like to see us accomplish something on a very difficult, some days seemingly intractable, issue. Nevertheless, I am in favor of trying to pass an immigration bill. But there is going to be widespread reluctance on this side of the aisle to support cloture and thereby bring the bill to a conclusion unless amendments, a significant number, are being allowed to be considered.

HONORING OUR ARMED FORCES

SERGEANT JAMES W. HARLAN

Mr. MCCONNELL. Mr. President, while I am in my leader time, I rise today to honor the heroic sacrifice of a fellow Kentuckian, a brave soldier who served multiple tours in Iraq. He was also a proud father and grandfather who sought to protect the people and the land he loved.

SGT James W. Harlan was tragically killed on May 14, 2004, when a suicide bomber detonated a car bomb next to his humvee at Camp Anaconda near Balad, Iraq. Sergeant Harlan was a native of Owensboro, KY, and a member of the 660th Transportation Company's 88th Regional Readiness Command in the U.S. Army Reserve. He was 44 years old.

For his heroic service, Sergeant Harlan was awarded the Silver Star and the Purple Heart, among many other awards and medals of distinction.

I mentioned that Sergeant Harlan was brave; let me elaborate on that. When he was 11 years old, his older sister Doris was assigned the daunting task of babysitting young Jimmy. ''Jimmy was mischievous. He was always into something,'' she recalls. Sensing a window of opportunity to display his courage, Jimmy declared that he would jump off the roof of their family's house while his parents were away. At first Doris protested, but realizing that his intentions were probably only to rankle her, she told Jimmy: ''Fine, you go ahead and do it.'' She even went so far as to set out pillows for him to land on. Sure enough, brave young Jimmy jumped off that roof, and to this day Doris is surprised that he escaped without major injury.

Jimmy's love of adventure carried over into his adulthood. He enjoyed the outdoors and would often take his kids fishing and hunting. A compassionate and loving father to his five children, Jimmy always made sure to spend quality time with his family. ''When everyone else was sitting around with their bellies full on Thanksgiving, he would be outside throwing the football,'' his brother Kenny Likens recalls.

One of his favorite things to do was to coach baseball with his brothers. When he spent time indoors, he enjoyed watching old Western movies with his kids.

His sons, James Bryan Harlan, David Shane Harlan and Jacob Alexander Roberts, and his daughters, Tara Strelskey and Amanda Prout, as well as his two stepchildren, Bobby and Brittany Gray, will miss his caring and generous spirit.

Jimmy will also be missed by two girls who might not yet realize the extraordinary sacrifice their grandfather made, but who will learn it as they grow older. He was especially proud of them. Jimmy often said of his granddaughters, Jaidyn Main and Abigail Prout, ''Aren't they just the prettiest things you have ever seen?''

Jimmy's civilian career was partly spent as a truck driver. He enjoyed the opportunity to work on the big rigs and to see different parts of the country. He would often drive with his brother Kenny Likens. Through all that driving across the country, though, the two never did find a place they liked as much as their hometown of Owensboro, KY, where Jimmy was born and raised. When Jimmy left for his final tour in Iraq, he was working for the streets department in Owensboro.

Having served for two decades in the military and Reserves, Jimmy was a seasoned soldier. His patriotism and sense of civic duty compelled him to reenlist after the terrorist attacks of September 11, 2001, and he served two tours in Iraq.

While there, Jimmy supervised truck drivers who transported supplies to the troops at Camp Anaconda. His son James Bryan Harlan offered some perspective when he remarked:

> Nobody wants to see their father die . . . but to have it be while doing something of this significance, we're proud of him.

I would like to take this opportunity to say that not only is his family proud of him, but all of America is proud of Jimmy's heroism and sacrifice.

SGT James W. Harlan drove a rig across the highways of the United States, and he traversed the desert sands of Iraq. He had an adventurous spirit, and his far travels and his exemplary service were a natural fit for that little boy who once jumped off his parents' roof.

Jimmy Harlan left an inspirational example for his children and grandchildren, his brothers, Kenny Likens and DeWayne Likens; his sister, Doris Taylor; his step-brothers, Randall Wingfield, Steve Wingfield, and the late Michael Calloway; his fiancee, Carol Gray; his mother, Doris Marie Gray; and his late father, William Arthur Harlan.

I ask the Senate to keep the family of SGT James W. Harlan in their thoughts and prayers. I know they will be in mine.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1348, which the clerk will report.

The 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.

Cornyn modified amendment No. 1184 (to amendment No. 1150), to establish a permanent bar for gang members, terrorists, and other criminals.

Dodd/Menendez amendment No. 1199 (to amendment No. 1150), to increase the number of green cards for parents of United States citizens, to extend the duration of the new parent visitor visa, and to make penalties imposed on individuals who overstay such visas applicable only to such individuals.

Menendez amendment No. 1194 (to amendment No. 1150), to modify the deadline for the family backlog reduction.

Sessions amendment No. 1234 (to amendment No. 1150), to save American taxpayers up to $24 billion in the 10 years after passage of this act, by preventing the earned-income tax credit, which is, according to the Congressional Research Service, the largest antipoverty entitlement program of the Federal Government, from being claimed by Y temporary workers or illegal aliens given status by this act until they adjust to legal permanent resident status.

Sessions amendment No. 1235 (to amendment No. 1150), to save American taxpayers up to $24 billion in the 10 years after passage of this act, by preventing the earned-income tax credit, which is, according to the Congressional Research Service, the largest antipoverty entitlement program of the Federal Government, from being claimed by Y temporary workers or illegal aliens given status by this act until they adjust to legal permanent resident status.

Lieberman amendment No. 1191 (to amendment No. 1150), to provide safeguards against faulty asylum procedures and to improve conditions of detention.

Cornyn amendment No. 1250 (to amendment No. 1150), to address documentation of employment and to make an amendment with respect to mandatory disclosure of information.

Salazar (for Clinton) modified amendment No. 1183 (to amendment No. 1150), to reclassify the spouses and minor children of lawful permanent residents as immediate relatives.

Salazar (for Obama/Menendez) amendment No. 1202 (to amendment No. 1150), to provide a date on which the authority of the section relating to the increasing of American competitiveness through a merit-based evaluation system for immigrants shall be terminated.

DeMint amendment No. 1197 (to amendment No. 1150), to require health care coverage for holders of Z nonimmigrant visas.

Bingaman/Obama modified amendment No. 1267 (to amendment No. 1150), to remove the requirement that Y–1 nonimmigrant visa holders leave the United States before they are able to renew their visa.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 2 hours of debate with respect to amendment No. 1184, as modified, offered by the Senator from Texas, Mr. CORNYN; an amendment offered by the Senator from Massachusetts, Mr. KENNEDY, related to the same subject, with time equally divided and controlled between Senator CORNYN and Senator KENNEDY.

Who yields time?

Mr. ALLARD. Mr. President, I am requesting just 30 seconds to make a unanimous consent request.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The Senator is recognized.

Mr. ALLARD. Mr. President, I ask unanimous consent that the pending amendment be set aside and that we call up three amendments, Nos. 1187, 1188, and 1201, and then we be returned back to the pending amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Massachusetts.

Mr. KENNEDY. Objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ALLARD. I thank the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, just for the benefit of the Members, we have tried to establish a way of moving along today. We are going to consider the Cornyn amendment, and then there is an amendment that I will place at the desk. We will have a 2-hour time allocation equally divided, though I am not sure we will take all the time, and then we will have an opportunity to vote on that measure.

We are trying to set up a series of votes through the morning, through the afternoon, and through the evening. What we are going to try to do is to give Members as much time as possible on these items, rotating back and forth through the course of the day, and we will work with our colleagues to try to accommodate their schedules. We have a rigorous program, and we will announce that.

We have talked with the floor managers, Senator SPECTER, Senator KYL, and others, on these measures, and we will proceed in that way. So Members need to understand that we will have a busy and full day, and we will start off with the amendment of the Senator from Texas, No. 1184, as I understand.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

AMENDMENT NO. 1184

Mr. CORNYN. Mr. President, I yield myself up to 10 minutes.

Mr. President, this amendment we will vote on this morning is an important amendment. It was first filed 2 full weeks ago, and it has taken this long to be able to get a vote on this amendment, for which I am grateful, but I must say that, as the Republican leader indicated this morning, the rate of progress with getting amendments debated and voted on is not promising. And the fact that the majority leader has now filed cloture, potentially cutting off the opportunity for full and fair debate and an adequate number of votes on this bill, again, is not encouraging at all.

I am one of those who would like to see a solution to this problem, but I think it is important that we reflect on what kind of solution we will accomplish if we are successful. To me, the goal is simply to restore law and order to our immigration system. It is important to our national security because we have to know who is coming into our country and why people are here in a post-9/11 world. It is important to public safety because we know the same broken borders that can allow people who are economic migrants to come across can also allow common criminals, drug traffickers, and even terrorists. And it is important to our prosperity in this Nation that we reestablish our heritage as a nation that believes in the rule of law. We simply cannot have people choosing to obey some laws and disobeying others. That is not adherence to the rule of law. That is picking and choosing, cherry-picking what laws you find convenient and what laws you find inconvenient.

To my mind, and based upon my experience with my constituents across the State of Texas last week, this is the cause for so much distrust of the Federal Government when it comes to this issue. The basic objection to this underlying bill is not that people don't believe there is a serious problem, it is not that people are racist or anti-immigrant or nativists or know-nothings or any of the other names that sometimes people are called. It is that the American people believe we have been here before.

In 1986, they gave their trust to the Federal Government to actually fix this problem by granting a one-time amnesty and then providing for an enforcement system that would actually be enforced against employers who hire people who cannot legally work here. They were sold a bill of goods. It didn't work. We got an amnesty, and we got no enforcement. That is why people are so distrustful.

So if we are serious about restoring the rule of law, I believe the first place to start would be by passing this amendment, amendment No. 1184, on the floor of the Senate.

What does this amendment do?

Well, first of all, this amendment would mandate that gang members cannot obtain legal status. It is well documented that members of MS–13 and other gangs, ultra-violet gangs emanating from Central America, have come across our broken borders and committed terrible crimes of violence in the United States. In the underlying bill, the Secretary of Homeland Security could actually grant a waiver that would allow a gang member legal status.

That just cannot be. Congress should draw a line about whom we are willing to allow in and whom we are not, and we shouldn't delegate this to the Secretary of the Department of Homeland Security or the Attorney General or anyone who might hold those positions in the future.

The next thing my amendment would do is it would address the definition of ''good moral character.'' We would allow only people with good moral character, as defined in the bill, to obtain legal status. The underlying bill does not contain a prohibition on those who are affiliated with terrorist organizations. My amendment makes the commonsense change that would bar them. The amendment also requires that those who apply for legalization under the bill must generally show they have good moral character.

Third, my amendment makes the failure of sex offenders to register in high-speed flight crimes grounds of ineligibility for Z visas.

Fourth, my amendment makes repeat DWIs, driving while intoxicated or driving under the influence, an aggravated felony. It is a simple fact of life that repeat DWI offenders are a substantial threat to a community's safety.

They have a proven history of involvement in various serious collisions that kill, maim, and otherwise seriously injure innocent people.

When I was in Texas this last week, I met with representatives of Mothers Against Drunk Driving and told them about the gaps in this underlying bill and received the assurance, at least of that representative, that this was an issue she cared passionately about. I suggest all of us who care passionately about public safety and decreasing the incidence of drunk driving and driving under the influence, that are a threat to public safety, that those who care about decreasing that threat should vote for this amendment. Designating a third DUI offense as an aggravated felony recognizes the acute danger that repeat DUI offenders present to the American people and the strong need to remove from the United States those who repeatedly commit DUI offenses.

The fifth category is the one on which I believe there is the biggest disagreement. This has to do with so-called absconders and identity thieves. This gets to the essence of this bill and whether we are serious about restoring the rule of law to our immigration system and whether we are going to send a message, loudly and clearly, that while we might be willing to consider those who have entered our country without a visa, who are by definition guilty of a misdemeanor, or those who have come in legally and who have overstayed, who are guilty of a status violation under our immigration laws—while we might be willing to consider them for a path to legalization and citizenship under some conditions, we should not allow a path to legalization and citizenship for those who have openly defied our courts, the lawful orders of our courts, and who have shown themselves as having no regard for the rule of law.

What kind of citizens can we expect these individuals to be, individuals who have been ordered deported, who have had their day in court and who simply defied that court order by going on the lam and melting into the American landscape, or those who have been ordered deported and who have actually

been deported but then who have reentered the country? Both of those, going on the lam after you have been ordered deported and reentering after you have been actually deported, are felonies under section 243 of the Immigration and Naturalization Act—a felony.

If we are serious about restoring respect for the rule of law, then we should, at the very least, prohibit felons and repeat offenders from getting the Z visa or path to legal status, including the opportunity to apply for legal permanent residency and citizenship. We should be willing to draw a bright line there.

I have to say, with all due respect, if we do not adopt this amendment, then we might as well retitle that section of this bill, ''No Felon Left Behind.'' It is clear, whether it is gang members, terrorists, sex offenders or repeat drunk drivers, these people have thumbed their noses at the law. While there is some common ground, and I congratulate Senator KENNEDY for moving our way on this issue, it completely omits the category of felons who have shown no regard for our laws and who have shown themselves unwilling to live in peace with Americans in this country. We ought to draw a bright line there. My amendment would do that.

Mr. President, I yield myself 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, the Senator is recognized.

Mr. CORNYN. I know we have a number of colleagues who not only are Members of the Senate but are also running for the highest office in our land, running for the office of President of the United States. I know there have been a number of debates on the Democratic side and Republican side. I believe this amendment and the vote on this amendment is a defining issue for those who seek the highest office in the land, for them to demonstrate their respect for the rule of law and to demonstrate their desire to return law and order to our immigration system. A ''no'' vote on the Cornyn amendment will demonstrate that we are not serious, that we do not believe the rule of law deserves respect because, unfortunately, under the Kennedy amendment, the alternative is literally a figleaf that has been offered to give people the sense they voted for something so they will have an explanation, even knowing they have not voted to exclude these felons. A failure to vote yes on the Cornyn amendment will indicate we are not serious about restoring the rule of law through our immigration system and will indicate we are willing to allow felons and people who have no desire, based on their experience, to comply with our laws and live in peace in this country, to become part of America. I think we need to send a loud and clear message as to where that line should be drawn.

I reserve the remainder of our time on this side and yield the floor.

Mr. DURBIN. Will the Senator yield for a question?

Mr. CORNYN. I will, Mr. President.

Mr. DURBIN. I would like to ask the Senator about a hypothetical that is not a hypothetical. It is a real case that has come through my office in Chicago. I ask the Senator from Texas if he would consider the facts in this case and tell me how his amendment would apply to the case.

In a family in Chicago, the father is a citizen of the United States and the four children that he and his wife have are all citizens of the United States. The mother is undocumented. The mother came into the United States illegally. She was married, raised a family—and her grandmother died in Mexico. She went back over the border and, when she tried to reenter the United States, produced identification that was false. They caught her. They deported her back to Mexico, but she made it back to the United States. She is now with her family in Chicago.

It is a case that has had a lot of publicity because she was deported 2 days before Mother's Day. She has been allowed to return to the United States on a humanitarian waiver to be with her family.

I would like to ask the Senator from Texas, how would you treat her under your amendment? What would her status be? Would she be characterized as an aggravated felon? Could she, under any circumstances, be given any opportunity to become legal under your amendment?

Mr. CORNYN. Mr. President, I will be glad to try to answer the question. Similar to a lot of hypotheticals, it has a lot of twists and turns. Let me give it a try.

Under this amendment, people who entered the country illegally and who are guilty of illegal entry, or who come in legally and overstay, would not be rendered ineligible, not under the Cornyn amendment. Those who are repeat offenders—in other words, people who have entered illegally, then exited the country and reentered; exited, reentered—are guilty of a more serious offense because they are multiple offenders.

I am not sure, under the hypothetical the Senator asked, whether this individual would be barred. But people who are serial offenders and violators of our immigration laws would be barred under this amendment.

Mr. DURBIN. So if I might ask the Senator from Texas: The Senator from Texas would suggest, then, that this mother of four citizens, married to a citizen of the United States, who has lived here for more than 10 years, should be deported?

Mr. CORNYN. What my amendment would do would not order her deported. What it would do is say she is ineligible for a Z visa.

Mr. DURBIN. I ask the Senator from Texas—let's get down to the reality of the situation. As far as this family is concerned, where the mother has gone through the experience I described, you would say that family has to either break up or leave?

Mr. CORNYN. Mr. President, I disagree with the characterization of the Senator from Illinois. As this hypothetical individual is married to a U.S. citizen, she could get a waiver on that ground because she is married to a U.S. citizen. She would not, under existing law—she could get a waiver and would not be deported necessarily.

Mr. DURBIN. If I might ask one last question, is that a provision in your amendment? Or is that in the underlying bill?

Mr. CORNYN. In response to the question, that is a provision of current law that my amendment does not touch.

Mr. DURBIN. I thank the Senator from Texas.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I thank the Senator from Illinois for raising that issue. I think our language makes it extremely clear. I think there is a real question. We are looking through the language of the Senator from Texas about whether that would necessarily define that individual as an aggravated felon and therefore would deny the judge the opportunity to make a humanitarian finding on it, but we can come back to that.

AMENDMENT NO. 1333, AS MODIFIED

Mr. President, I call up my amendment No. 1333, as modified.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1333, as modified, to amendment No. 1150.

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

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

The amendment is as follows:

On page 48, strike line 11 and all that follows through page 51, line 37, and insert the following:

SEC. 204. INADMISSIBILITY AND DEPORTABILITY OF GANG MEMBERS.

(a) DEFINITION OF CRIMINAL GANG.—Section 101(a) (8 U.S.C. 1101(a)) is amended by inserting after paragraph (51) the following:

''(52)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons—

''(i) that has, as 1 of its primary purposes, the commission of 1 or more of the criminal offenses described in subparagraph (B); and

''(ii) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subparagraph (B).

''(B) Offenses described in this subparagraph, whether in violation of Federal or State law or in violation of the law of a foreign country, regardless of whether charged, and regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph, are—

''(i) a felony drug offense (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(ii) a felony offense involving firearms or explosives, including a violation of section

924(c), 924(h), or 931 of title 18 (relating to purchase, ownership, or possession of body armor by violent felons);

''(iii) an offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to the importation of an alien for immoral purpose);

''(iv) a felony crime of violence as defined in section 16 of title 18, United States Code, which is punishable by a sentence of imprisonment of 5 years or more, including first degree murder, arson, possession, brandishment, or discharge of firearm in connection with crime of violence or drug trafficking offense, use of a short-barreled or semi-automatic weapons, use of a machine gun, murder of individuals involved in aiding a Federal investigation, kidnapping, bank robbery if death results or a hostage is kidnapped, sexual exploitation and other abuse of children, selling or buying of children, activities relating to material involving the sexual exploitation of a minor, activities relating to material constituting or containing child pornography, or illegal transportation of a minor;

''(v) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

''(vi) any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property); and

''(vii) a conspiracy to commit an offense described in clause (i) through (vi).''.

(b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (L); and

(2) by inserting after subparagraph (E) the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang, is inadmissible.''.

(c) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, who at any time has participated in a criminal gang, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang is deportable. The Secretary of Homeland Security or the Attorney General may waive the application of this subparagraph.''.

(d) TEMPORARY PROTECTED STATUS.—Section 244 (8 U.S.C. 1254a) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking '', or'' and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(iii) the alien participates in, or at any time after admission has participated in, knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the gang the activities of a criminal gang.''; and

(3) in subsection (d)—

(A) in paragraph (2)—

(i) by striking ''Subject to paragraph (3), such'' and inserting ''Such''; and

(ii) by striking ''(under paragraph (3))'';

(B) by striking paragraph (3); and

(C) by redesignating paragraph (4) as paragraph (3); and

(D) in paragraph (3), as redesignated, by adding at the end the following: ''The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision.''.

(e) INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.—

(1) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section 209(a)(3), is further amended—

(A) in subclause (II), by striking ''or'' at the end;

(B) in subclause (III), by striking the comma at the end and inserting a semicolon; and

(C) by inserting after subclause (III) the following:

''(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender); or''.

(2) DEPORTABILITY.—Section 237(a)(2)(A)(i) (8 U.S.C. 1227(a)(2)(A)(i)) is amended—

(A) in subclause (I), by striking '', and'' and inserting a semicolon;

(B) in subclause (II), by striking the comma at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(III) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender).''.

(f) PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF PROTECTION ORDERS.—

(1) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C. 1182) is amended—

(A) in subsection (a)(2), by adding at the end the following:

''(J) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.—

''(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, provided the alien served at least 1 year's imprisonment for the crime or provided the alien was convicted of or admitted to acts constituting more than 1 such crime, not arising out of a single scheme of criminal misconduct, is inadmissible. In this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

''(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that constitutes criminal contempt of the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, is inadmissible. In this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

''(iii) APPLICABILITY.—This subparagraph shall not apply to an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, upon a determination by the Attorney General or the Secretary of Homeland Security that—

''(I) the alien was acting in self-defense;

''(II) the alien was found to have violated a protection order intended to protect the alien; or

''(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury.''; and

(B) in subsection (h)—

(i) by striking ''The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)'' and inserting ''The Attorney General or the Secretary of Homeland Security may waive the application of subparagraphs (A)(i)(I), (B), (D), (E), (F), (J), and (K) of subsection (a)(2)''; and

(ii) by inserting ''or Secretary of Homeland Security'' after ''the Attorney General'' each place it appears.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any acts that occurred on or after the date of the enactment of this Act.

SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO DRUNK DRIVING, ILLEGAL ENTRY, PERJURY, AND FIREARMS OFFENSES.

(a) DRUNK DRIVING.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by inserting after subparagraph (J), as added by section 204(f) the following:

''(K) DRUNK DRIVERS.—Any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is inadmissible.''.

(2) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) DRUNK DRIVERS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of 1 felony for driving under the influence under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is deportable.''.

(3) CONFORMING AMENDMENT.—Section 212(h) (8 U.S.C. 1182(h)) is amended—

(A) in the subsection heading, by striking ''SUBSECTION (A)(2)(A)(I)(I), (II), (B), (D), AND (E)'' and inserting ''CERTAIN PROVISIONS IN SUBSECTION (A)(2)''; and

(B) in the matter preceding paragraph (1), by striking ''and (E)'' and inserting ''(E), and (F)''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to convictions entered on or after such date.

(b) ILLEGAL ENTRY.—

(1) IN GENERAL.—Section 275 (8 U.S.C. 1325) is amended to read as follows:

''SEC. 275. ILLEGAL ENTRY.

''(a) IN GENERAL.—

''(1) CRIMINAL OFFENSES.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

''(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

''(B) knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

''(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

''(2) CRIMINAL PENALTIES.—Any alien who violates any provision under paragraph (1)—

''(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

''(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

''(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

''(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

''(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

''(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

''(A) alleged in the indictment or information; and

''(B) proven beyond a reasonable doubt at trial or admitted by the defendant.

''(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

''(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

''(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross, the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

''(1) not less than $50 and not more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

''(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 275 and inserting the following:

''Sec. 275. Illegal entry.''.

(3) EFFECTIVE DATE.—Section 275(a)(4) of the Immigration and Nationality Act, as added by this Act, shall apply only to violations of section 275(a)(1) committed on or after the date of the enactment of this Act.

(c) PERJURY AND FALSE STATEMENTS.—Any person who willfully submits any materially false, fictitious, or fraudulent statement or representation (including any document, attestation, or sworn affidavit for that person or any person) relating to an application for any benefit under the immigration laws (including for Z non-immigrant status) will be subject to prosecution for perjury under section 1621 of title 18, United States Code, or for making such a statement or representation under section 1001 of that title.

(d) INCREASED PENALTIES RELATING TO FIREARMS OFFENSES.—

(1) PENALTIES RELATED TO REMOVAL.—Section 243 (8 U.S.C. 1253) is amended—

(A) in subsection (a)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''212(a)'' or after ''section''; and

(ii) in the matter following subparagraph (D)—

(I) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not more than 5 years''; and

(II) by striking '', or both'';

(B) in subsection (b), by striking ''not more than $1000 or imprisoned for not more than one year, or both'' and inserting ''under title 18, United States Code, and imprisoned for not more than 5 years (or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a)).''; and

(2) PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.—Section 924(c) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting '', alien smuggling crime,'' after ''any crime of violence'';

(ii) in subparagraph (A), by inserting '', alien smuggling crime,'' after ''such crime of violence''; and

(iii) in subparagraph (D)(ii), by inserting '', alien smuggling crime,'' after ''crime of violence''; and

(B) by adding at the end the following:

''(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).''.

(3) INADMISSIBILITY FOR FIREARMS OFFENSES.—Section 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)), as amended by sections 204(e) and 209(a)(3), is amended—

(A) in clause (i), by inserting after subclause (IV) the following:

''(V) a crime involving the purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code), provided the alien was sentenced to at least 1 year for the offense,''; and

(B) in clause (ii), by striking ''Clause (i)(I)'' and inserting ''Subclauses (I), (IV), and (V) of clause (i)''.

Mr. KENNEDY. Mr. President, I will make a comment. I see my friend from Rhode Island. I would like to make a brief comment on the amendment of Senator CORNYN and a brief comment on our amendment. Then I hope the Senator from Rhode Island will speak to it.

It is always interesting to listen, when we are talking about the immigration bill, to those who go back to the 1986 bill. I remember it very clearly. I voted against it. That was an amnesty. That was a real amnesty. We hear a great deal in the public about what is amnesty, what is not amnesty. That was amnesty. This legislation is not amnesty. That effectively said those people who were undocumented, who came here, were forgiven. They followed the basic recommendations of a report by the distinguished president of Notre Dame, the Hessberg Report. I remember it clearly.

There were enforcement provisions in there. They were completely inadequate. I might remind my friend from Texas, from 1986 to 1992, we had a Republican administration, a Republican President, and they didn't enforce it, as they have not enforced the recent legislation. They have had three investigations in terms of investigating undocumented aliens—three. They are the great defenders of the American border? Great defenders about immigration reform?

Please.

We always have to go through the little dance about the 1986 bill and the enforcement. I wish, during that period of time—1986, 1987, 1988, 1989—I wish all during those years we had the enforcement. But we did not. So we are where we are today. The real question is, is this legislation that we have now the downpayment on national security, on security internally? Does it provide the opportunity for those who are here to pay the fine, go to the back of the line, demonstrate a good working relationship and be able to emerge out of the shadows—the AgJOBS bill, the DREAM Act, and other provisions of the temporary worker program?

With regards to the Cornyn amendment, we have an immigration program in this legislation that is strong, practical, and fair. One of the essential elements is to bring the 12 million men, women, and children—hard-working families—out of the shadows into the sunlight of America. We know we are not going to conduct massive roundups and deport 12 million people. We don't have the means to do it. It would disrupt our economy, inflict untold hardships on millions of hard-working people. It is estimated it would cost more than $250 billion. We would have buses all the way from Los Angeles to New York and back to trying to do this, if it were even possible.

But the Cornyn amendment would make vast numbers of these families ineligible for our program. We are trying to deal with a key element of the program and that deals with the families who are here. It would keep them in the shadows, where employers abuse and underpay them. That hurts the immigrants, but it hurts American workers, too, by depressing wages.

That is what we see that is out there now, with undocumented—the 12 million with a work record which is even better, in terms of percentages, than native born Americans, people who are willing to work and want to work hard. But there is exploitation of those individuals because every one of them knows all the boss has to do is go down and call the immigration service.

Work 80 hours a week.

Well, I don't want to.

Well, I'm going to call the immigration service and you're deported.

They do that. That individuals are exploited in this country is well understood. We are trying to free ourselves from that kind of a condition. But the Cornyn amendment would still make vast numbers of these families ineligible for our programs, keep them in the shadows where employers abuse and underpay them, which hurts the immigrants but it hurts American workers, too, by depressing their wages.

The Cornyn amendment does this by classifying an array of common garden variety immigration offenses as crimes that would make them ineligible for the program. For example, the Cornyn amendment says that if you come here, have been ordered out of the country by immigration authorities, but if you fail to leave or you come back, you are ineligible. That is exactly what has been going on with our broken immigration system; people have come to work, employers want them to come, and they have benefitted our economy.

Immigration officers may find them and order them home, but our employers beg them to come back. Our broken borders make that possible.

Cornyn says: If you have used false identification, you may be found inadmissible and may be deported. But in our broken system, the people who have wanted to work have been forced to use the false identification. That is the reality of where we are today. Cornyn says he wants to be tough on gang members, sex offenders, individuals convicted of domestic violence. So do we. We have addressed any provisions not covered by the current law. Our amendment goes even further than the bipartisan compromise bill.

He wants to exclude gang members. Our amendment does that too. Nobody who has engaged in illegal activity as part of a criminal gang will be allowed to enter or stay in this country. He says we should bar sex offenders from coming here. Our amendment does that. Any convicted sex offender who fails to register will not be allowed back in the country; if already here, then those offenders will face deportation.

Cornyn says immigrants who commit acts of domestic violence or endanger their families should be punished. Our amendment does that. He says drunk drivers should be deported. Our amendment does that. Any immigrant with one felony conviction for drunk driving will not be allowed to enter this country. If convicted here, then the drunk driver will be deported.

He says there should be consequences for individuals engaging in fraud. Our amendment does that. Our amendment punishes anyone who commits perjury or makes false statements when seeking immigration benefits. If any person lies on their application, then this individual will be prosecuted and subject to criminal penalties.

He says we should go after immigrants convicted of firearms offenses. Our amendment does that, too. Who are the people we want to apply under our program? Who are the people the Cornyn amendment would condemn to the shadows of abuse? We know that the vast majority of the families who have come over here are hard-working people who care for their children, go to church, and contribute to their communities.

In America, we respect hard work. Hard work built America. So our program says: If your only offense is that you came here to work, you came here to provide for your family, we will proceed in a way that you can atone for that offense and earn the right to stay and work legally. If you are a criminal, then we will arrest you. If you are a threat to our national security, a terrorist, then we will lock you up. If you try to cheat your way into the program through fraud, we will deport you. But if you came here to work and build a life, then you can stay. But first you have to meet the tough requirements: You have to pay the $5,000 fine, show a steady work history, learn English, get to the back of the line to get your green card, behind all those who have been waiting legally to get theirs.

The Cornyn amendment creates harmful barriers for refugees fleeing persecution. In America, we have had a long and proud tradition of providing refuge to people who have faced persecution and oppression in their lands, whose lives are at risk because they stood up for their beliefs.

We took in refugees from Cuba and from Vietnam as they fled communism. We have helped people from Somalia and Bosnia and other areas of conflict and oppression. Now we are beginning to help people whose lives are at risk because they helped our troops in Iraq.

But often these persecuted refugees have no choice but to cooperate with their oppressors in order to save their families' lives and enable their escape. The Cornyn amendment says: If you do that, if you provide what is called material support to these oppressors and terrorist groups, then we are not going to rescue you from the hands of your oppressors. You have to take your chances and hope your oppressors do not persecute you or even kill you or your family.

Consider the case of Helene from Sierra Leone, Revolutionary United Front rebels attacked her home, hacked one of her family members to death with a machete; they set her son on fire, leaving him near dead with severe burns. They held her family captive, raping her and her daughter and forcing them to cook, forcing her to cook and wash their clothes.

The Cornyn amendment would bar legitimate refugees who were forced to assist their oppressors under duress. Under the Cornyn amendment, Helene would be ineligible to come to America as a refugee because she cooked for the rebels and washed their clothes. Under the Cornyn amendment, she and her family are ineligible because they provided material support for a terrorist group.

If that is not bad enough, the Cornyn amendment says she can be excluded based on secret evidence, evidence that neither she nor anyone else outside the Government can see. She may never know why she was excluded. The Cornyn amendment even bars her from going to court to explain her situation and appeal the denial of her case. The decision of the Secretary of Homeland Security or the Attorney General is final.

Helene would never get her day in court to explain the tragic circumstances of her case. The door to freedom in America would be closed shut, end of the discussion, you go back into the hands of your persecutors.

Madam President, surely by now, we have learned that closed proceedings conducted by executive branch officials based on secret evidence without any possibility of court review are inconsistent with American traditions and inconsistent with the search for justice; let's not go down that road again.

The amendment makes all of its changes retroactive. They apply to the past and future conduct. The Cornyn amendment would change the rules in midstream. That is frowned on in American jurisprudence; it is unconstitutional in criminal law and disfavored elsewhere. People whose conduct would not have affected their immigration status at a time it was committed, will suddenly suffer severe consequence. The retroactivity provisions simply bring home the punitive nature of this amendment. It is not designed to contribute to creation of a tough but fair and practical system of immigration, it is designed to be harshly punitive.

This amendment would exclude hundreds of thousands from benefits of this bill and undermine the bipartisan compromise that members of this body worked so long and so hard to produce. We will have an opportunity to vote for an alternative, the amendment I have offered. The amendment expands the

already tough criminal gang provisions contained in the bill.

If you are associated with a gang, and that gang is known to be engaged in violent crimes, drug crimes, crimes involving firearms or explosives, alien smuggling or trafficking, you are not going to qualify for benefits. If you are associated with a gang and the gang has been engaged in crimes of violence, including murder, arson, possession, kidnapping, bank robbery, sexual exploitation, abuse of children, obstruction of justice, witness tampering, burglary, racketeering, among other crimes, you are not going to be entitled to receive lawful status in this country, and you are not going to qualify for benefits.

This amendment expands the already tough grounds of inadmissibility and the criminal penalties in the current immigration law. We target essentially the same provisions as Senator CORNYN but in many instances go further. This amendment bars the admission of sex offenders who don't register as required and makes them subject to deportation as well.

It ensures that wife beaters, child abusers, stalkers, and others who prey on the vulnerable are inadmissible to the United States. It ensures that a drunk driver who is sentenced to 1 year of prison cannot be admitted to the United States and can be removed as well. Our drunk driving provisions, which require only one felony conviction, are even more restrictive than Senator CORNYN's, which requires three convictions before a drunk driver becomes inadmissible. We increase the penalties for illegal entry. We ensure that immigration fraud is subject to perjury charges. We toughen the penalties for firearm offenses. We are tough, but we are practical too. That is where this side by side differs from Senator CORNYN. His provisions are bright-line rules. He turns many of these criminal offenses into aggravated felonies. That is ''immigration speak'' for: You will never, ever be forgiven.

For many offenses, such as murder, that is more than a reasonable consequence. Murderers should not become U.S. citizens. Under the current law, they can never become a citizen. But most immigrants are not murderers, they are people who have entered the United States illegally. Under the Cornyn amendment, they could be aggravated felons too.

As a practical matter, Senator CORNYN does not want us to distinguish between murder and illegal entry; but that is not practical, nor does it reflect our criminal justice system. So it is true that we build in some small but important waivers that in extraordinary circumstances would give someone a second chance, not murderers but someone who had long ago made a mistake.

This week, I received a letter about a young man named Adrian, a former gang member in Massachusetts who has turned his life around. Adrian went from a life of juvenile delinquency to that of a dedicated student; one who works full time now in hopes of going to college. Adrian's principal and his teachers praise him for his hard work, his commitment to family, his newfound motivation to go to college. They want him to have a chance to stay in this country.

The author of the letter then says: ''It is a very, very hard thing to leave the gang life behind. There are other Adrians out there as well who have made the same decision regardless of difficulty. Is the message this country wants to send them, that what they have done is unforgivable regardless of whatever changes they may have courageously made? Wouldn't the country gain by having an incentive in law that might attract young people to leave gang life and move their lives forward a very different way? Wouldn't it be helpful to the country to have a waiver that a person could apply for if they can prove they have left a gang and provided evidence on how they have moved on?''

Every change in our immigration law represents a statement about whom we are as a country. Are we a country that takes individual circumstances into account or are we a country that punishes with no regard for individual circumstances? We can be tough on crime and yet retain a level of discretion in our immigration laws? This is the crux of the difference between what I am suggesting to the Senate and what Senator CORNYN has proposed.

That a measure of discretion is every bit as much a tool of law enforcement as the strictest ban. I see my friend who has been waiting here. I yield time.

The PRESIDING OFFICER (Mrs. MCCASKILL.) The Senator from Texas.

Mr. CORNYN. Madam President, I would ask the distinguished Senator from Massachusetts if we may go back and forth across the aisle. I have a speaker on our side as well who would like to be recognized for 10 minutes. Is that acceptable?

Mr. KENNEDY. Well, I would like to follow that. The good Senator was here even before I was this morning. Is that agreeable?

Mr. WHITEHOUSE. Madam President, I would yield to the request of the Senator from Texas.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. I thank all my colleagues for their courtesies.

Madam President, I rise in strong support of the Cornyn amendment and in opposition to the much weaker, watered-down Democratic alternative.

This amendment illustrates a lot about this debate. The Cornyn amendment is clear. It is necessary. It is common sense. It is absolutely necessary we pass amendments such as this and have the ability to debate and vote on amendments such as this in the important immigration debate.

This amendment is very straightforward. It prevents terrorists, gang members, sex offenders, and other folks who have broken the law in significant ways, committed significant felonies, from receiving immigration benefits and citizenship in the future. How can any of us in the Senate oppose a straightforward and necessary commonsense amendment? How can any of us be comfortable with an underlying bill which has these gaping loopholes? We must address these gaping loopholes. How can we tell families across America that we are going to allow sex offenders and gang members to become legal residents, possibly citizens? The Cornyn amendment would prevent this. It would address all of these significant loopholes.

Again, terrorists, gang members, violent gang members, those who have committed other significant felonies, those who have been detained for coming into the country illegally and have absconded, those who have been deported from the country for coming into the country illegally and have reentered illegally—all of those categories of illegals should be prevented from gaining the benefits of this bill. The Cornyn amendment clearly does that.

The Democratic alternative clearly does not. It has significant omissions from the Cornyn amendment. It allows absconders, those who have been detained and have gone underground, to receive the benefits of the bill. It allows those who have been deported from the country and who came back in illegally to get the benefits of this bill. It allows others who fall into the category of gang members and those who committed serious felonies to gain the benefits of this legislation. That is simply wrong. We must support the commonsense, straightforward Cornyn amendment.

I also want to spend a portion of my time urging my colleagues to not vote for cloture on this bill as it presently rests before us, because we have many important amendments to consider. Two of those are the amendments I will humbly offer to the Senate. They are important issues; they are important amendments. I urge us to pay careful consideration to them and to have an opportunity for debate and vote.

In that spirit, I ask unanimous consent to lay aside the pending amendment and to call up my amendment No. 1338.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. VITTER. I am sorry to hear that. Let me try my second amendment which is also at the desk. It concerns a significant provision in the bill which we need the opportunity to debate and vote on. That is Vitter amendment No. 1339.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. VITTER. Madam President, unfortunately, this illustrates the point about the inappropriateness of cloture. These are two significant amendments which go to important provisions of the bill. All of us—and more importantly, the American people—deserve to have these matters debated and voted on. Let me explain what these amendments are about. Everybody—certainly the majority side—has been given the amendments.

My first amendment only requires what Congress originally mandated back in 1986; that is, the entry/exit system known today as US–VISIT. We must have that fully operational before all aspects of this bill are allowed to go into effect. It was authorized 10 years ago, but it is not near to fully operational now. We must make sure that it is a part of this bill's enforcement trigger.

Without the US–VISIT system's completion, we can't be sure that we know what individuals are in the country. In fact, we can be sure we will not know because how can we possibly have a grasp of who is in the country and who is not in the country without this system which tracks people as they exit? There are a lot of folks on visas here for a limited period of time. Under that visa, they, of course, need to exit the country before their visa is up. The US–VISIT system allows us to know if they are doing that. How can we possibly be ready for the full implementation of this legislation, how can we possibly say we have the enforcement system we need in place without the US–VISIT system, without knowing who exits the country and when, without knowing whether they have overstayed their visa?

As of 2006, the illegal population included 4 to 5.5 million overstays, people here illegally because they are overstaying the time limits of their visa. The US–VISIT system is absolutely necessary to get to the heart of the problem and to enforce against overstays. How can we say we have adequate enforcement, how can we trigger the other provisions of this bill without making sure we have that in place, functioning, fully operational?

The US–VISIT system is not any part of the triggers now in the bill. It must be. That is what my amendment 1339 goes to.

As I mentioned, I have another amendment, No. 1338, that would correct a provision in the bill which doesn't allow for a catch-and-release program anymore but simply changes that to a catch, pay, and release program. In this legislation, those in this country illegally who are caught and who are not from Mexico don't have to be kept in custody. They can be released on a $5,000 bond. For months, and indeed years, we on the Senate floor and those around the country have decried the catch-and-release program, a program that has been in place where illegals are caught but are released into our country and simply given a piece of paper that says: Show up to court on such-and-such a date. Guess what. They never do. This bill merely changes that to a catch, pay, and release program. It allows catch and release to continue, only with a $5,000 bond.

Why is that a problem? Because many of the folks we are talking about, particularly those who are among the most dangerous, those involved in illegal drug activity, those in other organized crime, can get the $5,000 bond. If they are already paying human smugglers to get them across the border, in many cases thousands and thousands of dollars, one has to assume they can get the resources to pay this bond. Changing catch and release to catch, pay, and release is completely inadequate. Yet that is what the underlying legislation does.

Amendment No. 1338 would close that loophole, would say: No, we are going to end catch and release forever, and we are not going to allow cash, pay, and release. When we catch these folks coming into the country illegally who are not from Mexico, so we can't simply send them back to Mexico at the southern border, we are going to detain them. We are not going to let them into the country on a bond or anything else. We are going to detain them until they are deported, and we are going to work very hard to deport them as quickly as possible.

Again, I believe my two amendments, which have not been allowed to be offered, clearly illustrate why we are not ready for cloture on this bill. This is a significant debate on a massive, 800-page bill. This bill, if enacted, will affect our country in major and significant ways for decades to come. Everybody admits that, no matter what side of the debate they may be on. Yet we have only been allowed to have a modest number of votes on the bill, something on the order of 12. That is ridiculous. We need these sorts of amendments considered and voted on, and we must oppose cloture until that happens.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, we have tried to work out an orderly process as we have proceeded. We are going to have plenty of time to deal with a range of different amendments, as we did with the Vitter amendment previously.

I yield 12 minutes to the Senator from Rhode Island.

How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 39½ minutes remaining.

Mr. KENNEDY. I yield the Senator from Rhode Island 12 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

REMEMBERING SENATOR CRAIG THOMAS

Mr. WHITEHOUSE. Madam President, this is my first time speaking on the floor since the passing of our colleague, Senator Thomas. I know we are all very conscious of the desk draped in black across the way, next to Senator CORNYN. I extend my condolences to his many friends, my many esteemed colleagues who knew and admired Senator Thomas and mourn his loss and know he will be sorely missed by his friends in the Senate and his friends and family in his native State of Wyoming.

AMENDMENT NO. 1184

I rise today to address amendment No. 1184 offered by my friend from Texas, my former attorney general colleague, Senator CORNYN.

I will oppose this amendment. It is not entirely without merit in every one of its many dimensions, but it would undercut the fundamental principles of due process which are a longstanding and vital hallmark of our legal system. I fully support the creation of new grounds for inadmissibility to the United States for convicted sex offenders, gang members, repeat DUI offenders, and for individuals who have been convicted of firearms offenses and domestic violence. I have prosecuted these crimes. I have a firsthand understanding of how dangerous these criminals are. Simply stated, America's doors should not be opened to people who commit such crimes. If Senator CORNYN believes there are loopholes, I am happy to plug them, although I would note that the Secretary of Homeland Security, the Attorney General, the President, and others seem satisfied.

For that reason, I will support the alternative amendment offered by Senator KENNEDY which would add these offenses and others to the grounds for inadmissibility.

There is a right way to ensure dangerous criminals don't enter the country and there is a wrong way. Unfortunately, the amendment we are debating goes about it the wrong way. Let me explain.

Under the Immigration and Nationality Act, good moral character is a prerequisite for a variety of benefits and privileges, the most important being naturalization. Therefore, the law lists a series of characteristics which exclude a person from the definition of ''good moral character'': for example, a person whose income is derived principally from gambling or one who has given false testimony for the purpose of obtaining benefits or one who has been convicted of an aggravated felony. This, of course, makes perfect sense. These individuals as a general rule should not get on a path to naturalization.

But this amendment would change the definition of ''good moral character'' in a very novel and unsettling way: It would exclude from that definition one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or 237(a)(4). These sections list a series of security-related grounds under which

an alien is excludable or deportable. Those grounds, sensibly enough, include espionage, sabotage, terrorist activity, and any other unlawful activity. Anyone convicted of such offenses or even indicted for such offenses should be, of course, excludable. But that is not what this amendment says. This amendment would give the Secretary of Homeland Security and the Attorney General unreviewable discretion to make a determination as to good moral character.

First, as I have previously said, I am not inclined to expand the powers of the current Attorney General in any substantive way, much less to expand his power to make important unreviewable decisions. Setting aside my grave hesitation about this particular Attorney General, as a general rule, I don't believe we ought to prevent judges from reviewing important decisions which can affect life, liberty, and property. This would violate one of the most fundamental principles of American democracy—judicial review, a principle we have honored for centuries.

The second issue is even more unsettling. That is, under the proposed amendment, a person could be determined to lack ''good moral character'' if the unreviewable decision is made that he or she is ''described in'' these two specific sections of the immigration code.

''Described in,'' what exactly does it mean to be ''described in'' a statute? Not ''convicted'' under a statute, not ''in violation'' of a statute, not ''indicted'' under a statute but merely ''described in'' it.

Who knows what it means? I have found no precedent for this formulation. Is it consistent with American values to grant the Attorney General and the Secretary of Homeland Security the unreviewable discretion to say that a person is ''described in'' those statutes; the unreviewable power to say that somebody is engaged in ''unlawful activity''; and the unreviewable power to then deny them the benefits and privileges of American law?

That is not my experience as a prosecutor. I found due process to be important and valuable.

The amendment does not stop there. It would allow this unreviewable discretion to be based on evidence which the accused would never have the opportunity to confront.

Madam President, like you, I have spent my professional life in the American legal system, a good deal of it I spent as a U.S. attorney and as an attorney general. My experience is that our American system of law stands on some fundamental principles, among them that people can be aware of the charges brought against them, that people have an opportunity to confront the evidence used against them, that the prosecution and the judge are not rolled into one, and that we have judicial review of important decisions affecting people's rights and privileges. These are basic principles, and they represent core American values.

I do not know why we have to keep getting up to defend this. This is bedrock stuff. From the suspension of habeas corpus, to the administration's legal defense of torture, to ''extraordinary rendition,'' and so on, we have seen relentless efforts to chip away at bedrock principles of American law. With this amendment, there they go again.

Of course, we must do everything proper and necessary to protect our borders and keep Americans safe. But to throw out the separation between prosecution and judge, to throw out the opportunity to understand and explain evidence used against you, to throw out our ancient principle of judicial review, to allow Government officials to take away rights and privileges without answering to anyone? I do not think so.

These principles are too dear to be thrown away so lightly. Our country has been through a lot over the years, and these principles have survived and flourished, to lie today in our hands, in our stewardship, to protect and to pass on, as they were passed on to us.

I do not think this immigration issue is so terrifying that we need to throw these principles away now over immigration. We are made of sterner stuff than that.

I ask my colleagues to oppose Senator CORNYN's amendment No. 1184.

I thank Senator KENNEDY, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. CORNYN. Madam President, I yield the Senator from Alabama 10 minutes from our allotted time.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. SESSIONS. Madam President, I appreciate the Senator's comments about American law and principles. As a former U.S. attorney and attorney general, I share the general view. He mentions the historic privileges we have in America. But let me tell you, no one has a right to enter the United States of America. We decide who comes in and who does not.

That is a core principle of sovereignty. Every Nation in the world makes those decisions, if they are a functioning state, and you then allow people to enter on your terms, on whatever conditions they may be. The condition may be, you can enter as long as you are enrolled in a college, you can enter for a certain period of time, you can enter on a tourist visa to do a certain number of things.

But those conditions are not such that if you say someone cannot come here you violated the laws of America. If you say you can come to America but not if you have a history of being a sexual predator, what right does that violate? What principle of American law does that violate? I suggest none. We have every right to insist and ensure the immigration system of the United States serves the national interest. The national interest means you do not allow people to continue to stay in our country or to come to our country who have repeat DUIs or who sell drugs or who are associated with terrorists. How basic is that? Nobody has a constitutional legal right to demand entry into the United States of America. How much more basic can it be than that?

So that is where we are confused. It amazes me the lack of understanding and comprehension of what it is all about. We set the standards. We have the most generous immigration laws of almost any country in the world. It has been a big part of our heritage. We are not going to end immigration. Nobody wants to do that, or to act irrationally, and so forth.

But to set reasonable standards, as Senator CORNYN is attempting to do with his amendment, only makes common sense. For example, I have mentioned some of the loopholes. He fixes them. I give him every bit of credit for this: for standing firm, for insisting on this vote, after he has been objected to and objected to and blocked from getting his vote. But he stood firm on this issue. He is going to fix a number of the problems I wish to briefly mention.

Some aggravated felons who have sexually abused a minor are eligible for amnesty under this bill. They have no entitlement to amnesty. Nobody has entitlement to amnesty, whether they are perfectly wonderful citizens and all that. They are not entitled to that. This is a gift we give. So why would you want to give that to somebody who sexually abused a minor?

Well, the child molester who committed the crime, before this bill is enacted, is not barred from getting amnesty if their conviction document omitted the age of the victim. If the conviction document did not put the age down, then they are to be admitted under this bill. After there was some objection to it, they fixed that language for the future but did not fix it for the past or current convictions. So I think Senator CORNYN is correct. I support that portion of his amendment very strongly.

Another provision is that aliens with terrorism connections under this legislation are not barred from getting amnesty. They do not have a right to stay here. If we have any suggestion that someone in this country, now here, or someone who wants to come here is connected to terrorists, they do not have to be admitted. What kind of right do they have to demand to be admitted? If our State Department, in some country around the world, has information that a person is connected to terrorism, they do not have any right to demand to come here. They come at our pleasure, our sufferance.

So one of the things this bill, as written, does is it says an illegal alien seeking most of the immigration benefits must show good character. But last

year's bill—let me say this on the terrorism question—specifically barred aliens with terrorism connections from having the required good moral character to enter the United States. That is one of the things we say. You cannot come here unless you have good moral character. You cannot come here if you are a felon, a thief, a drug dealer or a child molester. Surely, that would make sense. So this bill eliminated that.

Another example, surprisingly, of this bill being weaker even than last year's fatally flawed bill: The bill's drafters have ignored the Bush administration's request that changes be made to the asylum, cancellation of removal, and withholding of removal statutes in order to prevent aliens with terrorist connections from receiving relief. The bill drafters were told about this by the Bush administration and were urged to put different language in, and they refused to do so, for reasons I cannot fathom.

But it begins to show a certain mindset. I think that mindset is we are somehow here to represent people who want to come into our country and stay in our country instead of representing the American people and the interests of the United States.

Last year, we had good moral character as a requirement. Good moral character involved not being connected to terrorists. But according to current law, an alien cannot have good moral character if they are a habitual drunkard, a majority of their income comes from illegal gambling, giving false testimony for immigration benefit purposes, they have been in jail for 180 days, they have been convicted of an aggravated felony or they have engaged in genocide, torture, or extrajudicial killings. That is current law we have. But this year's bill is completely missing these new terrorism bars that were in last year's bill, and the bill no longer requires good moral character. That is a matter that leaves us at greater risk than we need to be. It concerns me.

Another example. Instead of ensuring that members of violent gangs, such as MS–13, are deported, the bill will allow violent gang members to get amnesty as long as they renounce their gang membership on their application. That is the current law. Under the bill, being in a violent gang is not going to prevent you from qualifying for amnesty. The bill requires amnesty applicants to list—to list—you are required to list that gang membership on your application. Then you get a blank that says ''renunciation of gang affiliation.'' So if you check that blank and say you renounce it, then you get to stay in, perhaps.

So why don't we allow this: If an illegal alien has been a member of a violent international gang, such as Mara Salvatrucha 13, MS–13, why don't we say that blocks him or her from being eligible for the amnesty in the bill? Loyalty to the United States should be the requirement, not loyalty to some outside gang that is violent.

The night before last, I happened to turn on C–SPAN and catch a National Press Club conference by a series of law enforcement officers involved in the Border Patrol, the former chairman of the Border Patrol. They were ferocious in their criticism of this bill. I was surprised how strongly they felt about it.

Hugh Brien, himself an immigrant, was Chief of the Border Patrol from 1986 to 1989. He called the bill a sellout, a complete betrayal of the Nation, a slap in the face to millions of Americans who have come here legally like he had done. In 1986, he recalled: ''Our masters, our mandarins promised it would work.'' Of course, the 1986 bill did not. He also said, based on his experience in many years with the Border Patrol: ''It's a disaster.''

Kent Lundgren, the national chairman of the Association of Former Border Patrol Officers, said this: ''There are no meaningful criminal or terrorist checks'' in the legislation. He noted that the ''screening will not happen.'' He added Congress is lying about it.

The PRESIDING OFFICER. The Senator has used his time.

Mr. SESSIONS. Madam President, I thank the Chair and support the Cornyn amendment.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, how much time do I have?

The PRESIDING OFFICER. Thirty-one minutes.

Mr. KENNEDY. Madam President, I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. SCHUMER. Thank you, Madam President.

First, I salute my colleague from Massachusetts for his undaunted, courageous, and effective leadership on this issue, which is one of the most difficult issues we face. I think he has the respect of everybody in this body for that—the Senator from Massachusetts does—whether they agree or disagree with the bill.

Now, I rise in opposition to the Cornyn amendment and in support of the Kennedy alternative amendment No. 1333. There certainly are attractive parts of the Cornyn amendment, but the good parts of the amendment are buried in complicated language that strikes at the heart of the comprehensive immigration bill many of us are working hard to pass. At a minimum, my colleague's amendment would have the effect of stripping the path to citizenship, one of the mainstays of the compromise—one of the two mainstays of the compromise—out of the bill altogether. This body has already rejected that approach outright. It ought not do it now by stealth. It is a Trojan horse—nothing short of an attempt to kill the whole bill in the guise of tough enforcement.

My colleagues know when it comes to tough enforcement, whether it is on immigrants, citizens, or anyone else, I don't yield to anybody. I am a tough-on-crime guy. I come from an area that was ravaged by crime, and the works of the Federal Government, State government, and city government helped make the communities I represent much safer.

What we do in the Kennedy amendment is keep the tough enforcement without killing the bill. Let me repeat that. What we do in this amendment is keep the tough enforcement—it is all there—but we don't kill the bill. We don't eliminate the path to citizenship which is, of course, what the Cornyn amendment does and may well be intended to do.

If we are serious about passing the best possible bill and passing a bill that makes good sense, we should support the Kennedy amendment and not throw out the baby with the bathwater. We all want a bill that is tough on people who have broken the law, and we all want a bill that keeps people who should not be let into the United States in the first place from coming here.

Senator KENNEDY's amendment is both tough and smart. It changes the law to prevent the worst criminals from getting into the country and kicks out people who shouldn't be here, and it picks out the best parts of the Cornyn amendment and leaves out the worst.

Like Senator CORNYN's amendment, Senator KENNEDY's amendment says any new immigrant who has participated in a criminal gang in any way, shape, or form can't come live in the United States, period. It doesn't wait for a felony conviction or anything else. If you are in a gang, you can't come in, and you can't become a citizen. Any immigrant in the United States who has been a member of a gang can be deported. That is how it should be. Also, Senator KENNEDY's amendment cracks down on gang members who violate our gun laws.

Under Senator KENNEDY's amendment, aliens who have committed the horrible crimes of domestic violence—stalking, child abuse, child neglect, or child abandonment, and who have been sent to jail for a year—are barred from moving to the country or from attempting to naturalize as citizens. The amendment provides that sex offenders who don't register can't immigrate or come work here, and convicted sex offenders who don't register get deported.

The amendment would keep drunk drivers from immigrating to the United States. Just one felony conviction for drunk driving and you are out. People who try to sneak into the country, illegally cross the border, or lie to immigration agents will face steep fines and jail time, as the bill provides, as this body ratified last week.

The amendment has tough penalties for repeat offenders. An alien who tries

to enter the country after being convicted of a serious penalty can face up to 20 years in jail under the amendment.

So this is one tough amendment. But, again, it doesn't seek by stealth, as the Cornyn amendment does, to eliminate the bill altogether. Some of the things in this amendment are exactly like the language in Senator CORNYN's amendment. Senator KENNEDY's amendment takes the best of the Cornyn amendment and leaves out the parts that will gut or decapitate the bill. A vote for the Kennedy alternative is a vote for tough enforcement but also smart policy.

Madam President, I yield back the remaining time to my colleague and friend from Massachusetts.

The PRESIDING OFFICER. Who yields time? The Senator from Texas is recognized.

Mr. SPECTER. Madam President, customarily, as a manager of the bill, I control time, but I think now the time is in whose hands? I ask for 12 minutes of time, Madam President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, may I inquire whether the Senator intends to speak for or against the—

Mr. KENNEDY. Madam President, I yield 12 minutes to the Senator from Pennsylvania.

Mr. CORNYN. I think that takes care of it. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, I was about to say some nice things about the Senator from Texas, and I still will. He has been a very active and constructive participant in the consideration of immigration reform. In the 109th Congress he was very much involved and contributed greatly. We didn't always agree on a number of items, but he is very sincere, very studious, very thoughtful, and very constructive, and he continues in that role, although as is evident, there are some differences as to our approach. But I commend the Senator from Texas for what he has done and for what he continues to do here.

I am in favor of the alternative to the Cornyn amendment. I say that because we have structured the bill with a great many compromises. While I might be inclined to agree with the Senator from Texas on some of the specifics that he has enumerated which would be a bar to citizenship, there was a tremendous amount of give-and-take in the structuring of this bill so that I am standing with the committee bill—strike that. We don't have a committee bill. I wish we did. But I am supporting the bill which came out of the lengthy consultation with about a dozen principal Senators participating. There are a number of specifics, in the amendment which is side by side, which I think are preferable to the amendment by the Senator from Texas.

Illustrative of this preference is that the Senator from Texas makes a third conviction for drunk driving a crime of violence. Well, it may be a crime of violence, or it may not be a crime of violence. The alternative which has been proposed would make drunk driving a grounds for inadmissibility and deportability, providing the alien serves at least a year in prison. From my days as district attorney, I have seen quite a number of cases involving drunk driving, for example, and while I don't condone multiple convictions, I think it is a more appropriate ground that there be inadmissibility or deportability where the drunk driving was serious enough to call for a year in jail.

The amendment offered by the Senator from Texas also strips judicial review of findings that an alien is barred on national security grounds. From what we have seen about this issue in many contexts, there needs to be judicial review, although in a different context. In the last few days we have seen the Military Commission conclude that it had no jurisdiction because of problems with the indicting procedure with respect to whether one is an enemy alien or an unlawful enemy alien. This points to the necessity for judicial review, which would be excluded by the Cornyn amendment.

The Cornyn amendment also would deport or prevent citizenship for someone who has ever violated a protective order. Well, it is a good bit more complicated than that. The alternative amendment provides that there would be an analysis. It would exclude people convicted of a felony domestic violation, but there would be a consideration about whether, on a protective order, the alien was acting in self-defense, along with other considerations, in fact. Most fundamentally, the Cornyn amendment would strip the authority of the Departments, the Department of Homeland Security and the Department of Justice, to waive certain grounds which would warrant deportation or inadmissibility. That discretion, which is lodged in the alternative, enables a fuller review of the facts. It gives a chance to really look beyond some of the technical categorizations which might appear ominous on their face, but which, after there is a detailed review of what has happened on the underlying factors, might reveal there ought not to be inadmissibility or deportation. That discretion ought to remain with responsible officials in the Department of Homeland Security and the Department of Justice.

It is for those reasons, but fundamentally because the pending legislation was crafted with a great many compromises, that I favor the substitute and oppose the Cornyn amendment.

I would like to address something which is more fundamental and very serious, as we have had a statement by the majority leader that if cloture is not invoked tomorrow at 6 o'clock, he will take down this bill.

I think that would be grossly erroneous. I think that would be very bad procedure. If you compare what was done last year in the 109th Congress with what we have done in this Congress, you would see there was much more consideration in the last Congress than has been afforded this bill at this time.

For example, in the 109th Congress, we worked the bill through the committee. We did not work this bill through the committee. That was a leadership decision. I have stated on the Senate floor on several occasions the concern of not having gone through committee; that it was probably a mistake. Well, if this bill is taken down because we haven't made sufficient progress in the eyes of the majority leader, there is no doubt it would be a mistake because had we gone through committee, we would have worked through so many of these issues which we have had to legislate on the floor.

In the 109th Congress, the Judiciary Committee, which I chaired, had 6 days of committee markups. They were tough and laborious days, and we dealt with 59 amendments. We returned one Monday after a recess when the majority leader said he would proceed with the substitute bill, and a Monday back after a recess is a very tough day. But on March 27, 2006, the committee made a special effort to reconvene. We had a quorum, believe it or not, by 10 o'clock in the morning, and we worked through, laboriously, until the evening when we reported out a bill. That is what happened during the markup, 6 days of markup in the committee where, as I say, we considered some 59 amendments.

Then, when we moved to the floor of the Senate, we had 12 days on the bill. We had 4 days before cloture failed, and then we came back with 8 days more and considered in excess of 50 total votes—some rollcall, some voice votes—in passing the bill out of the U.S. Senate.

Now, contrast that with what we have had up to the present time. We have been on the bill 8 days, and 3 of those days were Mondays or Fridays pro forma without voting. We have only had 5 days where we have been involved in voting. Even on those days, they have not been as productive as voting days were on the bill in the 109th Congress because we have been in quorum calls. We have been negotiating. We have been trying to work through issues that, had this bill gone through committee, would have been resolved some time ago.

So you have a comparison of, really, 5 days, plus 3 days of pro forma, 8 at the most, contrasted with 12 days before. It is more accurately a comparison of 12 to 5—12 in the last Congress where we legislated and where we passed the bill. Here, where we have voted on only 21 amendments, contrasted with more than 50 we voted on in the last Congress.

We have also had a tremendous amount of Senators' time and time of the Secretary of Commerce and the

Secretary of Homeland Security. We met for 2 hours on Tuesdays, Wednesdays, and Thursdays, and sometimes on Mondays and Fridays as well, over a 10-week period.

It is hard to calculate how many hours were put in by Senators, but I think it goes into the thousands. It is hard to calculate how much time was put in by the two secretaries, but I think that goes into the hundreds. If you talk about staff time, it is incalculable. The staff director, Mike O'Neill, worked for about 20 days solid, including weekends, and that was sort of par for the course.

So to pull this bill tomorrow at 6 o'clock—I think it would be hard to find the right word that is appropriate in strength and not overboard. But I think ''outrageous'' would be a modest comment; it would be outrageous to pull this bill tomorrow.

One of my staffers said this bill has been the result of blood, sweat, and fears—paraphrasing Churchill's blood, sweat, and tears—and maybe more fears than blood and sweat. But we have come a long way. We have already seen a lot of finger pointing on this floor. We seem to be a lot better in the Senate at finger pointing than at legislating. But if this bill is pulled down, then you may even see toe pointing, because 10 fingers won't be sufficient for Republicans blaming Democrats and the majority leader for pulling down the bill, and Democrats blaming Republicans for a lot of dilatory amendments.

The majority leader has said these amendments are designed to kill the bill, that the people offering the amendments don't have any intention of voting for the bill. Senators who offer amendments don't have to have intentions of voting for the bill. Senators can offer amendments because they are Senators and because they think their amendments may pass, and because, who knows, they may even think their amendments could improve the bill. I think Senator CORNYN sincerely believes his amendment will improve the bill.

I ask unanimous consent for 3 more minutes.

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

Mr. SPECTER. Madam President, I ordinarily keep better track of time, but I am a little wound up and concerned about where all of the work we have done may end up if this bill is pulled and, more importantly, after the work that has been done, where it would leave the immigration mess in the United States. We have 12 million undocumented immigrants; we don't know where they are or what risks they face. We cannot deport them all. We have a porous border. If we don't have comprehensive immigration reform, we are not going to put up all the fencing, the barriers, and stop the additional people. The administration has made commitments, and there will be more about how the funds will be spent. We are not going to go through with employer verification. We are not going to spend the money on foolproof identification so employers can see who is legal and who is not legal, so that we have the basis for imposing tough sanctions, including jail. We are not going to eliminate the magnet to bring more people in. It will be a colossal failure.

I think it is safe to say the Senate would be the laughingstock of the country, after all of the hyperbole and publicity and all of the proposals and objections, if we are not able to finish this bill. It doesn't have to be finished this week. There is next week. We are not known for necessarily using the full week. We vote very infrequently on Mondays, almost never on Fridays. The evening session is not really practiced around here. When I came to the Senate with Howard Baker, we used to have a lot of all-night sessions. One night in 1982 or 1983—I ask for 4 more minutes.

Mr. KENNEDY. I yield 4 more minutes to the Senator. How much time will I have remaining?

The PRESIDING OFFICER. The Senator will have 6½ minutes.

Mr. KENNEDY. I thank the Chair.

Mr. SPECTER. Madam President, we had a tax bill on the Senate floor, and it was 11:45. Howard Baker, the majority leader, was consulting with the Finance chairman, Senator DOLE. There were 63 amendments pending. Senator Baker said we are going to work through the night. He said amendments, like mushrooms, grow overnight. So we worked through the night. There were some amendments taken, some amendments withdrawn, and some voted upon. It is amazing how much shorter the debate is at 3 a.m. It is also amazing how many more Senators there are on the floor at 3 a.m. There were a lot of people on cots in the cloakroom, but a lot of Senators were on the floor. The insomniacs outnumbered the sleepers by 2 to 1. We had a lot of comments like you heard in Parliament. Someone would be making an argument and there would be cries of ''vote, vote.'' At 3 a.m. the cries of ''vote'' and the lack of decorum carried the day.

The point is that a few more days in the Senate will not impede the action of this body. Some of the items that are coming up on the agenda may not merit the kind of time and attention the immigration bill does.

The American people are obviously sick and tired of the bickering in the Congress and in the Senate, sick and tired of the kind of finger pointing, and there will be an awful lot of it if we fail to legislate on this matter. The bill may be voted down. I think the bill will pass if we stick with it. Certainly, we ought to carry it through to conclusion.

I thank my colleague from Massachusetts for yielding me the extra time.

I yield the floor.

Mr. WEBB. Madam President, I rise today to discuss amendment No. 1313, an amendment that I will offer to the immigration reform bill, which will address what I believe are two crucial flaws in this legislation. The first flaw relates to what some people may call amnesty, wherein the bill legalizes almost everyone who entered this country by the beginning of this year. The second flaw relates to an unworkable set of procedures applicable to those who are properly offered legal status. It is important to the health and practicality of our system that these two flaws be addressed.

My amendment would achieve three critically important goals: it creates a fair and workable path to legalization for those who have truly put down roots in America; it protects the legitimate interests of all working Americans; and it accords honor and dignity to the concept of true American justice.

If one accepts the premises of these three goals, then I strongly believe that this amendment is the best way forward.

As a general matter, I agree with my colleagues that the time has come for fair and balanced reform of our broken immigration system. When I say ''fairness,'' I mean a system of laws that is fair to everyone here in the United States and especially our wage earners.

I strongly support the provisions in this immigration bill that strengthen our Nation's borders. Our porous borders are a threat to our national security, and we have waited far too long to fix this problem.

I also support the sections of the bill that create tough civil and criminal penalties for employers who unfairly hire illegal immigrants, creating both a second-class population and undercutting American workers. The bill's employment verification system will help ensure that illegal workers cannot get employment in the United States and would therefore face little choice but to return to their homelands.

As a point of reference, I do not support this bill's creation of a massive new temporary worker program. Two weeks ago, I voted to support Senator DORGAN's two amendments to strike and sunset that program, and I find it regrettable that the Senate did not adopt those amendments.

We have seen a good bit of analysis on the Senate floor in recent days to the effect that the temporary worker program will be largely unworkable. To the extent that it would work, it would create a wage-based underclass and a bureaucratic nightmare. Furthermore, as I stated on the floor 2 weeks ago, I believe that guest worker programs—aside from purely temporary, seasonal work—drive down the wages of hard-working Americans and of those who came here by following the law.

With those points in mind, I now turn to my amendment, which regards the other major component of this bill—the legalization program.

My amendment reflects a proposal that I have been discussing with Virginians ever since I began my campaign for the Senate. I have always supported tough border security and cracking down on large employers who hire illegal workers. I also have always supported a path to legalization for those who came here during a time of extremely lax immigration laws but who have laid down strong roots in their communities. I do not, however, favor this path to citizenship for all undocumented persons.

Under the provisions of the immigration bill we are debating, virtually all undocumented persons currently living in the United States would be eligible to legalize their status and ultimately become U.S. citizens. Estimates are that this number totals 12 million to 20 million people. This is legislative overkill. It is one of the reasons that this bill has aroused the passions of ordinary Americans who have no opposition to reasonable immigration policies but who see this as an issue that goes against the grain of basic fairness, which is the very foundation of our society.

By contrast, my amendment would allow a smaller percentage of undocumented persons to remain in the United States and legalize their status, based on the depth of a person's roots in their community.

Under my proposal, undocumented persons who have lived in the United States at least 4 years prior to enactment of the bill could apply to legalize their status. I note that this 4-year period is even more generous than the 5-year threshold that was contained in several bills in the past few Congresses—bills that were supported by Senators from both parties and by immigrants' rights groups.

After receiving the application, the Department of Homeland Security would evaluate a list of objective, measurable criteria to determine whether the applicant should receive a Z visa and thus be allowed to get on the path to citizenship.

The statutory criteria to be considered would be work history, payment of Federal or State income taxes, property ownership and business ownership in the United States, knowledge of English, attendance at U.S. schools, immediate family members in the United States, whether the applicant has a criminal record, and whether the applicant wants to become a U.S. citizen.

Like the underlying bill, applicants would be given probationary status while the DHS considers their Z visa application and could lawfully work during this probationary status period.

I believe these provisions are fair to our immigrant population and also that they will help us avoid the mistakes this Congress made in 1986 with the Simpson-Mazzoli amnesty bill, which resulted in a tidal wave of illegal immigration.

My amendment would also make the underlying bill more practical.

It strikes the bill's unrealistic ''touchback'' requirement. Few immigrants would have the money or the ability to return to their home countries on other continents. Most of these persons would lose their U.S. jobs, leaving their families in turmoil and placing further strain on our communities. Basic fairness dictates that these persons be allowed to apply for a green card from within the United States.

I believe that my amendment sets forth an equitable system that not only recognizes the contributions of immigrants to our society but also introduces practical measures that will help us avoid the same mistakes our country made in 1986 with the Simpson-Mazzoli amnesty bill.

I have heard loud and clear from Virginians, and I have talked with people on all sides of this issue. What I hear over and over again is that Congress should find a fair system that both protects American workers and respects the rule of law. This amendment represents the fairest method I know to do so and to do so realistically.

I ask you all to support amendment No. 1313 when it comes for a vote in the Senate.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas is recognized.

Mr. CORNYN. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator has 22 minutes.

Mr. KENNEDY. Will the Senator yield as a point of interest?

Mr. CORNYN. Yes.

Mr. KENNEDY. I think I have 6½ minutes.

The PRESIDING OFFICER. The Senator has 8½ minutes.

Mr. KENNEDY. I am trying to get some information to the Senators who will follow along. Does the Senator plan to use the remainder of his time? I am not trying to hurry him; it is only for information purposes.

Mr. CORNYN. Madam President, I agree it is a good idea to try to give our colleagues notice as to when a vote will occur. I am happy to agree we can have the vote at 11:45. I probably will not use all of my time, but it depends on how wound up I get.

Mr. KENNEDY. Why don't we sort of move along but indicate to our colleagues that we are reaching a conclusion and we expect votes fairly soon. Then we will have follow-on amendments with Senator DEMINT and, hopefully, Senator BINGAMAN. If we can work those out in the next 20 minutes or so, we can get stacked votes; otherwise, we plan to have these two votes reasonably soon.

The PRESIDING OFFICER. For the information of Senators, the vote will occur at approximately 11:55 if some time is not yielded back.

The Senator from Texas is recognized.

Mr. CORNYN. Madam President, we have a number of speakers who have commented. I appreciate the wise comments of the Senator from Pennsylvania, and I am not talking about the part where he was complimentary of me; I am talking about his comments on the process and the difficulty, since this bill came to the floor without going through committee, of providing an adequate opportunity for debate and amendments. We have all tried to work our way through this.

I do concur it is a terrible mistake in judgment to seek to close off debate on this bill before an adequate opportunity for votes occurs. We have had, by my count—and I could be off one or two—nine rollcall votes on this bill. By way of comparison, when the McCain-Kennedy bill, which later became the Hagel-Martinez bill, was on the floor last year, we had 32 rollcall votes, I believe. We need to have an adequate opportunity to flesh this out. As we have seen here, some of these details get very technical, but they have a profound consequence in terms of the outcome.

Let me speak to some of the specific items that have been raised here. As we pointed out, first, there will be a vote on the Kennedy amendment, and then there will be a vote on the Cornyn amendment. With all due respect, I call the first one a watered-down version of the second one. I will point out the differences now, in part.

The Kennedy amendment would still allow waivers to allow members of gangs to become legalized under the provisions of this bill. The Kennedy bill would still allow sex offenders to not be barred if they were sentenced to less than 6 months. The Kennedy bill would still allow waivers for firearms offenses; that is, allow people who have been convicted of firearms offenses to get a waiver and to be allowed legal status.

My amendment covers those who are associated with terrorist organizations. Those innocents referred to under the material support provisions are covered by a waiver executed by the Department of State and Department of Homeland Security.

As we can see, this gets exceedingly technical. Let me focus on sex offenders, by way of example, to point out why these differences are important. My amendment would bar those who have failed to register as sex offenders from becoming eligible for a Z visa and legal permanent residency status and a path to American citizenship. We have spoken in Congress on this issue through such legislation as the Adam Walsh Act. We have made it clear we will monitor and lock up those sex offenders who don't follow the rules and bar sex offenders from bringing individuals into the country whom they may also harm.

Yet the amendment offered by the distinguished Senator from Massachusetts, Senator KENNEDY, would still give those sex offenders who fail to register a loophole to exploit if they can plea bargain their case to less than 6

months. The maximum penalty for the underlying offense is no more than 1 year. All of us who have had experience in the legal system, particularly with the criminal law system, understand plea bargains are a way of life and it may well be a very serious sex offender will have plea bargained an indictment against him or her to less than 6 months, and still be allowed entry into the United States under the Kennedy amendment.

Here is what the Kennedy amendment does. On page 20 of the amendment, it modifies the exceptions to the criminal bars admissibility by adding failure to register as a sex offender and firearm offenses to the list of offenses excepted from the criminal bars to accessibility.

Why would we allow this loophole? We just got this amendment last night, of course. We have not been able to survey the sex offender registry laws of all 50 States. We know there is at least one State—New York—where first-time failure to register a conviction is a class A misdemeanor, punishable by up to 1 year.

My simple question is: Why would we want to employ a loophole for sex offenders and allow them to gain the benefits under this bill by being eligible for a Z visa, with a path to legal permanent residency, potentially, and American citizenship?

My amendment makes clear—unlike the Kennedy amendment—that all these loopholes are closed and this is not possible. I cannot imagine that the American people would feel, among the many other people who are arguably worthy of gaining benefits under this bill, we would want to demean what we are doing here by providing these benefits to people who so clearly have shown themselves unworthy of getting those benefits.

I will point out that I know we have had a big debate in this country and in the Senate about what constitutes amnesty. I think the problem is the American people—many of them—don't feel we are serious about restoring the rule of law when it comes to our broken immigration system. I don't mean for a minute to impugn the good faith of Senators who have labored long and hard to try to bring this bill to the floor, and those of us who are trying to improve it, to make it better. But by way of example, these are the sorts of offenses that ordinarily would be punishable under our laws but which are completely ignored when it comes to applicants for a Z visa—and that is the 12 million or so who are here—who have committed these acts.

Anyone who has entered the country without being inspected or admitted; that is, who came across the border before January 1, 2007, this bill would make eligible for a Z visa.

Any alien who failed to show up for his or her removal proceeding without just cause would be eligible for legal status under this bill.

Any alien; that is, any noncitizen, who, through fraud or willful misrepresentation, got a visa or other document or admitted to the United States would be eligible for a Z visa.

Any individual who makes a false claim to U.S. citizenship—this is an independent offense against our criminal laws—would be eligible for a Z visa.

Any noncitizen who was a stowaway who made their way into the United States, anyone who is the subject of a civil penalty for document fraud would be eligible under this bill for legalization and a Z visa.

Any alien who, when trying to enter the country, did not have the proper documents, visa, passport, border-crossing card, et cetera; any alien who remained unlawfully in the United States for less than a year, left the United States before removal, and then tried to reenter in a 3-year period would be eligible for a Z visa under this bill, or was in the United States unlawfully continuously for more than a year, then tried to reenter the United States within 10 years after leaving or being removed from the United States. It gets a little convoluted, but that person would be eligible for a Z visa or legalization and potentially a path to legal permanent residency and American citizenship.

Under this bill, any alien who, after previously violating immigration laws, for example, crossed the border multiple times and remained unlawfully in the United States for an aggregate of a year or more under this bill would be eligible for legalization under a Z visa, potentially eligible for legal permanent residency and American citizenship.

Any alien who came with another alien who is not admissible to the United States who is certified as helpless due to sickness, disease, and disability and requires the protection or guardianship of an alien. That is one more example of the kind of offenses which ordinarily we would punish under our laws which are waived and not considered when it comes to eligibility of the Z visa.

I don't think it is particularly productive on the floor of the Senate to talk about what is amnesty and what is not, but let me talk about the more basic consideration and one reason I think my constituents in Texas have expressed such strong concerns about it. It is really exemplified in the debate we are having on the Cornyn and Kennedy amendments. Are we serious about restoring respect for the law or are we going to simply turn a blind eye to violations in the future?

What we are being told by the proponents of this bill—and I believe they in good faith believe this, but it is unfortunate that the bill language itself does not appear to bear out that optimism and hope when it comes to the enforceability—is that this is, as in 1986, the last time we are going to do this. If we deal with the 12 million people who have come into the country without a visa or who have entered legally and who have overstayed their visa, if we give them an opportunity to get a Z visa, this is it, last time, it will never happen again. That sounds ominously similar to what the American people were told in 1986 when there were 3 million people in that category. Now we have 12 million in that category.

So the question people have, logically—these are not racists, these are not bigots, they are not nativists, they are not anti-immigrants; these are American citizens who are concerned about their country and about being a country that respects the rule of law—they want to know: Is this going to work? Will it be enforced? Are we serious about restoring the rule of law to our country?

I have to say that the sort of fine and requirement that is being required with the Z visa is looked at with great skepticism. Last week, I had a constituent who said: Well, Senator, are you telling me that we are going to allow people who have not respected our immigration laws to pay $5,000, in effect, to buy legal status and then potentially apply for legal permanent residency and then become an American citizen? Who wouldn't go for that kind of deal? That caused me a lot of concern because I, frankly, had not thought about it in those terms.

But what causes me even greater concern is the concept that is missing from this legislation that is so important; that is, when it comes to our laws, we believe in the role of deterrence. In other words, when we provide a penalty to somebody for violating the law, one of the considerations is, will it deter people from acting in a similar capacity in the future?

I am afraid, when I look at this legislation, it completely omits any consideration of what will deter people from violating our immigration laws in the future. In fact, I am afraid what happens, as pointed out by my constituent, is that it is really viewed as an incentive. If all you have to do is to get into the country any way you can and then wait for the next bill to pass Congress which will allow you to pay a fine and then become legally here and on a path to legal permanent residency and citizenship, that is no deterrent. That is a powerful magnet which will continue to attract people to our country.

I say this not in any spirit except to say we have to find a way to fix this. I have been one who wants to try to fix this legislation. The amendments I have offered are in that spirit. But I have to say that we are going to continue to be viewed as nonserious about workability, about enforcement, about restoring respect for the rule of law unless we vote to exclude those who have shown nothing but defiance for our laws by absconding, by going underground even after having their day in court and refusing an order of deportation, or those who have been deported following a day in court, following all the rights our country provides for judicial review and administrative review and who simply left to only reenter again illegally.

As I mentioned at the outset, the Immigration and Naturalization Act makes both those categories of individuals felons—felons. This is not a misdemeanor. This is not an inadvertency. These are not people, frankly, who are entitled to the generosity of the American people when it comes to dealing with their legal status. These are people who showed they have nothing but contempt for our laws, for restoring the rule of law, and I just cannot imagine why any Member of the Senate would vote to give these individuals a path to legal residence and a path to potentially American citizenship.

If we are going to regain that lost credibility—and I think this is really where the rubber meets the road because, frankly, people across this country don't really believe we are serious about making this work. They are used to a history of being overpromised and undersold when it comes to fixing our broken immigration system. But I believe there is going to be a high price to pay for those of us who are still around in the coming years if, in fact, we pass this law knowing that it has these huge, gaping loopholes that excuse unlawful conduct, which is basically thumbing their noses at the rule of law. If we are not serious about making sure people who go through background checks are actually not criminals or terrorists, if we are not serious about making this work, there is going to be a high price to pay for those who support this legislation only in the coming years to find that it was another scam pulled on the American people.

That is why it is so absolutely critical that we continue this debate, and I implore the majority leader to allow us to continue the debate, to allow us to have amendments offered. I understand and we all understand in this country that you win some and you lose some, majorities rule, but that is what we ought to be doing on this bill to make it as good as we possibly can to try to regain the respect and the trust of the American people because, frankly, we don't have it now. That is the reason for the outcry we have heard in my State and around the country when it comes to this legislation.

We can fix it. I am an optimist, but we cannot fix it if there is not an opportunity for a full and fair debate and if the majority leader is determined to cut off the opportunity to provide votes on amendments and is going to insist on ''my way or the highway''; in other words, you are either going to have to agree to not let your amendments be heard and to let this bill go to a final vote or the majority leader is going to pull it down and deny us the opportunity to fix this problem.

I don't know anyone in the Senate who doesn't want to fix this problem. It is enormously complicated because this problem has festered for 20 years or more without a solution. That is no excuse for not trying, and that is why I have tried, along with my colleagues, to come up with an acceptable solution. I would say 90 percent of it we agree with. There is no light separating us. It is in the 10 percent we talked about that is the subject of important amendments which need to be heard and voted on where we can regain that trust.

Let me say in conclusion—and I may reserve a little bit of time—let me say before I sit down, Mr. President, that a ''no'' vote on the Cornyn amendment and a ''yes'' vote on the Kennedy amendment will, in essence, could retitle this section of this bill ''No Felon Left Behind'' because while we have excluded many categories of felons, we have, for some reason, left this big, gaping hole when it comes to those who show nothing but contempt for our laws. We need to fix this bill, we need to make it better, not make it worse, and we have an uphill climb to regain credibility of the American people to show we are serious and we want to restore our reputation as a nation that believes in the rule of law. A ''no'' vote on the Cornyn amendment will do nothing to help it; indeed, I think it will confirm the worst suspicions of the American people—that we really are not serious about fixing this problem.

Mr. President, I yield the floor but reserve the remainder of our time.

The PRESIDING OFFICER (Mr. CASEY). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 8½ minutes remaining.

Mr. KENNEDY. Mr. President, I listened carefully to the Senator's presentation. I have come to a different conclusion. The Senator said a ''no'' vote means we are really not for dealing with this issue. We have a bipartisan group that has worked long and hard. The Senator from Texas was involved in a lot of the discussions. As we pointed out previously, we wanted to have tough law enforcement internally. We wanted recognition that those 12.5 million people here were going to be able to be secure, they weren't going to be deported, they were going to go to the end of the line, they would have to go through the earned legalization program, bring families together again, set up a program in terms of a temporary worker program. I don't know what 90 percent the Senator agrees with because I haven't heard much.

What is important is what his amendment does and what its impact would be.

We ought to come back at the conclusion of this debate to the point that was raised at the beginning because after all the rhetoric, after all is said and done, listen to the example that was given by my friend from Illinois.

Senator DURBIN describes a mother of four U.S. citizens, married to a U.S. citizen, who is herself undocumented. She left the country to visit her sick mother. She was apprehended after she snuck back in. That means she has reentered the United States at least twice, and under the Cornyn amendment on page 2, she could be convicted of illegal reentry. That would make her an aggregated felon. Even if she is not convicted, the Cornyn amendment makes her ineligible for the Z program.

On page 10 of the amendment, he eliminates the waiver for final orders available in the bill. This is a waiver for hardship to family, and he eliminates it. No harm, the Senator says, because she can get a different waiver as the wife of a U.S. citizen. That didn't stop DHS from deporting her.

So why should people come out of the shadows? Why should they come out of the shadows if they are here with false papers, undocumented? Why should they come out of the shadows when they have seen what has happened to a mother of four citizens married to an American citizen? That is what we are basically talking about. That is undermining the basic core because we are talking about 12½ million people who are here, who came here to work in order to provide for their families, and they have been trying to do that for their families. More often than not, they probably went back to their countries of origin and came back in again. Probably more often than not they had false papers in order to be able to get their jobs. That in and of itself, under the Cornyn amendment, would effectively exclude them from participating in this program and would subject them to deportation. End of story. End of story because that undermines, obviously, the essential aspect of this legislation.

The rest of the Cornyn amendment—which I mentioned earlier with the list of the amendments that we have put through—covers the bars, the criminal gang members, including the new provisions of gang members engaged in gun crimes. Sex offenders are covered by the comprehensive Adam Walsh Act. The sex offenders are not going to get Z visas.

The Senator from Texas can say, under our language, under his interpretation, they will, but they would not. End of story. They would not.

On the provisions regarding drunk-driving convictions and individuals convicted of domestic violence, stalking, child abuse, and other serious crimes, we increase the penalties for perjury, fraud, and firearm offenses.

It is important that after all is said and done—and we gave the illustration earlier about the questions of material support—the terrorists are out.

One thing about managing a bill, for those of us who have been here, we understand it; that there is always the possibility and the likelihood people will misrepresent what is in the bill and then differ with it. It is an old technique. I have even used it myself. But we ought to understand when we see it that it is just a technique that is being used.

So with all respect to my friend and colleague, and I have a good deal of respect for him, the effect of the underlying Cornyn amendment would effectively exclude from the Z visa program any immigrant who had been or will be convicted of using false documents. That is the problem today. Because of our broken immigration system, almost every hard-working immigrant in the country has been forced at one time or another to use false documents to get a job. These people have come here to work. They have been lured by the employers offering work. They are the very people this program is designed to bring out of the shadows. The Cornyn amendment will ensure they cannot come forward. Indeed, if they did come forward, they could be subject to prosecution and mandatory deportation for using a fake Social Security card.

I believe we have addressed many of the concerns the Members have had on dealing with some of these other issues and questions with the Kennedy amendment, and I would hope the Members would vote in favor of that and against the Cornyn amendment.

Mr. President, I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. May I inquire how much time remains on my side, Mr. President?

The PRESIDING OFFICER. The Senator has 2 minutes 45 seconds.

Mr. CORNYN. Mr. President, let me assure my colleague, Senator KENNEDY, that only those who have actually been convicted of document fraud would be excluded under my amendment.

According to recent statistics, roughly 10 million Americans fell victim to identity theft last year, at an estimated cost of $50 billion to U.S. taxpayers, and victims spent an average of $1,500 and 175 hours to actually recover their good name and their good credit after identity theft. This is not a trivial matter, and it is only people who have actually been convicted, not those who have presented false documents to work in the country who have not been convicted.

As far as the woman with four American children and married to an American spouse, my amendment does not touch her rights under current law. For example, we don't touch current law waivers for consent to reapply for admission. We don't touch the Secretary's ability to grant humanitarian parole. And we don't touch the waivers under current law that cover an immigrant who is the spouse of a U.S. citizen.

I thought Mr. DURBIN, the Senator from Illinois, was satisfied with that answer earlier, but I point that out to my colleagues just so they can be satisfied that there are exceptions for extraordinary circumstances.

What this amendment does is it broadly says felons will not be given the benefits of legalization and a path to American citizenship. They have had their chance, they blew their chance, and they have shown themselves unworthy of the trust and confidence of the American people when it comes to living among us in compliance with our laws and respecting the fact that, yes, we are a nation of immigrants, and proudly so, but we are also a nation of laws. Those laws keep us safe, they keep us secure, and they assure our prosperity, and the prosperity of generations yet to come. We cannot, once again, turn a blind eye to the laws that protect all of us, including those immigrants who have come here to become part of our great country and to seek opportunity for their future.

I hope my colleagues will support the Cornyn amendment, that they will vote against the Kennedy amendment as a dilution and watered-down figleaf of the Cornyn amendment.

With that, Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, with regard to Senator DURBIN, he could come back and speak to this issue, this was a mother of four U.S. citizens, herself undocumented, who left the country to visit her sick mother and was apprehended after she snuck back in. She had entered and reentered the U.S. twice. She had false documents, and she has been effectively deported.

The Senator says, well, she had rights to appeal, rights to do this and to do that. This is the real impact. This is the real impact of the Cornyn amendment. This is what the Cornyn amendment is all about. We know the people who have come in here. Why do they come in here? They come to work. Why do they come to work? Because the job is there. They are devoted to their families, devoted to their work and faith, in many instances devoted to this country—with 70,000 of them working in the Armed Forces of the United States. But in order to be able to do that, somewhere along the way they get the false papers. That is what the facts are. The great majority have them.

Under the Cornyn amendment, it says those individuals are subject to deportation. He thinks all 12½ million people are all going to volunteer and come out and say, well, by the way, Senator CORNYN gave us assurance that somebody down there in DHS can give me a waiver and let me stay. Come on. Come on. We believe that? That is going to be sufficient assurance to get these people to come out of the shadows so that they are not going to continue to be exploited? I don't believe that.

I have a lot of respect for my friend. I know what he is attempting to do in order to deal with some of these other issues, and we have attempted to address that. But the fact remains his amendment undermines the basic core of this—recognizing that people here are undocumented, and the ones who are undocumented, by and large, have these false papers. That is a part of the reality.

The question is: Are we going to say to those individuals: Look, you came here and are undocumented. You are going to pay a fine, and you are going to have to demonstrate that you are going to work, and you are going to show that you are going to be a good citizen. And in 8 years, after all the other people who have been waiting in line, after all of that period, when you are able to pay the fine, demonstrate that you have worked all that time, and have been a good citizen trying to make a difference in terms of going into the country, that then you will be able to at least start—start—on the potential road to citizenship.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired.

Mr. KENNEDY. Mr. President, does the Senator desire the yeas and nays?

Mr. CORNYN. Mr. President, I ask for the yeas and nays.

Mr. KENNEDY. Mr. President, I ask unanimous consent that it be in order to consider the yeas and nays on both amendments.

The PRESIDING OFFICER. Is there objection to the request for the yeas and nays on both amendments?

The chair hears none, and it is so ordered.

Is there sufficient second on both amendments?

There appears to be a sufficient second. The yeas and nays are ordered on both amendments.

Mr. KENNEDY. Parliamentary inquiry, Mr. President: There are going to be two back-to-back votes. The first one will be on the Kennedy amendment and the second one is on the Cornyn amendment; is that correct?

The PRESIDING OFFICER. The Kennedy amendment is the first vote.

Mr. KENNEDY. And the second vote is the Cornyn amendment. I thank the Chair.

To continue, Mr. President, it is our hope that we will move toward the DeMint amendment. We had good debate on that yesterday, and the Bingaman amendment, and then have votes on those fairly soon after. I thank all our Members for their cooperation.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1333, as modified, offered by the Senator from Massachusetts.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 32, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—66

Akaka	Feinstein	Murkowski
Baucus	Graham	Murray
Bayh	Hagel	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Kennedy	Pryor
Brown	Kerry	Reed
Byrd	Klobuchar	Reid
Cantwell	Kohl	Rockefeller
Cardin	Kyl	Salazar
Carper	Landrieu	Sanders
Casey	Lautenberg	Schumer
Clinton	Leahy	Snowe
Coleman	Levin	Specter
Collins	Lieberman	Stabenow
Conrad	Lincoln	Stevens
Craig	Lugar	Tester
Dodd	Martinez	Voinovich
Domenici	McCain	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Mikulski	Wyden

NAYS—32

Alexander	Cornyn	Isakson
Allard	Crapo	Lott
Bennett	DeMint	McConnell
Bond	Dole	Roberts
Brownback	Ensign	Sessions
Bunning	Enzi	Shelby
Burr	Grassley	Smith
Chambliss	Gregg	Sununu
Coburn	Hatch	Thune
Cochran	Hutchison	Vitter
Corker	Inhofe	

NOT VOTING—1

Johnson

The amendment (No. 1333), as modified, was agreed to.

AMENDMENT NO. 1184

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on amendment No. 1184 offered by the Senator from Texas, Mr. CORNYN.

Who yields time? The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I would ask my colleagues for a ''yea'' vote on this amendment. If you voted for the Kennedy amendment, you made an incremental improvement over the current law when it comes to banning criminals from getting the benefit of our immigration system. But in order to exclude felons, people who have shown their contempt and defiance of American law, and unless it is your intent to reward felons who have shown their contempt for the American legal system, to reward them with the most precious gift this country can offer, which is legal status, potentially legal permanent residency and a path to citizenship, you should vote yes on this amendment. I would urge my colleagues to do so.

The PRESIDING OFFICER. Who yields time? The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, make no mistake about it, with many good intentions which were covered in the Kennedy amendment, this guts the bill because it not only eliminates—it not only says that felons should not become citizens, and we agree with that, it says that anyone who has filed an illegal paper should not become a citizen. That is every immigrant who would be on the path to citizenship. This body voted against eliminating that provision overtly a few weeks ago. Now they are trying to do the same thing covertly because if you vote for this amendment, you will say no one will have a path to citizenship, no one who works, because everyone who has worked had to file a Social Security paper or something like that.

Anyone who wants to keep this bill going at the moment should vote against the Cornyn amendment. The Kennedy amendment dealt with felons. This is a stealth, Trojan horse amendment to kill the bill by saying no one—no one—who has ever worked shall have the path to citizenship.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Texas.

Mr. CORNYN. Mr. President, with all due respect, the Senator should read the amendment. It does not affect people who have committed identity theft unless they have actually been convicted of that. It would have no effect on people who have entered without a visa or who have come in on a legal visa and overstayed. This is no gutting of the bill; it is only to protect the American people from felons.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. Mr. President, I ask unanimous consent for 30 seconds.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Objection.

The PRESIDING OFFICER. Objection is heard.

The question is on agreeing to amendment No. 1184, as modified, offered by the Senator from Texas.

The yeas and nays were previously ordered. The clerk will call the roll.

The assistant legislative clerk called the 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 Oklahoma (Mr. COBURN).

The PRESIDING OFFICER (Mr. MENENDEZ) Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 51, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—46

Alexander	Crapo	Nelson (FL)
Allard	DeMint	Nelson (NE)
Baucus	Dole	Roberts
Bennett	Dorgan	Rockefeller
Bond	Ensign	Sessions
Brownback	Enzi	Shelby
Bunning	Grassley	Smith
Burr	Gregg	Snowe
Byrd	Hatch	Stevens
Chambliss	Hutchison	Sununu
Cochran	Inhofe	Tester
Coleman	Isakson	Thune
Collins	Landrieu	Vitter
Conrad	Lott	Warner
Corker	McConnell	
Cornyn	Murkowski	

NAYS—51

Akaka	Brown	Clinton
Bayh	Cantwell	Craig
Biden	Cardin	Dodd
Bingaman	Carper	Domenici
Boxer	Casey	Durbin
Feingold	Leahy	Pryor
Feinstein	Levin	Reed
Graham	Lieberman	Reid
Hagel	Lincoln	Salazar
Harkin	Lugar	Sanders
Inouye	Martinez	Schumer
Kennedy	McCain	Specter
Kerry	McCaskill	Stabenow
Klobuchar	Menendez	Voinovich
Kohl	Mikulski	Webb
Kyl	Murray	Whitehouse
Lautenberg	Obama	Wyden

NOT VOTING—2

Coburn Johnson

The amendment (No. 1884), as modified, was rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the time until 2 p.m. today be for debate prior to a vote in relation to the following amendments; that the time until then be equally divided and controlled between the two leaders or their designees, with the time to run concurrently; that no amendments be in order to any of the amendments covered in this agreement; that at 2 p.m., the Senate proceed to vote in relation to the amendments in the order listed; that there be 2 minutes of debate equally divided prior to each vote, with the vote after the first being 10 minutes in duration, with no amendments in order to the amendments prior to the vote: DeMint No. 1197, Bingaman No. 1267, as modified.

I designate Senator KENNEDY to have my time.

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

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are making some good progress. The Senator from South Carolina, Mr. DEMINT, had a good discussion last evening, as well as Senator BINGAMAN. We are grateful to them. We will have a good discussion prior to 2 o'clock on these issues.

We are hopeful, then, we will be moving along. Senator CORNYN had an amendment on confidentiality. We have Senator DODD. There are a number of those where we are trying to go back one side to the other. We hope those Senators who have amendments who are ready, particularly those who would like to enter into a time agreement, will let us know as quickly as possible. We will be in touch with others during this luncheon period and continue to move along. But we are thankful for all the help and cooperation we have received.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, staff has been working hard to set up votes on the amendments that have been called up. We ran into a little problem; that is, we had too many Democratic amendments. But we think at this stage they are now working on setting up side by side, in some instances, Republican amendments. We need to clear

off the amendments that have been called up.

Now, as I have just indicated, if we have offsets for the Democratic amendments, we will go ahead and allow those to be called up or have side-by-sides. Once we get this done, I have been assured by both Senator KENNEDY and Senator KYL and others that we can have a list of amendments people need a vote on—not they want a vote on but need a vote on. We hope both cloakrooms have hotlined this and Senators are working on a personal basis with individual Senators.

Hopefully, we can get, by the 2 o'clock time, permission to do away with—I should not say ''do away with''—to dispose of the amendments that have been called up. Then, hopefully, we can shortly thereafter find out what amendments people wish to have votes on. If we can do that, it would really move this ball down the court a long ways.

Mr. KENNEDY. Mr. President, will the Senator yield?

As I understand, 1 o'clock today is the deadline for the filing of amendments.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. A number of Senators have spoken to me about having their amendments filed. Many of them I have given the insurances that we would. The Senator from Texas, Mrs. HUTCHISON, had asked that 2 days ago, and we are working with the Finance Committee. I see her in the Chamber. I think Senator THUNE was here last evening. I objected to those individuals proceeding. It would appear to me, out of fairness we ought to make sure they are not excluded. Is our policy to make sure they are at least within—if they have indicated to the floor managers, they want to be in, we have them meet the deadline?

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, all first-degree amendments would have to be filed by 1 o'clock. As we have indicated, we are going to try to be fair to everybody. If there are amendments that have been up at the desk, we will certainly do our best to get to those. I think what we need to do is find out, as I have indicated, what needs to be voted on. Some Senators on our side, for example, have been contacted this morning, and they have decided not to offer amendments. The same will happen over there. If people have been waiting around and feel aggrieved they have not been allowed to offer their amendments, of course, we will consider that. But I do not think we need to do anything right now as far as a unanimous consent request in that regard.

We will do everything we can—everybody is working in good faith—to have people feel they have the opportunity to offer their amendments. I know the Senator from Texas—she is gone—she just walked in. I do not know what her amendment is about. I think it is Social Security. I am not too certain. She has been around here a lot. She is entitled, if for no other reason than having the endurance to hang around as long as she has, to have her amendment offered. We will work with everybody, both Democrats and Republicans, to see if we can work something out to have all these amendments offered and a time set to vote on them.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand, all they have to do is be filed by this time.

The PRESIDING OFFICER. That is correct.

Mr. REID. That is correct.

Mr. KENNEDY. So for those who are back in their offices, they do not have to be called up. They just have to be filed. So they have until 1 o'clock for the filing of amendments. We urge those who want to have amendments filed to make sure they understand that. They do not have to call them up. They are protected in that way.

The PRESIDING OFFICER. The Senator from Arizona.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. 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. CHAMBLISS. Mr. President, I ask unanimous consent to be allowed to speak up to 10 minutes as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that following me, the Senator from Maine be allowed to speak for up to 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, let me add another part to that unanimous consent request: that the Senator from Florida be allowed to speak for up to 10 minutes, following the Senator from Maine.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Georgia.

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

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand, under the rules, the filing time was set for 1 o'clock, and the leader has indicated for filing any amendments that we extend that. I ask unanimous consent that the filing time be extended until 2 o'clock.

The PRESIDING OFFICER. Is there objection?

The majority leader.

Mr. REID. Mr. President, if I could just say this—I would say this mostly to the staffs: We do not need a big rush over here as to filing amendments. It does not give anybody any benefit anyway. Just show some discretion on who has to file amendments, and then we will work our way through those and find out how we are going to dispose of them. So I think this is the right thing to do. There is no magic to the next 5 minutes. So we will wait for the next 65 minutes. If people have trouble making that deadline, let us know.

I have no objection.

The PRESIDING OFFICER. Is there objection?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, if I might just add a word, we thank the majority leader and the Senator from Massachusetts for extending the time. That should ease substantial pressure on this side of the aisle.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Maine.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 1554 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Florida is recognized.

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

Mr. MARTINEZ. Mr. President, I note the absence of a quorum, and I ask that the time be equally charged.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THUNE. 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 South Dakota is recognized.

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

Mr. THUNE. Mr. President, I yield the floor and suggest the absence of a quorum and ask unanimous consent that the time be charged equally between both sides.

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

The clerk will call the roll.

The bill 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.

AMENDMENT NO. 1183, AS FURTHER MODIFIED

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Clinton amendment No. 1183 be further modified with the changes that are at the desk.

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

The amendment (No. 1183), as further modified, is as follows:

On page 260, line 13, strike ''567,000'' and insert ''480,000''.

On page 260, line 19, strike ''127,000'' and insert ''40,000''.

On page 269, line 18, insert ''or the child or spouse of an alien lawfully admitted for permanent residence'' after ''United States''.

On page 269, line 21, insert ''or lawful permanent resident'' after ''citizen''.

On page 269, line 22, insert ''or lawful permanent resident'' after ''citizen''.

On page 269, line 23, insert ''or lawful permanent resident'' after ''citizen''.

On page 269, line 23, insert ''or lawful permanent resident's'' after ''citizen's''.

On page 269, line 24, insert ''or lawful permanent resident'' after ''citizen''.

On page 269, line 25, insert ''or lawful permanent resident's'' after ''citizen's''.

On page 269, line 26, insert ''or lawful permanent resident's'' after ''citizen's''.

On page 269, line 32, insert ''or lawful permanent resident's'' after ''citizen's''.

On page 269, line 41, insert ''or lawful permanent resident'' after ''citizen''.

On page 269, line 42, insert ''or lawful permanent resident status'' after ''citizenship''.

On page 270, strike lines 18 through 29, and insert:

(2) by striking paragraphs (2) and (3) and inserting the following:

On page 270, line 31, strike ''(3)'' and insert ''(2)''.

On page 271, line 17, strike ''(4)'' the first place it appears and insert ''(3)''.

On page 273, between lines 15 and 16, insert the following:

(5) Section 201(f) (8 U.S.C. 1151(f)) is amended—

(A) in paragraph (1)—

(i) by striking ''paragraphs (2) and (3),'' and inserting ''paragraph (2),''; and

(ii) by striking ''(b)(2)(A)(i)'' and inserting ''(b)(2)'';

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2); and

(D) in paragraph (2), as so redesignated, by striking ''(b)(2)(A)'' and inserting ''(b)(2)''.

(6) Section 202 (8 U.S.C. 1152) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(7) Section 203(h) (8 U.S.C. 1153(h)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''subsections (a)(2)(A) and (d)'' and inserting ''subsection (d)'';

(ii) in subparagraph (A), by striking ''becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent)'', and inserting ''became available for the alien's parent,''; and

(iii) in subparagraph (B), by striking ''applicable'';

(B) in paragraph (2), by striking ''The petition'' and all that follows through the period and inserting ''The petition described in this paragraph is a petition filed under section 204 for classification of the alien parent under subsection (a) or (b).''; and

(C) in paragraph (3), by striking ''subsections (a)(2)(A) and (d)'' and inserting ''subsection (d)''.

(8) Section 204 (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in clause (iii)—

(aa) by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears; and

(bb) in subclause (II)(aa)(CC)(bbb), by inserting ''or legal permanent resident'' after ''citizenship'';

(II) in clause (iv)—

(aa) by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears; and

(bb) by inserting ''or legal permanent resident'' after ''citizenship'';

(III) in clause (v)(I), by inserting ''or legal permanent resident'' after ''citizen''; and

(IV) in clause (vi)—

(aa) by inserting ''or legal permanent resident status'' after ''renunciation of citizenship''; and

(bb) by inserting ''or legal permanent resident'' after ''abuser's citizenship'';

(ii) by striking subparagraph (B);

(iii) by redesignating subparagraphs (C) through (J) as subparagraphs (B) through (I), respectively;

(iv) in subparagraph (B), as so redesignated, by striking ''subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii)'' and inserting ''clause (iii) or (iv) of subparagraph (A)''; and

(v) in subparagraph (I), as so redesignated—

(I) by striking ''or clause (ii) or (iii) of subparagraph (B)''; and

(II) by striking ''under subparagraphs (C) and (D)'' and inserting ''under subparagraphs (B) and (C)'';

(B) by striking subsection (a)(2);

(C) in subsection (h), by striking ''or a petition filed under subsection (a)(1)(B)(ii)''; and

(D) in subsection (j), by striking ''subsection (a)(1)(D)'' and inserting ''subsection (a)(1)(C)''.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that 5 minutes of the remaining time be reserved for Senator DEMINT.

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

AMENDMENT NO. 1267

Mr. BINGAMAN. Mr. President, I want to first speak on behalf of an amendment I offered with Senator OBAMA. It is one of the two amendments that will be voted on in the sequence at 2 o'clock. The amendment is aimed at addressing what I believe is a very shortsighted provision in this draft immigration bill.

My amendment applies only to this new guest worker program we are creating under the bill, the so-called Y–1 program. It doesn't impact the Y–2 program, which is the seasonal and nonagricultural program that is based on the existing H–2B program, or the H–2A program, which is the agricultural temporary worker program.

Under this immigration bill as it now stands, Y–1 workers—guest workers, which is how we refer to them—would be able to work in the United States for three 2-year work periods. But before they could renew their visas for the second and the third of those 2-year work periods, they would have to leave the country for at least a year. This is the so-called 2–1–2–1–2 provision. Work for 2 years, leave for 1 year, work for 2 years, leave for 1 year, work for 2 years, and then leave for good. The total number of work years in the United States would be limited to 6 years, but the work pattern would be interrupted twice each time by a 1-year absence requirement.

The amendment I have offered, and that we will be voting on in a few minutes, simply removes the requirement these guest workers leave the country before they renew their visas. It would leave in place the term of the visa, which is 2 years, and it would not alter the 6-year total work limit that is provided for in the bill. In addition, it would modify the requirement that Y–1 workers meet all of the relevant requirements under the program each time they apply to renew their visas.

Over the last 2 days, I have come to the floor to discuss this provision a couple of times. I strongly believe it does not make any sense from a policy standpoint and, ultimately, we are going to be judged by how much sense this legislation makes. As I have pointed out, this provision is bad for employers; it harms American workers; it will be difficult and costly to implement; and it will likely encourage these workers, whom we are bringing here as so-called guest workers, to overstay their visas.

For these reasons, my amendment has the broad support of labor groups, such as the Service Employees International Union; business organizations, such as the National Association of Home Builders and the Associated Builders and Contractors; and immigration and religious groups, such as the U.S. Conference of Catholic Bishops, the American Association of Immigration Lawyers, and the National Immigration Forum. The coalition of organizations supporting this amendment is indicative of how harmful the 1-year absence requirement would be from a variety of different perspectives.

I ask unanimous consent that following my remarks, the following material be printed in the RECORD: the statement that was issued by the U.S. Conference of Catholic Bishops, a letter by the Associated Builders and Contractors Organization, a letter by the National Association of Home Builders, and a statement by the SEIU, the Service Employees International Union.

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

(See exhibit 1.)

Mr. BINGAMAN. Mr. President, with regard to the employer, it would be extremely costly to require businesses to retrain and rehire new workers every 2 years. No employer I am aware of would think it satisfactory for an employee to take a 1-year so-called break every couple of years. Each of us in the Senate employs people in our offices, here in the Capitol and our home States. This would be an unacceptable condition for us, and I am sure it would be for any employer. Businesses would have to hire other workers to take over for the leaving guest worker, would have to invest time and money in retraining additional staff. This would be extremely burdensome, particularly on small businesses.

From an economic standpoint, I believe it generally does not make sense

to enact laws that cause instability in the workforce and create requirements that unnecessarily impose significant costs on our small businesses. I am not an economist, but this does not seem to be a sensible way for us to do business.

Let me take a moment to read a portion of a letter I received from the National Association of Homebuilders on this issue. The letter says:

This system essentially makes the entire program in title IV unworkable for the construction industry. In the residential construction industry, employers spend much time and resources training employees. To arbitrarily lose valued employees at the end of 2 years, as they are forced to return home for a full year, creates unnecessary amounts of instability in our workplaces, and wastes scarce employer resources.

The construction industry is not the only sector of the economy that would be adversely impacted by this provision. The new guest worker program is not limited in the respect that existing temporary worker programs are in terms of the work being seasonal or within certain industries, such as in agriculture. These are, in fact, permanent jobs we are talking about, and they are scattered throughout our economy and will be affected if we leave this provision unchanged.

The 1-year absence requirement is also harmful to American workers. Kicking workers out of the country every 2 years ensures that there will always be guest workers who will be coming in to be paid at the low end of the pay scale, and this will result in a depression of wages for all workers, not just those guest workers but for the American workers who are competing for those jobs as well.

According to a letter of support I have asked to be printed in the RECORD that I received from the Service Employees International Union, they say the following:

Employers will be less likely to invest in worker training or other benefits and wages to retain workers. . . . The 2–1–2–1–2 is a recipe for wage depression, job turnover and increased illegal workers.

The structure of the new guest worker program will also result in a substantial number of these workers overstaying their visas so they don't have to leave the country for an extended period of time. The Government has not done a great job in the past of ensuring that individuals leave the country at the expiration of their visas, and I have no reason to believe—I don't think any of us have any reason to believe—that the Department of Homeland Security will be able to do a substantially better job in the near future.

In December of last year, after the Government Accountability Office issued a report regarding the US–VISIT Program, which is a mechanism by which Government is supposed to be able to track the entry and the exit of foreign visitors, the Department of Homeland Security scrapped its plans to implement the exit portion of that program for U.S. land ports of entry.

In essence, the GAO report found it could take up to 10 years to develop the technology required to fully implement the program and that the cost of doing so could be in the tens of billions of dollars. There is nothing in the immigration bill that indicates that this capability is within our reach.

In section 130 of the bill, the Federal Government is required to come up with a schedule for deploying the exit component of the US–VISIT system. However, we have already been told by the GAO that this will not be a reality for a very long period of time.

In crafting this immigration bill, there has been a lot of attention given to trying to bring together individuals with a wide variety of political views. In my opinion, we have not focused enough on the practical aspects of how this bill is going to be implemented. Compromises need to be made as part of any legislative package, but we cannot lose sight of the need to craft legislation that makes sense from a policy standpoint and that actually can be implemented and can work.

It is my belief the new guest worker program is currently structured in a manner that has more to do with the politics of getting a compromise among those who drafted the legislation than it does with sound policy. As I have discussed, the requirement that these guest workers leave every 2 years before renewing their visas is bad for employers, it is harmful to American workers, it is difficult to enforce, and it will likely result in a larger population of undocumented workers in this country in the future.

For those reasons, I urge my colleagues to support my amendment and to help make this bill more workable and better public policy.

Mr. President, I yield the floor.

EXHIBIT 1

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
Washington, DC, June 6, 2007.

U.S. CATHOLIC BISHOPS URGE SENATE TO SUPPORT AMENDMENTS PROTECTING ASYLUM SEEKERS AND GUEST WORKERS IN THE COMPREHENSIVE IMMIGRATION BILL

The U.S Conference of Catholic Bishops urges Senators to vote for the following amendments to S. 1348, the Comprehensive Immigration Reform Act of 2007:

The Lieberman Safe and Secure Detention Amendment. Lieberman amendment #1191 would maintain U.S. obligations to international human rights by providing safe and secure detention for victims of torture and persecution seeking asylum protection in this country. While awaiting judgment on their cases, persons claiming persecution or fear of persecution in their home countries often are subjected to prison-like conditions in U.S. detention facilities without proper health, nutritional, physical or spiritual care. This amendment makes major improvements to the U.S. detention system by reinforcing the country's rich heritage and tradition of assisting especially vulnerable persons.

The Bingaman Guest-Worker Workability Amendment. Bingaman amendment #1267 would eliminate the requirement for the ''years out'' for guest workers who are renewing their temporary Y-visas. By requiring workers to leave the country after two years, only to return one year later, the underlying legislation would create a highly-bureaucratic and unstable system for guest workers to come in to the country. It is likely that many guest workers would overstay their visas, knowing that they are to return in just a year, and many government resources would likely be devoted to seeking out and punishing individuals who are providing valuable and much-needed work. The Bingaman amendment provides a significant step toward creating a worker program that is more humane, workable, and desirous for both guest workers and employers alike.

ASSOCIATED BUILDERS AND CONTRACTORS, INC.,
June 6, 2007.

THE U.S. SENATE,
Washington DC.

DEAR MEMBERS OF THE UNITED STATES SENATE: On behalf of Associated Builders and Contractors (ABC) and its more than 24,000 general contractors, subcontractors, material suppliers and construction related firms across the United States, I urge you to vote YES on an amendment (#1267) being offered by Senator Bingaman and Senator Obama to S. 1348, the ''Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007,'' which would remove the requirement that Y–1 temporary workers leave the country before renewing their visas.

Currently, the immigration bill allows Y–1 guest workers to work in the U.S. for 2-year periods (up to 6 years). However, it requires the workers to leave the U.S. for at least 1 year before renewing their visas. Requiring these workers to leave the country for a lengthy period of time between each work period is harmful for employers; extremely difficult and costly to enforce; harms American workers; and increases the likelihood that individuals will overstay their visas. Moreover, the construction industry, more so than many other industries, relies on highly trained workers to fill their labor force. Having a temporary worker on the job for only a two year time frame makes the current Y–1 visa program outlined in S. 1348 virtually useless for our industry. This is due to the fact that in most cases it takes two to four years to properly train workers in the construction industry.

The Bingaman/Obama amendment (#1267) would allow Y–1 temporary workers to stay in the United States for the entire duration of their work visa. This would give ample time for the employee to become fully trained in the construction industry and it would make the new Y–1 temporary visa beneficial to our ever expanding industry. It is imperative that America's construction industry be allowed the time needed to properly train their employees so that accidents on jobsites can be avoided at all costs.

ABC supports the Bingaman/Obama amendment (#1267) that would remove the mandatory requirement that Y–1 temporary workers leave the country before renewing their visa and ask you to vote ''YES'' on this important amendment.

Respectfully Submitted,
WILLIAM B. SPENCER,
Vice President, Government Affairs.

NATIONAL ASSOCIATION OF HOME BUILDERS,
June 5, 2007.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: On behalf of the 235,000 member firms of the National Association of Home Builders (NAHB), we urge

you (NAHB), we urge you to vote in support of the amendment being offered by Senators Jeff Bingaman (D–NM) and Barack Obama (D–IL), AMDT 1267, that would eliminate the mandatory one year cooling off periods in the proposed 2–1–2–1–2 future flow (''temporary worker'') program contained in Title IV of S. 1348, the Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007. Because of the importance of this issue to our members, and the overall workability of comprehensive immigration reform, NAHB will be key voting in support of this amendment.

The future flow program in Title IV of S. 1348 will create a legal process by which immigrants can enter the United States in future years to work in industries that have established labor shortages. Under the current proposed legislation, the bill would require a worker to return to their home country for a full year every two years. This system essentially makes the entire program in Title IV unworkable for the construction industry. In the residential construction industry, employers spend much time and resources training employees. To arbitrarily lose valued employees at the end of two years, as they are forced to return home for a full year, creates unnecessary amounts of instability in our workplaces, and wastes scarce employer resources.

The Bingaman/Obama amendment will eliminate the mandatory one-year ''cooling off'' periods in the current bill, and replace it with a two-year visa, that can be renewed two additional times for a total of six years—equal to the six years that are ultimately allowed under the program in S. 1348 now. Removing the cooling off periods will create a much more usable program for employers, and we urge you to support this effort to improve the bill.

NAHB believes that a workable future flow immigrant program is essential to comprehensive immigration reform because without it, it is likely to lead to a situation that will encourage more illegal immigration in the future.

Again, NAHB will be key voting in support of the vote on the Bingaman/Obama amendment, AMDT 1267.

Sincerely,

JOSEPH M. STANTON,
Chief Lobbyist.

SEIU strongly support the removal of the requirement that Y–1 temporary workers leave the U.S. for at least 1 year before renewing their visas. While we are willing to accept a temporary worker program in exchange for legalization of the 12 million undocumented living among us, we are very disappointed with the guest worker program contained in the ''Grand Bargain''. This is why the Bingaman/Obama amendment is critical and would improve workers ability to stay employed during the entire period of their Y visa. When temporary workers are working in year round jobs it is more difficult for all workers to raise their wages and improve their working conditions. The Y–1 visa program as it is currently drafted will ensure wage depression for all workers, because it will ensure workers leave their jobs every two years. Employers will be less likely to invest in worker training or offer benefits and wages to retain workers. Removing the 1 year return requirement will help all workers raise the wages, gain job experience and receive valuable training to improve the job skills. The 2–1–2–1–1 is a recipe for wage depression, job turnover and increased illegal workers, as history has demonstrated—guest workers will overstay their visas, when they have no legal channel to remain in the country.

We thank Senator Bingaman and Senator Obama for their continued leadership on comprehensive immigration reform. SEIU urges all Senators to vote for this improving amendment.

ALISON REARDON,
Director of Legislation, Service Employees International Union (SEIU).

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the Senator from New Mexico and I have worked on a great many matters since he was elected in 1982. If I may have the attention of the Senator from New Mexico, I am about to compliment him. I don't like to compliment him behind his back. The Senator from New Mexico and I have worked on a great many matters since he was elected to the Senate in 1982. I came at about the same time after the 1980 election. I am especially interested in his amendment and the criticism of the bill because it is the politics of compromise and not based on sound public policy.

The Senator from New Mexico and I are now working on a bill called the Bingaman-Specter bill on global warming. I am pleased to hear there has been no compromise in that bill that is based upon sound public policy. But in a very serious way, I suggest that is what we do. This place would be run a lot better if I ran it unilaterally. The Senator from New Jersey, who is presiding, smiles at that. I think more in humor than in disagreement. But we have 100 Members of this body with 200 different ideas. Each of us has two ideas on the same subject at a minimum. I know the Senator from New Mexico has a full plate on many items. He chairs the Energy Committee. He has been working on the global warming issue. He is not on Judiciary, and he doesn't have a special concern—well, for whatever reason, he did not elect to become part of the group of Senators who worked on the bill, for good and sufficient reason. I am not suggesting he should have. He attended the sessions, as did the Senator from New Jersey who is presiding, and saw what we were doing. We were so compromised that people on opposite ends of the political spectrum left us. They wouldn't stay with us because we couldn't satisfy everybody, and understandably so. We simply could not satisfy everybody.

The question is whether we would have satisfied anybody. We will know when we move along and try to get this bill to final passage. But when you take what happened to us last year—we passed a bill in the Senate, they passed one in the House, and we couldn't even conference it, wouldn't even conference it. There are people who just want a tight border and to deport 12 million undocumented immigrants. That is what they want to do.

As we work through the compromises, I would consider it a compliment to be a party to the politics of compromise, and I would accept the term ''politician'' with grace and appreciation. I remember hearing Adlai Stevenson speak in the early fifties. Perhaps it was when he first ran for President in 1952. He said: Do you know the definition of a statesman? The definition of a statesman, Mr. President, is a dead politician. That is why I much prefer being a politician, at least for the moment. I much prefer being a politician.

On this specific amendment, we hassled about this a long time. We had 6 years in mind. Should it be 3 and 3 or should it be 2 and back and 2 and back for a year and back? We finally accepted this compromise to try to make the workers temporary, that they would not get roots here and not return to their home country; that when we are working within the structure of the immigration laws, we have to accommodate the 12 million because we cannot deport them. We would like to identify those who are criminals, who are not contributing, who do not have roots and deport them, if we can identify them in numbers that we can handle.

Then there was the issue of trying hard to avoid the characterization of amnesty. Amnesty is a lot like Shakespeare's famous definition of a rose:

> That which we call a rose by any other name would smell as sweet.

If we could find more ways to make these 12 million people earn citizenship, we would. We have the fine. Maybe it is too high, maybe it is too low. We have back taxes. Maybe we can find that out and maybe we cannot. The requirement of English I think everybody agrees with. Having roots in this country, yes. Being a contributor to this country, yes. If we could shake the title of amnesty, we would like to do it, if somebody could tell us how to do it.

There are many people who are so opposed to what we are trying to do, they will call anything amnesty. I am not going to say it is not amnesty—although I believe it is not amnesty because they are earning their way—because if you get involved in name calling, it all disintegrates. People are angry at President Bush for saying it is not amnesty when they are sure it is amnesty.

I compliment the President for the leadership he has shown on this issue. He sent us Secretary of Commerce Gutierrez and Secretary of Homeland Security Chertoff. For hours, days, weeks, months they worked on it. There was a commitment by the administration.

The President has spoken out on this issue loudly, plainly, and clearly. He has taken a lot of brickbats for it, but he is working hard on it. On the Senate floor a few weeks ago, I made a comment that it was either amnesty or anarchy. Anarchy is what we have here; that is, if it is amnesty—and, again, I say I think it is not, but I am not going to get into a name-calling contest with people who want to call names.

Lou Dobbs of CNN has been one of the most vocal critics of the plan. He

has a right to do that, and I have been on his program and discussed it with him, debated it with him. But I was interested to see him comment about my characterization of anarchy. That struck a chord. Lou Dobbs doesn't like anarchy—nobody likes anarchy—but in a sense that is the choice we have.

So I urge my colleagues to vote against the amendment of the Senator from New Mexico, although I have great respect, and I know this is very thoughtful, very well presented, all except for his criticism of the politics of compromise.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I first thank my colleague and congratulate him for his leadership on this bill. I know he has worked long and hard to bring this bill to the floor and is making the best out of a very awkward, difficult situation in trying to get all the interested parties under the same tent.

I am reminded of when I was attorney general of my State of New Mexico. One of the duties of the attorney general in New Mexico is to issue what are called attorneys general opinions about different legal points that come up. Sometimes those opinions are followed by various State agencies and then they are challenged in court. I remember in one of the cases where it was challenged in our State supreme court, a friend of mine on the State supreme court, who was a very wise man, wrote an opinion essentially saying that the opinion I had issued, the attorney general opinion, was wrong. He said attorneys general opinions are entitled to great weight, except when they are wrong.

That is sort of the way I feel about the bill that has been brought to the floor. I have great respect for those who have put it together, and it is entitled to great weight and deference, except where it clearly is wrong. That is what we are trying to do with this amendment, is to correct an area of the bill that clearly is wrong. I hope my colleagues will see it the same way and support my amendment. But I compliment the Senator from Pennsylvania for his leadership on this important issue.

AMENDMENT NO. 1177

I wish to speak very briefly about another amendment, unless the Senator from Pennsylvania wishes to say something, and then I would defer to him. I gather he does not need to at this point.

Let me speak briefly about another amendment I have filed. It is amendment No. 1177. It provides forestry workers with Y visas some of the same rights to ensure that the terms of their guest worker contracts are honored the same way other guest workers in the agricultural sector can have their contracts honored.

This is an amendment that is eminently reasonable. It was adopted by unanimous consent during the debate as part of the immigration bill we passed out of the Senate in the last Congress. I hope we can get agreement from the managers of the legislation to include it this year as well. So I wished to briefly allude to that amendment and urge every consideration of it.

I yield the floor, and 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. 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. 1197

Mr. KENNEDY. Mr. President, I expect that Senator DEMINT will come to the floor to address his amendment, but in the next 5 minutes that we have before he does so, I would say his amendment is basically saying there will be no adjustment in status unless all these individuals are going to be able to buy into the high-deductible HSAs, health savings accounts, and that because of the fact that immigrants are a burden on the health care system, that they should be required to do this additional kind of work to meet their responsibilities under this legislation.

There are a couple factors I wish to mention. First of all, if you take the fact that you have 12 million of these individuals, the 12 million who are the undocumentable, they are going to, as part of their fine, pay $500 per individual. That comes to some $6 billion—$6 billion—that can go for support for various health care offsets into local communities. That is not an insignificant amount of resources. We anticipated this possibility, No. 1.

No. 2, we ought to make an examination of what happens to these undocumented individuals. What is the utilization by the undocumented? We know they are basically healthier, they are younger, and the various information and statistics we see says there is not an overutilization of the health services.

I have statistics for undocumented immigrants in one of the border States, this is in Texas, and I will read this and include the appropriate part in the RECORD. The Comptroller's office estimates the absence of the estimated 1.4 million undocumented immigrants in Texas would have been a loss to their gross State product of $17 billion. Also, the Comptroller's office estimates State revenues collected from undocumented immigrants exceed what the State spends on services, with the difference being $424 million. That is today, one State—Texas—in the utilization of services.

So we find this population where there has not been an overutilization of services, and we have provisions in the current legislation to deal with this problem and deal with it generously. But the Senator from South Carolina wants to insist on a high-deductible program.

Let us look at the average high-deductible program. The average annual deductible for a high-deductible plan required under the DeMint amendment is $1,900 for an individual and $4,000 for a family. The average annual premium for the plan: $2,700 for an individual and $7,900 for a family. The total average cost for an individual would be $4,600 and $11,000 for a family. That is for the average individual and family. This includes the fees and also the deductibility.

We have the various studies that have been done, the reports, and this information is from the Los Angeles Times. It points out that plans with high deductibles of $1,000 or higher monthly premiums that can be less than $100, as Senator DEMINT provides, are a good fit for healthy people with some financial resources. The median annual income of those using the high-deductible plans is $75,000. This is a fit for $75,000. Although the lower premiums make plans attractive, cash-strapped families run the risk of being unable to afford the deductibles.

Those are the facts. So the effect of the DeMint amendment is another way of denying the 12 million undocumented from being able to participate in the other provisions of the legislation, which we have very carefully crafted. They have to pay a high fine, they have to pay the State a set-aside, they are going to have to pay the fees as they move along. These are not insignificant. We are talking about thousands and thousands of dollars which have been worked out carefully and considered.

This kind of additional burden will say to men and women whose average income may be $10,000 or $11,000 that they are not going to be able to do it. Take those individual Americans who are making $10,000 and $11,000 and look at how many of them are able to afford health insurance. Virtually none. We know about that in Massachusetts because Massachusetts has passed a very effective program to bring those individuals in and to help and assist those individuals.

So the idea that we are going to put this in as a requirement is another way of saying to those individuals, look, we might like other provisions of the legislation, but this is a way of effectively barring you from being able to participate in this program. That undermines the object of a very important aspect of this whole endeavor. Therefore, I hope the amendment will be defeated.

As I understand from the Chair, the last several minutes are supposed to be for the Senator from South Carolina; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I don't see him in the Chamber. I think we ought to reserve that time for the Senator. As I understand, under the previous agreement,

we have agreed to vote at 2 p.m.; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I would like to speak on my amendment that is up for a vote.

The ACTING PRESIDENT pro tempore. At the present time, all time has expired.

Mr. DEMINT. I ask unanimous consent that I have 2 minutes to speak on my amendment.

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

Mr. DEMINT. Mr. President, I appreciate the opportunity to speak on this amendment. I think all of us would agree that we would like to design an immigration program that benefited America, that actually brightened the future for Americans, for our children, and that we do not want an immigration system that is going to invite people from all over the world who will come here and be a burden to the American taxpayers.

Unfortunately, the way this bill is written, the Z visas we offer all the illegal immigrants in this country do not require that these illegals have health insurance before they are given these legal passes. That means they will continue to be a heavy burden on the American health care system.

Senator KENNEDY has said the $500 one-time fee they have to pay is enough to cover these costs. I know every American wishes they could pay $500 and have free health insurance for life but, unfortunately, it is more expensive than that. Also, Senator KENNEDY has said these types of minimum policies cost well over $2,000 a year, which is, frankly, not true. Many of us have policies that cost less than $1,000 a year for a high-deductible policy, which is the minimum level we ask for.

The least we can ask of these immigrants we are granting permanent legal status in this country is not to be a burden on Americans for their health care. To have a minimum level of health insurance is the least we can ask. This amendment would require Z visa holders to have that minimum level, and I ask all of my colleagues to support it.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the DeMint amendment No. 1197.

Mr. DEMINT. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—43

Alexander	Crapo	Murkowski
Allard	DeMint	Nelson (NE)
Bennett	Dole	Roberts
Bond	Ensign	Sessions
Brownback	Enzi	Shelby
Bunning	Grassley	Smith
Burr	Gregg	Snowe
Byrd	Hatch	Stevens
Chambliss	Hutchison	Sununu
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Coleman	Lott	Voinovich
Corker	Martinez	Warner
Cornyn	McCaskill	
Craig	McConnell	

NAYS—55

Akaka	Feinstein	Mikulski
Baucus	Graham	Murray
Bayh	Hagel	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Kennedy	Reed
Brown	Kerry	Reid
Cantwell	Klobuchar	Rockefeller
Cardin	Kohl	Salazar
Carper	Kyl	Sanders
Casey	Landrieu	Schumer
Clinton	Lautenberg	Specter
Collins	Leahy	Stabenow
Conrad	Levin	Tester
Dodd	Lieberman	Webb
Domenici	Lincoln	Whitehouse
Dorgan	Lugar	Wyden
Durbin	McCain	
Feingold	Menendez	

NOT VOTING—1

Johnson

The amendment (No. 1197) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote, and move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator from New Mexico has an important amendment. He was over here yesterday afternoon and evening and spoke well about it. He came over here during the lunch hour. It is a very important amendment. He deserves to be heard.

AMENDMENT NO. 1267

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided on the Bingaman amendment No. 1267, as modified.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that Senator LANDRIEU be added as a cosponsor to amendment 1267.

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

Mr. BINGAMAN. Mr. President, this amendment tries to eliminate the 2–1–2–1–2 provisions in this bill. The underlying bill says if a guest worker comes here, they can work for 2 years, they are kicked out for a year, they can come back, work for two more, they are kicked out for a year, they can come back work for two more, then they are kicked out for good.

What my amendment does is to say: Let's bring them here for 2 years, allow them to renew their visa twice, so that they would be here a maximum of 6 years. This makes a lot more sense for employers, for American workers who are competing for these jobs, for the guest workers themselves.

This has the support of the business community, the unions, the Catholic bishops. Everybody interested in this bill supports this. This is commonsense legislation. I urge my colleagues to support the amendment.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, earlier this afternoon the Senator from New Mexico criticized the bill as being the ''politics of compromise,'' as opposed to sound public policy. I told him, had he participated in the negotiations, he would have seen quintessential politics of compromise. You could not begin to make any progress at all on this legislation unless it was the politics of compromise. I suggest that is an art form frequently practiced in this body. I reminded the Senator from New Mexico of our cosponsorship of global warming. I am glad to hear there is nothing in the bill which he is the principal sponsor of that is a factor of the politics of compromise. I am glad our bill is pure.

I have not seen the bill, in the short time I have been in the Senate, that doesn't have compromise in it. If it did not have any compromise, it would not have gotten here. If it did get here, it would not be passed.

The principle of this bill is to make it temporary so people do not establish roots. If you dealt with Senator KYL on this matter, you would understand how important he is to this bill and how important this provision is to his continued support.

Mr. OBAMA. Mr. President, I come to the floor today to speak in favor of the Bingaman-Obama Y–1 guest worker amendment.

The Bingaman-Obama amendment removes the requirement that Y–1 visa holders under the new guest worker program leave the United States for at least 1 year before renewing their visas. Designing a worker program where people are supposed to come to the U.S. for 2 years, leave for a year, return for 2 years, leave for a year, and then return for 2 years is a recipe for creating a new undocumented population.

Our amendment does not modify the overall number of permissible work years, which would still be limited to a total of 6 years, and it doesn't change the term of the visa, which would still be 2 years. In order to renew their visa, applicants would still have to demonstrate that they are eligible to meet the requirements of the program. The amendment maintains the general structure of the program, but revises it in a manner that makes the program more workable.

We need to pass this amendment because the process in the underlying bill

is costly and burdensome on employers, especially small businesses. Requiring employers to rehire and retrain workers every 2 years imposes unnecessary costs and creates instability in the workforce.

The underlying language is also harmful to American workers. The 1-year absence requirement would ensure that guest workers are always at the lowest end of the pay scale, which would depress overall wages. And the system as now designed provides an additional incentive for guest workers to overstay the term of their visas. Rather than returning to their home countries after their 2-year visas expire, many workers will just remain in the United States and become undocumented immigrants.

In short, the temporary worker design in the bill is unworkable and difficult to enforce. It is unlikely that the government will be able to sufficiently track the entry and exit of these workers to ensure that they comply with the 1-year absence requirement. By removing the 1-year requirement to leave the country between renewals we would at least be making the program workable.

Our amendment has the support of a variety of labor, business, immigration, and religious groups. Specifically, the Service Employees Union International, SEIU, the National Association of Homebuilders, NAHB, the Associated Builders and Contractors, ABC, the U.S. Conference of Catholic Bishops, USCCB, the American Immigration Lawyers Association, AILA, U.S. Hispanic Chamber of Commerce, and the National Immigration Forum, NIF, have voiced their strong support of this amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The question is on agreeing to amendment No. 1267.

Mr. BINGAMAN. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 41, nays 57, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—41

Akaka	Conrad	Leahy
Baucus	Dodd	Lieberman
Bayh	Durbin	Lincoln
Biden	Feingold	Menendez
Bingaman	Hagel	Mikulski
Boxer	Harkin	Murray
Brown	Hutchison	Nelson (FL)
Cantwell	Inouye	Obama
Cardin	Kerry	Pryor
Carper	Kohl	Reed
Casey	Landrieu	Reid
Coburn	Lautenberg	Sanders
Schumer	Shelby	Whitehouse
	Tester	Wyden

NAYS—57

Alexander	Domenici	McCaskill
Allard	Dorgan	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Feinstein	Roberts
Bunning	Graham	Rockefeller
Burr	Grassley	Salazar
Byrd	Gregg	Sessions
Chambliss	Hatch	Smith
Clinton	Inhofe	Snowe
Cochran	Isakson	Specter
Coleman	Kennedy	Stabenow
Collins	Klobuchar	Stevens
Corker	Kyl	Sununu
Cornyn	Levin	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	Warner
Dole	McCain	Webb

NOT VOTING—1

Johnson

The amendment (No. 1267), as modified, was rejected.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that the time until 6:45 p.m. today be for debate prior to a vote in relation to the following amendments; and that the time until then be equally divided and controlled between the two leaders or their designees, with the time to run concurrently; that no amendments be in order to any of the amendments covered in this agreement prior to the vote; that at 6:45 the Senate proceed to vote in relation to the amendments in the order listed; and that there be 2 minutes of debate equally divided prior to each vote, with the votes after the first being 10 minutes in duration; that if an amendment on this list is not pending, it is to be called up now. These amendments are Cornyn, No. 1250; Reid, No. 1331; Sessions, No. 1234; Menendez, No. 1194; Kyl, No. 1460; Lieberman, No. 1191; and that a half hour of the minority's time on these amendments be allocated to Senator SESSIONS, and another half hour allocated to Senator CORNYN.

The ACTING PRESIDENT pro tempore. Is there objection to the unanimous consent request?

Mr. STEVENS. Mr. President, reserving the right to object, is this an exclusive list?

Mr. REID. No.

Mr. STEVENS. No objection.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, and I shall not object, I wish to inquire of the majority leader: I have an amendment that is a change in the amendment by which we proposed to sunset the guest worker provision. That amendment failed by one vote. I have made a modification to that amendment and would intend to reoffer the amendment and have another debate on it and a vote on that amendment. I wonder if I could inquire of the Senator——

Mr. REID. Mr. President, I say to my friend, at this time tentatively there are three Democratic amendments pending. There are no Republican amendments to match those. When we finish this tranche of votes, we are going to try to complete tonight at least these six more. I understand the Senator has or will refile his amendment, and we will be happy to take that into consideration as we try to move this bill along.

Mr. DORGAN. Mr. President, I have no objection.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. Mr. President, reserving the right to object, could the leader tell us when amendments can be called up which were not on the list he just read, that have not been allowed to be called up today?

Mr. REID. We are working on that now. We are making progress. There are going to be three called up as soon as we get this vote started. That will be the next agreement we will enter into, and there will be three Republican amendments. So if you have something you care about, work with your colleagues over there to see if that can be one of the next three.

Mr. THUNE. Mr. President, I thank the Senator.

The ACTING PRESIDENT pro tempore. The Chair hears no objection, and it is so ordered.

AMENDMENTS NOS. 1331 AND 1460 TO AMENDMENT NO. 1150

The ACTING PRESIDENT pro tempore. The clerk will report two amendments.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1331 to amendment No. 1150.

The amendment is as follows:

(Purpose: To clarify the application of the earned income tax credit)

At the end of subtitle F of title VII, add the following:

SEC. ____. EARNED INCOME TAX CREDIT.

Nothing is this Act, or the amendments made by this Act, may be construed to modify any provision of the Internal Revenue Code of 1986 which prohibits illegal aliens from qualifying for the earned income tax credit under section 32 of such Code.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KYL, for himself and Mr. SPECTER, proposes an amendment numbered 1460 to amendment No. 1150.

The amendment is as follows:

(Purpose: To modify the allocation of visas with respect to the backlog of family-based visa petitions)

Beginning on page 270, strike lines 31 and 32, and insert the following:

''(3) FAMILY-BASED VISA PETITIONS FILED BEFORE JANUARY 1, 2007, FOR WHICH VISAS WILL BE AVAILABLE BEFORE JANUARY 1, 2027.—

''(A) IN GENERAL.—The allocation of immigrant visas described in paragraph (4) shall apply to an alien for whom—

''(i) a family-based visa petition was filed on or before January 1, 2007; and

''(ii) as of January 1, 2007, the Secretary of Homeland Security calculates under subparagraph (B) that a visa can reasonably be

expected to become available before January 1, 2027.

''(B) REASONABLE EXPECTATION OF AVAILABLITY OF VISAS.—In calculating the date on which a family-based visa can reasonably be expected to become available for an alien described in subparagraph (A), the Secretary of Homeland Security shall take into account—

''(i) the number of visas allocated annually for the family preference class under which the alien's petition was filed;

''(ii) the effect of any per country ceilings applicable to the alien's petition;

''(iii) the number of petitions filed before the alien's petition was filed that were filed under the same family preference class; and

''(iv) the rate at which visas made available in the family preference class under which the alien's petition was filed were unclaimed in previous years.

''(4) ALLOCATION OF FAMILY-BASED IMMIGRANT VISAS.—''.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Virginia.

Mr. WEBB. Mr. President, I ask unanimous consent to speak as in morning business and the time to be charged to the majority side.

The ACTING PRESIDENT pro tempore. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Virginia is recognized.

AMENDMENT NO. 1313

Mr. WEBB. Mr. President, I wish to discuss amendment No. 1313, an amendment I will offer to the immigration reform bill, which will address what I believe are two important, crucial flaws in this legislation. The first flaw relates to what many are calling amnesty, wherein the bill legalizes almost everyone who entered this country by the beginning of this year. The second flaw relates to an unworkable set of procedures that is applicable to those who are properly being offered legal status. It is important to the health and practicality of our system, in my view, that these two flaws be addressed.

My amendment would achieve three critically important goals. It creates a fair and workable path to legalization for those who have truly put roots down in America; it protects the legitimate interests of all working Americans; and it accords honor and dignity to the concept of true American justice. If one accepts the premises of these three goals, then I strongly believe this amendment is the best way forward for our country.

As a general matter, I agree with my colleagues that the time has come for fair and balanced reform of our broken immigration system. When I say ''fairness,'' I mean a system of laws that is fair to everyone in the United States, and especially our wage earners.

I strongly support the provisions in this immigration bill that strengthen our Nation's borders. Our porous borders are a threat to our national security, and we have wasted far too long to fix this problem.

I also support the sections of the bill that create tough civil and criminal penalties for employers who unfairly hire illegal immigrants, creating both a second-class population and undercutting American workers. This bill's employment verification system will help ensure that illegal workers cannot get employment in the United States and would, therefore, face no choice but to return to their homelands.

As a point of reference, I did not support this bill's creation of a massive new temporary worker program. Two weeks ago, I supported Senator DORGAN's two amendments to strike and sunset that program, and I find it regrettable the Senate did not adopt those amendments. We have seen a good bit of analysis on the Senate floor in recent days to the effect that the temporary worker program will be largely unworkable. To the extent it would work, it would create a wage-based underclass and a bureaucratic nightmare. Furthermore, as I stated on the floor 2 weeks ago, I believe guest worker programs—aside from purely temporary, seasonal work—drive down the wages of hard-working Americans, and of those who came here by following the law.

With those points in mind, I wish to now turn to my amendment, which regards the other major component of this bill: the legalization program.

My amendment reflects a proposal I have been discussing with Virginians ever since I began my campaign for the Senate last year. I have always supported tough border security and cracking down on large employers who hire illegal workers. I also have always supported a path to legalization for those who came here during a time of extremely lax immigration laws but who have laid down strong roots in our communities. I do not, however, favor this path to citizenship for all undocumented persons. Under the provisions of the immigration bill we are now debating, virtually all undocumented persons living in the United States would be eligible to legalize their status and ultimately become citizens. Estimates are that this number totals 12 million to 20 million people. This is legislative overkill. It is one of the reasons this bill has aroused the passions of ordinary Americans who have no opposition to reasonable immigration policies but who see this as an issue that goes against the grain of true fairness, which is the very foundation of our society.

My amendment would allow a smaller percentage of undocumented persons to remain in the United States and legalize their status based on the depth of a person's roots in their community. Under my proposal, undocumented persons who have lived in the United States at least 4 years prior to the enactment of the bill could apply to legalize their status. I note that this 4-year period is even more generous than the 5-year threshold that was contained in several bills the past few Congresses addressed—bills that were supported by Senators from both parties and by immigrants' rights groups.

After receiving the application, the Department of Homeland Security would evaluate a list of objective, measurable criteria to determine whether the applicant should receive a Z visa and thus be allowed to get on the path to citizenship.

Among the statutory criteria would be an individual's work history; payment of Federal or State income taxes; property ownership and business ownership in the United States; knowledge of English; attendance, successfully, at American schools; immediate family members living in the United States; whether the applicant has a criminal record; and, very importantly, whether the applicant wants to become an American citizen.

Like the underlying bill, applicants would be given probationary status while the DHS considers their Z visa application and could lawfully work during this probationary period.

I believe these provisions are fair to our immigrant population, and also that they will help us avoid the mistakes this Congress made in 1986 with the Simpson-Mazzoli amnesty bill, which resulted in a tidal wave of illegal immigration.

My amendment would also make the underlying bill more practical. It strikes the bill's unrealistic ''touchback'' requirement. Few immigrants would have the money or the ability to return to their home countries on other continents. Most of these persons would lose their American jobs. They would leave their families in turmoil and place further strain on our community services. Basic fairness and common sense dictates that these persons be allowed to apply for a green card from within the United States.

I believe my amendment sets forth an equitable system that not only recognizes the contributions of immigrants to our society but also introduces practical measures that will help us avoid the same mistakes our country made in 1986 with the Simpson-Mazzoli amnesty bill.

I have heard loudly and clearly from Virginians, and I have talked with people on all sides of these issues. What I hear over and over again is that Congress should find a fair system that both protects American workers and respects the rule of law. This amendment represents the fairest method I know to do so, and to do so realistically.

I ask my colleagues to support amendment No. 1313 when it comes to a vote in the Senate.

With that, Mr. President, I yield the floor.

Mr. DORGAN. Mr. President, will the Senator yield for a question?

Mr. WEBB. Mr. President, I gladly yield to my colleague.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was listening to the description of the amendment by Senator WEBB. I think

it is a good amendment, and I intend to be prepared to support it. This amendment is about the treatment of those who have come here without legal authorization. The underlying bill, by the way, was cobbled together by a group of people, including the White House, I guess, and they said anybody who shows up in this country without legal authorization by December 31 is deemed to then have been legal and will be given a work permit.

I think Senator WEBB's approach is much more sensitive and much more realistic to our people who have been here 10, 15, 20 years without legal authorization but they have been model citizens, they raised families, have had jobs, have done things that would commend them to us for the future. He is suggesting a much more sensible way of dealing with that. I think that amendment makes a lot of sense.

I did want to say we had a vote on the guest worker or temporary worker provisions, and I offered an amendment, or 2 amendments, and the second amendment was to sunset that after 5 years. I lost that vote by one vote in the Senate, and I have filed an amendment at the desk and will attempt to have another vote on that. I have modified section 2 just a bit. But my hope is that the Senate would reconsider and pass the amendment that would sunset this temporary worker provision after 5 years. Again, the vote was 49 to 48 against my amendment, and we will have another opportunity to vote on it.

The reason I mention it is the Senator from Virginia mentioned that amendment and the other amendment I offered as well. I ask the Senator from Virginia if he doesn't think this piece of legislation, in addition to legalizing those who have come here as of December 31st of last year, saying you now have legal status—in addition to that—saying we believe there are millions of people who don't live here at this point whom we want to be able to invite in to take American jobs—I ask the Senator from Virginia whether that makes much sense in the scheme of trying to create economic opportunity for Americans at the lower economic scale in this country. There are a lot of people working at the bottom of the ladder here who want jobs, who can't find jobs, and find downward pressure on their income. I ask whether the Senator doesn't believe this temporary worker program displaces people in this country who need these jobs.

Mr. WEBB. Mr. President, I say to the Senator from North Dakota I was very pleased to support both his amendments for those reasons and reasons similar to them. I hope the Senator can get a vote on his revised amendment. I think it is important we deal with this immigration issue in a very realistic and practical manner, with the focus being the well-being of individuals who are here legally and who are citizens whose wages and salaries are in many ways being held down by these types of programs. The guest worker programs are classic examples of that.

I also would like to say that with respect to the timeline in the present bill and the cutoff for full legalization being anyone who came here before December 31 of last year, or before January 1 of this year, one of the questions that has been raised on my amendment is: Well, what do we do with these people who haven't been here 4 years? Some questions have been raised saying this would create an unfairness in this amendment. But the answer to that—the obvious answer to that is: What do we do with people who came here after December 31? They are here. What are we going to do with the people who are here next year? They are going to be here.

There is always going to be some leakage in our system. What we are looking for is a measure of fairness for people who have truly put down roots in their community and to allow them to assimilate and become American citizens. That is a separate thing from the guest worker program that the Senator from North Dakota is talking about, and I hope I get another chance to vote for his amendment.

Mr. DORGAN. Mr. President, if the Senator would yield further for a question, there are some in this Chamber who say to us: The choice on immigration is between doing the wrong thing and doing nothing. That is not the choice at all. That is a false choice. They bring the wrong thing to the floor of the Senate and say: If you oppose this, then you are for nothing.

One of the things we are for is enforcing the law. We have a law in this country about employer sanctions, about illegal immigration, trying to stop it. All one would have to do would be to enforce the law. In 2004, there were four cases in the entire United States of America that were brought by the U.S. Justice Department against employers who were employing illegal workers, illegal aliens—four. What does that tell us? That tells us that the administration says: We surrender on the issue. We surrender.

The other point I wished to make is there is no discussion on the floor of the Senate in the construct of this bill, within the debate on this bill, about the American worker. I understand we have an immigration issue. I fully understand that, and we need to deal with that. But part and parcel of that, in my judgment, ought to be some discussion on the floor of the Senate about how this affects the American worker. We have a lot of workers in this country who aren't doing very well. It has been a long time since they have seen any increase in their income, despite their productivity rising. Where is the debate about the impact on the American worker? It is not selfish for us to believe that ought to be a part of this discussion.

So I ask the Senator from Virginia whether he believes as well that when you bring an immigration bill to the floor, you ought to have some discussion about what is the impact of this issue on the American worker, on the people who have a high school education or perhaps don't even have a high school education and who are at the bottom of the ladder, got up this morning and went to work and are working at minimum wage, struggling to get by to raise a family to do the best they can and discover at the end of the day: Oh, by the way, there is more downward pressure on your income because the employer can bring somebody through the back door that is able to be paid lower wages, they will work for less money, even as the bigger employers are exporting jobs out the front door to China and Sri Lanka and Bangladesh.

So I ask whether the American worker shouldn't play a bigger role in the debate on the floor of the Senate.

Mr. WEBB. Mr. President, I would say that an enormous amount of work has gone into this piece of legislation, as we all know. I appreciate all the energy that the Senator from North Dakota has placed for years on the interests of the American worker. I share those interests. This amendment that I offer is based on two things. One is fairness to everyone, including the American worker, and the other is the practicality that is this particular part of the legislation.

Mr. DORGAN. I thank my colleague.

Mr. WEBB. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas is recognized.

AMENDMENT NO. 1250

Mr. CORNYN. Mr. President, I have an amendment that is scheduled for a vote later on this evening, and I would like to spend a few minutes explaining it. This is—well, let me put it this way: If the definition of insanity is doing the same thing over and over and over again and expecting a different outcome, the provisions in the underlying bill that my amendment will correct represents insanity in action because it repeats a mistake made in the 1986 immigration laws that is within our power to correct. I believe the amendment I am offering will allow that correction to take place, and I offer it in that spirit.

At the very least, the American people expect we will not intentionally repeat mistakes. They don't expect us to be perfect. They do expect us to do our best, and we owe them that much. But in this case, doing our best means not repeating a mistake.

Quite simply, the Department of Homeland Security is, under the current bill, prohibited from using internally all information from Z visa applications, as well as sharing information with the relevant law enforcement agencies. That is right. You can actually apply for a Z visa if you are 1 of the 12 million or so people here in the

country already in violation of our immigration laws, whether it is entering without a visa or once having entered with a visa, overstaying that visa, and if you are seeking the benefits of this underlying bill which are mainly represented in the form of a Z visa, the information contained in that application by those 12 million individuals is effectively shielded from law enforcement authorities. For example, if an applicant comes forward and is denied a Z visa, this legislation currently pending prohibits the Immigration and Customs Enforcement Service from using that information in order to apprehend that person who is not legally present in the country.

What we learned about the 1986 amnesty was that the New York Times said it created the largest immigration fraud in the history of the United States. That same view is shared by the general counsel of the Immigration and Naturalization Service under President Clinton with regard to statutory restrictions on sharing and using information. That general counsel, Paul Virtue, noted that this prohibition greatly contributed to this fraud.

At this point, I ask unanimous consent that the New York Times article be printed in the Recored and I refer my colleagues to the testimony of Paul Virtue before the House Immigration and Claims Subcommittee of the House Judiciary Committee at judiciary house.gov/judiciary/106–52.

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

(See exhibit 1.)

Mr. CORNYN. In addition to questions of why we would want to put out of bounds to law enforcement agencies information which they could use to investigate and identify fraud and criminal conduct, you might ask: Why the double standard? For example, we don't afford these kinds of robust confidentiality provisions for other classes of immigrants such as asylees or battered women or those who fall under the temporary protected status provisions. So why would we have a double standard? When an asylum seeker applies for legal status, that asylum seeker must submit an application and return at a later date for the decision. If that asylum seeker's application is denied, then he or she is taken into custody on the spot, based on information contained in the application.

Now, the proponents of this bill will tell us that without these guarantees of confidentiality, those who are already here in the country in violation of our immigration laws will not come forward and seek the benefits of the Z visa provided for under the bill, which leads me to ask: Aren't we granting the biggest benefit that can ever be given to anybody in the world—legal status and a path to American citizenship—even though these individuals have violated our laws?

And to be clear, we are talking about those who cannot even establish that they meet the minimum requirements to get this valuable benefit. Even worse, they have continually flouted our immigration and criminal laws. Why would we consciously give these individuals broad privacy protections by the mere filing of their application for Z status, and why would they be treated differently from other immigrants?

The proponents say they do exempt from confidentiality those who commit fraud or are a part of some other scheme in connection with their application. Of course, that is the very least we should do. But this bill does not go nearly far enough to effectively enforce our immigration laws and protect the American people from those who could and would and might do us harm.

For example, on page 311 of the bill, in section 604(b) labeled ''Exceptions to Confidentiality,'' the drafters of this bill have chosen to protect aliens who are criminal absconders who have not been removed from the United States; that is, people who are under orders of deportation but who have not yet been removed. This is, in fact, a felony offense under 8 U.S.C. 1253, which is punishable for up to 4 years in prison. Yet the underlying bill would provide confidentiality for that individual.

We all know that hundreds of thousands of individuals come across our borders each year in violation of our immigration laws. But what most Americans would be shocked to realize is that, according to recent estimates, almost 700,000 aliens who have immigrated illegally or overstayed who have been ordered deported have simply failed to comply with that court order. How many Americans think that it is OK to ignore a court order? How many Americans, after receiving a subpoena from a court, ignore it and simply skip that court date?

Let me give two examples of what I am talking about. In section 604(b), the drafters claim they allow law enforcement to go after information for those denied Z status because of felonies and serious criminal offenses, but what is missing are those aliens who have actually committed those felony offenses but who have not yet been actually convicted. In section 604, the drafters further claim they resolve the problem by allowing law enforcement access to those who commit fraud or misrepresentations in their Z applications. But again, what is missing is law enforcement's ability to reach third-party fraud: Where the alien, him or herself may not be complicit but to prosecute the third party, the Government needs the information from the Z application filed by such individuals in order to make the case. Simply stated and summarized, fraud by third parties involved in a Z application; crimes that have not yet resulted in a conviction; absconders—people who have ignored a valid court order and who have yet to be physically removed—as well as those Z visa applicants who are denied on noncriminal grounds, all of those categories of information are rendered confidential and kept from law enforcement authorities when it comes to investigating crime and other wrongful conduct.

As I said earlier today, in fact, if we were more interested in regaining the public's confidence that we were actually serious about passing an immigration law that could be and would be vigorously enforced, I don't think I would be up here offering this amendment because it would be agreed to without the necessity of a vote. But strangely, to me, this commonsense sort of amendment is being resisted. In a way, it helps merely confirm what most people across the country—particularly in my State—seem to suspect, which is that Congress cannot be trusted and is not serious about creating an immigration law system that can be adequately enforced.

As my colleagues know, I offered a separate amendment that would categorically bar fugitive aliens from receiving the benefits under this bill. I believe this is an issue of fundamental fairness and integrity of the system. In exchange for what has been offered to this population, which is the largest legalization program in our Nation's history, we should be able to say that for any person who applies for and receives benefits under this program, we will authorize the Immigration and Customs Enforcement Service to look at that application and to, if necessary, if warranted under law, arrest that individual who made that application and deport them, in accordance with our laws that Congress has already passed.

But the bill the Senate is considering today turns a blind eye to those who apply for the benefits under this bill and are denied. This bill would allow them simply to slide back into the shadows—the precise problem we are being told we are trying to fix.

I daresay if you ask a random taxpayer on the street this simple question: Assume an alien comes forward to apply for legal status under this bill. Because the applicant doesn't satisfy one of the criteria for being awarded legal status, the applicant is denied benefits under the bill. What happens to that individual under the Senate immigration bill? If you were to ask that question to a man or woman on the street, I bet you that 100 out of 100 times people would say: Well, they ought to go home, they ought not to be granted benefits under the bill. Certainly, they would say you ought not to hide evidence of fraud or criminality or wrongdoing that could be investigated and prosecuted.

Yet the so-called confidentiality provisions my amendment addresses, under the current bill, would prevent law enforcement officials from using information on the application to locate and remove a significant population of those who don't qualify for legalization but have applied for it.

To be clear, this is for individuals who have actually applied for a Z visa, or benefits under the program, and

have been denied, not those whose Z visa status has been granted.

This is, in essence, providing an opportunity—to significant categories of individuals whose applications are considered and rejected—to slide back into the shadows, which is the very problem we are told this solution is designed to solve.

The whole point of this exercise, we continue to be told, is to enhance U.S. security by bringing people out of the shadows. But this bill would draw people out, only to allow them to slide back in if they demonstrate they are disqualified for the benefits under the bill—the very people we ought to be focusing on and having deported in accordance with our laws.

I remind my colleagues of our Nation's recent history with mass legalization and the consequences of prohibitions on Federal agencies sharing information.

As I have stated, reasonable observers have concluded that the 1986 amnesty was rife with fraud. That is the conclusion of the New York Times in the article that will be part of this record, dated November 12, 1989. The title is ''Migrants' False Claims: Fraud on a Huge Scale.''

We also note, for example, from the 9/11 Commission staff statements, that Mohamed and Mahmud Abouhalima, conspirators in the 1993 World Trade Center bombing, were granted green cards, or legal permanent resident status, under the Special Agricultural Workers Program, which was an amnesty program created by the 1986 bill.

Under this Special Agricultural Workers Program, a key component of the 1986 amnesty, these applicants had to provide evidence they had worked on perishable crops for at least 90 days between May 1, 1985, and May 1, 1986; their residence did not have to be ''continuous'' or ''unlawful.'' Nearly 1 million illegal aliens received legal permanent resident status under this amnesty—''twice the number of foreigners normally employed in agriculture'' at that time, according to the 9/11 Commission staff statements.

In other words, the inference is inescapable that there was fraud on a huge scale, based on the very kind of confidentiality provisions this bill includes and which my amendment would remove.

I wish to make one other point about this ill-conceived confidentiality provision. Under this bill we are considering, Congress would even prohibit the use of information from sworn third-party affidavits that are one of the documents that can prove eligibility. Who could not, with a little bit of creativity and initiative, get some third party to provide an affidavit that says: Yes, you were present on June 1, 2007; thus, you are eligible for the benefits under this program.

If you designed a program to welcome and invite and embrace fraud more, I cannot imagine what it would be. Yet that very same sort of affidavit could be rendered confidential and could not be shared with law enforcement personnel, unless my amendment is passed.

We already know from well-documented prosecutions of document vendors and other legalization cases that the type of documents submitted—especially sworn affidavits from third parties, not even relatives—no qualification, just third parties—have been used routinely to further fraud.

At the very least, we should not repeat the mistakes of 1986 by allowing the continued use of sworn affidavits by applicants to establish eligibility for the Z visa. My amendment takes care of these concerns.

We know one thing: Criminals and terrorists have abused—and will continue to seek ways to abuse—our immigration system in order to enter and remain in this country.

I regret this bill we are debating fails to give law enforcement the commonsense tools they need in order to prevent terrorists and others from exploiting the vulnerabilities inherent in any massive legalization.

My colleagues may tell you there is a confidentiality exception for national security and for fraud. But to rely solely on these exceptions is simply wishful thinking; it is not going to happen. It doesn't go nearly far enough to reach the kinds of fraud and criminal conduct and other wrongful conduct I have mentioned.

This kind of information law enforcement needs may provide valuable leads of which they were previously unaware. Failure to allow law enforcement to connect the dots is a deadly mistake I have heard my colleagues promise they would ''never allow to happen again.'' So I urge those who are truly serious about the commitment to make sure this kind of fraud and the danger associated with it doesn't ever happen again to support my amendment and make a crucial improvement to this legislation.

I yield the floor and reserve the remainder of my time.

EXHIBIT 1

[From the New York Times, Nov. 12, 1989]

MIGRANTS' FALSE CLAIMS: FRAUD ON A HUGE SCALE

(By Roberto Suro)

In one of the most extensive immigration frauds ever perpetrated against the United States Government, thousands of people who falsified amnesty applications will begin to acquire permanent resident status next month under the 1986 immigration law.

More than 1.3 million illegal aliens applied to become legal immigrants under a one-time amnesty for farm workers. The program was expected to accommodate only 250,000 aliens when Congress enacted it as a politically critical part of a sweeping package of changes in immigration law.

Now a variety of estimates by Federal officials and immigration experts place the number of fraudulent applications at somewhere between 250,000 and 650,000.

LACK OF MANPOWER AND MONEY

The Immigration and Naturalization Service has identified 398,000 cases of possible fraud in the program, but the agency admits that it lacks both the manpower and the money to prosecute individual applicants. The agency is to begin issuing permanent resident status to amnesty applicants on Dec. 1, and officials said they were approving 94 percent of the applicants over all.

Evidence of vast abuse of the farm worker amnesty program has already led to important changes in the way immigration policies are conceived in Congress. For example, recent legislation to aid immigration by refugees from the Soviet Union was modified specifically to avoid the uncontrolled influx that has occurred under the agricultural amnesty program.

Supporters of the farm worker amnesty argue that it accomplished its principal aim of insuring the nation a cheap, reliable and legal supply of farm workers and that it made an inadvertent but important contribution in legitimizing a large part of the nation's illegal alien population. #1,000 Workers, 30 Acres Critics point to cases like that of Larry and Sharon Marval of Newark. Last year they pleaded guilty to immigration fraud charges after immigration service investigators alleged that the Marvals were part of an operation that helped about 1,000 aliens acquire amnesty with falsified documents showing they had all worked on a mere 30 acres of farmland.

The amnesty for farm workers was a last-minute addition to the Immigration Reform and Control Act of 1986, which sought to halt illegal immigration with a two-part strategy. Under a general amnesty, illegal aliens who could prove they had lived in the United States since before Jan. 1, 1982, were given the chance to leave their underground existence and begin a process leading to permanent resident status. And to stem further illegal immigration, the employment of illegal aliens was made a crime.

The agricultural amnesty program was adopted at the insistence of politically powerful fruit and vegetable growers in California and Texas who wanted to protect their labor force. In several respects, the provisions for the program were much less strict than the general amnesty program, which drew 1.7 million applicants. Instead of having to document nearly five years of continuous residence, most agricultural worker applicants had to show only that they had done 90 days of farm work between May 1, 1985, and May 1, 1986.

Representative Charles E. Schumer, a Brooklyn Democrat who was an author of this Special Agricultural Worker provision, said that in retrospect the program seemed ''too open'' and susceptible to fraud. But he argued that budget decisions had made the battle to combat fraud more difficult.

''There has not been enough diligence in tracking down the fraud,'' he said, ''because funding for the I.N.S. has been cut by the White House in each of the last three budgets, even though everyone agreed when the bill passed that greater I.N.S. manpower was essential to make it work.''

Congress rarely raises the immigration service budget above Administration requests.

Aside from its budget problems, the immigration service has repeatedly come under fire this year in Congress and in an audit by the Justice Department for what was termed mismanagement and administrative inefficiency.

John F. Shaw, Assistant Immigration Commissioner, agreed that ''manpower restrictions'' at the agency were a major factor in the fraud in the agricultural amnesty program. He said much of the fraud ''shot through a window of opportunity'' when the agency was frantically trying to deal with many new burdens of the 1986 immigration law.

PEOPLE WHO SOLD FALSE DOCUMENTS

Mr. Shaw said law-enforcement efforts had been limited to the people who sold false documents to applicants for the farm worker amnesty. The immigration service has made 844 arrests and won 413 convictions in cases alleging fraud in the amnesty program. The people involved ranged from notaries public to field crew leaders. ''It was a cottage industry,'' Mr. Shaw said.

The immigration service can revoke legal status if it finds the applicant committed fraud, but even this effort is limited. Only applications that appear linked to a fraud conspiracy are held for review, as when an unusually large number of applicants assert that they have worked in the same place. Some 398,000 aliens have fallen into this category since the application period ended last Nov. 30, but it is likely that many of them will get resident status.

Mr. Shaw said the fraud conspiracies often involved farms that actually did employ some migrant labor. So it is frequently impossible to separate legitimate from illicit claims.

Given the limited law-enforcement effort, no precise count of fraud in the agricultural amnesty program is possible. But some rough estimates are possible based on information from the aliens themselves. An extensive survey conducted in three rural Mexican communities by the Center for U.S.-Mexican Studies at the University of California in San Diego found that only 72 percent of those who identified themselves as applicants for farm worker amnesty had work histories that qualified them for the program. A similar survey conducted by Mexican researchers in Jalisco in central Mexico found that only 59 percent qualified.

But fraud alone does not explain why the program produced more than five times the applicants Congress expected. Frank D. Bean, co-director of the Program for Research on Immigration Policy at the Urban Institute in Washington, said the miscalculation in the Special Agricultural Worker program reflected longstanding difficulties in tracking the number of temporary illegal migrants from Mexico.

''It is at least plausible that a very large percentage of the S.A.W. applicants had done agricultural work in the U.S. even if they did not meet the specific time requirements of the amnesty,'' Mr. Bean said. 'It Was a Weak Program'.

Mr. Shaw of the immigration service, and other critics of the law, believe there were more fundamental flaws. ''It was a weak program and it was poorly articulated in the law,'' he said.

Unlike almost all other immigration programs, which put the burden of proof on the applicant, the farm amnesty put the burden on the Government. Consequently, aliens with even the most rudimentary documentation cannot be rejected unless the Government can prove their claims are false.

Stephen Rosenbaum, staff attorney for California Rural Legal Assistance, a nonprofit service organization for farm workers, argued that there was no other way to structure an immigration program for an occupation ''that does not produce a paper trail.'' He noted that farm workers are paid in cash and neither the employers nor the workers keep detailed records. 'Immense Logistical Problems.'

''You can argue the wisdom of a farm worker amnesty, but if you have one, you have to recognize the immense logistical problems involved in producing evidence,'' he said.

The immigration service at first tried to apply the stringent practices common to other immigration programs, like rejecting applicants with little explanation when their documents were suspect. But three lawsuits brought in Florida, Texas and California over the last two years forced the agency to follow the broader standards mandated by Congress.

The burden-of-proof issue arose again earlier this year when the House of Representatives approved legislation that would have made any person who could prove Soviet citizenship eligible for political refugee status.

A legislator with a powerful role on immigration policy, Senator Alan K. Simpson, Republican of Wyoming, eliminated the provision because of concerns raised by the farm worker amnesty program, an aide said. Mr. Simpson, who is on the Senate Judiciary Subcommittee on Immigration and Refugee Affairs, substituted a series of specific circumstances that had to be met for a Soviet citizen to be considered a refugee, like denial of a particular job because of religious beliefs.

Immigration experts believe that the agricultural amnesty program will probably color policy debates over other categories of aliens whose qualifications will be difficult to document, like the anti-Sandinista rebels of Nicaragua.

''One certain product'' of the agricultural amnesty program, Representative Schumer said, ''is that in developing immigration policies in the future, Congress will be much more wary of the potential for fraud and will do more to stop it.''

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina is recognized.

(The remarks of Mr. DEMINT pertaining to the submission of S. Con. Res. 35 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

The PRESIDING OFFICER. Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, so I understand, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 hour 42 minutes remaining.

Mr. KENNEDY. I yield such time as I might use.

On the Cornyn amendment, the issue is basically confidentiality. Why is confidentiality important? What we are trying to do with this proposal is to say to the 12.5 million who are living here, the undocumented as well as those in agricultural jobs: Come out of the shadows, and if you are going to meet the other requirements of the bill—paying fines, go to the end of the line, demonstrate solid work achievement and accomplishment—you will eventually be able to get in line after the backlog is completed for a green card and citizenship. We are saying to the individuals: If you are undocumented today, we want you to register.

There is a question with regard to people who are undocumented today. If I go down and say my name is—maybe an undocumented Irish person, say his name is Halloran, and he goes in and says: I am Halloran and live on Linden Street. I am undocumented, my wife is undocumented, and my children are undocumented. We want these people to come out of the shadows and register to begin this process, right? Right. We have to make sure those people are going to have a certain amount of confidentiality, that they are not thinking they are just going to sign in and register and report to be deported. That is what the Cornyn amendment effectively does, is report to deport because he eliminates all kinds of protections of confidentiality.

We provide levels of protection of confidentiality for individuals, but not if they have been involved in any criminal activity and any fraudulent activity.

The Senator from Texas mentions the 1986 act. He has been mentioning the 1986 act time and time again. I responded that President Reagan signed that act. Republicans were in charge at that time, and they administered that act from 1986 to 1992. I voted against that legislation for many of the reasons that have been outlined. That is a different time.

If they want to talk about what President Reagan and what the Republicans did at that time, they can be my guest. But the fact is, as we do know, there were incidents where fraud was committed during that program in the submission of various agricultural documents, and fraud was committed. That is all outlined in a 1988 report which has been quoted here. But that has been the document. We have not seen other documents about similar kinds of fraudulent activities.

As a result, what did we do with this legislation? We did a number of things because of what happened in 1986.

We provide additional protections and requirements in these areas of identification. We provide a number of protections in this legislation, and I will include those at the conclusion of my statement.

Secondly, we have included in this legislation that if the DHS believes fraud has been committed, they can move ahead and deport. Do my colleagues understand? If the Department of Homeland Security thinks fraud has been committed by these individuals, they can move ahead and deport. That has been included. We have also included random audits of these various programs.

The point that has been made that in 1986 there were irregularities we accept and agree. The fact that the 1986 act was not well managed, we agree. Was there fraud in a number of these affidavits? We say, yes, and that is why we took action in this legislation to address it. And I will include those particular citations.

I will run through these points very quickly. If the applicant is inadmissible for criminal reasons or an alien smuggler, that information is turned over to the local law enforcement and police. If there has been a conviction of a crime, criminal activity, smuggling, marriage fraud, all of that information is turned over to the police. If there is any indication of any kind of intelligence activity, it is turned over to the Department of Homeland Security.

We have written into this legislation protections so we are not going to have abuses of confidentiality. But—but, Mr. President—when we are talking about other kinds of activities—for example, if they fail the English test, or because there is a certain amount of work requirement time, there is an issue as to whether they completed the work requirement, we protect their confidentiality. If they fail the English test, we protect their confidentiality. If there is a technical registration issue, we protect their confidentiality.

This is enormously important because if we do not protect their confidentiality, they are not going to register. It is as clear and simple as that.

This represents a very careful balance that was worked out. I respect the Senator from Texas on this issue, but it is important that we have guarantees for individuals if we expect them to register as this system is being set up because it is going to transition. We know parts of this system are not going to go into effect until we have border security, and if we expect individuals to participate in that system, we have to guarantee their confidentiality. We do so. It is enormously important. This system isn't going to function unless we do.

If the Cornyn amendment is adopted, the bottom line is this system will not function, and it will not work because as individuals in this community are wondering whether they ought to sign up for this system, by and large they are going to check with perhaps their local parish, maybe their local priest, maybe a nonprofit organization, social service organizations, community organizations in which they have confidence and trust, and those individuals are going to know whether there is confidentiality or not. Those individuals upon whom they rely in the local community, extended members of their family, nonprofit organizations, church organizations, unless they are able to give the assurance to these individuals that their confidentiality is going to be protected, we are not going to have people involved, and we are not going to have success with this legislation.

As I mentioned, in the incidence of fraud, we have addressed those extensively with provisions in the legislation. If there are incidents of fraud, criminal activity, terrorist activity, any of the other kinds of issues that involve criminality, of course, that protection is effectively out the window. We provide confidentiality, but limited in a very important way. It is enormously important to the success of the program.

Mr. President, I anticipate that we are going to have presentations by my friend and colleague from Alabama sometime with regard to the earned-income tax credit. I have comments in response to that amendment. I know there will be an alternative amendment that will be offered in that area. I will address the Senate when we have that particular proposal.

Eventually, we are going to have the Lieberman amendment, which is a very thoughtful amendment. We will have opportunity to address it at that time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SALAZAR. 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. SALAZAR. Mr. President, I ask that the time during the quorum call be equally divided between both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. 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. ALEXANDER. Mr. President, I appreciate the tremendous effort that has been made on both sides of the aisle to try to address the immigration dilemma facing our country. In my view, other than the war in Iraq, the war on terror, there is nothing more important before us, and we should leave the bill on this floor for as long as it takes to get it right because as difficult as it is to get it right, it seems to me that failure is not an option. If we fail, then what we have done is admitted that we have just simply allowed a situation to continue where perhaps a million new illegal persons will come into our country each year. That contravenes the rule of law upon which this country is founded, it works against our ability to be a country that lives by the motto that is engraved up there on the wall, ''one from many,'' to assimilate into our country the number of people who are coming, and it is a poor example for the rest of the world when we suggest to them that they create governments that rely upon the rule of law. It also absolutely enrages the American citizens, who look at Washington and say that the Government has done a horrible job for the last 10, 15, 20 years in enforcing our immigration laws. Americans have, in many cases, lost faith that we even have the ability to fix the mess. I used to feel that way myself before I came here. I haven't been here that long—just 4 years.

Twelve years ago, I was a candidate for President of the United States. I was in those debates which we watched on television last night, or those kinds of debates. One of my proposals was that we should create a new branch of the military in order to secure the border. In 1994, 1995, and 1996, Americans were upset about our inability to distinguish between legal immigration, which is the lifeblood of our country, and illegal immigration, which is an affront to the rule of law and the principles of what it means to be an American. So this has been going on year after year after year.

When I was home last week in Tennessee, I spent a lot of time listening and talking to Tennesseans. In fact, I just left a group of homebuilders from Tennessee in my office who were talking to me about the immigration bill and about some concerns they have. But of all the concerns that came through to me last week in my conversations with Tennesseans, it boils down to this: We don't really trust you guys in Washington, DC, to fix this problem. You don't seem to be willing to do it.

So I have a suggestion today that I will make, an amendment that I intend to offer. I won't call it up at this moment, but I want my colleagues to know about it and the country to know about it because I think if this bill were to become law, it would increase the level of trust the American people would have in the ability of this Government to enforce whatever law we pass. I am not suggesting it would solve everything or that we would regain trust overnight, but I am suggesting it would be a step forward. I will describe the legislation in just a moment, but it boils down to this: We would involve the Governors of the border States between the United States and Mexico in determining whether the new border control system we put in place is actually operational.

Right now, particularly amendment offered by my distinguished colleague from New Hampshire (Senator GREGG) the other day, the proposed bill has been strengthened in the following way: He said that his amendment would require the Department of Homeland Security to certify that it has established and demonstrated operational control over the entire U.S.-Mexico land border before other parts of the bill involving legal status could go into effect. We call this the trigger.

Senator ISAKSON from Georgia suggested this last year. It is a wise idea. It says, first we secure the border, and then, when it is secure, we do the other things about legalization of people already here, to the extent we decide to do that. But the question still remains: Who is going to say when the border is secure? The people out across the country—at least those in Tennessee—don't trust us, don't trust the Government in Washington, because of this poor record of 20 years. It doesn't matter that I just got here 4 years ago. They look up here and see the Government and they say: You didn't do it last year, you didn't do it 3 years ago, you didn't do it 10 years ago or 15 years ago, so how do we know you are ever going to do it, even if you pass the law?

Well, the three things I can think of that would make a difference are, No. 1, to pass a bill with teeth in it. For example, the Gregg amendment says

there will be 20,000 Border Patrol agents. That is more than we currently have. Today, there are 13,000. There will be four unmanned aerial vehicles. There will be 300 miles of vehicle barriers. Currently, there are about 78. There will have to be at least 370 miles of fencing already built. Now, there are 700 already authorized by the Secure Fence Act of 2006, and that hasn't changed, but 370 miles would have to be built. There would have to be 70 ground-based radar and camera towers on the southwest border. There would have to be a permanent end to catch and release. There would have to be an employment verification system that requires employers to electronically verify new hires within 18 months and all existing employees within 3 years. All of those things would have to be in place. The words are they would have to be ''established and demonstrated, that the Federal Government had operational control over the entire U.S.-Mexico land border.''

The amendment that is already part of the bill, the Gregg amendment, said the Director of Homeland Security would certify that. What I add with my amendment is it has to be concurred in, agreed with, signed off on by three of the four Governors on the United States-Mexico border. In other words, we pass the law with teeth—the teeth of the Gregg amendment and maybe more. I have suggested, and others seem to have agreed, what we ought to do is then fund the law. Either the President challenges us to pass an appropriations bill within 30 days after we pass the law, we do it ourselves, or we set up a trust fund—the way we do for highways and the way we do for Social Security, the way we do for anything else—and we say that money goes to secure the border, to fund these things. We pass a law with teeth. Then we provide the money. Then the Director of Homeland Security says the border is secure. That is the trigger. My amendment would say: The Governors of the border States, three out of four, have to agree.

The Governors of the border States are not in Washington, DC. They have not been infected with whatever is up here. They have not even been vaccinated. I have been up here long enough to be vaccinated with whatever disease is up here, and for that reason more Tennesseans trust the Governors than they do the Washington officials to solve this problem. If the Governors of California, Arizona, New Mexico, and Texas say yes, the border is secure, we agree with the certification of the Department of Homeland Security, I think that would be good enough for most Americans. That is the point of my amendment.

We need to put together a good bill that secures the border first. After border security, the other biggest problem is what to do about those already here illegally. I think that issue is less of an issue if most Americans believe we would pass a law that permitted the Border Patrol agents and the verification system to be done, that we would fund it and we would actually do it as certified by the Director of Homeland Security and the Governors on the border. Then I think they would be willing to accept different solutions for those already here.

But the week before last I voted for the amendment offered by Senator VITTER that would have sent the bill's drafters back to the drawing board on the question of what to do about the 12 million illegal persons, more or less, who are already here.

Senator HUTCHISON and Senator CORKER have done some very important work on this issue, which I intend to support and to cosponsor. That amendment would require illegal immigrants, who want to work here, to return to their home countries and reenter through legal channels in addition to paying a fine and passing the criminal background check.

In addition to that, this bill should be about another subject about which we hear almost nothing, and that is the number of people who come here legally every year. A little more than a million people come into the United States each year legally. Today, if I remember the figures right, most are family members. Some come here as students. Some come here as researchers, to create jobs for us. Some come here as refugees. For those Americans who come here legally and who are prospective citizens, especially given the large number of people coming from overseas, we need to do everything we can to help those persons become Americans.

I have filed several amendments. They seek to promote learning English, our common language, and what it means to become an American through an understanding of history and civics. For example, one of these amendments will help these legal immigrants learn English and what it means to be an American, to codify the oath of allegiance, and to make English our national language.

Another amendment would ask the Government Accountability Office to provide a comprehensive report on the costs imposed on the public and private sector by having millions of U.S. citizens and lawful permanent residents who are not proficient in English. So far in this debate the Senate has already passed my amendment to establish a Presidential award to recognize companies who have taken extraordinary efforts to help their employees learn English and American history and civics.

Some may say that is not so important, we all agree with that. It is awfully important. If you take a look at Europe today and you see the difficulty France has helping immigrants become French, and that Germany has helping immigrant workers become German, and that Japan has—because no one has an idea of what it might mean to become Japanese if you are not born Japanese—you can see how fortunate we are in this country to have literally invented the concept of becoming American. We say it does not matter what your race is, it doesn't matter who your grandfather is, you come here, you take the oath George Washington gave his officers at Valley Forge and you say: I am not whatever I was. I pledge allegiance to America. I learned the language, I learned the history, and we have a few principles we agree on, and I am an American. I am proud of where I came from, but I am prouder to be an American. Race doesn't matter. Religion doesn't matter. We pride ourselves on that. It is a tremendous advantage we have, so we ought not lose sight of the importance of helping legal citizens learn English and what it means to be an American.

I have heard some talk that encouraging people to learn English is somehow divisive. I can't imagine that. In fact, it is the reverse. It is our unifier. It unifies us, to have a common language. It unifies us to know that the rule of law and equal opportunity are common principles.

We debate what that means, and often they collide and conflict and we have to work that out as legislators, but we all agree on the same common principles and we enjoy the fact we have a common language, so I can speak to the President, and I can argue with the Senator from Colorado or I can agree with him as we are doing on an Iraq piece of legislation right now. We have a common language.

So, common language, what it means to be an American, finding many different ways to honor these new citizens who come here legally—that ought to be as important a part of this bill as securing the border and creating a verification system in dealing with the people who already got here illegally.

Primarily I came to the floor this afternoon to let my colleagues know I have a suggestion for how to begin to regain the trust of the American people on this issue, and that is this bill should pass with strong new provisions for border security, with funding to pay for it, and with a trigger that says the legalization parts of the bill don't take effect for 2, 3, 4, maybe even 5 years, until the border is secure.

Then the question is how are we going to know if the border is secure? The bill says trust the Director of Homeland Security. I say ask him, pay attention to him or her, but also trust the Governors of the border States. Let three out of the four Governors, of California, Arizona, New Mexico, and Texas concur with the Director of Homeland Security that the border is secure before we begin the legalization process, and I think the American people might buy it, they might believe that, and we might begin to regain their trust, after 20 years of mismanagement, that we are willing to take seriously securing the border and establishing respect again so we can have a rule of law.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Colorado is recognized.

Mr. SALAZAR. I thank my friend from Tennessee for his comments on the importance of immigration reform. I would say there is agreement in this Chamber among both Democrats and Republicans that what we need to do is secure our borders. The legislation before us today and the legislation we have been working on is, in fact, intended to secure our borders. We all recognize we need to move from a system of lawlessness and broken borders that create a wake of victims, to a system of law and order and a system of immigration reform that works for our country. We have been making significant progress as we move forward with this legislation. At this point we have already had 15 rollcall votes on this legislation. We expect to have another seven rollcall votes on this legislation as we move forward today. That gets us up to 22 rollcall votes. Last year before cloture was invoked on the immigration bill that was before the Senate, there were, at that time, 23 rollcall votes. So by the end of tonight we should be at a point where we would have equaled at least the number of votes we had last year.

We have some difficult amendments still coming up that we will be voting on, both today and tomorrow, but it seems to me we are making significant progress, and I appreciate the hard work that is going on today on the Democratic side as well as the Republican side.

Again, I appreciate the leadership of Senator REID. What he did is say: I am going to take the time of the Senate, 100 Senators. All of us here in the Chamber know how important our time is. We get a 6-year license to serve as Senators, so how we spend our time and how our time is allocated is at a very high premium. What Senator REID did was to say a long time ago we would spend the latter part of May, and now we are into June, dealing with this huge issue of immigration reform. At the end of the day it is a national security issue that goes to the heart of what Senator ALEXANDER was saying, which is we have to secure the borders of this country, we have to deal with the economic realities that have created the immigration issues we are facing here today, we have to deal with the reality of 12 million undocumented workers who live here in the shadows of America's society, and we have to create a system for immigration that is going to work into the future.

The people who have worked on this, including President Bush in the White House, have helped us move this debate forward—hopefully closer to conclusion.

I see my friend from New Jersey, who is I think ready to speak, so I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, first, I ask unanimous consent that Senator REID be added as a cosponsor of the Menendez-Hagel amendment, No. 1194.

The PRESIDING OFFICER. Without objection it is so ordered.

AMENDMENT NO. 1194

Mr. MENENDEZ. Mr. President, let me first commend my distinguished colleague from Colorado, who has been a voice of reason throughout this whole process. He has been a leader in trying to fashion a comprehensive immigration reform that is tough and smart. We need immigration reform that is tough as it relates to making sure our borders are protected. We have not only the right but the obligation to secure those borders and ensure that we have the wherewithal and the resources to make sure only those who cross, cross in a fashion that is safe, legal and orderly. At the same time, we need immigration reform that deals with our economy, fueling that economy, and finally finds justice for individuals who are often subject to human trafficking as well as exploitation.

To my distinguished colleague from Colorado, I tip my hat for the tremendous effort he has made—and that brings us to where we are today. But I do want to go toward one of the pending amendments that will be voted on in the next block. It is the amendment I have offered with Senator HAGEL and many others that goes to the core of one of the great issues the Senate will decide as it relates to this immigration bill, and that is whether families and the reunification of families is still a value to the Senate, is still a value in our family, whether families who come together and are strengthened by being together and helping each other and working with each other and nurturing each other and by so doing strengthening communities in the process are to be preserved, or are they, in terms of that battle, likely to be eliminated and struck, at least in our immigration context?

I certainly hope when the Senate comes to vote, it will be voting in a way that is in line with the many speeches I have heard here, that I have heard in committee hearings, that I have heard in the other body, in the House of Representatives, where I served before coming here, about family values, family reunification is going to be preserved. It is time to put our votes where our values are. The Menendez-Hagel amendment offers that opportunity.

Now, I do wish to wave my saber to the managers of the bill. I have heard some suggestion that there may be an attempt to offer a budget point of order which would require a higher vote total. I would simply say that there are also budget points of order on the underlying substitute. If in fact we are going to go down that slippery slope, then I would have the expectation myself to be offering budget points of order against the substitute. I think what is fair is to have a vote up or down on the amendment as it relates to the majority of the Senate's will. We will see what the majority will of the Senate is.

But if we are going to move down that road, I would acknowledge that there is a budget point of order as it relates to the underlying substitute. So I hope we will not move to that type of tactic as we pursue the vote on this amendment.

Now, it seems to me that under the existing bill, people who apply under the existing rule, under the law as it is today, who observe the law, who follow the rules, who said to their family member: No, no, do not come to the United States, wait your turn, follow the law, obey the rules, who filed an application as is a right of a U.S. citizen to file for a petition for their immediate relative, who paid their application fee, whose Government took their application fee, whose Government went ahead and made an analysis of that petition to see if it was a petition that was lawfully entitled to be approved, and who approved the very essence of that petition saying: Yes, this person, as a U.S. citizen, has the right—the right—to go ahead and apply for their family member, their brother or sister, their mother or father, their son or daughter—that is the universe that we are talking about—and says: Having approved my documentation and having approved of that petition, then you must wait your turn to the time that ultimately the priority date will invoke the possibility for you to come to the United States.

That is the law. That is obeying the law. That is the rule of law. So you would think that in the legislation we are debating, those who have obeyed the law, followed the rules, and those who are U.S. citizens and have done the right thing, that we would not extinguish, eliminate their right for having done the right thing—for having done the right thing.

But that is the very essence of what this bill does, unless we adopt our amendment. Under the bill, not only does, of course, the Senate bill propose a radical change to who and how you can come to this country, but it also cancels the applications that are pending—pending—of many people who have been waiting patiently in line for family-based visas. If you are a U.S. citizen or lawful permanent resident, you filed after May of 2005, the date that arbitrarily was taken and put into the bill to bring in a relative to the family immigration system, your application is gone. It is voided. You are told: Get to the back of the line—the back of the line, by the way, which is the back of the line with people who violated the law, who violated the law. Imagine that.

Whose right is being extinguished here? Not the family member who is waiting abroad. No. The right of the individual that is being extinguished is the U.S. citizen. That is where the right accrues. It is that person who has

the right to make this claim under existing law.

So we take away their right after they filed the petition, paid their fees, and told their family members to wait. They are told to get in the back of the line. The back of the line is after those individuals who did not follow the law and obey the rules.

It boggles the mind. Under the Senate bill, employment-based immigrants are allowed to continue their applications as long as they are pending after the date of enactment. Employment-based verification. What about those families who have done everything right? It is only fair, in my mind, that family-based immigrants be given the same treatment.

The Menendez-Hagel amendment goes a long way to restoring fairness to this situation by doing what? We simply take the cutoff date that is in the bill, May 2005, and we say: Do not treat American citizens any worse than you are going to treat those who came into the country in an undocumented fashion. You are going to give them a benefit, January 1, 2007. They had to be here by January 1, 2007. Well, then, let those who followed the law, obeyed the rules, paid their fees, told their families to wait, they have the same benefit: January 1, 2007.

It is not outside the ''grand bargain.'' It is within the same context. You want to clear out a backlog? Fine, clear out a backlog but be fair in the process. Do not extinguish the rights of U.S. citizens.

It is important to understand, as we talk about this, the stringent requirements that exist under the law today governing family sponsorship for immigration. They would continue to apply in these cases. Any U.S. citizen or lawful permanent resident wishing to sponsor a family member, as part of the approval of that petition, must demonstrate that he or she earns at least 125 percent of the Federal poverty level and must sign a legally enforceable ''affidavit of support,'' pledging to ensure his or her relative will not become a public charge.

On top of that, based upon the welfare reform legislation that was passed several years ago, legal immigrants are barred, barred from accessing most Federal means-tested public benefits for the first 5 years in the United States and are thereafter subject to further limitations until they have worked 40 quarters in this country, which is the equivalent of 10 years—10 years. Five years first, in terms of being barred from any public benefit because you came in on the affidavit of a family member who said: I am going to be responsible for this individual, and then 10 years after, in terms of being subject to further limitations of their necessity to have worked 40 quarters, 10 years.

Now, I have heard a lot about the rule of law. I am for the rule of law. But how does the rule of law get promoted, how does the rule of law get promoted when we say to a U.S. citizen who has applied for their family member waiting abroad, waiting their time, following the rules, obeying the rule of law, that, in fact, they have an inferior right to someone who did not follow the rules, who did not obey the law, and who ultimately will receive a benefit superior, superior to that U.S. citizen who is claiming their family member and waiting under the law and pursuing the law?

In my mind, it sends out totally the wrong message. The message should have been: No, no. Come across. Come however you can. Then, by the way, you know we are going to give you a benefit. Do not stay out there waiting. Yes, it breaks our heart that we are not together. Yes, you are going to have to wait a period of time. But you know that is the law. We are going to do this right.

Oh, no. Instead of honoring and rewarding that and sending a message that when you observe the law there is a benefit, you know, we do the opposite. We do the opposite under this bill. Our amendment very simply says: A U.S. citizen claiming their family member, waiting under the legal process, waiting to proceed, that their right should not be snuffed out like that, under this bill, in May of 2005, when those who have crossed the borders of our country through a process that is unchecked, undocumented, get a benefit—January of 2007.

Because here is the message we send under this bill: Break the law, you get a benefit—January of 2007. Follow the law, follow the rule of law, obey it, your right is snuffed out in May of 2005. So I think if we want to send a message about the rule of law, what we want to do is to ensure we put on an equal footing the rights of a U.S. citizen claiming their family member, obeying the law, to give them the same opportunity that those who have not. That is what our amendment is all about.

Now, as we approach moving toward a vote on this amendment, I wish to remind our colleagues about whose rights they are snuffing out. Rights of individuals good enough to wear the uniform of the United States, good enough to serve their country, good enough to fight for their country but not good enough to observe their right to claim their family member.

Under this bill, both U.S. citizens and U.S. legal permanent residents' rights are snuffed out. These men in different branches of the armed services of the United States, they were good enough to fight for their country, but they were not good enough, under this bill, to have their rights preserved to claim their family member.

That does not make sense to me. Now, I have heard about this killer amendment—killer amendment. One of our colleagues has tried to describe our amendment on family reunification as a killer amendment. What is a killer amendment? A killer amendment is an amendment that is proposed by a sponsor who does not want to see comprehensive immigration reform pass the Senate.

Now, the ironic part of that is many who used that language last year when I was in the Senate voting for comprehensive immigration reform, that was used against me in my election last year. They were voting against comprehensive immigration reform. Killer amendment? When did family reunification—family reunification—strengthening of families, preserving the rights of U.S. citizens, including those who wear the uniform of the United States, when did that become a killer amendment?

Now, I have heard a lot about family values in my 15 years in Congress. You know, when you want to move away from the human aspect, when you want to forget, for example, the face of Marine LCpl Jose Antonio Gutierrez, a legal permanent resident of the United States who gave his life, the first soldier to die in Iraq, under this bill, had he survived, you would have extinguished his right to claim his family. He was good enough to die for his country, not good enough to have his rights preserved. When you don't want to see the human faces, you dehumanize it so you can deal with it abstractly. So what have we heard about? We have heard about chain migration. We can treat it like an inanimate object; we have to stop that chain migration.

This is much more than chain migration. This chain my colleagues so abstractly refer to, the top of this chain is someone who is a mother or a father. When did that become such a horrible thing? I thought we wanted to strengthen families, honor our parents, honor their ability to perform and to be strengthened. But that is chain migration. We can't let a U.S. citizen be able to claim their family. No, that is chain migration. We can't do that.

When did we decide our brothers and sisters are nonnuclear? But they are part of the chain, brothers and sisters. Then our children—this is a good one—if they are under the age of 21, they are part of our nuclear family. If they are over the age of 21, they are no longer part of our nuclear family, just a little part of this chain.

I have two children. One is 21; the other is 23. I have never for a moment, because they changed from 20 to 21, believed they were not part of my nuclear family. I don't view them as part of a chain. I don't love them any less. I couldn't live without them any less. The mere passage of a year, some numerical figure makes them part of a chain, nonnuclear. I guess we can do away with our children. I guess we can do without the right of U.S. citizens to claim their children. We can just discard them. I guess when you become 21, you really don't matter anymore. As a matter of fact, all of that family values stuff doesn't matter anymore. Unless we adopt this amendment, that is what we are talking about.

Imagine if we couldn't have such a set of circumstances be preserved by

virtue of this amendment. I have shown some of these pictures before, but as we move to the vote, I hope people understand what I am talking about. Under the bill, family reunification that I believe is so critical, we wouldn't have a lot of people in our country who have made enormous contributions. Ultimately, we ended up thriving because of their contributions. We ended up thriving on the contributions of a Colin Powell whose parents, under this bill, would not have been eligible to come to this country and, therefore, unlikely that he would have been born here and had the opportunity to become chairman of the Joint Chiefs of Staff or Secretary of State. He has made a good contribution to this country.

Right now in Iraq our leadership comes from GEN David Petraeus. The reality is, under this bill his parents would have been unlikely to come to this country, and he would not be a United States general and leading the best efforts we can have in Iraq.

Under this bill, the inventor of the polio vaccine, Jonas Salk, would not have made it to this country. Yet he saved the lives of millions and millions of people here and across the world. Under this bill, at least, America wouldn't have been the place in which electricity and the light bulb would have been found. Thomas Edison, from my home State of New Jersey, likely would not have made it because his parents weren't rocket scientists.

The list goes on and on. We have a gentleman who did a great service to our service men and women across the globe, Bob Hope. Under this bill his parents wouldn't have made it, and we wouldn't have had an incredible ambassador for our country and an incredible sponsor of goodwill for the men and women who served us over decades around the globe.

What do we say? This came out recently in one of the newspapers. What are our priorities? Stopping terrorists, stopping drugs at the border? No. Drugs or explosives? No. We are just checking to make sure you don't take any loved ones with you.

Under this bill, it doesn't matter because even when you obey the law and follow the rules, you ultimately have your right extinguished.

It seems to me we have our values wrong. It is not about chain migration, not about just looking at the ability to say that family reunification should not happen, especially when the burden is on the family member who happens to be a U.S. citizen. I simply believe the question before the Senate will be, are you willing to vote to eliminate the right that exists today of a U.S. citizen who filed his papers, the Government took his money, he obeyed the law, followed the rules, you are going to take away his or her right? But you are going to give a right to individuals who didn't follow the law and obey the rules. I certainly don't believe that ultimately is in pursuit of the rule of law.

There are many organizations that have joined us. I ask unanimous consent to have this list printed in the RECORD.

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

ASIAN AMERICAN
JUSTICE CENTER,
Washington, DC, June 5, 2007.

DEAR SENATORS: We, the undersigned organizations, write to urge you to vote yes on the Menendez-Hagel Amendment to ensure fairness for U.S. citizens and their families. Without this amendment, U.S. citizens will be punished for playing by the rules and waiting in line to be reunited with their family members.

The current immigration bill being considered by the Senate contains a provision that would address the current family backlog of people that have applied for lawful permanent residence, but only for those who applied before May 1, 2005. Applications that were filed by U.S. citizens to sponsor their adult children or siblings after this cut-off date—an estimated 833,000—would be thrown out. Not only does this send the wrong message to people who are citizens and obey the law, the government will be severely taxed with the administrative cost of returning application fees for the past two years.

Senators Robert Menendez (D–NJ) and Chuck Hagel (R–NE) have introduced an amendment, co-sponsored by Senators Daniel Akaka (D–HI), Hillary Clinton (D–NY), Christopher Dodd (D–CT), Richard Durbin (D–IL), Daniel Inouye (D–HI), Frank Lautenberg (D–NJ), and Barack Obama (D–IL), to the current Senate bill that would correct this grave injustice by changing the cut-off date for legal immigrant applicants from May 1, 2005 to January 1, 2007—the same cut-off date that is currently set for the legalization of undocumented immigrants—and adding 110,000 green cards a year for a meaningful backlog reduction so as to not lengthen the 8–year deadline for clearing the adult children and sibling backlog.

By voting for the Menendez-Hagel Amendment, you will help immigrants who have gone through the long and sometimes arduous process of learning English and becoming citizens. These Americans have filed applications and paid fees to the U.S. government so that they can bring in their adult children or siblings. They have made life choices based on the very reasonable expectation that they would be eventually reuniting with their family members. Our country can't tell people who have been waiting patiently in line for visas that we are now retroactively rewriting the rules and effectively forcing them to start from scratch.

We urge you to vote yes on the Menendez-Hagel Amendment and ensure our immigration system is fair for United States citizens.

Very truly yours,

National Organizations: Asian American Justice Center; Advocates for Children and Elders International; American Friends Service Committee; American Immigration Lawyers Association; Amerian-Arab Anti-Discrimination Committee; Asian & Pacific Islander American Health Forum; Association of Community Organizations for Reform Now; Cambodian American National Conference; Church World Service, Immigration and Refugee Program; Coalition for Comprehensive Immigration Reform; Democracia Ahora; Dominican American National Roundtable; Ethiopian Community Development Council; Federation of Indo-American Seniors' Association of North America; Friends Committee on National Legislation; Hate Free Zone; Hebrew Immigrant Aid Society; Hmong National Development; Immigrant Legal Advocacy Project; Immigrant Legal Resource Center; International Immigration; Foundation Japanese American Citizens League; Kurdish Human Rights Watch; Laotian American National Alliance; Latin American Legal Defense and Education Fund; Leadership Conference on Civil Rights; Legal Momentum; Lutheran Immigration and Refugee Service; Mennonite Central Committee, Washington Office; Mexican American Legal Defense and Educational Fund; National Advocacy Center of the Sisters of the Good Shepherd; National Alliance to Nurture the Aged and the Youth; National Asian Pacific Center on Aging; National Association of Latino Elected and Appointed Officials Educational Fund; National Council of La Raza; National Korean American Service & Education Consortium; National Immigration Forum; National Immigration Law Center; NETWORK, A National Catholic Social Justice Lobby; Organization for Justice & Equality; Organization of Chinese Americans; People For the American Way; Sikh Council on Religion and Education; Sojourners/Call to Renewal; Somali Family Care Network; South Asian American Leaders of Tomorrow; Southeast Asia Resource Action Center; Unitarian Universalist Association of Congregations; United Methodist Church, General Board of Church and Society; U.S. Conference of Catholic Bishops; World Relief.

Local Organizations: Asian American Federation of New York; Asian American Institute, Chicago, IL; Asian Law Caucus, San Francisco, CA; Asian Pacific American Legal Center of Southern California; CASA of Maryland; Causa, Oregon; Colorado Immigrant Rights Coalition; EI CENTRO de Igualdad y Derechos, Albuquerque, NM; Filipino-American Coalition of Florida; Filipino American Political Alliance of Florida; Fresno Interdenominational Refugee Ministry; Guru Gobind Singh Foundation Sikh Center, Rockville, Maryland; Illinois Coalition for Immigrant and Refugee Rights; Iowa Citizens for Community Improvement; Korean Resource Center, Los Angeles, CA; Korean American Resource & Cultural Center, Chicago, IL; La Casita: Servicios Legales para inmigrantes, Trenton, NJ; Latin American Community Center, Wilmington, DE; Massachusetts Immigrant And Refugee Advocacy Coalition; National Capital Immigrant Coalition; New Jersey Immigration Policy Network; New York Immigration Coalition; Northwest Federation of Community Organizations; OCA—South Florida Chapter; Stone Soup Fresno; Tennessee Immigrant and Refugee Rights Coalition; The Pyonghoa Gospel Church, Flushing, NY; United Chinese Association of Florida; YKASEC—Empowering the Korean American Community, Flushing, NY.

Mr. MENENDEZ. There are 80 of them. I will not read them all, but I want to give a sense of some who have moral authority behind them, as it relates to saying the Senate should adopt this amendment: The Church World Service; the Hebrew Immigrant Aids Society; the Lutheran Immigration

and Refugee Service; the Mennonite Central Committee; NETWORK, a National Catholic Social Justice Lobby; the Unitarian Universalist Association of Congregations; the United Methodist Church; the U.S. Conference of Catholic Bishops; and a whole host of organizations that are not religious in nature but clearly are advocates from all of the different sectors of society: For example, the Asian American Justice Center, the Asian and Pacific Islander American Health Forum, the Federation of Indo-American Seniors' Association of North America, the Friends Committee on National Legislation, the National Association of Latino Elected and Appointed Officials, the National Council of La Raza, the National Korean American Service & Education Consortium, to mention a few. They all believe this Senate should be putting its votes where its values are, into the reunification of families.

Finally, I know there will be an attempt to offer what we call a side-by-side, something to try to produce a figleaf for those who don't want to be seen as casting a vote against family reunification, a vote against snuffing out the rights of U.S. citizens. And that figleaf actually would do absolutely nothing. What it would do is guarantee the underlying bill. It would guarantee that a U.S. citizen who obeyed the law, followed the rules, did everything right, had their family member waiting, it would guarantee that their right would be snuffed out. It would guarantee that they would go to the back of the line, a line in which there are people who didn't follow the law, obey the rules, violated the law, and they will be in the back of the line with them.

That amendment that is going to be offered clearly is a figleaf. It clearly is poorly constructed. It doesn't deal with the present realities of undermining that right of a U.S. citizen. It does nothing to preserve the right of those people who filed and who are now being snuffed out, being cut out in terms of the rights of those U.S. citizens because of the underlying bill.

There is only one way to make this right. There is only one way to preserve family reunification. There is only one way to preserve the rights of these individuals who wore the uniform of the United States, who were good enough to wear the uniform, serve their country, and should have the right, which this bill snuffs out, to claim family members. There is only one way of making sure we don't turn this into an abstract object of chain migration, but that we understand the core values of family; that we understand a child who turns 21 is no less a child you love dearly and want to be with and who doesn't stop being part of your nuclear family because they magically turned 21 and are now nonnuclear. That is what is at stake in this amendment.

I urge my colleagues to support the Menendez-Hagel, and others, amendment so that, in fact, we can still stay within the ''grand bargain'' but we can do what is right on family reunification.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. I ask unanimous consent to speak as in morning business.

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

(The remarks of Ms. KLOBUCHAR are printed in today's RECORD under ''Morning Business.'')

Ms. KLOBUCHAR. 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. 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 suggest the absence of a quorum, and ask unanimous consent that the quorum call be charged equally.

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

The clerk will call the roll.

The bill 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. As we noted earlier, we are going to have a series of votes at 6:45. I wanted to address the amendment which has been offered by my friend, Senator SESSIONS from Alabama, which relates to the earned-income tax credit.

I see the Senator from Alabama has just arrived, so I will be glad to let him make his presentation and then respond. If that is what the Senator would like to do, I will withhold.

Mr. SESSIONS. I think I am ready, Mr. President.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 1235

Mr. SESSIONS. Mr. President, I thank Senator KENNEDY for his courtesy, and I would just like to make some general comments about the earned-income tax credit and why I think this is important. I ask that I be notified in 20 minutes if I have gone that far.

The earned-income tax credit is one of the major—the major, in fact—transfer programs in the Federal Government. It is a payment of monies, in reality. It doesn't work the way it was intended, but in reality, it provides a substantial check every year to persons who are low-wage workers. It is for people who are trying to do well but are not making much money, so they give them a check to encourage work. I have felt for some time—and maybe I will talk with Senator KENNEDY one day about it, and we might reach an agreement on this—I think it would be much better if tax credit were paid along with your paycheck. It is designed to increase—it is allowed, under the EITC, but we don't do it that way. You file a return, and the next year, after you have completed your year's work, they send you a large check. On average, the recipient receives a benefit of almost $1,800 a year; that is, the people who qualify receive that amount. Again, the people who qualify are individuals who are working in lower wage jobs, which, in fact, are the types of jobs most of the 12 million illegal aliens are doing. They are working at low-wage jobs. Therefore, we can expect there will be a disproportionate number of persons who will qualify for this tax credit.

Now, the tax credit was designed to encourage Americans to work—American citizens. When it started in the 1970s under President Nixon, they thought there had to be some incentive so that you would get more money by working than by drawing welfare, or else you would just stay home and draw welfare. There still is a problem with that, in reality. But this bill was supposed to incentivize work, and that is why it was drafted the way it was and has continued to grow and become quite substantial. But, again, it was designed to take care of American citizens, our own people.

Now, we are into an immigration reform bill where we have 12 million people here who came into our country illegally. They are being considered for amnesty. They are going to be allowed to stay in this country and be given that right. Maybe some didn't want it or didn't expect it, but they will be given the right to stay here. But under present law, because they are not legally here, they are certainly not entitled to the earned-income tax credit. Unless they file fraudulent documents and receive it fraudulently, they don't get an earned-income tax credit.

So we say we are going to have a $1,000 fine that people must pay as part of a punishment for being in the country illegally, and it is not really amnesty because they pay a fine, but in reality, the fine can be paid on the installment plan, and only $200 has to be paid the first year when you apply for the Z visa. So under the bill, as I understand it—I think there is little dispute about it—as soon as this bill passes, everybody can come in and get a probationary legal status in America, and then before long, they are entitled to apply for and receive a Z visa that is good for 4 years. It can be renewed indefinitely. At some point, they can apply, if they so choose, for legal permanent residency.

What I want to tell my colleagues is that not only will we be providing amnesty to the persons who came into our country illegally for a $200 payment, we will be giving them—even for the temporary probationary status and the

Z visa, prior to legal permanent residency, the earned-income tax credit. I think that is quite a step. Indeed, you pay $200 for your fine, and you file your tax return next year and get a $1,800 check from Uncle Sam.

Don't be mistaken, the earned-income tax credit is for people who don't pay income tax. It is a gift from Uncle Sam. It is meant to encourage Americans to get out and work, not to encourage people to come into our country illegally to gain this benefit. So I just would say to my colleagues, this is an important principle.

According to the Congressional Budget Office—and they run the numbers on this—it is the largest single benefit program and cost of this bill in the first 10 years—not in the outyears; there are some big costs that aren't being calculated. But in the first 10 years, this is the largest direct single benefit.

Over the 2008 to 2017 period—

Ten years—

the Joint Tax Committee estimates that S.A. 1150 would increase outlays for refundable tax credits by about $13 billion, the largest direct spending effect of the legislation. Enacting 1150 would increase the amount of refundable tax credits mainly by increasing the number of resident aliens for income tax purposes.

In other words, it would increase the number of people eligible.

Resident aliens are taxed in the same manner as U.S. citizens and thus could qualify for the refundable tax credit.

They are taxed, but they are not going to be paying high taxes because many of them are lower income people, but they will get the tax credit.

So my amendment would reduce the bill's direct spending cost, the cost to the American taxpayer. Who pays the big check they get every year? Who pays the check they get every year? They are not paying it. It is the taxpayers, the American taxpayers. It is an additional reward on top of the amnesty that is provided. So my amendment would reduce the estimated cost of this legislation by nearly half, No. 1, and it is right, and it is fair.

Now, last year, my amendment—which I believed was justified, but this Congress didn't agree—said you would not receive the earned-income tax credit until you became a citizen. Why not? How is an illegal alien able to come here, not expecting the earned-income tax credit, and then be rewarded with it by our government? That never made sense to me.

But in this legislation—because I think it is important, and we can make a big difference here—in this legislation I have offered, it would simply say that during the time you have a probationary visa or a Z visa up until the time you become a legal permanent resident, you wouldn't get the earned-income tax credit. How much simpler is it than that?

I hope my colleagues will see that this is a perfectly logical amendment, and I would suggest it reflects on our mindset, our approach to this entire process, if we are not able to draw this kind of line as we go through passing—or attempting to pass—this historic piece of legislation. I really think we should give thought to that and ask ourselves what right does somebody who came into our country illegally, who has been here maybe for a number of years, expect to receive this benefit, where we say: OK, we are just going to give up; we are not going to make you go home; we will let you stay; you can have amnesty. By the way, you start receiving the earned-income tax credit of $2,000. How much sense does that make? I don't think that is good public policy. It raises questions about how serious we are about defining our immigration system in a way that works, that has bright lines, and carries out a logical policy. But I understand that people are determined to see that this goes forward.

Now, Senator REID has offered an amendment that is going to be a side-by-side. This amendment is very short, and basically all the amendment says is—I don't have it before me. Our majority leader, our Democratic majority leader, is offering an amendment that says: Well, we will comply with all the current laws of the IRS, and you don't get the earned-income tax credit if you are illegal. Well, of course. That means zero—nothing. I have to tell my colleagues, I am amazed at that amendment, unless I have missed something entirely, because that is what it is all about. They won't be illegal when they are given the probationary status or the Z visa status. They become legal and would get it. I was going to meet with some of the White House people to discuss this issue. I don't think they understood it that way, and I am not sure the President understood that this was actually going to happen under the legislation. But if this bill becomes law, they would get it.

So you say: Well, maybe they wouldn't get it. Well, if they don't get it, why wouldn't you vote for my amendment, which quite plainly assures that they don't get it? Follow me?

So I don't understand this cover amendment. It is not even a fig leaf, I say to my colleagues. I don't think you are going to be able to hide behind the Reid amendment because it is not going to do anything but guarantee that persons who are here and are given this amnesty will pay $200 and then they will get to draw nearly $2,000 a year under the earned-income tax credit.

The amendment being offered by Senator REID makes no sense to me. Maybe I missed something, but I don't think so. I would be delighted to hear what is in play. It is what you call a cover amendment. So what I say to my colleagues is, let's get realistic about what we are doing. Let's understand the cost this legislation is going to have. The Congressional Budget Office has found in their report—although it was written so that it is a little hard to find, but it is perfectly plain—the bill, over 10 years, will cost the American taxpayers $32 billion. A substantial chunk of that amount is the earned-income tax credit. They say the earned-income tax credit is for children. It is not for children, it is for American workers. You may get more if you have children, but it is not for children, it is for American workers.

I thank the Chair and reserve the remainder of my time on this issue.

The PRESIDING OFFICER (Mr. OBAMA). Who yields time?

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I see the Senator from Arizona on the Senate floor. I was going to respond at some time to the Senator from Alabama. I am glad to wait until the Senator from Arizona is finished.

AMENDMENT NO. 1150

Mr. KYL. Mr. President, I thank the Senator from Massachusetts, since it is important that, prior to a meeting we have at 5:30, to speak to an amendment offered by Senator MENENDEZ.

I want to be clear that we have a side-by-side amendment that we will also be voting on, which I think goes to the heart of what Senator MENENDEZ is trying to get at here, but it does so in a way that will not upset the bipartisan consensus that has been worked out on the legislation.

I think the Menendez amendment has been discussed in the past. It is an amendment that would, in significant ways, change the basic agreement that has been made by some of the Senators. Therefore, it would be very problematic were it to pass. There is a budget point of order against the Menendez amendment, and that point of order will be raised. Because of the extra cost that would be imposed by additional immigrants being permitted to come into the country over time, in fact, I think there is more than one budget point of order because of those increased costs. The general proposition is that some have said the bill is not family friendly and that we need to do more for families. I want to try to dispel that, Mr. President.

We start out with the proposition that somewhere between 12 million and who knows how many million illegal immigrants who are in the United States, for the most part, are going to be able to stay. If everything that can be expected of them is accomplished, they have the ability to apply for a green card and eventually potentially become citizens of the United States of America. That is a tremendous benefit for people who came illegally.

One of the reasons some of us have been willing to accommodate that is people have come here with families or have created families here, and we do not want to disrupt those families.

Secondly, there are family visas that historically have been issued by the United States. This bill doesn't in any way affect the ability of any legal permanent resident or citizen to bring

into the United States their spouse or minor children. That is the so-called nuclear family.

In addition, 40,000 parents per year can be brought into the United States, and there are extraordinarily liberal visitations for parents beyond that 40,000 number. We have said the so-called nonnuclear family—the extended family—in the future is going to compete the same as workers are going to compete, so that we can get in balance with some of our competitors in the global economy, where more of the visas are reserved for work purposes and fewer for family purposes. But in the meantime, some 4 million people, roughly, who have applied for a family visa—extended or nonnuclear family—are going to be allowed to immigrate to the United States, and instead of taking 30 or 40 years, in some cases, it is going to all happen within an 8-year period of time. That is extraordinarily helpful to families and family reunification.

Now, it is true, if somebody has come here illegally and their family is still outside the country, we don't permit that family to come. But the object, obviously, is to try to encourage that individual to go back with his family. That would be family reunification.

But the problem the Menendez amendment poses is, instead of allowing those people who have applied for visas for extended families who have a reasonable expectation to come to the United States, he would change the date that measures their eligibility in such a way as to allow a lot of people—thousands, hundreds of thousands, actually—to immigrate to the United States who, today, under current law, have no reasonable expectation they would ever make it to the United States. What we have tried to do is to be fair and say, if you have a reasonable expectation you will be permitted to immigrate to the United States, we will allow you to come in, and we will do it within a very short period of time—8 years, or perhaps less than that period of time, as opposed to the perhaps 20 or 30 years it may have otherwise taken. If you didn't have a reasonable expectation to get in, then you are not going to come.

The reason the date was drawn where it was in May 2005 is that represented a compromise. I believe the original date was March or July of 2004—the time when people who were in line but had no reasonable expectation—that their application was going to be processed and were notified by the U.S. Government. Basically, the Government said: For the time, we are not going to be processing these numbers anymore because the backlog is too long. The backlog numbers are truly astounding. There are people in Mexico, for example, who have no reasonable expectation of getting here. For example, if you are the brother or sister of a U.S. citizen, and if you are a Mexican national and you recently filed to become a legal permanent resident of the United States, you have an expected wait of about 80 years. So even if you are 21 years of age, at the time when you can expect to get here you would be 101 years of age. That is not a reasonable expectation you will be allowed into the United States.

I went to Senator MENENDEZ and said: I think you have a point because we have drawn an arbitrary deadline. Remember, the date at which they were told we were no longer going to be processing, temporarily, these applications was in 2004. But in order to be more liberal, we moved the date to May 2005. His argument was, there may be some people who still had an expectation because they filed last year, and maybe they had an expectation they could make it.

I said: You know, there may be some such people, so let's take a look at it and see if we can redo this so everybody who had a reasonable expectation they could get here will be allowed to be here, no matter when they applied—whether it was 2 years ago, last year, 2 months ago, or 10 or 12 years ago—if they had a reasonable expectation of getting in.

We have crafted an amendment that I offered to Senator MENENDEZ, but he preferred to go forward with his amendment. But the side-by-side that I will be proposing is an amendment that stretches the date out to 2027. It says: If you had a reasonable expectation, based upon your category of immigration, the country you are from, the lines that currently exist with that country, if you had a reasonable expectation within the next 20 years you could have made it into the United States, then you get to come in under a family visa. That is extraordinarily liberal—everybody who really had an expectation that they could make it. Like I said, if you are this Mexican national, and you are the brother of an American citizen, and you were 21 years of age when you applied, you would be over 100 years old today. That is not a reasonable expectation. So you would not be permitted to come into the United States. You never had a reasonable expectation that you could make it.

The effect of my amendment and the Menendez amendment is almost identical in terms of the number of people who would be allowed to come to the United States. There is only a 3,000 difference out of about 600,000 people. So we are not reducing the number of people. We are making it accurate as to who can actually come.

There is also a general notion that somehow we are being unfair to families. As Senator KENNEDY has frequently pointed out, after this legislation is passed, for a period of 8 years, the total family percentage coming into the United States will be 74 percent. And you add another 15 percent for humanitarian visas, and there is only 11 left for the employment visas. Today, 65 percent are family visas. In subsequent years, families will still be the majority of immigrants to the United States—51 percent. Then you add to that another 17 percent for asylum seekers and other humanitarian visas; 17 percent of the total is a very humane number for the United States. We can still be very proud of our tradition of allowing the poor, hungry, and downtrodden to come to this country, and we will still have a majority of family-based visas in this country.

Mr. GRAHAM. Will the Senator yield?

Mr. KYL. Yes.

Mr. GRAHAM. For those who are worried about this, on the issue of families, you should be worried about this. Is it not true that in this bill, in terms of family reunification, the way we have accomplished or dealt with the bill, families will be reunified decades earlier, and those who are waiting to join their families under this bill—those who have done it right—will be together no later than 8 years; is that correct?

Mr. KYL. That is exactly correct. Instead of waiting 20, 30 years, they will have to wait no longer than 8 years.

Mr. GRAHAM. So if you want to be the person who keeps families apart, bring this bill down. I assure families will not be reunified under the current system like they are here, that we will have a dramatic increase in green cards to get these families reunited. We go up to 74 percent. If you want to keep families apart, bring this bill down and let the current system survive.

Secondly, when it comes to families, there are 12 million people here illegally. Is it not true that their families, under this bill—if they will do the right thing—will never live in fear again?

Mr. KYL. Mr. President, to me, that is one of the main features of the bill. Today, we have people who are being exploited, people against whom crimes are being committed, but they are afraid to report it to the law enforcement authorities. They are not being paid adequate wages and their working conditions are poor. Frankly, they are being taken advantage of. As long as they are in this gray status, that will continue.

This bill offers them immediately an opportunity to begin a process by which they are playing by the rules and, as a result of that, they can have the freedom and the assurance of being protected by the laws of the United States.

Mr. GRAHAM. To my good friend from Arizona, I say this: If you are concerned about the 12 million people who are living in fear, subject to exploitation, then this is the best chance you will ever have in my political lifetime to fix it. If you want to bring this bill down, the one thing I can assure you is that the 12 million, or however many there may be, will not only live in fear, they are going to live in more fear because we have stirred up a hornets nest in this country.

I argue, if you care about people who have families not being afraid anymore, if they get themselves right with the law, help us pass this bill. In the future, after everybody has been accommodated who has a reasonable expectation, we are going to allow families to be part of the new immigration system.

Could the Senator tell me again, in the future, what percentage of visas will be given to families?

Mr. KYL. The answer I give the Senator is that family visas alone are 51 percent—a majority—and another 17 percent is humanitarian.

Mr. GRAHAM. Would the Senator acknowledge that is twice the family component of other nations with whom we are competing?

Mr. KYL. Mr. President, that is almost exactly right. I know in the case of—in fact, I will give you the exact number. In Canada, it is 24 percent. If we have 51 percent, obviously, that is close to twice that number. In Australia, it is 27 percent. And, again, if we are at 51 percent in the future, that is almost exactly twice. But remember, that is only after 8 years. For the next 8 years, it is 74 percent because of what the Senator from South Carolina was pointing out.

Mr. GRAHAM. Mr. President, the bottom line, I say to my good friend from Arizona, is we would have no bill without him. He stepped to the plate and said I am willing to look at the 12 million anew; I don't believe we are going to deport them, and I don't believe we are going to put them in jail; So I am going to give them a chance to identify themselves, come out of the shadows and do things that will make them valuable to our country and will be fair and humane.

We have accomplished that. We couldn't do it last year. We are going to reunite families who have been waiting for decades to get into this country. We are going to expedite family reunions in an 8-year period for some people because they would not live long enough to get back with their families.

In the future, we are going to have a new system. There is going to be a strong family component, but I make no apologies about this, in the future we are going to have immigration based on the global economy and merit. We need to start looking at where we are in the world and making sure people come into our country under a merit-based system. Neither one of my parents graduated high school. There is a way forward for the semiskilled and low-skilled workers to come into our country in the future. But the family component in the future will be spouses and minor children, freeing up thousands of green cards for merit-based employment. They are not going to bring in their adult children unless they have a way to get in on their own. They are not going to bring in their third cousin. Nobody else does that. They are going to come in as a nuclear family, and we are going to do it based on merit, and merit is not a degree.

Under this bill, if you come in with a strong back and a strong heart and a desire to get ahead, you get points for getting a GED, you get points for an apprenticeship, you get points for doing the things that make you a better person. So I reject completely the idea that the merit-based system excludes hard-working people.

I end with this one thought. If we don't get it right now and correct the flaws in our system which led to the 12 million which will make us globally noncompetitive, then who will? When will they do it? There are a million reasons to say no to something this hard, there are 12 million reasons to say yes, and there are many reasons in the future to say yes because our country cannot survive with a broken immigration system that makes us noncompetitive.

This is a national security issue. This is a global economic issue. Now is the time to understand we will never have a perfect bill but to do something that will be good for America.

I thank my good friend, JON KYL, and Senator KENNEDY for getting us this far.

Mr. KYL. Mr. President, I appreciate that from the Senator from South Carolina.

Let me make one final point. I know Senator KENNEDY wishes to speak.

It was not easy for some people to agree to allow at least 12 million immigrants who came to this country illegally to stay here and eventually become citizens. That was not easy. One of the bases upon which we were able to do that was to respond to an argument that had frequently been made: Why should we let all those people, is the way it is described, become U.S. citizens and then chain migrate all their family—their uncles, cousins, grandparents, and so on? The answer to that question is we probably shouldn't. So that was ended in this legislation. That is what was stopped. That is part of the agreement that was reached, the consensus that was reached.

The adoption of the Menendez amendment would undo that. You can imagine how someone like me feels. I have taken a lot of heat for agreeing that the people who are here illegally should stay here, but I knew one of the reasons that was more palatable was because we had at least stopped the chain migration that would occur for anybody subsequently in the future, after we cleared the backlog of people who already applied.

Mr. MENENDEZ. Mr. President, will the Senator from Arizona yield?

Mr. KYL. Yes, I will be happy to yield. I was going to conclude and turn to Senator KENNEDY. I will be happy to yield.

Mr. MENENDEZ. One point. Remember how the Senator from Arizona said how all ''those people'' would be able to claim their families. The Menendez amendment has nothing to do with ''those people.'' The Menendez amendment has everything to do with U.S. citizens today who have a right under the law. So I hope we do not confuse both of those.

Mr. KYL. Mr. President, I say to the Senator from New Jersey that what he said, as far as he said it, is, of course, exactly correct. What I was talking about was the tradeoff that existed between the accommodation to the 12 million people and—by the way, I don't use that phrase ''those people.'' I hope the Senator understands that I was referring to the criticism of those who say we shouldn't allow the illegal immigrants in the country, especially if we chain migrate their families. We ended the chain migration.

We had to draw a time when applicants would be able to apply and their applications would be considered. We had it at one point. We agreed to move that date to accommodate the people on the Democratic side of the aisle. The Menendez amendment would move it to January 1 of this year, bringing in, I think, a total of well over 800,000 people. That, obviously, would undo the rather delicate balance of agreements that was reached that deals with this subject.

Recognizing, however, we wanted to make sure anybody who had a reasonable expectation of being able to immigrate should be able to do so, we have prepared an amendment that would, in fact, allow anybody with a reasonable expectation to be able to immigrate here. We put the date way back to 2027, and we say that if you could have reasonably expected to get here by 2027, you are in and you are in within an 8-year period from now.

I think that is very fair. The person who is excluded under our proposal is the person who, as I said, is the sibling of a Mexican national who is a sibling of a U.S. citizen who might be 101 years old when he gets to the United States of America. That is not a reasonable expectation.

I think our approach is reasonable. It is consistent with the underlying agreement we reached. I regret to say—and I appreciate the Senator from New Jersey has every right to raise a budget point of order on the underlying bill—we fully expected there would be points of order at the conclusion presumably of the consideration of the bill and we would have to vote on those. Obviously, it is a 60-vote point of order. We expected to have 60 people who would support the legislation, and we believe that to be the case. But if the Senator wants to bring the bill down, as the Senator from South Carolina said, by raising an amendment such as that which has been proposed or at this time trying to conclude the budget point of order, I don't think that is the best way forward.

As the Senator from South Carolina said, we have one good chance to get legislation passed. I don't think we want to blow that chance. Now is our time. We were sent here to do difficult

jobs. I hope, in the bipartisan spirit that has so far characterized our debate, we can move forward and continue to keep this bill as literally a beacon of hope for a lot of people who are counting on us.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know the Senator from Vermont is looking for some time to speak. I believe there is 30 minutes I have remaining; is that correct?

The PRESIDING OFFICER. There is 30 minutes.

Mr. KENNEDY. The Senator from Connecticut, Mr. LIEBERMAN, wants time. I yield 10 minutes to Senator LIEBERMAN. I will use probably 6 or 7 minutes. I will be more than glad to give 10 minutes to the Senator from Vermont if not, we will try and extend that if we can.

Mr. KYL. Mr. President, if I might interrupt the Senator for a question. Would it be possible also to make sure Senator DOMENICI will be able to speak after the Senator from Vermont?

Mr. KENNEDY. I will take 5 minutes of the 30 minutes; Senator DOMENICI can have 5 minutes; 10 minutes to the Senator from Connecticut, Mr. LIEBERMAN; and 10 minutes to the Senator from Vermont, Mr. SANDERS. I think that takes up 30 minutes. I ask unanimous consent that another minute be given to each of us, 33 minutes.

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

AMENDMENT NO. 1234

Mr. KENNEDY. Mr. President, I will be brief in response to the Sessions amendment. We are talking about the earned-income tax credit. That was developed in the 1970s. Why was the earned-income tax credit developed? Because of the increased number of children living in poverty.

We have, as this chart shows, in the United States more children who live in poverty than any other country in the world. This amendment would say to legal immigrants that you are not eligible for the earned-income tax credit that benefits children.

If we look at the report from the CRS, it shows that over 98 percent of the earned-income tax credit goes to families with children. That was its purpose, that is where it is focused, that was the reason for it, and this is the need.

Why in the world would we want to take benefits away from needy children? Who are the workers of the earned-income tax credit? Their average income is less than $20,000 a year. This is phased out at about $30,000 to $33,000 a year. This is the low-income individuals who are, what? Are they on welfare or are they out working? They are working. They have children. They are legal. Why take the benefits away from the children, the neediest children, most of whom are living in poverty?

We don't take the earned-income tax credit away from people who go to jail and commit murder. We don't take away the earned-income tax credit from people who have defrauded the Government. We don't take the earned tax credit away from burglars, child molesters, and the rest of the individuals who commit crimes. But this amendment wants to take it from one particular group and that is legal workers.

Who are those legal workers? They are trying to provide for their families, pay the penalties, show that they are working, and go to the end of the line. Many of these children are American children. They are not undocumented. They are American children because they were born here.

I find it difficult to understand, when we are talking about individuals who are working, who want to work, will work, are trying to make a better future for themselves and their families and particularly for their children, why they should be the only class of working people in the United States who ought to be penalized. That is what the Sessions amendment would do. That is wrong and it is not fair and it should not be accepted.

Mr. President, I yield the time as I have indicated.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, I thank Senator KENNEDY for yielding me time.

As I think we all know, this is a long and complicated bill. An important part of this bill deals with illegal immigration—how do we make sure we stop the flow of illegal immigrants into this country; how do we finally begin to deal with employers who are knowingly hiring illegal immigrants; what do we do with 12 million people who are in this country who, in my view, we are not going to simply, in the middle of the night, throw out of this country. These are difficult and important issues.

On those issues I am in general agreement with the thrust of this legislation. But, Mr. President, I wish to tell you there are areas in this bill where I have strong disagreement, and one is the issue of legal immigration, what we are doing in terms of bringing people into this country who, in my view, will end up lowering wages for American workers right now.

Senator KENNEDY a moment ago made a very important point. He talked about the truth that in our country today we have the highest rate of child poverty of any major country on Earth. That is a national disgrace. But on top of that, we have the highest rate of poverty of any major country on Earth. In fact, since President Bush has been in office, 5 million more Americans have slipped into poverty.

Today, in our country, as many people know, the middle class is shrinking. Millions of American workers are working longer hours for lower wages. In my State of Vermont, it is not uncommon for people to work two jobs, even three jobs, to make enough income to pay their bills. According to a recent Pew-Brookings Institute study, men in their 30s earned, on average, 12 percent less in 2004 than their fathers did in 1974, after adjusting for inflation. In other words, in America, we are moving in the wrong direction. Our standard of living, in many ways, is going down. If we don't reverse trends, our kids will have a lower standard of living than we have.

Now, in the midst of all of that, we are finding many large corporations, both those who employ skilled workers—professional workers—and those who employ low-wage workers, that are coming to this body and are saying, my goodness, yes, we are outsourcing millions of decent-paying jobs; yes, we have opposed vigorously raising the minimum wage; yes, we have done everything we can to make sure workers can't form unions, but what we want to do now, because we love the American people so much and we are so concerned about the American worker, what we want to do now is bring millions of new workers into this country, both low-wage workers and professional workers.

The argument there is Americans don't want to do the work. They say: We can't find American workers to do the work. That is a crock, in many instances. It is not true. One of the groups that has come to Congress to tell us how much they are concerned about the need to find workers because they can't find Americans to do the jobs is our old friends at Wal-Mart.

As many Americans know, Wal-Mart pays low wages. They often hire people for 30 hours a week rather than 40 hours a week, and they provide minimal health care benefits. Yet Wal-Mart has come in and said: Well, we can't find the workers. Bring us in more low-wage workers.

Well, guess what. Two years ago, when Wal-Mart announced the opening of a new store in Oakland, CA, guess how many people showed up for that job in Oakland, CA, at a Wal-Mart. Eleven thousand people showed up—11,000 people showed up in Oakland—filled out applications for a job when only 400 jobs were available. Eleven thousand people for 400 jobs.

Wal-Mart says they need more low-wage workers coming in from around the world because they can't find workers. Well, that was a couple of years ago. So you might say: Well, that doesn't happen today. In January of 2006, when Wal-Mart announced the opening of a store in Evergreen Park, just outside of Chicago, in your home State, Mr. President, 24,500 people applied for 2,325 jobs. Yet Wal-Mart and their friends are coming in here saying we can't find Americans who want to work.

Let us be clear. Wal-Mart does not provide good wages, does not provide good benefits, does not provide good health care, yet we are finding many people who want to do that because

people in this country are desperate, because people in this country want to work at almost any job.

Some of the people at the other end of the economic spectrum, the people who are hiring professionals, make the same argument. There are organizations out there, including companies such as Motorola, Dell, IBM, Microsoft, Intel, and Boeing, that say the same thing: We can't find professionals to do the jobs. I find it interesting that while these companies claim they can't find workers in the United States, some of these very same companies have recently announced major layoffs of thousands of American workers.

Let me repeat that. These companies are saying we desperately need to bring workers from other countries into America because we can't find people in the United States to do these skilled jobs. Yet, at the same time, they are laying off tens of thousands of American workers.

Let me give a few examples. A few days ago, the Los Angeles Times reported Dell would be eliminating 10 percent of its workforce, slashing 8,800 jobs. Dell is part of the group saying we need to bring more professionals into America. Meanwhile, as Dell has eliminated decent-paying jobs in the U.S., it applied for nearly 400 H–1B visas last year.

But Dell is not alone. On May 31, the Financial Times reported Motorola would be cutting 4,000 jobs on top of an earlier 3,500-job reduction designed to generate savings of some $400 million. This is nothing new. Motorola has cut jobs in this country year after year after year. But guess what. Motorola, part of a group saying they can't find American workers, recently received 760 H–1B visas. That was last year.

On May 30, Reuters reported IBM would be laying off more than 1,500 American workers, bringing total layoffs to that company of 3,700 last year. In April, CBS MarketWatch reported Citigroup announced it would be laying off 17,000 workers, yet Citigroup received over 330 H–1B visas.

Here is the point, and this is not a complicated point. Many of the largest corporations in this country are supporting this legislation. And you know why? It is not because they are staying up late at night worrying about some Mexican kid in Detroit or Chicago and what will be the future of that kid. They are not worrying about that. What they want to see is a continued influx into this country of cheap labor. They are not content with outsourcing millions of good-paying jobs. They are not content with fighting against working people who want to form unions. They are not content with their opposition, successful until recently, of keeping the minimum wage at $5.15 an hour for 10 years. That is not good enough. Now they are saying: Gee, we can't move Wal-Mart from America to China, we can't move hotels to China, we can't move restaurants to China, so what is the best way to continue keeping wages low for those workers?

When I was a kid, I worked in a hotel. I was a busboy. There is nothing wrong with that job. Millions of people do that job. I resent very much the fact that many of these large corporations are continuing their war against the middle class and against the American worker. I think it is high time the Senate begins to stand up for the American worker rather than the large multinational corporations who have so much sway over what we do in this body. I would hope before an immigration bill is passed, it will respect the rights of American workers, both low-wage workers and professional workers, and say that is our major responsibility, to make sure our kids——

Mr. SESSIONS. Will the Senator yield for a question?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SANDERS. Mr. President, I ask unanimous consent for 1 additional minute to yield to my friend.

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

The Senator from Alabama is recognized.

Mr. SESSIONS. My question, I guess, Mr. President, would be something like this: Perhaps it could be true that the large number of job applications received by Wal-Mart facilities is because even though Wal-Mart does not pay great wages, they do have health care benefits and job security, as opposed to construction work. Would the Senator agree that if businesses raised wages at the construction sites, if they had jobs that had a more permanent status to them, and actually offered a retirement plan and health care benefits, they might get more people willing to work at the construction sites?

Mr. SANDERS. Reclaiming my time, Mr. President, the Senator makes an important point, and that is we have all been educated that economics is about supply and demand. If you don't get the workers you want, you raise wages and you raise benefits. You don't simply open the door and bring in other workers at low wages.

The Senator makes an important point.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. Mr. President, I came to the floor tonight for a few moments to talk about the significance of the bill that is before us and the work that has been done by Senators and a couple of Cabinet members and great staff.

The American people have been telling us for many years that we are confronted with a problem that is apt to destroy our land, destroy our country, destroy our values, and that problem is that we have an inability to control our borders. We have illegal immigrants who come across our borders by the thousands who are, for the most part, interested in jobs. But after some of them get here and their jobs are procured, there are other things they bring with them or do here that make the American people very worried about our future.

I, for one, as a Senator of long standing, grow more worried every year as to whether we will ever be able to control our borders and thus control who comes in and who goes out so that we know who they are. We have heard the American people tell us this is our biggest responsibility; that if we don't secure our borders, something bad is going to happen to our country. We have heard them tell us of the horror stories that happen when some of these immigrants come here without authority, without the law on their side; they sneak in, in the dark of the night, or however they have been able to come, and then they form gangs. We have heard about how they have scared our people, hurt them, killed them, and how they fight amongst each other. Of course, I am not talking about all of them. I am saying the American people see this and say to us, can't you ever control our borders?

I want to say I think a terrific job has been done with this bill. It is not finished—there are a few more amendments that need to be considered and some time taken to review the final bill—but I believe the bipartisan group that wrote this bill under the leadership of Senator JON KYL on the Republican side and Senator TED KENNEDY on the other side, working with their best staff for months, and then both day and night for the last 2 months, have put together a piece of legislation that shows how you can work out practical differences if in fact your goal is significant and you forget about politics, you forget about party, and you begin to write a law you can be proud of.

I think we are close to that. I don't think you get there very often. Rarely do you get the opportunity to be part of such a law as a Senator. So for those who are going to vote against this bill, tonight they are saying to themselves, I think I am going to vote against it, I ask you and urge you to think of when you are going to be given an opportunity to vote on a bill, a piece of legislation that is more important than this. If we don't do it now, with your vote, when will we do it?

If for some reason this bill fails, those who cause it to fail have to ask themselves, when will we get a bill we can rely on, that we can trust, which is put together by good, practical people who resolved issues in a practical manner by working on the issues that are now confronting us, which are that our borders are wide open and we have no control over what is happening.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. Mr. President, I ask unanimous consent for 1 additional minute.

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

Mr. DOMENICI. I am certain if, after we pass legislation such as this, we provide the resources that are needed—and that is very important, and I think we are providing a means and a manner for resources to go to the border in this bill—and, secondly, if we annually make sure the resources and manpower are there to implement this law—because it will require much by way of manpower, much by way of technology—if we give this law that, we will return to say this was a historic event. Indeed, we will have done something good for America and good for our children. Something good for the families of existing immigrants, good for immigrants who are coming in the future and their families, who will also be permitted. We will also look for merit in those who are coming to help America, which is competing in a very difficult world.

I am very proud to be on the side of those who are trying to maintain the measure intact, or practically intact, because you can't do much better than was done by this hard-working bipartisan group. The more you try to change it, the more you risk losing it. When you end up thinking what did you lose it for, you end up really wondering whether you did right for your country.

I urge that we move as fast as we can, giving Senators an opportunity, those who need it, and, yes, saying we are going to pass it soon—I don't know about tomorrow or the next day but certainly send to our leader a message that if you will give us an opportunity to call up a few more amendments, it will get accomplished.

I look forward to more debate, more amendments.

Mr. MENENDEZ addressed the Chair.

The PRESIDING OFFICER. Who yields time? Who yields to the Senator? If no Senator yields time, then the time will be divided equally between both sides.

The Senator from New Jersey.

Mr. MENENDEZ. I suggest the absence of a quorum and ask unanimous consent that it be equally charged.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. DOLE. 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.

AMENDMENT NO. 1345

Mrs. DOLE. Madam President, I ask that at the conclusion of the consented time and the stacked votes, I be recognized to call up my amendment No. 1345 and that after 2 minutes of consideration, the amendment be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time to the Senator? At this time, the Senator from Alabama controls 17 minutes and the Senator from Texas 12.

Mr. SESSIONS. Is there any other time left?

The PRESIDING OFFICER. There is not at this time.

Mr. SESSIONS. I will be pleased to yield to the Senator from North Carolina.

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

Mrs. DOLE. Madam President, I am very concerned that amendments to this bill are being limited because there are many issues that deserve attention in this debate. For instance, in my home State of North Carolina, we have had a number of fatal automobile accidents caused by an intoxicated person who was in the United States illegally. Sadly, just yesterday morning on Interstate 40 near Raleigh, a man was killed on his way to work when his vehicle was struck by an SUV barreling across the median. The SUV driver, according to initial news reports, is an illegal alien, who now faces a number of criminal charges, including DWI.

In several of these incidents, the illegal alien driver has a record of DWI, sometimes repeated offenses, but has been caught and released. Just this past March, in Johnston County, NC, a 9-year-old boy and his father lost their lives in an accident caused by an intoxicated driver who had been convicted twice of drunken driving and had an outstanding warrant stemming from a probation violation—and he was in the United States illegally. Another tragic case was the death of Scott Gardner, a Gaston County school teacher, who was killed in 2005 by a drunk driver—a driver who was an illegal alien with five previous DWI charges. I want to thank my colleague RICHARD BURR who introduced the Scott Gardner Act to deal with this serious issue, and on the House side, my good friend SUE MYRICK has been a true leader on this front.

I hear from many North Carolinians who ask me what is Washington doing to stop this from happening. When are we going to take action to make our communities safer.

Such senseless tragedies are not unique to North Carolina. Automobile accidents caused by intoxicated illegal aliens are occurring around the Nation—too often killing innocent people who are just going about their daily lives, or leaving the victims with crippling, disabling injuries.

It is a privilege, not a right, for an immigrant to receive legal status to live in the United States of America. My amendment would ensure that this privilege is not granted to an illegal alien with a DWI conviction.

No question, our DWI laws should be vigorously enforced, regardless of the offender's immigration or citizenship status.

My amendment addresses an all too prevalent problem and should be considered. There are a number of other amendments that deserve a place in this debate. The bill we are considering would have enormous ramifications for nearly every American, as well as those who want to work in this country or become American citizens. We must do our due diligence and not rush this bill through. The majority in this body must not stifle the voice of the minority Members. More amendments must be considered.

I yield back my remaining time to Senator SESSIONS, the Republican manager.

Mr. SESSIONS. I thank Senator DOLE for her insight, sharing that important information, and for offering an amendment and demonstrating once again that good amendments dealing with very important issues are not being allowed to be considered. This is not a free and open debate. This is not a free opportunity to amend. The majority leader is controlling his machinery, the train is moving down the track, and very few amendments are being approved.

I have offered and filed quite a number. I have only gotten two amendments, and I said at the beginning that only one would be voted on. We are having the first vote on one I have offered.

Madam President, I ask unanimous consent—I see my colleague, Senator KENNEDY, here—I ask unanimous consent that the pending business be set aside and I be allowed to call up amendment No. 1253.

The PRESIDING OFFICER. Is there objection?

Mr. LIEBERMAN. On behalf of Senator KENNEDY, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SESSIONS. Madam President, we have quite a number of other amendments. That is what we are going to hear when we offer any of them because we now have a cloture motion filed. If cloture is obtained and you don't have an amendment pending, you can't get a vote on it. We know what the game is, and it is not a free, open debate on one of the most important bills in the time that I have been in the Senate that we are considering today.

I would like to share a few more thoughts. Maybe I will have a few minutes left for Senator LIEBERMAN. I know he wants more time than he has gotten so far. Senator KENNEDY is maneuvering for me to give him some of my time and maybe I will be able to do that.

The earned-income tax credit will not be taken away from people who are illegally in the country today if my amendment is passed. The earned-income tax credit is a credit given to working individuals who have lower incomes to encourage people to work. That is what it is all about. It is for Americans and people legally here.

So what I propose is that we do not provide this, on average, almost $2,000-per-year paycheck from the U.S. Government, to people who came into the

country illegally and were given this probationary card status through their Z card status.

I am not offering an amendment to take the earned-income tax credit away after they become legal permanent residents. So if they become a legal permanent resident, they would be entitled to have the earned-income tax credit.

Last year I offered an amendment that said that you would not get the earned-income tax credit until you became an actual citizen. That was voted down. Why? I still am not sure. I still don't think that was a good vote. But at least we ought not to give this credit to someone who was here illegally a few days ago, and now we give them some sort of probationary status and they immediately start getting paychecks from the Federal Government.

I don't think that is what this system is about. People would be given a great thing. They would be given amnesty, they would be able to stay in the country legally, continue to work, and any family gets to stay with them. All of this is in this piece of legislation.

A lot of people think that is too generous, but that is what this legislation does. The next question is: What else do they obtain by virtue of having this legal status bestowed on them when they were illegal? They are not receiving the earned-income tax credit now. It is not something that is being taken away from them. It is a question of when are we going to bestow that additional benefit on people who were in our country illegally and how much of an incentive does this payment to them create for other people who want to come into our country illegally?

That is some of the confusion we have. In my view, the first thing you do to reduce the flow of illegal immigration into the country is to quit rewarding it by Federal largesse. That is the first thing. If you cannot go out and arrest everybody—and that is not practical—and we are not going to do these other things, at least don't give people extra financial benefits as a reward to coming into our country illegally.

I am very concerned about that. I think that it is not a little bitty matter because the—Madam President, I would ask that I be notified when there is 5 minutes remaining.

The PRESIDING OFFICER. The Senator will be notified.

Mr. SESSIONS. So what I would say to my colleagues is, this is going to cost a lot of money. You do not have to be trained in economics to understand that money comes from somebody. Who does the money come from? It comes from American workers and taxpayers, many of whom are having their wages depressed as a result of this huge flow of illegal labor. They are being asked to pay an earned-income tax credit check of $1,800, on average, to individuals who were illegal a few months before and possibly still have not completed the full background check. They still may not have completed the process to go to even a Z visa. Then they may be in a Z visa status for some time.

I know it is said it is not amnesty because they have to pay a fine. How much is the fine? $1,000. They pay a $1,000 fine. Well, they do not actually pay a $1,000 fine. When they get this probationary status visa, they only pay $200. They pay the rest of it on an installment. Nobody has stated and set out how they are going to pay it. Presumably, they can pay it for 8 years or more.

So a person here illegally under the legislation that is now before us, that person would obtain legal status in the country, be able to work, and would then be entitled to receive an earned-income tax credit.

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. SESSIONS. So they would receive that earned-income tax credit, which would be, on average, almost $2,000, and they would pay only $200. Now, that is a pretty good deal, if you can get it, it seems to me. It is not necessary. It is not necessary as a matter of law, and it is not necessary as a matter of morality. It is certainly contrary to sound principles of Government. We should not do that.

I urge my colleagues to support this amendment. It is an amendment that would impact our Treasury by perhaps, according to the Congressional Budget Office, $10 billion in the next 10 years—$10 billion. So it is quite a sizable chunk.

Madam President, I see my friend, Senator LIEBERMAN is here. I yield the remainder of the time I have left to him. How much time remains?

The PRESIDING OFFICER. There is 3½ minutes.

The Senator from Connecticut.

AMENDMENT NO. 1191

Mr. LIEBERMAN. Madam President, I thank my friend, Senator SESSIONS. I appreciate his kind gesture. That brings me back within 30 seconds of what I originally had. I appreciate that.

I am going to speak on amendment No. 1191, which is set down for a vote this evening. This is an amendment that would improve our Nation's treatment of asylum seekers, that is, people who come to our shores seeking refuge from persecution they have suffered in their home countries based on race, religion, nationality or political conviction.

As far as I know, this is the only amendment on the treatment of those seeking asylum that will be considered as part of this comprehensive immigration legislation. I offer this amendment because the Congressionally chartered Commission on International Religious Freedom has told us that our country, our Government, is failing in its historic duty to those ''longing to breathe free'' from the Statue of Liberty.

I believe, as the Commission outlined, we can address this serious challenge at very little expense, with no adverse affect on our Nation's security, and without impairing immigration enforcement operations. It is the right thing to do. It is consistent with our best values in our history. In fact, as you know, our Founding Fathers understood the Nation's role to be not just a haven for those seeking freedom but a haven for those seeking freedom from persecution.

Thomas Jefferson once likened the United States to a ''New Canaan,'' the Biblical Canaan in mind, where victims of persecution, and I am quoting here, ''will be received as brothers and secured against like oppressions by a participation in the right of self-government.''

That is exactly what America has become. To the great benefit of this country, some of the greatest Americans in our history came here as refugees seeking asylum from persecution. Nobel Laureates Albert Einstein and Thomas Mann became neighbors in Princeton, NJ. Henry Kissinger and Madeline Albright came with their families to the United States, fleeing from the Nazis and Communists, respectively, and went on, of course, to become Secretaries of State.

If I might, on a point of personal privilege say, most special to me, on a day in 1949, then a child, my wife, Hadassah Freilich Lieberman, came here with her parents seeking asylum from Communist Czechoslovakia. This national duty to those fleeing persecution is emblazoned in a particular stanza on the Statue of Liberty that says:

Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame is the
imprisoned lightning,
And her name . . . Mother of Exiles.

Yet despite that lofty sentiment, too often today we are apparently turning asylum seekers away without the proper hearings guaranteed them by law, or confining them in prison conditions alongside convicted criminals while their cases are pending. That is what the U.S. Commission on International Religious Freedom has reported to Congress. This group was established, I am proud to say, in 1998, pursuant to legislation I introduced along with then-Senator Nickles and still, fortunately, Senator SPECTER.

It was aimed at strengthening our Government advocacy on behalf of individuals around the world who were being persecuted for their faith. Congress in the year that we established the Commission on International Religious Freedom also expressed its concern that recently enacted expedited removal procedures might be causing our own Government to mistreat victims of oppression, religious oppression, who came to the United States seeking asylum.

To find out if this was happening, Congress directed the newly established Commission to study the treatment of asylum seekers. The Commission conducted a comprehensive investigation and released a report in February of 2005 that was quite critical of the procedures of the Department of Homeland Security.

The report's recommendations were reasonable and straightforward. Unfortunately, 2 years passed. I persistently asked officials at the Department of Homeland Security when it would respond to the report and was always told the same: The recommendations are under review.

It appeared that little or nothing was being done. In fact, this February, 2007, the Religious Freedom Commission itself issued a blistering report 2 years after its initial report in which it gave out grades. The Customs and Border Patrol Agency received an F with respect to its treatment of asylum seekers. The Immigration and Customs Enforcement Agency received mostly Fs, and an overall grade of D. The Department of Homeland Security itself generally received an overall grade of D as well in its treatment of those claiming to be coming to America to seek asylum from persecution—religious, racial, nationality or based on political conviction.

That is unacceptable. Remember it was Congress that originally expressed concern about the treatment of asylum seekers. It was Congress that directed the Commission it had created to study whether there is a problem, was a problem, and now, in this Congress, as part of this comprehensive immigration reform bill, it must be Congress that will fix the problems the Commission has found.

That is why I introduced separate legislation earlier this year and then filed this amendment. I am pleased to say it appears I have come to some agreement with the Department of Homeland Security on a modified version of the amendment which I hope will be broadly supported by my colleagues.

It implements the recommendations of the U.S. Commission on International Religious Freedom and will improve our treatment of those who come to our shores claiming they seek asylum from persecution.

We have made a number of changes to address the concerns the Department of Homeland Security brought to us. I am pleased to describe them briefly.

The Commission on Religious Freedom found that too often the Department of Homeland Security was returning asylum seekers to countries where they were persecuted without giving them a chance to adequately make their case that they had a credible basis for their claims of persecution. Often employees of the Department of Homeland Security were failing to even ask these asylum seekers if they feared persecution, as required by Department procedures, before they were removed. This amendment would require what might be called simple quality assurance procedures so that the Department of Homeland Security can ensure its practices comply with its policies.

Secondly, virtually all the defense facilities the Department of Homeland Security uses are run as maximum security prisons, and in many cases those seeking asylum in this country, because they claim to be fleeing countries that were persecuting them, those detainees are forced to share cells with convicted criminals in maximum security prisons, sometimes in county jails. This is not appropriate for asylum seekers and other detainees who are not criminals and are not being criminally prosecuted. This amendment would require better Department of Homeland Security standards for those detention facilities to make them more consistent with our best values and the words that are emblazoned on the Statute of Liberty. This amendment would also encourage the development of more appropriate facilities for asylum seekers and families with children. These would be modeled after two secure but less restrictive facilities that the Department of Homeland Security already operates, one in Florida and the other in Pennsylvania.

The amendment will also encourage the expansion of secure alternatives to detention such as supervised release programs. Congress has already funded programs of this kind, and they have been successful. The amendment ensures the Department of Homeland Security will conduct vigorous oversight of the detention facilities it uses so the facilities, in fact, are complying with Department standards.

It is time we put in place and enforce safeguards to ensure people fleeing persecution are treated humanely and in accordance not just with our Nation's laws but with our best values.

I thank the Chair.

The PRESIDING OFFICER. The time of the Senator has expired.

AMENDMENT NO. 1191, AS MODIFIED

Mr. LIEBERMAN. I have a modification to the amendment, which I send to the desk at this time.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

At the appropriate place, insert the following:

Subtitle ___—Asylum and Detention Safeguards

SEC. ___01. SHORT TITLE.

This subtitle may be cited as the ''Secure and Safe Detention and Asylum Act''.

SEC. ___02. DEFINITIONS.

In this subtitle:

(1) Credible fear of persecution.—The term ''credible fear of persecution'' has the meaning given that term in section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)).

(2) Detainee.—The term ''detainee'' means an alien in the custody of the Department of Homeland Security who is held in a detention facility.

(3) Detention facility.—The term ''detention facility'' means any Federal facility in which an alien detained pending the outcome of a removal proceeding, or an alien detained pending the execution of a final order of removal, is detained for more than 72 hours, or any other facility in which such detention services are provided to the Federal Government by contract, and does not include detention at any port of entry in the United States.

(4) Reasonable fear of persecution or torture.—The term ''reasonable fear of persecution or torture'' has the meaning given that term in section 208.31 of title 8, Code of Federal Regulations.

(5) Standard.—The term ''standard'' means any policy, procedure, or other requirement.

SEC. ___03. RECORDING EXPEDITED REMOVAL INTERVIEWS.

(a) In General.—The Secretary shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a standard manner, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) Factors Relating to Sworn Statements.—Where practicable, as determined by the Secretary in his discretion, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(c) Exemption Authority.—

(1) In general.—Subsection (b) shall not apply to interviews that occur at facilities, locations, or areas exempted by the Secretary pursuant to this subsection.

(2) Exemption.—The Secretary or the Secretary's designee may exempt any facility, location, or area from the requirements of this section based on a determination by the Secretary or the Secretary's designee that compliance with subsection (b) at that facility would impair operations or impose undue burdens or costs.

(3) Report.—The Secretary or the Secretary's designee shall report annually to Congress on the facilities that have been exempted pursuant to this subsection.

(d) Interpreters.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien and there is no other Federal, State, or local government employee available who is able to interpret effectively, accurately, and impartially.

(e) Recordings in Immigration Proceedings.—Recordings of interviews of aliens subject to expedited removal shall be included in the record of proceeding and may be considered as evidence in any further proceedings involving the alien.

(f) No Private Right of Action.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. ___04. OPTIONS REGARDING DETENTION DECISIONS.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) in the first sentence by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(ii) in the second sentence by striking ''Attorney General'' and inserting ''Secretary'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking ''Attorney General'' and inserting ''Secretary''; and

(II) by striking ''or'' at the end;

(ii) in subparagraph (B), by striking ''but'' at the end; and

(iii) by inserting after subparagraph (B) the following:

''(C) the alien's own recognizance; or

''(D) a secure alternatives program as provided for in this section; but'';

(2) in subsection (b), by striking ''Attorney General'' and inserting ''Secretary'';

(3) in subsection (c)—

(A) by striking ''Attorney General'' and inserting ''Secretary'' each place it appears; and

(B) in paragraph (2), by inserting ''or for humanitarian reasons,'' after ''such an investigation,''; and

(4) in subsection (d)—

(A) in paragraph (1), by striking ''Attorney General'' and inserting ''Secretary'';

(B) in paragraph (1), in subparagraphs (A) and (B), by striking ''Service'' each place it appears and inserting ''Department of Homeland Security''; and

(C) in paragraph (3), by striking ''Service'' and inserting ''Secretary of Homeland Security''.

SEC. ___05. REPORT TO CONGRESS ON PAROLE PROCEDURES AND STANDARDIZATION OF PAROLE PROCEDURES.

(a) IN GENERAL.—The Attorney General and the Secretary of Homeland Security shall jointly conduct a review and report to the appropriate Committees of the Senate and the House of Representatives within 180 days of the date of enactment of this Act regarding the effectiveness of parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts. The report shall include the following:

(1) An analysis of the rate at which release from detention (including release on parole) is granted to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts throughout the United States, and any disparity that exists between locations or geographical areas, including explanation of the reasons for this disparity and what actions are being taken to have consistent and uniform application of the standards for granting parole.

(2) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's pursuit of their asylum claim before an immigration court.

(3) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien's physical and psychological well-being.

(4) An analysis of the effectiveness of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary in securing the alien's presence at the immigration court proceedings.

(b) RECOMMENDATIONS.—The report shall include recommendations with respect to whether the existing parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts should be modified in order to ensure a more consistent application of these procedures in a way that both respects the interests of aliens pursuing valid claims of asylum and ensures the presence of the aliens at the immigration court proceedings.

SEC. ___06. LEGAL ORIENTATION PROGRAM.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that all detained aliens in immigration and asylum proceedings receive legal orientation through a program administered and implemented by the Executive Office for Immigration Review of the Department of Justice.

(b) CONTENT OF PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Executive Office for Immigration Review on the date of the enactment of this Act.

(c) EXPANSION OF LEGAL ASSISTANCE.—The Secretary shall ensure the expansion through the United States Citizenship and Immigration Service of public-private partnerships that facilitate pro bono counseling and legal assistance for aliens awaiting a credible fear of persecution interview or an interview related to a reasonable fear of persecution or torture determination under section 241(b)(3).

SEC. ___07. CONDITIONS OF DETENTION.

(a) IN GENERAL.—The Secretary shall ensure that standards governing conditions and procedures at detention facilities are fully implemented and enforced, and that all detention facilities comply with the standards.

(b) PROCEDURES AND STANDARDS.—The Secretary shall promulgate new standards, or modify existing detention standards, to comply with the following policies and procedures:

(1) FAIR AND HUMANE TREATMENT.—Procedures to prevent detainees from being subject to degrading or inhumane treatment such as physical abuse, sexual abuse or harassment, or arbitrary punishment.

(2) LIMITATIONS ON SOLITARY CONFINEMENT.—Procedures limiting the use of solitary confinement, shackling, and strip searches of detainees to situations where the use of such techniques is necessitated by security interests, the safety of officers and other detainees, or other extraordinary circumstances.

(3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of grievances raised by detainees.

(4) ACCESS TO TELEPHONES.—Procedures permitting detainees sufficient access to telephones, and the ability to contact, free of charge, legal representatives, the immigration courts, the Board of Immigration Appeals, and the Federal courts through confidential toll-free numbers.

(5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near sources of free or low-cost legal representation with expertise in asylum or immigration law.

(6) PROCEDURES GOVERNING TRANSFERS OF DETAINEES.—Procedures governing the transfer of a detainee that take into account—

(A) the detainee's access to legal representatives; and

(B) the proximity of the facility to the venue of the asylum or removal proceeding.

(7) QUALITY OF MEDICAL CARE.—

(A) IN GENERAL.—Essential medical care provided promptly at no cost to the detainee, including dental care, eye care, mental health care, and where appropriate, individual and group counseling, medical dietary needs, and other medically necessary specialized care. Medical facilities in all detention facilities used by the Department maintain current accreditation by the National Commission on Correctional Health Care (NCCHC). Requirements that each medical facility that is not accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) will seek to obtain such accreditation. Maintenance of complete medical records for every detainee which shall be made available upon request to a detainee, his legal representative, or other authorized individuals.

(B) EXCEPTION.—A detention facility that is not operated by the Department of Homeland Security or by a private contractor on behalf of the Department of Homeland Security shall not be required to maintain current accreditation by the NCCHC or to seek accreditation by the JCAHO.

(8) TRANSLATION CAPABILITIES.—The employment of detention facility staff that, to the extent practicable, are qualified in the languages represented in the population of detainees at a detention facility, and the provision of alternative translation services when necessary.

(9) RECREATIONAL PROGRAMS AND ACTIVITIES.—Frequent access to indoor and outdoor recreational programs and activities.

(c) SPECIAL STANDARDS FOR NONCRIMINAL DETAINEES.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the distinctions between persons with criminal convictions or a history of violent behavior and all other detainees; and

(2) ensure that procedures and conditions of detention are appropriate for a non-criminal, nonviolent population.

(d) SPECIAL STANDARDS FOR SPECIFIC POPULATIONS.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the unique needs of—

(A) victims of persecution, torture, trafficking, and domestic violence;

(B) families with children;

(C) detainees who do not speak English; and

(D) detainees with special religious, cultural, or spiritual considerations; and

(2) ensure that procedures and conditions of detention are appropriate for the populations described in paragraph (1).

(e) TRAINING OF PERSONNEL.—

(1) IN GENERAL.—The Secretary shall ensure that personnel in detention facilities are given specialized training to better understand and work with the population of detainees held at the facilities where such personnel work. The training should address the unique needs of—

(A) aliens who have established credible fear of persecution;

(B) victims of torture or other trauma and victims of persecution, trafficking, and domestic violence; and

(C) families with children, detainees who do not speak English, and detainees with special religious, cultural, or spiritual considerations.

(2) SPECIALIZED TRAINING.—The training required by this subsection shall be designed to better enable personnel to work with detainees from different countries, and detainees who cannot speak English. The training shall emphasize that many detainees have no criminal records and are being held for civil violations.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility,

whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. ___08. OFFICE OF DETENTION OVERSIGHT.

(a) ESTABLISHMENT OF THE OFFICE.—

(1) IN GENERAL.—There shall be established within the Department an Office of Detention Oversight (in this section referred to as the ''Office'').

(2) HEAD OF THE OFFICE.—There shall be at the head of the Office an Administrator. At the discretion of the Secretary, the Administrator of the Office shall be appointed by, and shall report to, either the Secretary or the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement. The Office shall be independent of the Office of Detention and Removal Operations, but shall be subject to the supervision and direction of the Secretary or Assistant Secretary.

(3) SCHEDULE.—The Office shall be established and the Administrator of the Office appointed not later than 6 months after the date of the enactment of this Act.

(b) RESPONSIBILITIES OF THE OFFICE.—

(1) INSPECTIONS OF DETENTION CENTERS.—The Administrator of the Office shall—

(A) undertake regular and, where appropriate, unannounced inspections of all detention facilities;

(B) develop a procedure for any detainee or the detainee's representative to file a confidential written complaint directly with the Office; and

(C) report to the Secretary and to the Assistant Secretary all findings of a detention facility's noncompliance with detention standards.

(2) INVESTIGATIONS.—The Administrator of the Office shall—

(A) initiate investigations, as appropriate, into allegations of systemic problems at detention facilities or incidents that constitute serious violations of detention standards;

(B) conduct any review or audit relating to detention as directed by the Secretary or the Assistant Secretary;

(C) report to the Secretary and the Assistant Secretary the results of all investigations, reviews, or audits; and

(D) refer matters, where appropriate, for further action to—

(i) the Department of Justice;

(ii) the Office of the Inspector General of the Department;

(iii) the Office of Civil Rights and Civil Liberties of the Department; or

(iv) any other relevant office or agency.

(3) REPORT TO CONGRESS.—

(A) IN GENERAL.—The Administrator of the Office shall submit to the Secretary, the Assistant Secretary, the Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives an annual report on the Administrator's findings on detention conditions and the results of the completed investigations carried out by the Administrator.

(B) CONTENTS OF REPORT.—Each report required by subparagraph (A) shall include—

(i) a description of—

(I) each detention facility found to be in noncompliance with the standards for detention required by this subtitle; and

(II) the actions taken by the Department to remedy any findings of noncompliance or other identified problems; and

(ii) information regarding whether such actions were successful and resulted in compliance with detention standards.

(c) COOPERATION WITH OTHER OFFICES AND AGENCIES.—Whenever appropriate, the Administrator of the Office shall cooperate and coordinate its activities with—

(1) the Office of the Inspector General of the Department;

(2) the Office of Civil Rights and Civil Liberties of the Department;

(3) the Privacy Officer of the Department;

(4) the Department of Justice; or

(5) any other relevant office or agency.

SEC. ___09. SECURE ALTERNATIVES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a secure alternatives program under which an alien who has been detained may be released under enhanced supervision to prevent the alien from absconding and to ensure that the alien makes appearances related to such detention.

(b) PROGRAM REQUIREMENTS.—

(1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the development of the secure alternatives program on a nationwide basis, as a continuation of existing pilot programs such as the Intensive Supervision Appearance Program developed by the Department.

(2) UTILIZATION OF ALTERNATIVES.—In facilitating the development of the secure alternatives program, the Secretary shall have discretion to utilize a continuum of alternatives to a supervision of the alien, including placement of the alien with an individual or organizational sponsor, or in a supervised group home.

(3) ALIENS ELIGIBLE FOR SECURE ALTERNATIVES PROGRAM.—

(A) IN GENERAL.—Aliens who would otherwise be subject to detention based on a consideration of the release criteria in section 236(b)(2), or who are released pursuant to section 236(c)(2), shall be considered for the secure alternatives program.

(B) DESIGN OF PROGRAMS.—In developing the secure alternatives program, the Secretary shall take into account the extent to which the program includes only those alternatives to detention that reasonably and reliably ensure—

(i) the alien's continued presence at all future immigration proceedings;

(ii) the alien's compliance with any future order or removal; and

(iii) the public safety or national security.

(C) CONTINUED EVALUATION.—The Secretary shall evaluate regularly the effectiveness of the program, including the effectiveness of the particular alternatives to detention used under the program, and make such modifications as the Secretary deems necessary to improve the program's effectiveness or to deter abuse.

(4) CONTRACTS AND OTHER CONSIDERATIONS.—The Secretary may enter into contracts with qualified nongovernmental entities to implement the secure alternatives program and, in designing such program, shall consult with relevant experts and consider programs that have proven successful in the past.

SEC. ___10. LESS RESTRICTIVE DETENTION FACILITIES.

(a) CONSTRUCTION.—To the extent practicable, the Secretary shall facilitate the construction or use of secure but less restrictive detention facilities for the purpose of long-term detention where detainees are held longer than 72 hours.

(b) CRITERIA.—In pursuing the development of detention facilities pursuant to this section, the Secretary shall—

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities; and

(2) to the extent practicable, construct or use detention facilities where—

(A) movement within and between indoor and outdoor areas of the facility is subject to minimal restrictions;

(B) detainees have ready access to social, psychological, and medical services;

(C) detainees with special needs, including those who have experienced trauma or torture, have ready access to services and treatment addressing their needs;

(D) detainees have frequent access to programs and recreation;

(E) detainees are permitted contact visits with legal representatives and family members; and

(F) special facilities are provided to families with children.

(c) FACILITIES FOR FAMILIES WITH CHILDREN.—In any case in which release or secure alternatives programs are not a practicable option, the Secretary shall, to the extent practicable, ensure that special detention facilities for the purposes of long-term detention where detainees are held longer than 72 hours are specifically designed to house parents with their minor children, including ensuring that—

(1) procedures and conditions of detention are appropriate for families with minor children; and

(2) living and sleeping quarters for children under 14 years of age are not physically separated from at least 1 of the child's parents.

(d) PLACEMENT IN NONPUNITIVE FACILITIES.—Among the factors to be considered with respect to placing a detainee in a less restrictive facility is whether the detainee is—

(1) part of a family with minor children;

(2) a victim of persecution, torture, trafficking, or domestic violence; or

(3) a nonviolent, noncriminal detainee.

(e) PROCEDURES AND STANDARDS.—Where necessary, the Secretary shall promulgate new standards, or modify existing detention standards, to promote the development of less restrictive detention facilities.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. ___11. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect on the date that is 180 days after the date of the enactment of this Act.

Mr. LIEBERMAN. Madam President, it is my understanding that based on the agreement we have reached after negotiation with the Department of Homeland Security, the Senate is prepared to agree to the amendment. I ask unanimous consent that occur.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment, as modified, is agreed to.

The amendment (No. 1191), as modified, was agreed to.

Mr. LIEBERMAN. Madam President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. This will mean the amendment now listed as No. 6 of those

to be voted upon would no longer have to be voted upon.

The PRESIDING OFFICER. The Senator from Texas has the remainder of the time.

AMENDMENT NO. 1250

Mr. CORNYN. Madam President, I rise to speak in favor of my earlier amendment which would take the blinders off law enforcement personnel when it comes to investigating fraud and other wrongful and even criminal conduct on the part of those who are claiming an advantage under this legislation, as well as third parties who might be implicated in fraud or other criminality.

I would first like to respond to Senator KENNEDY's comments, and then I want to speak to the Menendez amendment briefly. Senator KENNEDY earlier claimed my amendment eliminated all kinds of protections of confidentiality. He said he provided a level of protection of confidentiality for individuals so it will encourage them to come forward and file their applications for Z visas, and he is worried if we allow law enforcement access to that information to investigate third party fraud or other criminality, the applicants for the Z visas will not be willing to come forward.

It should be noted that my amendment does not eliminate all protections. It simply ensures law enforcement has access to information for those who cannot qualify for Z status under the terms of the underlying bill, including those who are criminals and absconders who have reflected their prior disregard for our laws. Also, despite Senator KENNEDY's claim, their proposal still protects information for aliens who have committed crimes but have not been convicted and are denied Z status. My amendment would make that information available to law enforcement personnel in the discharge of their official duties.

Furthermore, the distinguished Senator from Massachusetts acknowledges there was fraud in sworn affidavits and claims.

He said he is now alluding to the 1986 fraud under the agricultural amnesty bill that I mentioned in my earlier remarks and which were the subject of a New York Times article dated November 12, 1989. He said we took action in this legislation to fix it.

First, let me express my appreciation to the Senator for acknowledging that the third party affidavits that were used to qualify for benefits in 1986 were a large source of fraud.

I see nothing in the bill that would ensure that fraudulent sworn affidavits, especially those provided by third parties, are accessible to law enforcement to prosecute the fraud.

This type of fraud remains protected and thus we haven't come very far from the problems we encountered in the 1986 amnesty.

Senator KENNEDY says we must guarantee confidentiality.

He said:

If we expect individuals to participate in that system, we have to guarantee their confidentiality. It's enormously important. This system isn't going to function and work unless we do.

What my esteemed colleague is essentially saying is, we need to protect those who have violated our laws, even committed felonies and other crimes for which they have not yet been convicted, because they would not come out of the shadows and register.

The point is, it is more than just coming out of the shadows. It is giving legal status to a person who has arguably violated our laws and put them on a path to citizenship, denying law enforcement the opportunity to investigate and to prosecute where appropriate.

Further, we are essentially binding the hands of law enforcement because even if they wanted to prosecute these individuals and remove them from the country, they couldn't get the evidence needed to make the case, nor could they remove the person because by merely applying for Z status, they get the protection from removal.

Is that really what we want to say to our country about who should be permitted to remain in the United States? I think not. Nothing in my amendment would affect the ability of those who have entered the country in violation of our immigration laws or who have simply overstayed their visa or even those who have produced false documents in order to gain access to work. My amendment would not even address any of those individuals. This present amendment would not do that.

But, surely, we want to remove the cloak of confidentiality, the blinders, from our law enforcement personnel that would allow them to investigate cases of fraud, wrongful conduct, and other criminality.

I remain flabbergasted that the proponents of this bill would embrace this sort of provision. I would think what they would want to do is restore public confidence that we are actually reestablishing the rule of law when it comes to this broken immigration system. If anything, this serves to confirm the worst fears of skeptics about this bill because, frankly, it does nothing but confirm their worst fears that this is a vehicle for perpetuating the same sort of mistakes we encountered in the 1986 legislation, but apparently those lessons were not learned.

AMENDMENT NO. 1194

I want to speak briefly about the amendment offered by Senator MENENDEZ while he is on the Senate floor regarding those who want to immigrate to our country, but particularly those who have respected our laws and who have waited patiently in line.

I am particularly troubled by the situation that his amendment is designed to remedy because the proponents of the underlying bill have said: We are not going to allow any line jumping. We are going to provide an opportunity for those who have violated the law to get right with the law, but we are not going to do so to the detriment of people who have followed the rules and waited patiently in line, expecting that their application for a visa or legal permanent residency would be acted on. As I said before the recess, this is a very important principle to me. It is a matter of fundamental fairness and crucial to the integrity of not only our immigration system but our entire legal system. It would be extremely unfair to allow someone who has not respected our laws to be able to obtain a green card before someone who has respected our laws and waited in line for a chance to enter the country legally.

I am not talking about the claim that those who wait in line legally have to do it in their home country while someone who is here illegally and obtains a Z card can wait in country. That certainly is an issue. Those who are here illegally are getting the advantage over and above those who have made the decision to obey our laws waiting patiently outside the country. Even Secretary Chertoff, a key negotiator of the compromise, admits in a USA Today article that there is a ''fundamental unfairness'' anytime illegal immigrants are permitted to stay in country, while those who have respected our laws wait patiently outside of the country. I am afraid we make what even Secretary Chertoff admits is a ''fundamental unfairness'' that much more unfair in the underlying bill. To their credit, proponents of this compromise have stated that the proposal would not allow anyone who came here illegally to obtain their green card until everyone who chose to follow the law gets their green card. That is a laudable goal, and that should be our goal. But to achieve this goal, the compromise arbitrarily sets the cutoff date for legally ''being in line'' at May 1, 2005, while setting the date for the end of the line for those illegally here at January 1, 2007.

As an illustration, this means someone who chose to respect our immigration laws, chose not to enter illegally, and filed the proper immigration paperwork on June 1, 2005, is not considered to be ''in line'' under the terms of this bill, while someone who decided not to respect the laws and enter illegally on the same date can obtain a Z status and ultimately secure American citizenship.

My staff has met with a number of groups who have focused on this particular problem. I know Senator MENENDEZ has been listening to their same concerns. The Asian American Justice Center in particular has made compelling arguments that declaring the end of the line for legal immigration as May 1, 2005, is unfair. Other groups, including the Interfaith Immigration Coalition, the Jewish Council for Public Affairs, the U.S. Conference of Bishops, the Mexican American Legal Defense and Education Fund have written to my office to explain that those people who played by the

rules and applied after May 1, 2005, will not be cleared as part of the family backlog pursuant to the terms of the bill and will lose their chance to immigrate under current rules and be placed in line behind Z visa applicants. Some of these groups report that more than 800,000 people who have patiently waited in line will in essence be kicked out of the line.

I understand the Menendez amendment will be voted on soon. It addresses an important issue, ensuring that those who decided to abide by the laws will not be disadvantaged simply because they chose not to come here illegally.

As I said, I have been struggling with this over the past couple weeks because this is a matter of fundamental fairness. So I continue to consider this amendment. I know others are likewise considering it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORNYN. Madam President, I thank the Chair and yield the floor.

AMENDMENT NO. 1250

The PRESIDING OFFICER. There will now be 2 minutes equally divided on amendment No. 1250.

Who yields time?

The Senator from Texas.

Mr. CORNYN. Madam President, I understand we have 2 minutes equally divided before the vote.

Simply stated for my colleagues, my amendment would remove the blinders that would prevent law enforcement from investigating and prosecuting wrongful conduct, including fraud and criminality.

I would think if there is one thing we learned from the 1986 amnesty, this type of confidentiality provision, if it protects any information to be gleaned from the applications of those who have actually been denied Z visas, it would be that we should pursue and support this kind of amendment which would help law enforcement and, even more importantly, help restore public confidence that we are not playing games with them but that we are actually serious about restoring the rule of law when it comes to our broken immigration system.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Cornyn amendment attacks the whole issue of confidentiality for these undocumented aliens. If the Cornyn amendment is adopted, there are no individuals who are going to register for any of these programs—none—because all their information will be available.

This is a report-to-deport amendment. How are you going to convince individuals to come in and register for the Z visa program or any of the programs if they know all of their information is going to go to the Immigration Service and every other agency?

With regard to criminality, with regard to terrorism, with regard to all the fraud and all the abuse, we have put in here careful protections. Those kinds of protections are supported by JON KYL, by other Republican Members, and by all of us here.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. If you accept the Cornyn amendment, it effectively undermines all confidentiality.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Madam President, I appreciate everyone allowing me to say a few words before the vote starts. We have six votes that will take place. Any minute, the votes will start. We worked out an agreement—tentative in nature, but I think it is fairly firm—we will have six more votes tonight. I want to alert Members we will have more votes tonight. It could be a late night, for sure.

When that is all completed, we will have had—I do not know the exact number—35 votes, or something like that, and it is evenly divided between Democrats and Republicans. There is one vote difference as to who offered the amendment. But I think we have made a lot of progress.

I hope people feel they are having an opportunity to have their voices heard in this regard. Within a short few votes, we will certainly have had more votes than we had last year. I am not sure that is a good guide for anything, but that is at least what we will be able to show everyone. I hope people would be able to see that the end is in sight.

Remember, if cloture is invoked on this matter, we will have 30 hours more of amendments. As I have indicated to my friend, the distinguished junior Senator from Arizona and others, upon being asked the question whether all these postcloture votes would take place, the answer is, we are not going to be blocking any people from voting on germane amendments.

I hope everyone understands it will be a late night tonight, and we will start early in the morning.

Mr. CORNYN. Madam 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 question is on agreeing to the Cornyn amendment No. 1250.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. TESTER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 39, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—57

Alexander	DeMint	McCaskill
Allard	Dole	McConnell
Baucus	Domenici	Murkowski
Bennett	Dorgan	Nelson (NE)
Bond	Ensign	Pryor
Brownback	Enzi	Roberts
Bunning	Graham	Rockefeller
Burr	Grassley	Sessions
Byrd	Gregg	Shelby
Chambliss	Hatch	Smith
Coburn	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Isakson	Stevens
Collins	Klobuchar	Sununu
Conrad	Kyl	Tester
Corker	Lincoln	Thune
Cornyn	Lott	Vitter
Craig	Martinez	Voinovich
Crapo	McCain	Warner

NAYS—39

Akaka	Feinstein	Mikulski
Bayh	Hagel	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Kennedy	Reed
Brown	Kohl	Reid
Cantwell	Landrieu	Salazar
Cardin	Lautenberg	Sanders
Carper	Leahy	Schumer
Casey	Levin	Stabenow
Clinton	Lieberman	Webb
Durbin	Lugar	Whitehouse
Feingold	Menendez	Wyden

NOT VOTING—3

Dodd	Johnson	Kerry

The amendment (No. 1250) was agreed to.

AMENDMENT NO. 1331

The PRESIDING OFFICER. There will now be 2 minutes evenly divided on the Reid amendment, No. 1331.

Mr. REID. Mr. President, the earned-income tax credit is an important program that benefits low-income workers with children who are legally working in this country. Those working illegally in this country are ineligible for the earned-income tax credit.

This amendment makes it perfectly clear that nothing in the bill changes the prohibition of an illegal alien's access to the earned-income tax credit. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, this is not a cover vote. It is not a cover vote at all. It leaves the bill exactly as it was. The problem with the legislation is that those people who are today illegal and would be made legal through the probationary status visa or the Z visa would be entitled to receive the earned-income tax credit, which is, on average, nearly $1,800 per recipient. That earned-income tax credit is a direct payment from the taxpayers of America.

This amendment—unlike the vote you cast last year when I raised it—would allow the earned-income tax credit when you get a green card but not when you are on a Z visa or probationary visa. So this is less far-reaching than the amendment I offered last year.

I urge that this amendment not be accepted.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 1331.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 40, as follows:

[Rollcall Vote No. 191 Leg.]

YEAS—57

Akaka	Feinstein	Murray
Baucus	Grassley	Nelson (FL)
Bayh	Hagel	Nelson (NE)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Kennedy	Reed
Brown	Kerry	Reid
Brownback	Klobuchar	Rockefeller
Byrd	Kohl	Salazar
Cantwell	Landrieu	Sanders
Cardin	Lautenberg	Schumer
Carper	Leahy	Smith
Casey	Levin	Specter
Clinton	Lieberman	Stabenow
Collins	Lincoln	Tester
Conrad	Lugar	Voinovich
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Mikulski	Wyden

NAYS—40

Alexander	DeMint	McCain
Allard	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Roberts
Bunning	Enzi	Sessions
Burr	Graham	Shelby
Chambliss	Gregg	Snowe
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thune
Corker	Isakson	Vitter
Cornyn	Kyl	Warner
Craig	Lott	
Crapo	Martinez	

NOT VOTING—2

Dodd	Johnson

The amendment (No. 1331) was agreed to.

AMENDMENT NO. 1234

The PRESIDING OFFICER. There is now 2 minutes equally divided before the vote on the Sessions amendment No. 1234.

Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, who is eligible for the earned-income tax credit? Legal workers. They work. Who are the beneficiaries of the earned-income tax credit? Ninety-eight percent of it goes to poor children. What country in the world has the greatest percent of poor children? The United States of America. Ninety-eight percent of the benefits of the earned tax credit go to poor children, and many of them are American children.

In the history of the Internal Revenue Code, we have never excluded a class. We have treated everyone equally. The Sessions amendment for the first time in the history of the United States of America is going to say: Workers who are here legally are going to be denied the earned-income tax credit that can benefit their children who are looking for a better future.

I hope the Sessions amendment will be defeated.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, the earned-income tax credit was designed and has been in effect as a support for American workers. That is what it is. Four million people who do not have children receive it.

This amendment says those people who are here illegally today who are made legal under this bill through the Z visa or the probationary status who have not yet obtained legal permanent residence would not get this benefit. The people are supposed to pay a fine, $1,000. They only have to pay $200. They pay that $200 fine, sign up, and they get a $2,000 earned-income tax credit, which is basically a check from the United States Government.

The people who are here illegally would be, under this bill, made legal, be allowed to work. They are not receiving earned-income tax credit today. There is no moral, legal, or principled reason to give them that in the future until they become a legal permanent resident.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 1234.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD), and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—56

Alexander	Dole	McCain
Allard	Domenici	McCaskill
Baucus	Dorgan	McConnell
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Graham	Pryor
Bunning	Grassley	Roberts
Burr	Gregg	Rockefeller
Byrd	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Stabenow
Cochran	Isakson	Stevens
Coleman	Klobuchar	Sununu
Conrad	Kyl	Tester
Corker	Landrieu	Thune
Cornyn	Lincoln	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	

NAYS—41

Akaka	Brownback	Clinton
Biden	Cantwell	Collins
Bingaman	Cardin	Durbin
Boxer	Carper	Feingold
Brown	Casey	Feinstein
Hagel	Lieberman	Sanders
Harkin	Menendez	Schumer
Inouye	Mikulski	Smith
Kennedy	Murray	Snowe
Kerry	Nelson (FL)	Specter
Kohl	Obama	Webb
Lautenberg	Reed	Whitehouse
Leahy	Reid	Wyden
Levin	Salazar	

NOT VOTING—2

Dodd	Johnson

The amendment (No. 1234) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1194

The PRESIDING OFFICER. There is now 2 minutes evenly divided before the vote on the Menendez amendment, No. 1194.

Who yields time?

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, under the bill before us, U.S. citizens have less rights than an undocumented alien. The base bill says, you break the law, you get benefits up to January 1, 2007. You follow the rule of law, and your right as an American citizen to claim your family, for which you have already submitted a petition, is extinguished as of May 1, 2005. That is fundamentally wrong.

How do we promote the rule of law when we say to a U.S. citizen, who has already applied for their family member waiting abroad, paid their fees, the government has collected them, their application has been approved, they followed the rules and obeyed the law, that they have an inferior right—an inferior right—to someone who did not follow the rules and crossed the border and who will ultimately receive a benefit superior to that of a U.S. citizen who is claiming their family?

Why do we tell the family of the U.S. citizen to go to the back of the line behind people who violated the law? This is a vote about family values and family reunification. This is a vote about the rule of law. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Arizona.

Mr. KYL. Mr. President, first of all, this is an amendment that would enable people to enter the United States and become immigrants, green card holders, and eventually citizens, who, under the current law, have no expectation of ever getting those rights because they are in categories or are from countries in which the waiting line is so long that they would never, ever be able, under existing law, to become a U.S. citizen.

In addition, because it would allow several hundred thousand immigrants to come into this country who would not otherwise be legal under existing law, there are three budget points of order, and, therefore, at the conclusion

of these remarks, I will be making a budget point of order. I hope my colleagues agree that we should not waive the budget under these circumstances.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I make a point of order that the pending amendment, No. 1194, to S. 1348, violates section 201, the pay-as-you-go point of order of S. Con. Res. 21, the concurrent resolution on the budget for fiscal year 2008.

Mr. MENENDEZ. Mr. President, I regret that we have started down this road. I move to waive section 201 of the concurrent resolution for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 193 Leg.]

YEAS—53

Akaka	Feinstein	Murray
Baucus	Hagel	Nelson (FL)
Bayh	Harkin	Nelson (NE)
Biden	Hatch	Obama
Bingaman	Inouye	Pryor
Boxer	Kennedy	Reed
Brown	Kerry	Reid
Bunning	Klobuchar	Rockefeller
Cantwell	Kohl	Salazar
Cardin	Landrieu	Sanders
Carper	Lautenberg	Schumer
Casey	Leahy	Smith
Clinton	Levin	Stabenow
Coleman	Lieberman	Tester
Conrad	Lincoln	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wyden
Feingold	Mikulski	

NAYS—44

Alexander	DeMint	McCain
Allard	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Roberts
Brownback	Enzi	Sessions
Burr	Graham	Shelby
Byrd	Grassley	Snowe
Chambliss	Gregg	Specter
Coburn	Hutchison	Stevens
Cochran	Inhofe	Sununu
Collins	Isakson	Thune
Corker	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	

NOT VOTING—2

Dodd	Johnson

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1460

The PRESIDING OFFICER. There are now 2 minutes evenly divided before the vote on the Kyl amendment No. 1460. Who yields time?

Mr. KYL. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I appreciate not waiving the budget in this last point of order. I will confess to you, I think that Senator MENENDEZ had a point in saying we should only allow people who had a reasonable expectation to be immigrants, and those who didn't should not. The bill itself drew an arbitrary deadline. Senator MENENDEZ drew a different arbitrary deadline. This side-by-side actually is constructed so that, under existing law, everyone who has a reasonable expectation of being allowed to immigrate under a family visa will be able to immigrate under a family visa. Only those people who never had any reasonable expectation would be denied.

What it does is to take it out to the year 2027, 20 years from now, and anyone who could have had a reasonable expectation of immigrating within that 20-year period would be allowed to immigrate under this amendment. It is a more precise and fair and just way to allow family members to come into the United States. The numbers are approximately identical to those who would be allowed to immigrate under the bill.

The PRESIDING OFFICER. Who yields time? The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I urge my colleagues to vote against this. It is not more than a figleaf. It sounds great, 2027. The definition of ''reasonable expectation'' means absolutely nothing. The majority of the Senate voted to have some form, although it did not pass a budget point of order, to have some form of family reunification of U.S. citizens waiting to go be reunited with their family abroad.

This does nothing. As a matter of fact, I have heard some of the children, family members of U.S. citizens, would have to wait 60 years. I have the State Department's report. None of them are more than 15 years. So the reality is, this is a figleaf for those who voted against the last one. It does absolutely nothing for family reunification.

Let's keep at least a strong message we do want to reunify families as we move this bill ahead and vote against the Kyl amendment.

The PRESIDING OFFICER (Mr. SALAZAR). The question is on agreeing to the amendment.

Mr. KYL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senator is necessarily absent: the Senator from Georgia (Mr. CHAMBLISS).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 45, as follows:

[Rollcall Vote No. 194 Leg.]

YEAS—51

Alexander	Domenici	McCaskill
Allard	Dorgan	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Graham	Pryor
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Coburn	Hatch	Shelby
Cochran	Hutchison	Smith
Coleman	Inhofe	Snowe
Collins	Isakson	Specter
Corker	Kyl	Stevens
Cornyn	Lincoln	Sununu
Craig	Lott	Thune
Crapo	Lugar	Vitter
DeMint	Martinez	Voinovich
Dole	McCain	Warner

NAYS—45

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Hagel	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Reed
Boxer	Kennedy	Reid
Brown	Kerry	Rockefeller
Byrd	Klobuchar	Salazar
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Clinton	Levin	Webb
Conrad	Lieberman	Whitehouse
Durbin	Menendez	Wyden

NOT VOTING—3

Chambliss	Dodd	Johnson

The amendment (No. 1460) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1182 TO AMENDMENT NO. 1150

Mr. REID. Mr. President, I call up amendment No. 1182, the Thomas amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. Thomas, proposes an amendment numbered 1182.

Mr. REID. 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 authorize the Secretary to establish new units of Customs Patrol Officers)

At the end of section 101 of the amendment, insert the following:

(c) SHADOW WOLVES APPREHENSION AND TRACKING.—

(1) PURPOSE.—The purpose of this subsection is to authorize the Secretary, acting through the Assistant Secretary of Immigration and Customs Enforcement (referred to in this subsection as the ''Secretary''), to establish new units of Customs Patrol Officers

(commonly known as ''Shadow Wolves'') during the 5-year period beginning on the date of enactment of this Act.

(2) ESTABLISHMENT OF NEW UNITS.—

(A) IN GENERAL.—During the 5-year period beginning on the date of enactment of this Act, the Secretary is authorized to establish within United States Immigration and Customs Enforcement up to 5 additional units of Customs Patrol Officers in accordance with this subsection, as appropriate.

(B) MEMBERSHIP.—Each new unit established pursuant to subparagraph (A) shall consist of up to 15 Customs Patrol Officers.

(3) DUTIES.—The additional Immigration and Customs Enforcement units established pursuant to paragraph (2)(A) shall operate on Indian reservations (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452)) located on or near (as determined by the Secretary) an international border with Canada or Mexico, and such other Federal land as the Secretary determines to be appropriate, by—

(A) investigating and preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) carrying out such other duties as the Secretary determines to be necessary.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2008 through 2013.

Mr. REID. I believe there is no debate on this matter.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1182) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1272 TO AMENDMENT NO. 1150

Mr. REID. Mr. President, I call up amendment No. 1272 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. SCHUMER, proposes an amendment numbered 1272.

Mr. REID. 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 improve security by providing for the establishment of B-1 visitor visa decisionmaking guidelines and a tracking system)

At the appropriate place, insert the following:

SEC. ___. B-1 VISITOR VISA GUIDELINES AND DATA TRACKING SYSTEMS.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act—

(A) the Secretary of State shall review existing regulations or internal guidelines relating to the decisionmaking process with respect to the issuance of B-1 visas by consular officers and determine whether modifications are necessary to ensure that such officers make decisions with respect to the issuance of B-1 visas as consistently as possible while ensuring security and maintaining officer discretion over such issuance determinations; and

(B) the Secretary of Homeland Security shall review existing regulations or internal guidelines relating to the decisionmaking process of Customs and Border Protection officers concerning whether travelers holding a B-1 visitor visa are admissible to the United States and the appropriate length of stay and shall determine whether modifications are necessary to ensure that such officers make decisions with respect to travelers admissibility and length of stay as consistently as possible while ensuring security and maintaining officer discretion over such determinations.

(2) MODIFICATION.—If after conducting the reviews under paragraph (1), the Secretary of State or the Secretary of Homeland Security determine that modifications to existing regulations or internal guidelines, or the establishment of new regulations or guidelines, are necessary, the relevant Secretary shall make such modifications during the 6-month period referred to in such paragraph.

(3) CONSULTATIONS.—In making determinations and preparing guidelines under paragraph (1), the Secretary of State and the Secretary of Homeland Security shall consult with appropriate stakeholders, including consular officials and immigration inspectors.

(b) DATA TRACKING SYSTEMS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act—

(A) the Secretary of State shall develop and implement a system to track aggregate data relating to the issuance of B-1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(A); and

(B) the Secretary of Homeland Security shall develop and implement a system to track aggregate data relating to admissibility decision, and length of stays under, B-1 visitor visas in order to ensure the consistent application of the guidelines established under subsection (a)(1)(B).

(2) LIMITATION.—The systems implemented under paragraph (1) shall not store or track personally identifiable information, except that this paragraph shall not be construed to limit the application of any other system that is being implemented by the Department of State or the Department of Homeland Security to track travelers or travel to the United States.

(c) PUBLIC EDUCATION.—The Secretary of State and the Secretary of Homeland Security shall carry out activities to provide guidance and education to the public and to visa applicants concerning the nature, purposes, and availability of the B-1 visa for business travelers.

(d) REPORT.—Not later than 6 and 18 months after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security shall submit to Congress, reports concerning the status of the implementation of this section.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1272) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, for all Senators, we now have a number of amendments lined up which we can vote on this evening. There will be about 80 minutes, an hour and a half, before the vote starts.

Mr. President, I ask unanimous consent that the time until 10 o'clock be for debate with respect to the following amendments and that the time be equally divided and controlled between the majority and Republican leaders or their designees, with the time to run concurrently; that no amendments be in order to any of the amendments in this agreement prior to the vote; that at 10 o'clock tonight, the Senate proceed to vote in relation to the amendments in the order listed; that there be 2 minutes of debate prior to each vote, with the votes after the first being 10 minutes in duration; and that if the amendment is not pending, then it be called up now.

The first amendment we will vote on is Clinton, No. 1183, as further modified; second is Ensign, No. 1374; the third one will be Salazar, No. 1384; fourth one is Inhofe, No. 1151; the fifth one is Hutchison, No. 1415; sixth is Vitter, No. 1339; seventh is Obama, No. 1202, as modified with the changes at the desk; and eighth is Dorgan, No. 1316.

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

The amendments are as follows:

AMENDMENT NO. 1374

(Purpose: To improve the criteria and weights of the merit-based evaluation system)

Beginning on page 262, strike line 36 and all that follows through page 264, line 1, and insert the following:

Category	Description	Maximum points
Employment		**66**
Occupation	U.S. employment in specialty occupation (as defined by the Department of Labor)–**35 pts** Honorable Service within any branch of the United States Armed Services for (1) 4 years with an honorable discharge, or (2) any period of time pursuant to a medical discharge–**35 pts** U.S. employment in STEM or health occupation, current for at least 1 year (extraordinary or ordinary)–**35 pts**	
Employer endorsement	A U.S. employer willing to pay 50% of a legal permanent resident's application fee either 1) offers a job, or 2) attests for a current employee–**23 pts** U.S. employment in high demand occupation (the 30 occupations that have grown the most in the preceding 10-year period, as determined by the Bureau of Labor Statistics)–**21 pts**	
U.S. employment experience	Years of lawful employment for a U.S. employer (in the case of agricultural employment, 100 days of work per year constitutes 1 year)–**5 pts/year** (max 30 pts)	
Age of worker	Worker's age: 25-39–**18 pts**	
Education (terminal degree)	Graduate degree in a STEM field (including the health sciences).–**50 pts**	**50**

Category	Description	Maximum points
	Graduate degree in a non-STEM field–**34 pts** Bachelor's degree in a STEM field (including the health sciences)–**40 pts** Bachelor's degree in a non-STEM field–**32 pts** Associate's degree in a STEM field (including health sciences)–**30 pts** Associate's degree in a non-STEM field–**25 pts** Completed certified Department of Labor registered apprenticeship–**23 pts** High school diploma or GED–**21 pts** Completed certified Perkins vocational education program–**20 pts**	
English and civics	Native speaker of English or TOEFL score of 100 or higher–**30 pts** TOEFL score of 90-99–**25 pts** Pass USCIS Citizenship Tests in English & Civics–**21 pts**	**30**
Home ownership	Sole owner of place of residence–**8 pts per year of ownership**	**24**
Medical insurance	Current private medical insurance for entire family–**10 pts per year held**	**30**
Total		**200**

AMENDMENT NO. 1202, AS MODIFIED

At the end of title V, insert the following:

SEC. 509. TERMINATION.

(a) IN GENERAL.—The amendments described in subsection (b) shall be effective during the 5-year period ending on September 30 of the fifth fiscal year following the fiscal year in which this Act is enacted.

(b) PROVISIONS.—The amendments described in this subsection are the following:

(1) The amendments made by subsections (a) and (b) of section 501.

(2) The amendments made by subsections (b), (c), and (e) of section 502.

(3) The amendments made by subsections (a), (b), (c)(1), (d), and (g) of section 503.

(4) The amendments made by subsection (a) of section 504.

(c) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) TEMPORARY SUPPLEMENTAL ALLOCATION.—Section 201(d) (8 U.S.C. 1151(d)) is amended by adding at the end the follows new paragraphs:

''(3) TEMPORARY SUPPLEMENTAL ALLOCATION.—Notwithstanding paragraphs (1) and (2), there shall be a temporary supplemental allocation of visas as follows:

''(A) For the first 5 fiscal years in which aliens described in section 101(a)(15)(Z) are eligible for an immigrant visa, the number calculated pursuant to section 503(f)(2) of the Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007.

''(B) In the sixth fiscal year in which aliens described in section 101(a)(15)(Z) are eligible for an immigrant visa, the number calculated pursuant to section 503(f)(3) of Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007.

''(C) Starting in the seventh fiscal year in which aliens described in section 101(a)(15)(Z) are eligible for an immigrant visa, the number equal to the number of aliens described in section 101(a)(15)(Z) who became aliens admitted for permanent residence based on the merit-based evaluation system in the prior fiscal year until no further aliens described in section 101(a)(15)(Z) adjust status.

''(4) TERMINATION OF TEMPORARY SUPPLEMENTAL ALLOCATION.—The temporary supplemental allocation of visas described in paragraph (3) shall terminate when the number of visas calculated pursuant to paragraph (3)(C) is zero.

''(5) LIMITATION.—The temporary supplemental visas described in paragraph (3) shall not be awarded to any individual other than an individual described in section 101(a)(15)(Z).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective on October 1 of the sixth fiscal year following the fiscal year in which this Act is enacted.

(d) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

(1) INCREASE IN LEVEL.—Section 201(c)(1)(B)(ii) (8 U.S.C. 1151(c)(1)(B)(ii)) is amended by striking ''226,000'' and inserting ''567,000''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective during the period beginning on October 1 of the sixth fiscal year following the fiscal year in which this Act is enacted and ending on the date that an alien may be adjust status to an alien lawfully admitted for permanent residence described in section 602(a)(5).

AMENDMENT NO. 1384

(Purpose: To preserve and enhance the role of the English language)

At the end of the matter proposed to be inserted, add the following:

SEC. 702A. DECLARATION OF ENGLISH AS LANGUAGE.

(a) IN GENERAL.—English is the common language of the United States.

(b) PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.—The Government of the United States shall preserve and enhance the role of English as the language of the United States. Nothing in this Act shall diminish or expand any existing rights under the laws of the United States relative to services or materials provided by the Government of the United States in any language other than English

(c) DEFINITION OF LAW.—For purposes of this section, the term ''laws of the United States'' includes the Constitution of the United States, any provision of Federal statute, or any rule or regulation issued under such statute, any judicial decisions interpreting such statute, or any Executive Order of the President.

AMENDMENT NO. 1151

(Purpose: To amend title 4, United States Code, to declare English as the national language of the Government of the United States, and for other purposes)

Strike section 702 and insert the following:

SEC. 702. ENGLISH AS NATIONAL LANGUAGE.

(a) SHORT TITLE.—This section may be cited as the ''S.I. Hayakawa National Language Amendment Act of 2007''.

(b) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''SEC. 161. DECLARATION OF NATIONAL LANGUAGE.

''English shall be the national language of the Government of the United States.

''SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE NATIONAL LANGUAGE.

''(a) IN GENERAL.—The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

''(b) EXCEPTION.—Unless specifically provided by statute, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If an exception is made with respect to the use of a language other than English, the exception does not create a legal entitlement to additional services in that language or any language other than English.

''(c) FORMS.—If any form is issued by the Federal Government in a language other than English (or such form is completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.

''SEC. 163. USE OF LANGUAGE OTHER THAN ENGLISH.

''Nothing in this chapter shall prohibit the use of a language other than English.''.

(c) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following new item:

''6. Language of the Government ..... 161''.

AMENDMENT NO. 1316

(Purpose: To sunset the Y–1 nonimmigrant visa program after a 5-year period)

At the end of section 401, add the following:

(d) SUNSET OF Y–1 VISA PROGRAM.—

(1) SUNSET.—Notwithstanding any other provision of this Act, or any amendment made by this Act, no alien may be issued a new visa as a Y–1 nonimmigrant (as defined in section 218B of the Immigration and Nationality Act, as added by section 403) on the date that is 5 years after the date that the first such visa is issued.

(2) CONSTRUCTION.—Nothing in paragraph (1) may be construed to affect issuance of visas to Y–2B nonimmigrants (as defined in such section 218B), under the AgJOBS Act of 2007, as added by subtitle C, under the H–2A visa program or any visa program other than the Y–1 visa program.

AMENDMENT NO. 1415

(Purpose: To prohibit obtaining social security benefits based on earnings obtained during any period without work authorization)

Strike section 607 and insert the following:

SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR PERIODS WITHOUT WORK AUTHORIZATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by striking subsection (c) and inserting the following new subsections:

''(c)(1) Except as provided in paragraph (2), for purposes of subsections (a) and (b), no quarter of coverage shall be credited for any calendar year beginning on or after January 1, 2004, with respect to an individual who is not a natural-born United States citizen, unless the Commissioner of Social Security determines, on the basis of information provided to the Commissioner in accordance with an agreement entered into under subsection (d) or otherwise, that the individual was authorized to be employed in the United States during such quarter.

''(2) Paragraph (1) shall not apply to an individual who was assigned a social security account number prior to January 1, 2004.

''(d) Not later than 180 days after the date of the enactment of this subsection, the Secretary of Homeland Security shall enter into an agreement with the Commissioner of Social Security to provide such information as the Commissioner determines necessary to carry out the limitation on crediting quarters of coverage under subsection (c).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of the Social Security Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) in computing the average indexed monthly earnings of an individual, there shall not be counted any wages or self-employment income for any year for which no quarter of coverage may be credited to such individual as a result of the application of section 214(c).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit applications filed on or after the date that is 180 days after the date of the enactment of this Act based on the wages or self-employment income of an individual with respect to whom a primary insurance amount has not been determined under title II of the Social Security Act (42 U.S.C. 401 et seq.) before such date.

AMENDMENT NO. 1339

(Purpose: To require that the U.S. VISIT system—the biometric border check-in/check-out system first required by Congress in 1996 that is already well past its already postponed 2005 implementation due date—be finished as part of the enforcement trigger)

On page 3, line 25 insert the following new subsection:

(6) The U.S. Visit System: The integrated entry and exit data system required by 8 U.S.C. 1365a (Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), which is already 17 months past its required implementation date of December 21, 2005, has been fully implemented and is functioning at every land, sea, and air port of entry.

The PRESIDING OFFICER. Who yields time?

The Senator from New York.

AMENDMENT NO. 1183, AS FURTHER MODIFIED

Mrs. CLINTON. Mr. President, I call up amendment No. 1183, as further modified, and ask unanimous consent for its consideration.

The PRESIDING OFFICER. The amendment is pending.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the majority leader, Senator REID, and Senator DODD be added as cosponsors to the amendment.

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

Mrs. CLINTON. Mr. President, I know there are very strongly held and honestly felt disagreements in this Chamber on the legislation before us. Many of these differences are mirrored across our country. The issue of immigration strikes deeply at our values and our concept of America and stirs our emotions. While we may reach different conclusions, we all have to begin at the same place. Our immigration system is in crisis. I have concerns about this underlying bill, but we all do. This is not the bill any of us individually would have written and produced for the Senate's consideration. But I commend the primary sponsors for bringing this to the floor of the Senate so we can debate the issues it raises and try to craft a solution that simultaneously honors our Nation's strong immigrant heritage and respects the rule of law.

As a nation, we place a premium on compassion, respect, and policies that help families. But our immigration laws don't reflect that. In fact, our current laws tear families apart. For lawful permanent residents and their spouses and minor children, this bill not only fails to help them, it actually makes matters worse. It is time to take all the rhetoric about family values and put it into action and show that we mean what we say when we talk about putting families first. That is what my amendment does.

This amendment is a bipartisan amendment offered with Senator HAGEL and Senator MENENDEZ. It is our view we must make reuniting families a priority in our immigration system, that we should show compassion for those living apart from their spouses and minor children, that we should reform immigration in a way that honors families and brings them together. Unfortunately, the compromise bill before us fails to help families and children stuck in a bureaucratic quagmire created by our tangled, broken immigration system. Spouses and minor children of lawful permanent residents applying for a green card are required to remain overseas while awaiting their new legal status. The problem is there is a huge backlog.

Despite what some have suggested this week, the visa backlog for spouses and minor children of lawful permanent residents is significant and substantial. According to the June 2007 State Department visa bulletin, the backlog is currently more than 5 years long. For some, that backlog could stretch even longer. What does that mean? In very human terms it means parents are forced apart from their children. Husbands are separated from their wives. Tax-paying, law-abiding, legal immigrants who are doing the right thing are treated as though their families don't matter at all.

If you are a lawful permanent resident and your spouse and minor children are caught in this long line, your family is not allowed to enter the United States even for a brief visit. You are limited in your ability to leave the United States to visit your spouse and children overseas. Under our current policies, lawful permanent residents are forced to choose between their newly adopted country and living with their spouse or children. Five years may not seem long to some of us. We serve 6 years in the Senate. It seems to go by very fast. But 5 years in the life of a young child or in a marriage is precious time indeed. For a 10-year-old child, it is half their life. It is time that can never be recaptured. Unfortunately, that 5-year timeframe is often much less than what actually happens to these families.

We are proposing that spouses and minor children of lawful permanent residents be exempt from the visa caps and that we finally allow these nuclear families who have been separated for far too long to be reunited. This amendment is necessary because the compromise bill does absolutely nothing to bring these families together. In fact, the compromise actually reduces the number of visas for spouses and minor children of lawful permanent residents. It does not allocate a single visa to address the existing backlog for these family members.

As I have said many times, we have a national interest in fostering strong families. This amendment is supported by more than 100 faith-based, family, and immigrant advocacy organizations and denominations. I thank all of these organizations that have endorsed and rallied support for the Clinton-Hagel-Menendez amendment. They do an invaluable service in speaking out for people whose voices would otherwise not be heard.

The amendment is not considered a bill killer. It is not considered an amendment everybody has to vote against who has agreed to the compromise, because many of us know these legal permanent residents. Many of us actually work with them. Some of them even contribute to the campaigns of people in this Chamber. These are people who are doing everything they can to play by the rules, except they are divided for years from their spouses and minor children. I hope the Chamber will endorse this act of compassion and common sense.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I certainly agree with the Senator from New York about the value of having family unity. A strong family is certainly a very important value that we ought to maintain to the maximum extent possible. I intend at the appropriate time, before the vote comes up, to raise a point of order under concurrent resolution 21, but for a few moments I will deal with the merits as to the issue advanced by the Senator from New York.

The effect of adoption of this amendment would mean those who are now legal permanent residents or green card holders would have an immediate right to bring in their spouse and children, and it is estimated there are some 800,000 of these green cards in existence at the present time. From many perspectives, it would be worthwhile to have that accomplished. That would certainly be a personal preference of mine, if it were not for many collateral constraining factors about the difficulty of allowing that many additional green cards all of a sudden. The 800,000 figure is the best estimate that is available at this late hour.

The effect of the amendment offered by the Senator from New York as to the approximately 12 million undocumented immigrants would be that as soon as the backlog is cleared after 8 years, then at that time they would be eligible to have green cards issued as green card holders or as legal permanent residents, after the backlog is

cleared in 8 years. Under the amendment by the Senator from New York, they would have the right to bring in their spouse and minor children.

Again, if I were to devise an ideal system and there were not other limitations, I certainly would not disagree with that as a desirable way to proceed. But this compromise was constructed very carefully and very painfully by the dozen or so Senators from both the Democratic side of the aisle and the Republican side of the aisle who structured it. The Presiding Officer was a member of that group, the junior Senator from Colorado. In structuring the arrangement to not allow legal permanent residents or so-called green card holders from bringing in their spouse and minor children, there were many tradeoffs. As I have said on the floor earlier, many of the provisions which were excluded, rejected, were ones I personally would have favored. I have cast a fair number of votes here during the course of this debate that, given my preferences, I would have cast differently. But the overall objective of getting a bill passed is worth the compromises which have been made.

Earlier today, this amendment was characterized by the Senator from New Mexico as the politics of compromise. Well, that might sound bad, but that happens to be the reality of what goes on in the Senate all the time. It goes on in all political bodies. We don't have anyone who can structure a bill to his or her precise specifications. If I could structure a bill, it would be a very different bill. But my role, along with a number of other Senators, was to try to find accommodations to find a bill which we could agree to and bring to the floor and then, if the full Senate wanted to work its will to the contrary, that is the way the system works. But there is nothing inappropriate about the politics of compromise. That means we sacrifice the better for the good.

The overall good is to get a bill passed which will deal with 12 million undocumented immigrants in a constructive way. It gives them an opportunity to escape the fear they now have that they will be detected at any time. It gives us an opportunity to identify those who are not contributing, who have criminal records, who ought to be deported. We can't deport all 12 million, but for the balance to be on the path toward citizenship, that is a very worthwhile, commendable objective as to the greater picture. We have comprehensive reforms. We have securing the border and employer verification. I will not go through all of the details, but this bill is very important. This accommodation to reject the contentions of the Senator from New York is necessary if we are to attain the greater good.

Mr. KYL. Mr. President, might I just interrupt with a question to the Senator?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, is it not true that under this amendment, this amendment would wipe out the difference between a citizen of the United States and a green card holder with respect to their right to immigrate the nuclear family? So there would be no distinction between a green card holder and a citizen's rights?

Mr. SPECTER. Mr. President, the Senator from Arizona is correct. It is the citizen who has the right to bring a spouse and minor children, not legal permanent residents, so-called green card holders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it was the intention of the majority leader to ask that there be 10 minutes on each amendment to be evenly divided. I think that was the desire in order to be fair to all of those who were going to offer amendments. I think those who are offering amendments were given that kind of assurance. So I ask unanimous consent that the remaining time be allocated equally between the amendments and equally in terms—well, I ask unanimous consent that there be 10 minutes on each amendment equally divided between those who favor the amendment and those who are opposed.

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

The Senator from New York.

Mrs. CLINTON. Mr. President, may I inquire, was a budget point of order or other point of order made against the amendment?

The PRESIDING OFFICER. It was not raised. It is not in order at this time.

Mrs. CLINTON. Mr. President, let me, just if I could, respond.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take 2 minutes of my time on the following amendment and yield it to the Senator. She was not aware of the time limitation when she made her remarks. I think she ought to be entitled to make her comments.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank the Senator.

I think it is important to recognize that there are many distinctions between a U.S. citizen and a foreigner living legally in the United States which uphold the value of citizenship, but the right to marry and to live with your family should not be one of them.

Denying legal permanent residents, who are on the pathway to pledging their allegiance to the United States, the right to marry and live together in our country is an obstacle to their becoming the kind of full-fledged citizens we want them to be.

Also, under current law, guest workers, students, and others can be with their spouses and minor children and then adjust to legal permanent resident status with them. Due to the backlogs, only lawful permanent residents are treated differently.

So, Mr. President, I understand that those who worked so hard on coming up with this compromise may not be able to find their way clear to support this at this time, but I do not believe we have a national interest in separating legal permanent residents from their spouses and minor children.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma.

AMENDMENT NO. 1151

Mr. INHOFE. Mr. President, let me make an inquiry. It is my understanding that under the UC, all of the eight amendments that will be considered on the floor have been called up and are in order to be considered; is that correct?

The PRESIDING OFFICER. They have not all been reported at this time.

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me tell you something procedurally that is going to happen here in about an hour at 10 o'clock. There is a list of amendments. First, there are two of them, and then the Salazar amendment will be considered. After that, the Inhofe amendment will be considered.

Now, I want to get something understood procedurally because I think it is very important for everyone, particularly the occupant of the chair at this time, who has the Salazar amendment, to know what is going on.

A year ago, we debated the Inhofe amendment that would make English the national language for the United States of America. We debated it at length, hour after hour. We talked about that every President back to and including Theodore Roosevelt in 1916 made comments that English should be the official and should be the national language of the United States of America. We talked about the 50 countries that have English as a national language, one being in west Africa—Ghana—and one being in east Africa—Kenya—but not the United States of America.

Now, one of the things that happened a year ago is I had my amendment up, which is essentially the same amendment that will be up tonight. I would like to have you listen carefully. It is really a one-sentence amendment. All it says is:

> Unless specifically provided by statute, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English.

In other words, this is an entitlement.

Now, it has exceptions in there for laws that are on the books, such as laws protecting the sixth amendment, which would be the Court Interpreters Act and other such things. However, it

was aimed—I don't want to act as if I am hiding this because we talked about this a year ago. One of the things has been very controversial: At the very end of the Clinton administration was when he passed Executive Order No. 13166, and 13166 essentially said that if you are a recipient of Federal funds, then your documentation can all be done in whatever language you desire, so it could be Swahili, it could be Spanish, or any other language.

Now, what happened a year ago was they passed my amendment—and my amendment was exactly the same as it is today—and it passed by a vote of 62 to 35. Does that sound right? So, 62 to 35. Then right after that, the Salazar amendment—and I see the Senator from Colorado is preparing to respond—was passed, which gutted my amendment, did away with it.

So those individuals who voted for my amendment and then voted for the Salazar amendment—and there are quite a few Democrats and Republicans who did that—voted to make English the official language and then, in the next vote, 3 minutes later, voted to take it away.

Now, I see that this is happening again tonight because, unfortunately, I have to offer my amendment first. I anticipate it will be adopted because it is very popular. Right now, the polling shows that 91 percent of the people in America want English as an official language, and 76 percent of Hispanics believe English should be an official language.

Now, I am prepared to go on and debate this issue. I should not have to do it since 62 Members of this body already voted in favor of it. What I am going to say now, though, is very significant because if you vote for the Inhofe amendment when it comes up tonight, then vote for the Salazar amendment, you are essentially saying you are gutting the Inhofe amendment and you do not want English to be the official or the national language of the United States of America.

The Salazar amendment is exactly the language in the underlying bill. I have it before me. I would be glad to read it. In fact, I am not sure how this time is going to work out. If we have time equally divided, I am going to run out of time. So I will just state that the language is precisely the same in the underlying bill. The underlying bill actually puts into law executive orders, and this specific executive order of 13166, which gives anyone an entitlement to any language he or she wants, will become law. That is the language which is in there right now.

I am attempting to change that language. If my amendment is adopted, it will change. However, the next vote is going to be on the Salazar amendment. I am just saying to you, as my friends out here, do not vote for both of us because if you vote for both of us, you are voting to make English the official language, and then, in the very next vote, you are taking it away and reinstating the original language in the bill.

So I hope no one is going to think it is going to go unnoticed if anyone votes for my amendment and then votes to kill the amendment they just supported. That is what is going to happen tonight. I look forward to the vote.

The PRESIDING OFFICER (Mr. KENNEDY). The Senator's time has expired.

The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise to speak in opposition to the proposed amendment by my good friend from Oklahoma. First and foremost, I want to say I believe all Members of this Chamber and the people in the United States understand that English is important and that people, in order to succeed in our society, need to learn English; that the ability to acquire the English language and to speak it well is something we all support, and we support a number of different programs that would assist people who have limited English proficiency to acquire the English language as a keystone to success. I think that goes without saying.

The amendment that is proposed by my friend from Oklahoma would, in fact, do a number of things that I think are problematical and should cause all of us to vote against the amendment.

The first and a very important reason to vote against his amendment is that it is contrary to the provisions of law that exist in many States. For example, in the State of New Mexico, you have in the Constitution—in the Constitution of the State of New Mexico—as my good friend, Senator DOMENICI, would articulate here, a provision that says that many of the documents within that State have to be provided in both English and Spanish. The same thing is true for the State of Hawaii. I believe this is a States rights issue, and those constitutions of those States ought to be respected. There are other States in our Union which have decided they are going to adopt English as their official language. I believe that is a matter the States ought to decide. I do not believe it is a matter we ought to be imposing here from Washington, DC, on the backs of the States of our Union.

Also, at the end of the day, what my good friend from Oklahoma is attempting to do with his amendment is to undo an executive order that has been long recognized by President George Bush, implemented by President George Bush, conceived by President Bill Clinton, and put into law with his signature.

President Clinton's executive order was signed on April 11, 2000, on October 26, 2001. That executive order was recognized by Ralph Boyd with the U.S. Department of Justice under the Bush administration. It was again recognized on January 11, 2002, and again on November 12, 2002, and then again on December 1 of 2003.

If I may take a moment to just read a portion of what was included in that communication that went out from the U.S. Department of Justice to all of the court administrators across the United States and all of the U.S. district courts. It said the following in the memorandum:

> It is beyond question that America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom. Examples range from contact with the clerk's office in pro se matters to testifying at trial. They include but are not limited to matters involving domestic violence, restraining orders, parental rights, and other family law matters, eviction actions, alternative dispute resolution or mediation programs. . . .

And on and on.

What both the Bush administration and the Clinton administration recognized in this executive order is that it is important to make sure people who have limited English proficiency receive the kinds of services so they can understand what is going on in terms of the interface between the Government and themselves.

Mr. President, I believe my friend from Oklahoma has an amendment in search of a problem, and I urge my colleagues to vote against it.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I will take just a few minutes. I am sorry to interrupt the debate.

EXPRESSING THE SENSE OF THE SENATE THAT ATTORNEY GENERAL ALBERTO GONZALES NO LONGER HOLDS THE CONFIDENCE OF THE SENATE AND OF THE AMERICAN PEOPLE—MOTION TO PROCEED

CLOTURE MOTION

Mr. REID. Mr. President, I move to proceed to S.J. Res. 14 and send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 179, S.J. Res. 14, relating to Attorney General Alberto Gonzales.

Harry Reid, Richard J. Durbin, Kent Conrad, Bernard Sanders, Jeff Bingaman, Dan Inouye, Jon Tester, S. Whitehouse, Debbie Stabenow, Byron L. Dorgan, Amy Klobuchar, Sherrod Brown, Carl Levin, Chuck Schumer, Barbara Boxer, Jack Reed, H.R. Clinton.

Mr. REID. Mr. President, I withdraw my motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. REID. Thank you, Mr. President.