The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) was necessarily absent.

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

The result was announced—yeas 37, nays 61, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—37

Akaka	Feinstein	Menendez
Bayh	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Obama
Boxer	Johnson	Reed
Cantwell	Kennedy	Reid
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Conrad	Landrieu	Schumer
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden
Durbin	Levin	
Feingold	Lieberman	

NAYS—61

Alexander	DeWine	Murkowski
Allard	Dole	Nelson (FL)
Allen	Domenici	Nelson (NE)
Baucus	Dorgan	Pryor
Bennett	Ensign	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Byrd	Hatch	Specter
Carper	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Coburn	Isakson	Talent
Cochran	Kyl	Thomas
Coleman	Lincoln	Thune
Collins	Lott	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	
DeMint	McConnell	

NOT VOTING—2

Enzi	Rockefeller

The amendment (No. 4087), as modified was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

I move to lay that motion on the table.

Mr. SPECTER. The motion to lay on the table was agreed to.

DEATH OF SENATOR LLOYD BENTSEN

Mr. REID. Mr. President, I was just notified a few minutes ago that Lloyd Bentsen died. For those of us who have had the pleasure of serving with Lloyd Bentsen, this is a sad day. There was no one who better represented the Senate than Lloyd Bentsen. He looked like a Senator, he carried himself so well, and he acted like a Senator. He legislated like a Senator. He died at age 85. He was sick for a number of years. He was a person who had a great political record. He served in the House of Representatives for three terms, and he served in the Senate—he could have served as long as he wanted—and became Secretary of the Treasury during the Clinton administration. He, of course, ran for Vice President and he ran for President.

For me personally, he was such a guiding light. I can remember when I was elected to the Senate, and I was trying to get on the Appropriations Committee. I met in his hideaway.

This speaks about the way Lloyd Bentsen conducted his life. I was telling him why it would be good for me. I had been through a tough race. It was the most noted race in the cycle at that time. I was talking to him a lot about why it was important for me to get on the Appropriations Committee. He ended the discussion very quickly.

He said: It doesn't matter if it is good for you. I believe it is good for the Senate.

That was how he conducted his life. He was someone we all looked to. As a new Senator, I could talk to him with reverence. I can remember visiting with him when he was Secretary of Treasury. He told me how much he missed the Senate and how lonely it was down there and how he missed the collegiality of the Senate.

The State of Texas has had great Senators, but no Senator has ever been a better Senator than Lloyd Bentsen.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Mr. REID. Mr. President, with the consent of the majority leader, I ask unanimous consent that the time for the recess begin now, 12 minutes early.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, there will be no objection. We are making real progress and have begun discussing how we will handle the rest of the day and tomorrow as well. There is no objection.

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

Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:19 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Texas is recognized.

(The remarks of Mrs. HUTCHISON are printed in today's RECORD under "Morning Business.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006—Continued

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senator from Rhode Island be given 10 minutes to speak on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I rise to discuss S. 2611, the immigration bill we are debating this week. It has been a difficult debate with several difficult votes, but I believe this is one of the most important pieces of legislation we will address this year.

The status of immigrants in this country, including legal aliens, guest workers, and illegal aliens, has a profound impact on our economy, our labor force, and the quality of life of all of the Nation's residents. Clearly, our immigration system in terms of both its punitive measures and its benefits offered is in need of overhaul. The bill before us is not perfect, but it is a realistic approach to dealing with an issue that is important to so many Americans.

Rather than measures that sound good but are ineffective, this legislation is truly comprehensive immigration reform. It includes tough enforcement provisions directed at those who seek to come here illegally in the future and those who would hire illegal aliens. It contains provisions for guest workers that balance the needs of employers and the average American worker, and it offers a path to legalization to those who entered this country illegally but who have since been working hard and obeying the rules.

One of the most important sections of this bill relates to enforcement. Clearly, the continuous flow of illegal immigrants across our southern border in particular in search of higher paying jobs in the United States strains our Nation's labor market and resources such as hospitals and schools and law enforcement.

I note that while illegal immigration has been a significant problem since the 1980s, the problems have only worsened in the past 6 years. The 9/11 Commission gave the Bush administration a grade of C-minus on border security. The administration has simply lost control of the border. In the past decade, between 700,000 and 800,000 illegal immigrants have arrived in this country annually. Over 70 percent of these individuals are from Mexico or South America or from Central America. During the same period from 1995 to 2005, the number of Border Patrol agents increased from 4,876 to 11,106.

However, while the number of border agents increased dramatically during the Bush administration, the number of apprehensions at the border declined 31 percent from the last 4 years of the Clinton administration. In addition, approximately one-half of the 11 million illegal aliens in this country live in the 46 nonborder States, yet the average apprehension rate during the

Bush administration is 25,901 individuals per year in interior States away from the border.

But apprehending individuals illegally crossing the border only partially solves the problem. The reason so many try to enter this country is the search for jobs. We must work to cut off the supply of jobs by making it too costly for employers to hire illegals. Again, this administration has performed poorly in this area. In fiscal year 2004, the last year in which data is available, the Justice Department only obtained 46 convictions for employer violations of illegal immigrant employment laws. Audits of employers suspected of utilizing labor have dropped from a peak of 8,000 per year under President Clinton to less than 2,200 in fiscal year 2003 under President Bush. The number of cases resulting in fines has declined from a peak of 900 under President Clinton to a total of 124 in fiscal year 2003. I would therefore say that the first step to improve enforcement would be to actually enforce the laws that are already on the books.

In addition, I believe the bill adds many useful enforcement measures. I would like to highlight a few that I feel are most significant.

I am particularly pleased with the focus on technology. This bill requires the Department of Homeland Security to create a virtual fence along the borders using unmanned aerial vehicles, cameras, sensors, tethered aerostat radars, and other surveillance equipment. This bill also requires the Department of Homeland Security to work with other agencies such as the Department of Defense and the Federal Aviation Administration to develop plans for sharing assets and implementing surveillance strategies.

In addition, this bill includes provisions which replace and extend existing fencing along the U.S.-Mexican border. While I realize that building additional fences may be an attractive option, ultimately I believe this approach would be expensive and ineffective. History has proven that fences simply drive the illegal immigration flow to cross by land through more inhospitable terrain, increasing the number of deaths, or to enter by boat through our largely unprotected ports and shores.

For example, once a triple fence was built in the San Diego area, apprehensions dropped dramatically, but they increased 342 percent during the same period in Tuscon, away from the fence. In addition, during that period, it is estimated that 1,954 people died attempting to cross the Sonoran Desert to reach Tucson.

I also believe that wall is a symbol of distrust which can only weaken our relations, particularly with Mexico. It is a country we need to cooperate with to reduce the flow of illegal aliens.

For these reasons, last week I voted against the Sessions amendment to add 370 more miles of triple-layer fencing and 500 miles of vehicle barriers along our southern border. I believe the funding could be spent in more effective ways using new technologies.

This bill also improves enforcement of employers who might unlawfully hire illegal aliens. First, it reduces the number of documents that can be used to prove legal status. It also increases verification and recordkeeping requirements. Most importantly, it establishes an electronic employment verification system.

Under this program, employers must electronically verify new hires' employment authorization within 3 days through the Social Security Administration and the Department of Homeland Security databases. All employers will have to participate in the system within the next 5 years. The bill also provides for punitive measures for employers who do not participate. Such a system will help standardize enforcement, making it more certain that employers hiring illegals will be found out and therefore providing a deterrent effect.

I believe the measure I have discussed, along with others in the bill, will help control the stream of illegal aliens entering this country.

As we all are aware, one of the most controversial aspects of this bill is that it provides a path to legalization for approximately 11 million illegal immigrants living in this country. I believe that while this is a difficult decision, it is a necessary one.

Logic and history dictate that these individuals will certainly not return to their native countries voluntarily. In addition, it is not possible to apprehend and return all of them involuntarily. If apprehensions continue at the present rate and new illegal immigration ceases, it would still take 228 years for this country to be free of illegal immigrants.

In the meantime, a significant segment of our population is living in the shadows and in constant fear of being caught working for low wages, often in terrible conditions, without health care, without a way to redress any crimes against them. So many being forced to live this way lowers the standard of living for all of us—by decreasing job opportunities, lowering wages and the standards of working conditions for the American workforce, and burdening our hospitals and law enforcement agencies. It is not just a problem for the illegal population, it is a problem for all of us. And it is time we address it. This bill does address it, and I believe in a fair way. It is not what opponents have called amnesty. These people are not illegal one day and enjoying the rights and benefits of legal residency the next without any sacrifice or work on their part. I would like to take a moment to put these provisions I am about to discuss in a historical context.

For the vast majority of our Nation's history, there were few, if any, requirements for immigrants entering this country. The first restrictive immigration laws, other than those racially based, were not passed until the late 1880s and did not substantially change for several decades, including during the height of European immigration in the early 1900s. These laws excluded convicts, polygamists, prostitutes, persons suffering from loathsome or contagious diseases, and persons liable to become public charges. The 1917 literacy requirement required individuals to be able to write out 40 words in some language, not necessarily English.

These requirements, I would say, were not particularly strenuous. The INS, once established in 1891, actually ran its own schools and supplied textbooks to help immigrants learn English and civics. There was no requirement to work or have marketable skills. For the most part, if you arrived and were relatively healthy, you were admitted. So by these standards, the requirements for earned adjustment are much more significant.

First, in order to receive the most benefits from this bill, an individual must prove he or she has already lived in this country for 5 years—time to become a part of the community and, it should be noted, the residency requirement since 1802. These individuals will also have to prove they worked 3 of the past 5 years and then must work continuously for the next 6 years. They must pay all unpaid back income taxes. They must demonstrate an understanding of the English language and an understanding of the history and government of this country. They must submit to fingerprinting and background checks and meet the health and security requirements of every other alien entering the country. Also, they are placed at the ''back of the line'' of applications for adjustment, and, as we all know, that wait is several years. They also have to pay a $2,000 fine as well as other processing fees.

Those who have been in this country since January 7, 2004, and have been employed since that time may apply for status called deferred mandatory departure which would allow them to remain in this country for an additional 3 years.

During that time, these individuals can apply for immigrant or nonimmigrant status, but ultimately they must leave the country in order to be admitted under that legal status. These hurdles are high and a far cry from amnesty. They strike the proper balance in punishing those who came here illegally and addressing the problems of some illegal aliens in the country.

One of the original provisions of S. 2611 about which I had significant reservations was the originally proposed H–2C guest worker program. It would create a new visa category—providing visas for hundreds of thousands of low-skilled workers each year. I understand the argument that this new program is a way to regulate and hopefully slow the flow of illegal aliens who will continue to cross our borders, but I was

concerned about immediately implementing the program as it was originally drafted.

I believe, however, that it has been vastly improved by the amendment process here on the floor. Senators DORGAN and STABENOW were the first to note the flaws in this program during debate on their amendment to eliminate the program, an amendment which was tabled. Further amendments, however, fix many of these flaws.

I wish to commend Senator BINGAMAN for his amendment, which passed, that reduces the number of H–2C visas allotted annually to 200,000 and eliminates the provision that would allow this number to automatically increase in future years. This amendment provides some needed limitation on the H–2C program until we see how all the provisions of S. 2611 are working.

I also wish to commend Senator OBAMA for offering his amendment, which was accepted and which provides adequate requirements for the wages offered to H–2C visa workers. One of the greatest challenges of allowing low-skilled workers in this country is balancing their needs with the needs of the American labor force. Over the past 32 months, real average hourly earnings have fallen by 1.2 percent. Without adequate protections, an influx of workers who will accept lower wages risks bringing down the wages and working conditions of everyone. I also worry that companies will use this visa program as a recruiting device for cheap labor rather than truly offering opportunities to individuals who want a better life in the United States. Senator OBAMA's amendment will work against those dangers, and I am pleased it was included.

I must state that I continue to have one concern about this program—the bilateral agreement. For our immigration system to truly work, it is critical that the United States have cooperation regarding enforcement with countries and citizens flocking to this country. I was, therefore, pleased to find that S. 2611 requires the United States to enter into bilateral agreements on numerous issues, including taking back aliens removed from the United States, document forgery, smuggling, human trafficking, and gang membership. However, this bill does not state that these bilateral agreements must be completed before the H–2C program is established. I believe a delay in concluding bilateral agreements may undercut the purpose of the H–2C program.

I will continue to monitor the situation, and I believe it is an issue Congress may have to address again in the near future.

Let me conclude very briefly by pointing out that there is a category of residents here, the Liberian community, who have been here legally since the late 1980s. For years, I have been endeavoring to provide relief so that these individuals, who are important and decent members of communities all across this country, could reach permanent status in United States and aspire to citizenship. I am pleased to note that in this bill, there is a means to do that. They can avail themselves of the mechanism others will use for their pathway to citizenship. It is long overdue.

I am disappointed that we could not specifically rectify this problem years ago and recognize their contributions as legal residents here under temporary protective status. But I am pleased that this legislation will go a long way to give the Liberian community a pathway to citizenship.

I am pleased to support this legislation. I commend the sponsors and the chairman of the Judiciary Committee and Senator KENNEDY for their work.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I ask unanimous consent the following first-degree amendments be in order: First, Senator LEAHY on No. 4117, with 20 minutes equally divided; Senator GRASSLEY on title III, with 20 minutes for Senator CORNYN, 5 minutes for Senator KENNEDY, 5 minutes for Senator OBAMA, 5 minutes for Senator KYL, and 10 minutes for myself; Senator LIEBERMAN, No. 4036, with the time agreement to be determined; Senator DURBIN on a humanitarian waiver amendment, with time to be determined; Senator KENNEDY, No. 4106, with the time agreement to be decided.

I further ask, following those amendments, the next first-degree amendments be in order: McConnell, 4085; Gregg, 4114; Hutchison, 4101; Burns, 4124; Chambliss, 4084; Cornyn, 4097; Sessions, 4108; Kyl, 4134.

Provided further that it be in order to have first-degree amendments offered by the Democratic leader or his designee between each of the preceding Republican amendments.

I further ask unanimous consent that if cloture is invoked on the bill and if any of the above listed amendments have not been offered prior to the expiration of time under rule XXII, it be in order to call that amendment prior to third reading of the bill. I further ask consent that it be in order any time during the consideration of these amendments to consider a managers' amendment which has been cleared by both managers and notwithstanding the provisions of rule XXII.

I think I specified on Senator LEAHY's amendment 4117 that the 20 minutes equally divided would be followed by a tabling motion.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Reserving the right to object, the Senator is referring to the Leahy-Coleman-Kennedy-Sununu-Lieberman-Chafee amendment. He had not mentioned a motion to table. He has a right to make a motion to table at any time. On the Leahy-Coleman-Sununu-Chafee-et al. amendment, I hope the distinguished chairman of the Judiciary Committee would at least listen to this debate, of our efforts to protect these child soldiers before the Senator moves to table.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I always listen with great care to anything the very distinguished Senator from Vermont has to say, but in order to get consent to this unanimous consent agreement, it was found to be necessary to insert the language, which I did.

Mr. LEAHY. I have no objection to that. I just want to make my point. We are trying to protect these women who have been raped and mutilated and these children forced into involuntary servitude and others who have stood up when the United States has asked them to help defend us.

Mr. SPECTER. Does that last comment come out of Senator LEAHY's time?

Mr. LEAHY. That is when I reserved my right to object.

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

Mr. KENNEDY. We intend to notify the Senate what these Democratic amendments will be. They will be interspersed as rapidly as we can. We will do that, hopefully, before the end of the afternoon.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 4117

Mr. LEAHY. Mr. President, this bipartisan amendment I offer is on behalf of the distinguished Presiding Officer, Senator COLEMAN, Senator KENNEDY, Senator LIEBERMAN, Senator CHAFEE, Senator HARKIN, Senator BINGAMAN, and Senator SUNUNU.

We have had unintended consequences because of changes made in immigration laws after September 11. Rightly so, they were modified to protect national security, but we made them so broad that many people have been prevented from entering our Nation, people who do us no harm.

The PATRIOT Act and the subsequent REAL ID Act modified definitions of ''terrorist activity'' and ''material support'' in order to block entry into the United States of individuals who assist terrorist organizations. On its face, that made sense. No one wants terrorists or their supporters to come here as refugees.

But the new law failed to recognize that many foreigners, including children, are forced against their will to give food, shelter or other assistance to terrorist groups.

It also defined ''terrorist organization'' so broadly that groups that are

not engaged in activities against civilians—freedom fighters that the U.S. Government once provided training and other material support to—like the Montagnards in Vietnam—are covered by this broad definition.

Our amendment would bring American laws once again into line with American values. It would give U.S. officials the ability to separate the victims from the aggressors, and it will bring our immigration laws into harmony with our government's foreign policy.

We can prevent the entry of those who would do America harm without closing our borders to genuine refugees who urgently need our help.

Let me give a few examples. A 13-year-old girl is kidnapped, she is forced to become a member of the Lord's Resistance Army in Uganda, become a soldier, basically a sex slave of one of the commanders. She is ineligible for admission as a refugee under current law. That is wrong. In fact, it is immoral.

The same goes for people who provide material support to FARC, the terrorist group in Colombia. The support they gave was digging graves for other victims of the terrorists or giving them food, or otherwise being shot themselves.

Or a Liberian woman who was kidnapped by a rebel group and forced to serve as a sex slave. She was also forced to cook and do laundry for the rebels, so she is considered to have given material support and she is barred. That makes no sense.

People who are barred for supporting a terrorist organization—which is broadly defined as any group of two or more people fighting a government—includes refugees who our own government has long supported.

The Vietnamese Montagnards, who supported the United States 35 years ago, are barred. Members of the Karen Tribe fighting against the Burmese junta are barred. Some anti-Castro Cubans are barred.

Afghans who fought with the Northern Alliance, and even the NATO soldiers who trained them, are barred. We never intended to do that.

After 8 months of interagency inertia, the Secretary of State recently issued a waiver for one group of Burmese refugees who live in a refugee camp in Thailand. The use of the waiver authority was long overdue and I welcomed the Secretary's action. But the waiver was too limited, and will help only a minority of those deserving help, who are waiting to be resettled here.

When the waiver was issued, the State Department asserted that it did not plan to extend it to other groups in the near future.

Infighting between executive branch agencies is preventing people who have been victimized in the most brutal ways from obtaining asylum.

The bipartisan amendment that we offer today modifies the law so that before the overly broad definition of a terrorist organization is applied to a group of two or more individuals, the Secretary of State must determine that the group engages in terrorist activity which poses a threat to U.S. nationals or the national security of the United States.

That is the right balance. It protects U.S. security, and it provides sanctuary for victims of repression.

Mr. President, how much time remains for the Senator from Vermont?

The PRESIDING OFFICER. The Senator has not yet called up the amendment, so there is no time running.

Mr. LEAHY. That is not bad. Mr. President, I did not do that intentionally, but I think it may be protecting the distinguished Presiding Officer. I now call up amendment No. 4117.

The PRESIDING OFFICER. The clerk shall report the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. COLEMAN, Mr. LIEBERMAN, Mr. KENNEDY, Mr. CHAFEE, Mr. HARKIN, Mr. BINGAMAN, and Mr. SUNUNU, proposes an amendment numbered 4117.

The amendment is as follows:

(Purpose: To amend section 212 of the Immigration and Nationality Act regarding restrictions on the admission of aliens)

On page 65, line 24, strike ''f'' and insert the following;

(f) TERRORIST ORGANIZATIONS.—

(1) DEFINITIONS.—Section 212(a)(3)(B)(vi) (8 U.S.C. 1182(a)(3)(B)(vi)) is amended by striking subclause (III) and inserting the following:

''(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv), and that the Secretary of State, in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, has determined that these activities threaten the security of United States nationals or the national security of the United States.

''(vii) APPLICABILITY.—Clause (iv)(VI) shall not apply to—

''(I) any active or former member of the Armed Forces of the United States with regard to activities undertaken in the course of official military duties; or

''(II) any alien determined not to be a threat to the security of United States nationals or the national security of the United States and who is not otherwise inadmissible on security related grounds under this subparagraph.''.

(2) TEMPORARY ADMISSION OF NON-IMMIGRANTS.—Section 212(d)(3)(B)(i) (8 U.S.C. 1182(d)(3)(B)(i)) is amended to read as follows:

''(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that subclause (IV)(bb), (VI), or (VII) of subsection (a)(3)(B)(i) shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) shall not apply with respect to any material support an alien afforded to an organization (or its members) or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) shall not apply to a group, or to a subgroup of such group, within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 240.''.

(g)

Mr. LEAHY. Mr. President, I ask unanimous consent that of the time available to the Senator from Vermont, 4 minutes be reserved for the distinguished Presiding Officer and he be allowed to use that time.

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

Mr. LEAHY. Mr. President, I hope Senators will support this amendment. It has strong bipartisan support. It speaks to the moral goodness of our Nation. It ensures that the waiver in current law is available to asylum seekers who were forced to join terrorist groups or to provide material support against their will.

Completely innocent victims of ethnic and other forms of violence and repression are being denied asylum for engaging in the very activity they were forced to engage in, even though they pose no threat to U.S. security—child soldiers, sex slaves of people who were among the worst violators of human rights. Those victims are being excluded by our great, good Nation.

They deserve our compassion. Let us bring our laws back in line with our values.

I hope we will adopt this amendment.

Mr. President, I see the distinguished Senator from Minnesota on the floor. I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise in support of the amendment by Senators LEAHY, COLEMAN, LIEBERMAN, SUNUNU, KENNEDY, BINGAMAN, CHAFEE, and HARKIN.

The distinguished Senator from Vermont has laid out a general principle we are dealing with here. I would like to make a couple observations, if I may.

I would actually like to read from an article in the New York Times of April 3—just a couple sentences.

In Sierra Leone there was a woman who was kept captive in her house for 4 days by guerillas. The rebels raped her and her daughter and cut them with machetes. Under America's Program for Refugees she would be eligible to come to safety in the United States, but her application for refugee status has been put on indefinite hold because American law says she has provided material support to terrorists by giving them shelter.

The same story has been repeated in Liberia. Women who have been kidnapped, raped, forced to be sexual slaves, by the definition of ''material support,'' gave material support. The law makes no exception for duress.

In the State of Minnesota, we have individuals who have worked in groups that have been supported by the United States—Hmongs in Southeast Asia resisted the Laos military; Liberians who

gave de minimis aid under duress; Burmese; Somalians; Cubans resisting Castro; Colombians intimidated by the FARC guerrillas—and, again, they are in a similar circumstance as we have talked about. But the way the law is written, they would be denied the opportunity because of the definition of both ''material support'' and ''terrorist group.''

I think some of my colleagues have concerns about this. I know they have raised some questions. We have tried to look at those concerns. One of them is: What is the reason for this? There is a waiver provision in this legislation. The problem is that the labor provision is extremely, extremely limited. I believe one of them was negotiated for about 8 months. It does not cover asylum seekers in the U.S. who have been subject to atrocities, who under duress were forced to give minimal support but by definition of the law gave ''material support.''

So as a result—what I do not think was intentional—when we looked at the REAL ID legislation, we revised some of this. I do not think there was an intentional effort here. Sometimes, though, we suffer from the law of unintended consequences. The unintended consequences of the broad definition of ''terrorist organization'' and ''material support'' is to deny asylum, to deny entry to individuals who I think under all circumstances across the board—Democrat and Republican, liberal and conservative—it would be agreed that opportunity is the right thing to do, such as for the Vietnamese Montagnards, the Karen National Front fighting the Burmese junta, the Afghan Northern Alliance that has had U.S. support.

So what we have here, we believe, is a technical problem that can be corrected. If somebody is a member of a terrorist organization, they are not going to be allowed entry into this country. But that is not what this is about. That is not what we are dealing with here. I hope my colleagues would take a close look at this amendment and understand it is the right thing to do, the compassionate thing to do, the reasonable thing to do, and one that we will be proud of doing when we are finished.

There are a lot of folks who have fought for freedom in ways that we believe they are freedom fighters, a lot of folks who have been subject to great abuse, horrific abuse, and yet, somehow, the way things have been defined or appear to be threats to this country, they do not have the opportunity others have. They are not threats to our security. The right thing to do is to support the Leahy-Coleman amendment.

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

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the RECORD editorials from the New York Times and the Washington Post, and an op-ed from the Los Angeles Times in support of this amendment.

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

[From the New York Times, Apr. 3, 2006]

TERRORISTS OR VICTIMS?

In Sierra Leone there is a woman who was kept captive in her house for four days by guerrillas. The rebels raped her and her daughter and cut them with machetes. Under America's program to resettle refugees, she would be eligible to come to safety in the United States. But her application for refuge has been put on indefinite hold—because American law says that she provided ''material support'' to terrorists by giving them shelter.

This law is keeping out of the United States several thousand recognized refugees America had agreed in principle to shelter. By any reasonable definition, they are victims, not terrorists.

A Liberian woman was kidnapped by a guerrilla group and forced to be a sexual slave for several weeks. She also had to cook and do laundry. These services are now considered material support to terrorists. In Colombia, the United Nations will no longer ask the United States to admit dozens of refugees who are clearly victims, since all their predecessors have been rejected on material support grounds. One is a woman who gave a glass of water to an armed guerrilla who approached her house. Another is a young man who was kidnapped by paramilitary members on a killing spree and forced to dig graves alongside others. The men, many of whom were shot when their work was finished, never knew if one of the graves would become their own.

The law makes no exception for duress. It also treats any group of two or more people fighting a government as terrorists no matter how justified the cause, or how long ago the struggle. So the United States has turned away Chin refugees, for supporting an armed group fighting against the Myanmar dictatorship, which has barred them from practicing their religion. The United States has acknowledged that the law would also bar Iraqis who helped American marines find Jessica Lynch.

The law does not formally reject these applicants but places them on indefinite hold. No one accused of material support has ever had that hold lifted. The Department of Homeland Security can supposedly waive the material support provision but has never done so.

Clearly, Congress needs to add an exception for duress, allow the secretary of state to designate armed movements as nonterrorist, and allow supporters of legitimate groups to gain refuge. These changes would pose no risk of admitting terrorists to the United States and would keep America from further victimizing those who have already suffered at the hands of terrorist groups.

[From the Washington Post, Apr. 28, 2006]

HOW NOT TO TREAT FRIENDS

Congress tightened a law last year on refugee admissions in order (it thought) to keep terrorists and their supporters out of the country. The effect has been to bar friends and allies.

One example: Many Vietnamese Montagnards fought alongside U.S. forces during the Vietnam War and were then murderously oppressed by the Vietnamese government. During the war, the United States helped arm a Montagnard group called the United Front for the Liberation of Oppressed Races, which continued to struggle for autonomy after the war ended. This group ceased to exist in 1992, when a band of nearly 400 fighters disarmed and were resettled in North Carolina. Under Congress's irrational new rules, however, the group has become, legally speaking, a terrorist organization, and 11 Montagnards still stuck in Cambodia would be denied refugee status because in the past they had offered the group ''material support.''

The Montagnards are not the law's only, or even principal, victims. Thousands of ethnic victims of the Burmese military regime, living in camps in Thailand, expected after long waits to receive refugee status; now they're stuck in limbo. So are large numbers of Colombians who were forced to support the leftist rebels of the Revolutionary Armed Forces of Colombia. Liberians, Somalis and anti-Castro Cuban dissidents are also being branded terrorists and kept out.

Misguided law now prevents the admission of a member or backer of any group of ''two or more individuals'' that ''engages in, or has a subgroup which engages in,'' activities as commonplace as using an ''explosive, firearm or other weapon or dangerous device.'' The law treats a Montagnard who once aided a U.S.-backed group no differently from an al-Qaeda operative. The administration has the authority to override this absurdity in certain instances, though not all. But it has not used this limited power, and even the need for a waiver is galling. America should not be ''forgiving'' people who did not, in fact, support terrorism. These are victims—exactly the sort of people refugee and asylum programs are meant to protect.

An amendment being offered to the supplemental appropriations bill by Sens. Patrick J. Leahy (D-Vt.), Norm Coleman (R-Minn.) and Lisa Murkowski (R-Alaska) would solve the problem cleanly. It would clarify that only associates and supporters of groups certified by the government as terrorist organizations should be denied refugee status and that those forced to aid terrorists are not themselves terrorists. Congress did not mean to create this problem. Fixing it should not be controversial.

[From the Washington Post, Apr. 17, 2006]

FIX THIS LAW

If Congress doesn't quickly fix a major problem it created in the law governing the admission of refugees, tens of thousands of human rights victims will soon begin paying the price. Congress, we assume, never meant to rewrite federal law so that victims of totalitarian regimes and those forced to serve human rights abusers are kept out of the United States. Yet an accumulation of legal changes in recent years, culminating in the Real ID Act last year, has done just that—paralyzing America's traditionally generous refugee admission program. The United States is supposed to admit up to 70,000 refugees this year, though it probably will take around 55,000 under the best of circumstances. Yet human rights advocates estimate that between 10,000 and 20,000 people may be barred because of irrationally broad legal definitions of terrorism, support for terrorism and terrorist groups—definitions that make no distinction between this country's enemies and those it ought to protect.

The law makes ineligible for admission members or supporters of any group that contains ''two or more individuals, whether organized or not, [which] engages in, or has a subgroup which engages in'' activities as broad as using an ''explosive, firearm or other weapon or dangerous device.'' It makes no exception for people compelled to support a group—for example, Colombian peasants forced to aid the leftist rebels of the Revolutionary Armed Forces of Colombia. Nor does

it exempt someone who took up arms—or sheltered or fed someone who did—against the murderous Burmese government.

The result is that people around the world whose struggles America backs find themselves ineligible for refugee status here. The problem is most acute for Colombians and large numbers of people of the Karen and Chin ethnic groups whom the Burmese military junta has brutally repressed. But Liberians, Somalis and Vietnamese Montagnards have also gotten caught up in the problem. Even some Cuban dissidents who once helped anti-Castro forces may be found ineligible. The Bush administration has acknowledged that members of Afghanistan's Northern Alliance would be barred under the law as well; they, after all, fought alongside our troops.

The government has the power to waive the exclusion in some cases, but it hasn't managed to use it yet. Its power is limited, in any event; it can forgive people for their support for terrorism but not for their membership in terrorist groups. Even if it were broader, its categories are all wrong. These people aren't terrorists and shouldn't be labeled as such.

Fixing the law would not be hard. At a minimum, Congress needs to make it clear that not every armed, non-state group is a terrorist organization. Not all such groups attack civilians; some are U.S. allies fighting legitimate military struggles against evil governments. What's more, the law needs to recognize that people forced to aid terrorists are victims of terror, not terrorists themselves. Time is running out. Congress must act.

[From the Los Angeles Times, Mar. 29, 2006]

TERRORIST OR TERRORIZED?

(By George Rupp)

In his second inaugural address, President Bush made a stirring commitment to oppressed people yearning to be free: ''When you stand for your liberty, we will stand with you.''

For half a century, one of the best expressions of that bond has been the federal Refugee Resettlement Program. This State Department-administered program seeks to offer a safe harbor to those fearing persecution by tyrannical governments. But thousands of people whose lives are at risk for standing up for freedom will this year be denied help because of a Kafkaesque interpretation of who is deemed a terrorist.

The laws governing eligibility for refugee status have long denied it to anyone who commits a terrorist act or who provides ''material support'' to terrorists. These laws were strengthened after 9/11. The problem was created by recent legislation that expanded the definition of terrorists. There are real-life consequences from such myopic ''reform.''

In Colombia, for example, the leftist guerrilla group FARC often kidnaps civilians and demands ransom from their relatives. FARC also requires the payment of a ''war tax'' from Colombians in the regions it controls, upon threat of serious harm. Nearly 2,000 Colombians who faced such circumstances as paying a ransom or ''tax''—and who later fled the country and were determined by the United Nations to be refugees—have been denied U.S. resettlement on the basis of the ''material support'' provision.

In Liberia, a female head of a household was referred to the U.S. resettlement program by the Office of the United Nations High Commissioner for Refugees as a person particularly vulnerable to attack. Rebels had come to her home, killed her father and beat and gang-raped her. The rebels held her hostage in her own home and forced her to wash their clothes. The woman escaped after several weeks and made her way to a refugee camp. The Department of Homeland Security has decided that because the rebels lived in her house and she washed their clothes, she had provided ''material support'' to the rebels; the case has been placed on hold.

A Sierra Leonean woman's house was attacked by rebels in 1992. A young family member was killed with machetes, another minor was subjected to burns and the woman and her daughter were raped. The rebels kept the family captive for days in their own home. Homeland Security has placed the case on hold for ''material support'' concerns because the family is deemed to have provided housing to the rebels. Under this interpretation, it does not matter whether the support provided was given willingly or under duress.

Unfortunately, the actions of Homeland Security go far beyond barring the affected refugees from entering the U.S. They become permanently tainted by suspicions of terrorism and find themselves shut out by other nations that resettle refugees. And the governments now providing these people with temporary asylum might even force them back to the nations they fled.

U.S. policy toward authoritarian governments has been turned on its head: The victims of terrorism are being denied protection and sanctuary. The secretary of Homeland Security has the authority to determine that the ''material support'' provision shall not apply to certain individuals or groups. Yet the department has failed to issue guidance, causing mass confusion and holding up decisions on refugee cases. Neither the administration nor Congress seems able to fix the problem for fear of being labeled weak on terrorism.

Yes, we must remain vigilant against terrorists. But in order to implement Bush's commitment to stand with those seeking liberty at great personal risk. Homeland Security Secretary Michael Chertoff or Congress must rectify the injustice that treats victims of coercion as supporters of terrorism.

Mr. LEAHY. Mr. President, I ask unanimous consent to withhold the remainder of our time.

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

Who yields time?

The Senator from Illinois.

Who yields time?

Mr. LEAHY. Mr. President, how much time remains to this side, to the Senator from Vermont?

The PRESIDING OFFICER. Four minutes 4 seconds.

Mr. LEAHY. Mr. President, I ask unanimous consent to yield to the Senator from Illinois, with the understanding that 1 minute be retained to the Senator from Vermont.

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

Mr. OBAMA. Mr. President, if it would be acceptable, I ask unanimous consent that I have a total of 5 minutes and that the 1 minute also be retained by the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object, if that request is amended to the extent that the same additional amount of time will be given to the Republican side, there will be no objection.

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

Mr. OBAMA. Thank you very much.

Mr. President, I come to the floor to briefly discuss amendment No. 4177. It pertains to title III and I believe will be called in short order. It is a bipartisan effort to create the kind of employment verification system that will ensure that American workers are protected. It is an amendment that I worked on with Senator GRASSLEY, as well as Senator KENNEDY. And as I indicated, it will be offered shortly.

One of the central components of immigration reform is enforcement. This bill contains a number of important provisions to beef up border security. But that is not enough. Real enforcement also means drying up the pool of jobs that encourages illegal immigration. That can only happen if employers do not hire illegal workers. Unfortunately, our current employer enforcement system does little to nothing to deter illegal immigrants from finding work.

Just a few statistics: Overall, the number of workplace arrests of illegal immigrants fell from 17,552 in 1997 to 451 in 2002, even as illegal immigration grew during that time. Moreover, between 25 percent to 40 percent of all undocumented immigrants are people who have overstayed their visas. They are not folks who will be stopped by a wall. Rather, the only way to effectively deter overstays is to reduce their access to employment.

When Congress last passed an immigration bill in 1986, we did not provide any meaningful way for employers to check legal eligibility to work. Currently, employees can prove their legal status by showing a variety of documents, and employers are supposed to record their inspection of such documents by filling out an I–9 form for each employee. As a consequence, the market for fraudulent documents—fake Social Security cards, driver's licenses, birth certificates—has exploded.

Unfortunately, with more than 100 million employees in more than 6 million workplaces, and only about 788 Wage and Hour investigators, employer sanctions have basically become a nuisance requirement to maintain records, not a serious risk of penalty. As a result, the number of ''intent to fine'' notices issued to employers for hiring undocumented workers dropped from 417 in 1999 to just 3 in 2004. I want to repeat that. There were three employers in the entire United States in 2004 who were fined for hiring undocumented workers.

Now, understandably, employers cannot always detect forged documents. And employers who reject workers with questionable documents risk employment discrimination suits. That is why we need a better alternative. We need an electronic verification system that can effectively detect the use of fraudulent documents, significantly reduce the employment of illegal workers, and give employers the confidence that their workforce is legal.

When Congress first considered comprehensive immigration reform in April, the legislation on the floor addressed this problem by creating a national employment eligibility verification system. Senators GRASSLEY, KYL, and I all thought this was a good idea in theory, but we had concerns with the design of the system.

Senators GRASSLEY and KYL proposed that a verification system be implemented nationally within 18 months. Senators KENNEDY and I proposed that the system be phased in over 5 years but that it also included additional accuracy and privacy standards, as well as strict prohibitions on the use of the system to discriminate against legal workers.

Over the past few weeks, we have been in discussions to try to negotiate a compromise. I am pleased that we have reached an agreement by which all employers would have to participate by 18 months after the Department of Homeland Security receives the appropriations necessary to receive the funds needed to fund the system. All new employees hired would have to be run through a system. A series of privacy and accuracy standards would protect citizens and legal immigrants from errors in the system and breaches of private information. To make sure that employers take the system seriously, we strengthen civil penalties for employers who hire unauthorized workers, and we establish criminal penalties for repeat violators.

I think we worked in a constructive, bipartisan manner to design an employment verification system that is fair to legal workers and tough on illegal workers. I think it is a good amendment. I urge my colleagues to support it.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, I yield 5 minutes to Senator KYL.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Arizona.

Mr. KYL. Mr. President, I rise in strong opposition to the Leahy amendment and just warn my colleagues that this is not a benign amendment but is one of the most serious amendments that has been proposed to this legislation and, if it is adopted, literally would allow us to take somebody from the Taliban into the United States.

There is already a law that provides full waiver authority to the Secretary of State to allow entry into this country for someone who happened to be caught up in terrorist activity, albeit innocently—the villager who is forced to give rice and water to a Taliban member. There is nothing that prevents the Secretary of State from allowing that person to come into this country.

This is literally a solution looking for a problem. And it is pernicious because it literally allows entry into this country of members of the Taliban because the Taliban is not a designated terrorist organization or a person who assists an organization which threatens other countries and peoples but not the United States.

Under the specific language of the amendment, there are three specific exceptions. One is the Secretary of State, in consultation with or upon the request of the Attorney General or Secretary of Homeland Security, has determined that these activities threaten the security of United States nationals or the national security of the United States. So you can threaten the security of Israel or Sri Lanka or India or some other country and support that terrorist organization but be permitted to come into the United States. What sense does that make?

There is no problem here that cannot be dealt with under existing law. Show me where in existing law the Secretary of State does not have complete and unfettered authority to waive the provisions of the law. This is a law about terrorists, people who provide material support to terrorist organizations not being allowed into the United States. I know the good intentions of the sponsors of the amendment, but the fact is, some villager who is forced to provide aid and comfort to a terrorist organization can get entry into the United States without this language which opens a huge loophole. Never in the past have we said it is OK to let a member of the Taliban come in simply because the Taliban is not a designated organization.

You might ask: Why, with all of the other terrorist organizations, isn't the Taliban a designated organization? Of the 42 groups in the world that have been certified by the Secretary of State, it is not. The reason is because it is a serious matter to designate someone. For example, once they are designated, then giving anything of value to that group constitutes a Federal felony punishable by 15 years in prison. And as a result, the failure to designate the Taliban would be the type of group that if you give material support or aid to would permit you entry into the United States. Because the Department of State is conservative with these certifications and they have substantial collateral consequences, not every group that would fall into the category of a terrorist group is going to be designated, and the Taliban is a perfect example.

I urge my colleagues, simply because your heart yearns to help someone who might have been forced under a concept of duress to support a terrorist organization or an organization like the Taliban that is not designated as a terrorist organization, don't adopt this amendment under the mistaken view that there is no other remedy. There is a remedy. Clearly, under circumstances of duress, that remedy can be invoked.

I urge my colleagues to reject this very dangerous amendment.

The PRESIDING OFFICER (Mr. MARTINEZ). Who yields time?

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 7 minutes 52 seconds.

Mr. SPECTER. I yield myself 4 minutes.

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

Mr. SPECTER. Mr. President, this is the third version of this amendment that has been circulated on this bill. It may well be that an earlier version of this basic idea would merit support from Senators, but in its present form, it is not worthy of support because it redefines what is material support. What constitutes material support is a complex issue. Before the Senate passes on it, there ought to be an analysis and hearings. The Judiciary Committee has had a whole series of hearings but none on this subject.

The amendment further narrows the definition of what constitutes a terrorist organization. There, again, it is a complicated subject. It ought to be analyzed and considered at a hearing so that Senators have a record basis for making a determination as to whether it ought to be adopted. These are hardly the kinds of complex issues which can be decided without a record, without a hearing, and without analysis.

The Senator from Arizona has cited the Taliban, but there are many other citations that could be given. Kurdish terrorists in Turkey might be admitted under this amendment because they pose no threat to the United States of America. Basque terrorists in Spain might be admitted because they pose no threat to the United States of America. Hamas, which poses a deadly threat to Israel, might be admitted to the United States because they arguably pose no threat on the face of it to our national security. So we have an amendment which is very broad and changes really fundamental definitions, in redefining material support. In the collateral field of what is a material witness, the definition takes enormous analysis, which I have seen in the criminal law. And to narrow the definition of what is a terrorist organization, so that organizations which would be considered terrorist without this amendment but not terrorist under this amendment, is just not the sort of thing that ought to be done by the U.S. Senate without a full hearing, without analysis and a record basis for making such a broad, important distinction.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. How much time remains.

The PRESIDING OFFICER. The Senator has 1 minute 12 seconds.

Mr. LEAHY. Mr. President, no one has any intention or desire to permit terrorists into this country. It is setting up a straw man to say something would let the Taliban in here. This amendment is not about the Taliban, incidentally. Our government supported them very strongly through our

CIA and others, as the press has reported, during the Soviet Union days. But this amendment is not about terrorists. It is about genuine refugees who have been victims of the very brutality that is now preventing them from receiving asylum in this country.

I will give a practical example. We trained and supported the Vietnamese Montagnards. We trained and equipped them. We asked them to fight with us. Now we deny them asylum because they risked their lives to do what we asked them to do. The Burmese, who are fighting a brutal regime, our government supports them. Many are refugees. But even though they have not been designated a foreign terrorist organization and our government supports them, they are inadmissible. There are cases of women and children threatened with torture and death and forced to provide food, shelter or become the sex slaves of members of terrorist groups. Our law bars them from asylum.

We are giving them discretion. I cannot believe that President Bush or Secretary Rice is going to misuse this discretion to allow in terrorists.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. How much time do I have?

The PRESIDING OFFICER. The Senator has 4 minutes and 52 seconds.

Mr. SPECTER. Mr. President, I agree with Senator LEAHY on one important point. That is, he does not intend to offer an amendment to let terrorists into the United States. But his amendment does. Senator LEAHY's intentions are pure because I know Senator LEAHY. But the most revealing part about Senator LEAHY's last rebuttal was that he didn't deny my basic contention that it redefines what is material support, what constitutes material support, or the complexity of that issue.

Senator LEAHY does not deny that it narrows the definition of what constitutes a terrorist organization, nor does he deny that on the face of his language, Kurdish terrorists who are terrorizing Turkey might come into the United States or Basque terrorists who are terrorizing Spain might come into the United States or the example of Hamas terrorizing Israel might come into the United States. The fact is that the existing law is adequate to keep out such individuals, and supporters of this amendment have not met the burden of showing that the law should be changed in the way they have proposed.

Secretary Rice recently exercised the waiver to pave the way for the resettlement of 9,300 ethnic Karen refugees housed in a camp in Thailand who backed the Karen National Union. So we have, under existing law, methods for recognizing that some individuals may be acting under duress, that they may not be terrorists. That is the kind of an analysis which can best be made by the Secretary of State, as opposed to the very different concept of litigating such matters. And when you are dealing on the floor of the Senate with redefining material support, redefining what is a terrorist organization, that simply is not the way to legislate.

I have great respect for Senator LEAHY. He and I have worked together to craft this immigration reform bill. He and I have structured the hearing list and could have had a hearing on this, had it been deemed important and had it been deemed necessary to correct a major problem, but it wasn't because existing law is satisfactory to address the problem of individuals providing material support under duress. It is difficult for me to oppose Senator LEAHY, the ranking member of the committee, with whom I have worked so closely. But I do not want to sow confusion in this very important matter on the floor of the Senate by redefining very basic concepts in a few minutes in a way which is not intelligible.

How much time remains?

The PRESIDING OFFICER. The Senator has 1 minute 58 seconds.

Mr. SPECTER. I yield 1 minute to Senator KYL.

Mr. KYL. I am not sure if the group that the chairman of the Judiciary Committee referred to is the same one I will refer to here, but to illustrate the fact that the Secretary of State has unfettered authority to grant these waivers and has in fact done so in the past, actually there was a large group of refugees from Burma who were recently permitted asylum in the United States, even though they had provided, allegedly, material support to terrorism. This is an authority which can be exercised, which has been exercised.

Secondly, I urge my colleagues who are in support of this underlying legislation on immigration reform, it is a controversial enough piece of legislation for the Senate to consider. Amending it in the way that the chairman has described, without the necessary careful consideration of what the ramifications would be if this language is too broad, I urge that this be done in another way and another time rather than in this bill.

Mr. SPECTER. Mr. President, in my capacity as manager of the bill, it is my intention to move next to the Grassley amendment under title III. We will stack votes later because we have a whole series of amendments. I think our time can be most effectively used. So at this time I move to table the Leahy amendment and ask for the yeas and nays.

I withdraw the motion to table.

Mr. LEAHY. I was going to say, if the chairman will yield, that if we move to table now, we would have to vote now. I would have no objection if the chairman would give me some idea when those votes might be.

Mr. SPECTER. To respond to my colleague, I would say sometime around the dinner hour when we see how the debate goes. We have a great many amendments, and we know when we start to vote it takes much longer than the designated time. I would say somewhere in the 6 o'clock range.

Mr. LEAHY. Mr. President, I would note to the distinguished chairman, one of the reasons I agreed to this schedule, to come here and do this debate now, was that there would be a vote now. I am going to be off the Hill for a period of time around dinnertime, and I would like to be here to vote on my own amendment. Could we agree on a time certain, like 5:30, for the tabling motion on the Leahy-Coleman-Sununu amendment?

Mr. SPECTER. Mr. President, I would be prepared to have the vote occur as soon after 5:30 as we finish amendments. I think we may be able to have two more amendments in the next hour and a half. I think we can accommodate the request of the Senator from Vermont.

Mr. LEAHY. Mr. President, I won't make a unanimous consent request. I will rely on the expertise and long experience of the chairman of the committee to get that vote in before 5:30.

Mr. SPECTER. Mr. President, reserving the right to object, I must.

Mr. LEAHY. I am not making a unanimous consent request. I am saying I am relying on the representations of the distinguished senior Senator from Pennsylvania.

Mr. SPECTER. May I say, I think that is a wise reliance.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I believe the matter that is before the Senate now is the title III provisions. Under our agreement, I think I had 5 minutes to speak, am I correct?

The PRESIDING OFFICER. That amendment has not yet been formally called up.

The PRESIDING OFFICER. Once the amendment is pending, the Senator has 5 minutes.

Mr. KENNEDY. I thank the Chair.

AMENDMENT NO. 4177

Mr. GRASSLEY. The amendment as to title III has been filed. I am ready to take that up.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. GRASSLEY) proposes an amendment numbered 4177.

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

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Senators OBAMA, BAUCUS, and KENNEDY be added as cosponsors.

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

Mr. GRASSLEY. Mr. President, this amendment represents a bipartisan effort to create an effective, workable

employment verification system. Without a workable verification system, there is no point in having a bill dealing with immigration.

The amendment balances the needs of workers, employers, and immigration enforcement. The amendment would replace the current paper I–9 process with a new electronic verification system. This new system would allow employers to verify the legal status of their workers within 3 days of being hired. If the system cannot verify a worker's employment authorization, the employer would be notified and the worker must be discharged. If the system fails to operate as intended and a legitimate worker is erroneously discharged, the worker could be compensated by the Government for lost wages.

I understand that some of my colleagues believe that further changes are needed with respect to this provision, which would allow a worker who loses his job through no fault of his own to recover lost wages. I will continue to work with them, as chairman of the Senate Finance Committee with jurisdiction over the provisions in this amendment, on this issue and the questions they have in subsequent conference with the House of Representatives. I believe this amendment must move forward, so I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself 4½ minutes.

Mr. President, as the Senator pointed out, this really represents a very strong, bipartisan effort to make sure we get a key feature of this immigration reform correct. I wish to express my personal appreciation to those who have worked so hard and so well, including Senators GRASSLEY, KYL, OBAMA, and BAUCUS and their staffs, who have devoted an enormous amount of time to this issue. It is incredibly important. We are talking about worksite enforcement, which we all agree is a core goal and challenge. If that doesn't work, this legislation, to a great extent, will be very ineffective. But what we have worked out—the inclusion we have in this amendment—I think effectively guarantees that it will work out.

The core goal is to establish the worksite enforcement system as quickly as possible, which will succeed in preventing undocumented immigrants from obtaining employment. I believe everybody agrees that the heart of the system must be the new electronic verification system that allows employers to compare a worker's name and identification data to a central database that confirms or disconfirms the worker's eligibility to work in the United States. Yet the Basic Pilot upon which this electronic system will be based did not work well. It has error rates of 10 to 15 percent. In a national system, that would mean millions of Americans would be told every year they do not have the right to work in this country. The GAO has told us that the error rate could increase as the system is expanded to a national level.

So the core challenge is how to establish a universal verification system as quickly as possible, while minimizing the risk that we end up throwing millions of American workers out of work or putting thousands of employers out of business. The stakes are high. While all our other decisions have profound consequences for millions of immigrants, what we do in title III will directly affect also the working conditions for Americans, so it is enormously important to get it correct.

I am pleased to say that our negotiations with all of our colleagues here produced an agreement we can be proud of. We agreed to an ambitious schedule for implementation. Every employer in the country will be required to participate in the system beginning 18 months after funding for the system is appropriated. At the same time, we agreed on a number of due process and procedural steps to minimize the risk that U.S. citizens and legal immigrants are wrongly harmed by the system—problems which workers and employers are equally eager to avoid.

Mr. President, we may have differences about this legislation and about different provisions, but I think everybody agrees that if it goes into effect, we want to make sure it is the best possible system with the best possible protections. I think this amendment which has been worked out with the leadership of my colleague and friends, Senators GRASSLEY, BAUCUS, KYL, and OBAMA, is the best we could possibly recommend. We urge the Senate to accept it.

I will withhold whatever time I have remaining.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, it is my understanding that I have 20 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. CORNYN. Mr. President, I heard the distinguished Senator from Massachusetts and the distinguished chairman of the Finance Committee, Senator GRASSLEY, talk about this amendment as if this were an agreed-upon amendment. I understand there has been a lot of work put into this amendment. I rise to voice objections to the amendment for a number of reasons I would like to discuss.

This is critical. I agree with Senators GRASSLEY and KENNEDY that this is the linchpin of this bill. If we don't get this right, then we might as well pitch it in because the fact is that employment and the prospects for employment are the magnets that attract illegal immigrants into the country or people who come legally and overstay in violation of our immigration laws.

I think it is important that the very Cabinet member—Secretary Chertoff—who is going to be responsible for enforcing this immigration reform has called this amendment a poison pill. He expressed concerns about the fact that, as currently written—and I understand it is one thing to pass a piece of legislation and expect to improve it in the conference committee, but I think it is absolutely critical that our colleagues understand what it is they are being asked to vote on. The No. 1 concern I have is that it would create a carve-out, until such time as whatever process is developed would produce a rate of 99-percent accuracy, in terms of confirming eligibility of prospective employees to work legally in the United States. A nonanswer would be essentially treated as an approval, and that individual would be then authorized to work permanently in the United States.

Once we pass this legislation, if it is passed, and it goes to conference and the differences are worked out and it is signed by the President, we all know this is merely an authorization. This is not an appropriation. In other words, the money to pay for this, to make it happen, is a matter of the appropriations process. That is not what we are doing here. Once the money is appropriated, then we are going to have to see the Department of Homeland Security issue a request for a proposal and ask contractors to bid on creating the database and the system whereby we can verify eligibility of prospective employees. So what we are talking about is a system that is going to take months, if not years, to implement. But even after it is implemented, until such time as it has a 99-percent accuracy rate, essentially what we are saying is the same old broken illegal immigration system of hiring people who are not authorized to work in the United States is OK.

The second problem I point out with this amendment is it creates liability on the part of the Federal Government. If, for example, someone submits their credentials and they are refused a job because they are not qualified to work in the United States, what this does is create a litigation system that will prove a disincentive for employers and the Department of Homeland Security to actually even check someone's qualifications as to whether they can work legally in the United States. This was the issue the Secretary of the Department of Homeland Security, Mr. Chertoff, took great issue with. He says, as a former judge, you are going to have determinations made, lawsuits filed, and then you are going to have appeals, and perhaps these appeals will take years to finally resolve, and the costs of hiring lawyers and the costs to the Government are going to stack up.

What is the easiest way for the Government and that individual at the Department of Homeland Security to avoid incurring those additional costs? It is going to be to give the prospective

employee a pass and say: OK, you are fine. It proves a powerful disincentive for checking out the eligibility of that prospective employee.

Finally, this system would apply to future employees only. This amendment would limit the period of time in which employers could submit the credentials of this prospective employee to only 3 days. If, for example, they overlooked the matter and didn't do it for 4 days, they would be prohibited for all time from checking whether this individual could legally work in the United States.

So I ask, why would we create a system that is designed to fail? That is what this amendment, unfortunately, would do, notwithstanding the hard work that has been put into it. I believe the placeholder in title III is vastly superior to this so-called agreement, which is obviously not agreed to—certainly not by the Cabinet member who is responsible for the Department of Homeland Security and certainly not by this Senator and others who have had a chance to look at this.

Each day, approximately 1,300 migrant workers enter the United States to work illegally. The vast majority come here not to commit crimes or cause harm but to work. They are looking only to provide for their families, and we certainly all understand that. But they pay smugglers thousands of dollars and risk their lives crossing the border. They take this risk because they know that once they get into the United States, it won't be difficult to find employers willing to hire them in this black market of human labor. Until the Federal Government removes the magnet of illegal employment, it will not regain control over our broken immigration system.

Restricting employment of undocumented workers as a way to reduce illegal immigration is not a new concept. In 1981, the bipartisan Select Commission on Immigration and Refugee Policy recommended legislation making it illegal to hire undocumented workers. In 1997, the bipartisan U.S. Commission on Immigration Reform stated that eliminating the employment magnet is the linchpin to a comprehensive strategy to deter unlawful immigration. The U.S. Commission on Immigration Reform went on to conclude that the most promising option for verifying work authorization is a computerized registry based on the Social Security number. Yet, 25 years later, after 25 years of consensus, current employment verification laws are unworkable and unenforceable.

Today the Federal law only requires that employers confirm that employees produced paper documents. There is no general requirement that employers ensure that the paper documents are, indeed, reliable or otherwise take steps to combat fraud.

An employer—and this is the problem with the law as it currently stands, not necessarily with employers who are not FBI agents and who are not asking to conduct independent investigations or somehow a forensic examination of the authenticity of these documents, but under the law today an employer must review some combination of more than 20 different documents to determine whether a new worker is legal.

In 1996, Congress called for reduction in the number of documents, but 10 years later, the Government has yet to implement those regulations. As a result, document fraud and identity theft makes it easy for unscrupulous employers to look the other way and hire undocumented workers. Yet increasing penalties alone will not work because ambiguities in the law prevent employers from knowing what their obligations are with respect to their workforce.

Until there is a way for employers to truly know whether their workforce is legal, it will be difficult for them to comply and difficult for the Government to prosecute those who fail to comply. The result is the Government has all but given up enforcing laws governing the work site. The Government has all but given up.

In 2003, the Department of Homeland Security dedicated only 90 full-time employees to work site enforcement—90, for a country of almost 300 million people.

In 2004, the Department of Homeland Security issued only three—yes, three—notices of intent to fine employers for violating the work site enforcement laws.

In 1992, by contrast, the Department issued more than 1,400 notices of intent to fine. So we went from 1,400 notices of intent to fine for cheating for hiring workers who could not legally work in 1992 to 3 in 2004. So over the past 12 years, those enforcement efforts have declined at a rate of 99.8 percent.

In the absence of any enforcement whatsoever, many employers flagrantly violate our laws. Just a few weeks ago, the Department of Homeland Security arrested several managers at the largest pallet services company in the United States. The Government has charged those managers with conspiring to transport, harbor, and induce illegal aliens to reside in the United States. On the day of their arrest, the Department of Homeland Security also took into custody 1,187 undocumented workers.

According to the records, more than 50 percent of the employee records had faulty Social Security numbers, and the Social Security Administration had told the company more than a dozen times that they had more than 1,000 employees without accurate Social Security numbers.

I wish I could say the allegations against this company are an isolated event, but they are not. The truth is, many employers make no effort whatsoever to comply with the law.

A recent Government Accountability Office report reviewed employer tax filings for the years 1985 through 2000 and found that one employer submitted a single Social Security number—a single Social Security number—for more than 2,580 different employees in a single tax year. Overall, 8,900 employers—just .2 percent of all employers—accounted for more than 30 percent of the total number of incorrect Social Security number submissions.

Get this, Mr. President: Of the 84.6 million records placed in the Social Security earnings suspense fund for tax years 1985 to 2000, about 9 million had Social Security numbers that consisted of nothing but zeros. Obviously, the employer knew they were submitting a bogus number, and 9 million submitted nothing but zeros. But in the absence of any enforcement of the law, any incentive to clean up those numbers, any incentive for employers to comply with the law, any infrastructure that allows people to check to determine whether this is a person who can legally work, this is the kind of fraud that occurs.

For 3.5 million records, employers used the same Social Security number to report earnings for multiple workers in a single tax year.

The truth is, the Government is decades behind the private sector when it comes to document integrity. Maybe what we ought to do is issue a contract and outsource this to MasterCharge and Visa. Maybe they can do a better job.

The fact is, this is embarrassing and intolerable and inexcusable conduct on the part of the Federal Government. But there is also reason for hope. There is a model that is already in place. Since 1996, the Federal Government has run an electronic verification system called Basic Pilot. Currently, about 6,000 employers participate in this system. Members of Congress, for example, are required to use this electronic verification system. And it works. That system should be expanded, and that system should be enforced.

We simply must require electronic verification by all employers, not just the ones covered by the current law or those who decide to do it on a voluntary basis. Electronic verification has been tested for more than 10 years, and an independent review of the program found that 96 percent of participating employers believed that the electronic verification system is an effective tool for employment verification.

Reports have also shown that the Department of Homeland Security and the Social Security Administration have made considerable progress in improving the accuracy of data. According to a 2004 report, there is a 99.8-percent confirmation rate for U.S.-born employees.

I can assure you, Mr. President, and my colleagues that without work site enforcement, we will be back here again in 10 years trying to figure out what to do with the next wave of illegal immigrants. We cannot afford piecemeal enforcement. We have to secure our border, we have to work with

local and State law enforcement agencies to deal with enforcement in the interior, and we have to have an ability to verify on an accurate and expedited basis whether someone can work here legally in the United States. We don't yet have that. This bill does not yet provide it.

My hope is that we will get serious, finally, once and for all, in holding employers accountable, those who cheat and who provide that magnet that attracts so many people to come into this country illegally.

Mr. President, I reserve the remainder of my time. May I inquire how much time is left?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. CORNYN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I don't have time, so I ask unanimous consent for 2 minutes to address this issue, particularly some of the issues Senator CORNYN made.

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

Mr. GRASSLEY. Mr. President, Senator CORNYN has been working very faithfully with us on this issue, so I don't take exception to anything he said except to clarify from my position what I want to accomplish.

First, I don't ever pretend to make perfect legislation. The English language doesn't allow that, even if that is the good intent. We have had several variations of the amendment that is before us and on which we will be voting. I have always made an attempt to do things through my committee in a bipartisan way. This is a bipartisan amendment. If there is an issue with this amendment that it may not be the linchpin for the verification we want, we are going to have an opportunity in conference to fine-tune this amendment. I want the Senator from Texas to know that I am open to that, and I hope—I haven't talked to my cosponsors, but I hope the cosponsors are also open to it because everybody indicated their intent to make sure the verification system works.

With that in mind, I hope this amendment will be adopted so we can move this process forward, and anything that needs to be done with this amendment, including all of the objections that have been raised, will be taken care of in conference.

I think we have a good compromise, so I am not starting out with the idea that we have to correct it, but we are going to try to address all these concerns because this is a very key part of any immigration bill that we pass.

I yield the floor.

Mr. CORNYN. Mr. President, will the Senator from Iowa, before he yields the floor, yield for a question?

Mr. GRASSLEY. If I have time, I will.

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

Mr. CORNYN. I will give him a minute of my time by unanimous consent, if that will help.

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

Mr. GRASSLEY. Mr. President, I yield.

Mr. CORNYN. Mr. President, I guess the question I have for the Senator is, if this amendment fails, there is a provision in the underlying bill that would go to the conference committee; isn't that correct?

Mr. GRASSLEY. That is correct.

Mr. CORNYN. I understand the obligation of the Senator from Iowa, as chairman of the Finance Committee, to try to work on a bipartisan basis, and I know he is committed to do that, and that is what this amendment represents. But I want to make clear that in the absence of this amendment being adopted, we still have a title III provision that can go to conference committee and be the subject of further negotiations.

Mr. GRASSLEY. Yes, if the Senator will allow me to continue to use some of his time, I hope we would agree on this at least: If somebody is not employed because of a mistake that the Federal Government made, that we have a responsibility to make sure that person is made whole; that nobody should lose a job or not get a job because of a mistake made by some Federal bureaucrat. With that in mind, we ought to be able to move forward.

I think I heard the Senator from Texas say that is his motivation, that he would want to make sure nobody was harmed economically, not getting a job because of a mistake that the Federal Government made.

Mr. CORNYN. Mr. President, I express my appreciation to Senator GRASSLEY for his good work in this area. I do agree with him that we need to make sure, if there is a false positive—in other words, if someone should not be excluded from employment but the system says they should be and they are—that they ought to have some recourse.

My hope is that we would create a way for that record, if it is erroneous, to be corrected without everybody hiring a lawyer and going to their respective corners and then meeting in a courtroom and litigating the issues that could perhaps be worked out without that kind of experience.

I also want to make sure, as I know the Secretary of the Department of Homeland Security told both Senator GRASSLEY and myself, that we don't unintentionally create some disincentive for people to hold employers accountable for hiring people who aren't qualified to work. I think we can certainly work to that end to try to balance it so it is not a disincentive to work site verification and sanctions against employers who cheat, but at the same time it is also fair to the employees.

The other problem is, this amendment and what we have done so far on this bill does not require the issuance of a secure Social Security card or employment authorization document. We had numerous witnesses testifying to the need for such a secure card. I believe employers would welcome the ease of being able to rely on a single document that could be literally swiped through a card reader, such as a debit card or a credit card at a convenience store.

This bill, as amended by this amendment, would retain the complicated document scheme that has led to widespread document fraud and identity theft. And as I said, the Secretary of the Department of Homeland Security has stated his objections to this amendment. I realize he is not a Senator; he doesn't get to vote. But I do think we ought to consult with and respect the views of those who are going to have the responsibility to actually make this system work.

It concerns me that 20 years after the 1986 amnesty and the promise of work site enforcement that the agency responsible for enforcing those laws is telling Congress the new system would not work. My hope is that we would find a way to make it work. There may be some—I am not one of them—who don't want there to be enforcement, who don't want the system to work.

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

Mr. CORNYN. My hope is that we would all work together in good faith to make that happen. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, we are looking for stacked votes at 5:30, as mentioned during the discussion with Senator LEAHY. If we cannot get another debate completed on another amendment before 5:30, we will only have the two votes. But if it is possible to have Senator LIEBERMAN come to the floor or Senator DURBIN, it would be appreciated by the managers to try to move the bill along. We now have 5 minutes for Senator KENNEDY, 5 minutes for Senator OBAMA, and 5 minutes for Senator 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. SPECTER. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, I have just conferred with the distinguished Senator from Massachusetts, and we are going to yield all time back on—we had time listed, as I announced a little while ago, for 5 minutes for Senator OBAMA and 5 minutes for Senator KYL, but Senator OBAMA has spoken and Senator KYL spoke on the preceding amendment. Let's yield all time back.

Mr. KENNEDY. All time back.

Mr. SPECTER. And now we will proceed to Senator KENNEDY's amendment No. 4106.

I ask unanimous consent that we consider the Kennedy amendment

under a 30-minute time limit, equally divided, with no second-degree amendments.

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

AMENDMENT NO. 4106

(Purpose: To enhance the enforcement of labor protections for the United States workers and guest workers)

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Is the Senator offering an amendment?

Mr. KENNEDY. Yes. I call up amendment No. 4106 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 4106.

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

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

(The amendment is as printed in the RECORD of Monday, May 22, 2006, under ''Text of Amendments.'')

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

Immigrant workers are among the most vulnerable in our Nation. While performing society's most difficult and dangerous work, they face abuse by employers, the denial of basic rights, and economic exploitation. In negotiating the McCain-Kennedy bill, we took great care to include protections that will halt these alarming trends and ensure fair wages and working conditions for guest workers. We also took great care to protect American workers and ensure that the guest worker program does not diminish American labor standards.

However, history shows us that it is not enough to pass good labor laws if we do not also make a strong commitment to enforcing these laws. Beyond anything we have provided in the bill, the most important step we could take to help American workers and immigrant workers alike would be to improve our enforcement of the critical labor protections that have been a part of U.S. law for decades.

We have laws on the books that protect the safety of American workers. Yet each year in the United States over 5,700 workers are killed on the job, and 4.3 million others have become ill or injured. I must say that prior to the time we passed the OSHA law, that has more than doubled. We reduced that by more than 50 percent in recent years because of that legislation. That is 16 deaths and 12,000 injuries and illnesses each day, today.

We have laws on the books that prohibit child labor. Yet there are about 148,000 illegally employed children in the United States today. We have laws on the books that give workers a voice on the job to protect their fundamental right to organize and join a union. Yet each year in the United States more than 20,000 workers are illegally discriminated against for exercising these rights in the workplace.

These appalling statistics persist because our efforts to seek out and punish employers who violate the law are laughably inadequate. We find and address only a minuscule fraction of the number of violations that occur each year. Even when we do try to enforce the law, the penalties for breaking it are so low that employers treat them as a minor cost of doing business. The average fine for a serious OSHA violation last year was $883. The average fine for a child labor violation was $718. And violation of workers' rights to organize are remedied with back pay awards that come years too late. So such minor sanctions provide no incentives for employers to comply with the law.

We need to provide real penalties, not slaps on the wrist, for the employers that violate the Fair Labor Standards Act, the Occupational Safety and Health Act, and the National Labor Relations Act.

The Kennedy amendment bolsters our enforcement of these important laws. It updates the penalties under the Fair Labor Standards Act by increasing the back pay remedy for willful violations and increasing the maximum penalty for violations of the minimum wage, overtime, and child labor protections. It would also update the OSHA civil penalties which have been unchanged since 1990. It would provide a maximum penalty of $50,000 when a worker's death is caused by willful violations of the law, and make it a felony when an employer kills or injures an employee through such willful violations.

But these increased fines and penalties, while important, are not enough. We also need to take stronger steps to ensure that current laws are being enforced and violations are being detected and remedied.

Vigilant enforcement is particularly important in occupations with high percentages of immigrants who often see large numbers of violations of health and safety and wage and hour laws. It can be difficult to enforce the law in such occupations where workers often don't know their rights or are afraid to report violations.

That is why we need targeted enforcement efforts to ensure that guest workers' rights are protected and our high American labor standards are being maintained for all workers in this country. The Kennedy amendment will serve this important goal by requiring that 25 percent of all fees collected under the guest worker program be dedicated to enhance enforcement of the Fair Labor Standards Act, OSHA, and the labor protections of the immigration bill in industries that have the highest percentage of violations and the highest percentage of guest workers.

Another key step in protecting both American and immigrant workers is to end the economic incentives that employers have under the current law to abuse undocumented workers. The Supreme Court's decision in the Hoffman Plastic case was a major setback for American workers. By ruling that undocumented workers are not entitled to back pay when their rights are violated, the Supreme Court left millions of workers without meaningful recourse when they are fired for trying to organize a union.

Unfortunately, this terrible decision has been applied to other labor laws as well, making undocumented workers even more vulnerable to exploitation because their employers can violate their rights with relative impunity.

This decision also hurts American workers in several ways. It encourages employers to hire undocumented workers by making them less expensive and easier to intimidate. Businesses take advantage of the situation by hiring undocumented workers and cutting legal corners. Under the Hoffman case, unscrupulous employers are rewarded for this unlawful behavior.

Congress should not allow employers to use immigration laws as a shield for unlawful and abusive behavior. All workers should be entitled to the protections of our labor laws regardless of their immigration status.

Finally, our workplace standards will not be effective until workers have the security, knowledge, and means to enforce them. The best way to provide workers with these resources is to give them the ability to freely and fairly choose a union. The right to organize and join a union is a fundamental right recognized in the United Nations Declaration of Human Rights. Yet the United States violates that fundamental principle every day because our laws don't adequately protect the right to organize. When workers attempt to form a union, employers intimidate them, harass them, and retaliate against them. Employees who stand up for their rights are fired.

The Kennedy amendment provides stronger protections that allow workers to organize freely and require employers to negotiate fairly. It allows workers to get court orders to stop employers from firing or threatening union advocates and strengthens the penalties in current law for mistreatment of workers who support a union.

It is long past time to give workers these basic protections. Congress passed laws such as the Fair Labor Standards Act, the National Labor Relations Act, and the Occupational Safety and Health Act in order to establish the minimum standards necessary to preserve basic human rights. But we must provide meaningful enforcement if we want these to be meaningful laws. The Kennedy amendment ensures vigilant enforcement of these critical labor protections to preserve the health, the safety, and the well-being of all Americans. I hope it will be included in the underlying legislation.

Mr. President, I yield the floor.

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

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

Mr. KENNEDY. Mr. President, I have charts which are fairly indicative of the points I made earlier.

Penalties for violating workers' rights are shamefully low. On the first one, $718 is the average fine for child labor violations, and 148,000 children are being exploited in the labor force. There is very little enforcement in the first place against these violations. And even when there is one, the average fine is $718. When you have a serious OSHA violation, the average fine is $883.

If you look at the far side, it is a $1,000 minimum fine for bribery at a sporting event.

Here we are exploiting children, here we have the possibility of serious injury to workers, and here we have the minimum fine for bribery at a sporting event being higher.

It is illustrative of the inadequacy of current enforcement. More and more immigrant workers are dying on the job.

This is a very interesting chart. It shows the total number of immigrant workers who are dying on the job. These are significant numbers. You see they are increasing every year. It is explainable. This illustrates 2002, 2003, and 2004 for Hispanic fatalities and the national fatality rate. We see what happens. Here are the Hispanic fatalities.

Obviously, in the workplace the Spanish are being assigned to more dangerous jobs. There is not enforcement to make sure they are being protected on the jobs as they should be. As a result, they are paying with their lives, in many of these instances, and the numbers are continuing to go up.

We need strong enforcement. That is what our amendment does.

This chart shows that Fair Labor Standards Act enforcement has declined while the workforce has grown. This is the increase in the United States covered by the Fair Labor Standards Act. It has increased. This is from 1975 to 2004—112 percent.

The next is the increase in U.S. workers covered by the Fair Labor Standards Act; a 36 percent reduction in compliance actions being completed.

We are not getting enforcement and protection. As all of us know, the facts show and the GAO and other studies show when you have compliance and when you have enforcement, the result is saving workers' lives—Hispanic lives, migrant lives, American workers' lives.

We have to have justice in the workplace. We want to ensure that we are going to upgrade as we are moving to a new phase—bringing new people into the workplace. We want to upgrade the penalties to make sure that we are going to have compliance. This is consistent certainly with the other thrust of the legislation. It is important that workers who are going to have protections that we believe are essential to permit them to produce and to meet their responsibilities but to do it in a climate that is as devoid of exploitation and danger as possible. To do that we need compliance in enforcement. That is what this amendment is really about.

I suggest the absence a quorum and retain the remainder of my time.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

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

The PRESIDING OFFICER. Three minutes and 32 seconds.

Mr. SPECTER. I ask unanimous consent that Senator CORNYN be recognized for 7 minutes.

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

The Senator from Texas.

Mr. CORNYN. Mr. President, I rise in opposition to amendment 4106 by the distinguished Senator from Massachusetts. The amendment enhances enforcement of labor protections for United States workers and guest workers, it is argued, by increasing penalties in violation of the Fair Labor Standards Act, increase civil and criminal penalties in violation of the Occupational Safety and Health Act, strengthens enforcement of violations for unfair labor practices, and designates how fees collected under the H–2C program should be allocated, including 25 percent to the labor law enforcement fund, and it would, arguably, provide protections for whistleblowers.

The main problem I have with the amendment is it is beyond the scope of this bill and beyond the language included in the underlying compromise which we have been told time and time again is fragile or delicate, as those who have supported that compromise have sought to defeat amendments such as this argue to change it.

This is obviously an amendment designed to increase the role of government, a role that is not called for. The problem is, the irony is, we may end up providing more protections for foreign workers than are provided for American citizens who currently work and reside legally in the United States. We ought to be cautious about doing that.

Certainly we all agree—not all of us, but I agree—we need to provide some means for a guest worker or temporary worker program, and that those foreign workers who are authorized to work legally in the United States for a period of time should be given the protection of the laws that generally apply to workers who already work legally in the United States. But to increase penalties and so-called labor protections to a degree that exceeds that provided to American workers, to me, seems uncalled for.

I urge my colleagues to vote against amendment 4106.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. SPECTER. 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. SPECTER. 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. SPECTER. Mr. President, I ask unanimous consent we turn to the Durbin amendment, with 20 minutes equally divided, with no second-degree amendments.

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

AMENDMENT NO. 4142

Mr. DURBIN. Mr. President, I call up my amendment numbered 4142.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois, [Mr. DURBIN], proposes an amendment numbered 4142.

Mr. DURBIN. I ask unanimous consent 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 waiver of certain grounds of inadmissibility or removal where denial of admission or removal would result in hardship for a spouse, parent, or child who is a citizen or permanent resident alien)

On page 183, between lines 4 and 5, insert the following:

SEC. 235. WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY OR REMOVAL BASED ON HARDSHIP TO CITIZEN OR PERMANENT RESIDENT ALIEN SPOUSE, PARENT, OR CHILD.

(a) WAIVER.—Notwithstanding any other provision of law and except as provided in subsection (b), the Secretary of Homeland Security (in the sole and unreviewable discretion of the Secretary) or the Attorney General (in the sole and unreviewable discretion of the Attorney General), as applicable, may waive any ground of inadmissibility or removal of an alien under, or arising from, an amendment made by a provision of section 203, 208, 209, 214 or 222 of this Act if the denial of admission or removal of such alien would result in an extreme hardship to a spouse, parent, or child of such alien who is a citizen or an alien lawfully admitted for permanent residence.

(b) EXCEPTION FOR TERRORISTS.—No waiver may be made under subsection (a) under or

arising from an amendment referred to in that subsection with respect to a ground of inadmissability or removal under a provision of law as follows:

(1) Section 212(a)(3) of the Immigration and Nationality Act.

(2) Section 237(a)(4) of the Immigration and Nationality Act.

Mr. DURBIN. Mr. President, this amendment would authorize the Attorney General or the Secretary of Homeland Security to grant a humanitarian waiver to an immigrant if deportation would create extreme hardship for an immediate family member of the immigrant who is a U.S. citizen or a legal permanent resident.

The Senate is considering a bill that takes a comprehensive approach to solving the problem of illegal immigration. One aspect of the bill is strengthening enforcement of our immigration laws. I support that. We need to strengthen enforcement to restore integrity to our immigration system. No one will believe we are serious about immigration reform unless enforcement is a critical element.

But as we make our laws tougher, we must make certain we hold true to American values. We should treat people fairly. We shouldn't separate families if it would cause extreme hardship to American citizens.

I am concerned that some of the enforcement provisions in this bill are so broad they may have unintended consequences. These provisions have the potential to sweep up long-term legal permanent residents and separate them from their American families.

Let me give one example which will surprise most Members of the Senate. It illustrates the need for this amendment. Under current immigration law, a legal permanent resident convicted of an ''aggravated felony'' is subject to mandatory detention and deportation. The definition of aggravated felony in the Immigration and Nationality Act is very broad. It includes nonviolent crimes such as shoplifting. Section 203 of this bill would expand the definition of aggravated felony even further. It would now be an aggravated felony to aid or abet the commission of many nonviolent crimes.

Under this provision, a teenager who is a lawful permanent resident and has lived in this country most of her life, could be subject to mandatory detention and deportation if she drives a friend home from the mall after the friend shoplifts a DVD.

Let's take another example. The bill greatly expands the definition of document fraud to include potentially innocent activities such as omitting immaterial information from an immigration application. The bill would make such an omission a ground for deportation for the first time, so we are creating a new avenue for deporting people who are currently in the United States legally.

For example, a lawful permanent resident who inadvertently fails to include information about her parent's birthplace and address on her citizenship application could be convicted of document fraud and deported.

My amendment would follow very closely what Senator KYL and Senator CORNYN accomplished last week. The Senate approved a Kyl-Cornyn amendment that under very strict circumstances will allow a humanitarian waiver for undocumented immigrants who apply for legal status under this bill. We are following to the word the Kyl-Cornyn amendment for the cases of legal immigrants who might be deportable as a result of changes in the law made by this bill.

In my Chicago office, 80 percent of the casework relates to immigration. I can tell you we encounter case after case that would break your heart. In so many cases, people who have lived and worked in the United States for a long period of time and have immediate family members who are Americans are falling between the cracks of the law.

Most often, when we present these cases to Homeland Security they say that they are powerless to do anything because our immigration laws allow so little flexibility.

Every Member of the Senate has heard the pleas of a constituent or a friend or someone who has faced this kind of a dilemma. In most cases, we have no ability to help them.

My amendment would follow the Kyl-Cornyn amendment and create a very limited waiver that would apply only in the most compelling cases—where deportation of an immediate family member would cause extreme hardship to an American citizen or legal permanent resident. The waiver would not be automatic. The burden would fall on the immigrant to prove that extreme hardship would occur if he or she were deported.

In every case, the Government has complete discretion to deny the waiver. To quote my amendment, the decision to grant a waiver would be in the ''sole and unreviewable discretion'' of the Attorney General or Secretary of Homeland Security—the identical language used in the Kyl-Cornyn amendment. This same strict standard was enacted last week by the Senate in the Kyl-Cornyn amendment by a vote of 99 to 0.

The Kyl-Cornyn waiver would apply in cases where undocumented immigrants are seeking legal status. The waiver in my amendment would apply in cases where an immigrant who was previously in legal status is subject to deportation only because of a change in the law made by this bill.

Shouldn't we give the same chance to a legal immigrant facing deportation that we give to an undocumented immigrant seeking legal status? Deportation is very serious. For an immigrant, it means permanent exile from family and home. And in some situations, it may even be a matter of life and death.

I think it is appropriate that we build on the good work of Senators KYL and CORNYN. Their standard is tough, but it is fair, and it certainly is not an easy standard to meet.

It is also important to note that the discretionary waiver in my amendment is limited only to new penalties that are a consequence of this bill. In other words, it only applies to deportations that are a direct result of the changes in law made by this bill.

I should also point out that in no circumstances would this waiver apply to cases involving suspected terrorists. The text of the amendment makes that explicit.

We already give the Government broad discretion to apprehend, detain, and deport undocumented immigrants. My amendment would give the Government limited discretion—very limited discretion—to show mercy in only the most compelling cases.

The supporters of this amendment include the U.S. Conference of Catholic Bishops, Catholic Charities USA, Hebrew Immigrant Aid Society, American Jewish Committee, League of United Latin American Citizens, National Council of La Raza, Hispanic National Bar Association, Service Employees International Union, National Immigration Forum, American Immigration Lawyers Association, Asian American Justice Center, Mexican American Legal Defense and Education Fund, Human Rights Watch, and National Immigration Law Center.

Mr. President, I will close by saying this: most Members of the Senate would be surprised to learn that under this bill a young person who is guilty of aiding a shoplifter could be deported from the United States. In light of this, you can see why there ought to be a very limited option for the Secretary of Homeland Security and the Attorney General to grant a humanitarian waiver to an immigrant if it would cause extreme hardship to an immediate relative who is an American. We followed the same standard in the Kyl-Cornyn amendment, which was adopted earlier, and I hope my colleagues will support this amendment.

Mr. President, at this point, I withhold the remainder of my time and yield to the chairman.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield 5 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I appreciate the opportunity to address the amendment. I guess if imitation is the sincerest form of flattery, I appreciate the Senator from Illinois suggesting that this follows the course set by the earlier amendment that had to do, as it turns out, with an entirely different class of individuals than the ones this amendment addresses. So I do not believe it is a similar sort of amendment.

For this reason, this morning, the Senate voted overwhelmingly to reject the Feinstein amendment, which basically would have undone this delicate compromise, this fragile compromise we have been told has to be maintained

at all costs. That amendment would have simply opened the door to amnesty for 12 million people who are here and not require anyone—no matter how short a time they have been here—to do very much of anything distinguishable, at least from the 1986 amnesty.

The difference between what the Senate voted for earlier, which the Senator from Illinois references, is that those individuals had already had their day in court and been ordered deported but had simply gone underground. We recognized an extreme hardship exception there in an effort to try to work across the aisle with the Senator from Massachusetts and others, and the Senator from Arizona, Mr. MCCAIN. Those individuals, by the way, still had to meet the other criteria under the bill, the so-called 2-year and 5-year standards.

The problem I have with this amendment is it has absolutely no standards to guide the discretion. As it says in the amendment, the ''sole and unreviewable'' discretion of the Attorney General and the ''sole and unreviewable'' discretion of the Secretary of the Department of Homeland Security. So we are left to wonder what standards would be actually applied by either the Attorney General or the Secretary of the Department of Homeland Security.

Also, I believe, if taken at face value, this amendment would result in the waiver of grounds for inadmissibility for some 6 million individuals—roughly half of those who are currently in the United States—because, according to the Pew Hispanic Center, approximately 6 million people are currently in the country illegally who have an American citizen child or American citizen spouse.

So I urge my colleagues to vote against the amendment, although I do think this is one of those areas where the conference committee—after the Senate passes its version of the bill and the House is working with us to try to come up with a final form—certainly can build on and try to work on to put some meat on the bone that is left undone by this amendment.

The PRESIDING OFFICER. The assistant Democratic leader.

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

The PRESIDING OFFICER. Three minutes one second.

Mr. DURBIN. Mr. President, I would like to ask the Senator from Texas to reconsider his position because we followed the language of his amendment exactly in limiting this waiver to cases where deportation of an immigrant would cause ''extreme hardship to a spouse, parent or child'' of the immigrant who is an American citizen or lawful permanent resident.

We also followed his language exactly in committing the decision whether to grant a waiver to ''the sole and unreviewable discretion'' of the Attorney General or Homeland Security Secretary. In every case, the government would have complete discretion to deny the waiver. No court could review the denial of a waiver. That is an extremely high standard. It is one that would apply only in very limited circumstances.

And I say to the Senator, consider for a moment, if you would, that the group of people that would be affected by the Kyl-Cornyn amendment are those who are in the United States in undocumented status, who have received final orders of deportation and have not left the United States. I think the Senate took a wise, bipartisan course in saying that even those people should be viewed in some circumstances as deserving of another chance—but in very limited circumstances.

Now we are talking about a different class of people in my amendment. These are people who are here legally. They are not undocumented. They are legal permanent residents. Then, because of new changes in the law that this bill would make—not the old standards but new standards in the law—they might be subject to deportation. And we say, in those cases, where you have people who are here legally, who may be subject to deportation because of changes in the law made by this bill, we will give to the Attorney General or the Secretary of Homeland Security ''sole and unreviewable'' discretion to decide whether there is a humanitarian case for not deporting them. I think it is fair to treat those who are currently here legally at least as well as those who are currently not here legally.

The Senator's earlier amendment dealt with that class that is here undocumented, and I supported him. I thought it was a very wise and humane thing for him and Senator KYL to do. But I would ask him to consider. Shouldn't those who are here in legal permanent status receive at least as much consideration, if this new law establishes some means by which they could be deported, so in the case where there is extreme hardship to their American immediate family members, the Secretary would have this authority to grant them a waiver?

I say to the Senator, we use your identical language. And I did that even though I might have wanted to put it in different words. I thought to myself, let's stick to the standard that was established in the Kyl-Cornyn amendment. So I hope the Senator from Texas will reconsider.

Mr. President, I reserve the remainder of my time, if the Senator has any comments.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. Six minutes thirty-eight seconds.

Mr. SPECTER. Mr. President, I yield 2 minutes to Senator CORNYN.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I would just say that the way I read this amendment—and I have only seen it in the last few minutes—it would result in a waiver for approximately 6 million people illegally here in the United States, as we speak.

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

Mr. CORNYN. It would be based on the fact of alleged extreme hardship through a spouse, parent, or child of such alien who is a citizen. The fact is, a total of 6 million illegal aliens in the United States currently, according to the Pew Hispanic Center, have an American citizen child or spouse.

It would also, as I read this, purport to waive removal for aggravated felons and would result in a green card for this class of individuals, irrespective of payment of taxes, any requirement they learn English, or paying a fine—which we have been told are the essential ingredients of earned legalization.

So this is really a backdoor way of undermining the compromise we have been told is very delicate and fragile and should not be messed with. So I would think those Senators who believe that is actually true would vote against the Durbin amendment because it does seek to undermine that compromise.

The PRESIDING OFFICER. The Senator from Illinois.

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

The PRESIDING OFFICER. Forty seconds.

Mr. DURBIN. Mr. President, may I say to the Senator from Texas, ''aggravated felony,'' as defined by this bill, could include aiding or abetting shoplifting. So in that extraordinary case, where someone is a legal permanent resident and is about to be deported because of changes we are making in the law, this amendment would give one last chance to that person to go to the Secretary of Homeland Security and say: Please, don't ask me to leave the country because I drove the car when my girlfriend shoplifted a DVD. It would cause extreme hardship to my mother and father, who are American citizens. And the Secretary can say: No. And it is not reviewable by a court. He will be deported. But it at least leaves that last option. These are people who are currently legally in the United States whom we are trying to protect.

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

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. Five minutes.

AMENDMENT NO. 4106

Mr. SPECTER. Mr. President, I yield 3 minutes to the Senator from Georgia to speak on the Kennedy amendment No. 4106.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I thank the distinguished chairman.

I rise to oppose the Kennedy amendment. I come to the floor as chairman

of the subcommittee on occupational safety in the HELP Committee. I come to the floor because the issue this amendment addresses has nothing to do with immigration. It affects immigrants and nonimmigrants. It affects employment. It amends the Occupational Safety and Health Act, the National Labor Relations Act, and the Fair Labor Standards Act. It is a massive increase in fines and penalties. It changes many penalties from civil to criminal. There has not been a single hearing or anything else.

The distinguished Senator from Massachusetts knows full well that we have just completed 6 months of hard work on the Mine Safety Act, which this Senate today will pass unanimously in response to the terrible tragedy at the Sago mines. He knows how much time and effort went into the hearings and the studies to see to it what OSHA needed to do and what we needed to do. To summarily come to the floor on an immigration bill and amend the OSHA laws and the Fair Labor Standards Act, the National Labor Relations Act, to throw in massive penalties, massive criminal fines—in fact, just to give you an example, it dramatically increases criminal and civil penalties, with up to as much as 5 years in jail for a workplace accident. Arbitrary provisions such as this have no business on the floor of the Senate being tacked on to a bill that deals with a major pressing problem in an entire other area.

Just to add the piece de resistance, this amendment, as I read it, overturns the Supreme Court ruling in Hoffman Plastic Compounds, Inc. v. the National Labor Relations Board. What that would, in effect, do is force employers now to go pay back compensation to illegal immigrants who were working in the workplace and put the Justice Department as their designated attorney when they are not even here legally in the first place. Now, if that action is the right thing to do, it certainly needs to be done in civil debate and through the committee process and not as a last-minute attachment to a bill that is in itself controversial and in itself comprehensive.

So with all due respect to the distinguished Senator from Massachusetts but with respect for the integrity of the committee system, I submit this amendment should not be adopted, and I will oppose it.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, with respect to the Kennedy amendment No. 4106, my record is plain that I believe in strict enforcement of the Fair Labor Standards Act, strict enforcement of OSHA, and strengthening enforcement against unfair labor practices. But this amendment represents a sweeping change to the Fair Labor Standards Act and to OSHA. In particular, it increases certain penalties five- and tenfold. It increases civil fines under OSHA and criminal penalties under OSHA without any record as to whether such increases are necessary. There have been no hearings on this bill.

It would increase an OSHA criminal penalty from 6 months to 10 years and in another place strike a 1-year penalty and insert a 10-year penalty on a first conviction. Those are very significant changes. As much as I favor strict enforcement of the Fair Labor Standards Act and OSHA and strict enforcement against unfair labor practices, there has been no hearing on this amendment, and, therefore, I reluctantly oppose it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know we had this debate about an hour ago. I ask unanimous consent for 1 minute.

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

Mr. KENNEDY. Mr. President, it is true that we have increased significantly and dramatically the penalties in the Mine Safety Act because they were a slap on the wrist. They didn't even rise to the level of a business penalty. All we are doing basically is changing the maximum penalties, when we see the loss of life and the most grievous kinds of injuries to American workers. That is what we are doing. They haven't been raised since 1990, over 16 years. Why shouldn't we be able to at least take that to conference? That is all this is doing, trying to make sure that all the laws to protect American workers and to protect guest workers are going to be fairly and equitably enforced.

I thank the chairman.

Mr. SPECTER. Mr. President, Senator KYL was unnecessarily detained and did not have his time on Grassley No. 4177. I ask unanimous consent for 1 minute for Senator KYL.

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

Mr. KYL. Mr. President, I will be voting against the Grassley amendment. I compliment the chairman of the Judiciary Committee and the chairman of the Finance Committee, Senator GRASSLEY, and his staff, for working hard at producing what is a big step forward in ensuring that we can determine the eligibility of workers to be hired. Unfortunately, it doesn't complete the job. That is such a critical component of this legislation that I cannot support it until additional changes are made.

My vote is not intended to be pejorative in any way toward those who worked very hard to put this together, and many of my ideas are in that amendment. I appreciate their effort. But there is still a long way to go, and, in some respects, this is a metaphor for a lot of this bill. There has been a lot of progress made, but there is a long way to go.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we are now ready to vote on four amendments. I ask unanimous consent that there be 2 minutes of debate equally divided before each amendment is called.

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

Mr. SPECTER. I further ask unanimous consent that the first rollcall vote on Leahy No. 4117 be the regular 15 minutes and that each succeeding of the stacked votes be 10 minutes.

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

Mr. SPECTER. I want to put my colleagues on notice that we will strictly enforce this time because we have four votes, and it is going to take quite some time. There is more business to be conducted after the votes are concluded.

I further ask unanimous consent that when the Senate resumes consideration of the bill at 8:30 a.m. tomorrow morning, Senator MCCONNELL be recognized to offer his amendment No. 4085; provided further that the time until 9:30 be equally divided between Senator MCCONNELL and Senator REID or his designee; provided further that at 9:30, the Senate proceed to a vote in relation to the McConnell amendment with no second degree in order prior to the vote; I ask consent that following that vote, the Senate proceed to a vote on invoking cloture; further that there be 2 minutes for debate equally divided between the stacked votes after the first vote and the time from 9:20 to 9:30 on Wednesday be equally divided between Senators DODD and MCCONNELL. The order of the votes will be Leahy No. 4117, Grassley No. 4177, Kennedy No. 4106, and Durbin No. 4142.

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

The question is on agreeing to the Leahy amendment No. 4117.

Mr. LEAHY. Mr. President, I understand the distinguished Senator from Pennsylvania is going to speak to correct one part of the record, but both Senator COLEMAN and I want to make sure the record is correct and Senators know what they are voting on. Some Senators, in speaking in opposition to the Leahy-Coleman amendment, suggested that members of Hamas, the Kurdish PKK, or the Basque separatist group might obtain refugee status in the U.S. because those terrorists organizations do not specifically target the United States. That is totally incorrect. They are not allowed in with this. Hamas, the Basque separatists, the Kurdish PKK are already listed as terrorist organizations by our government. Members of the Taliban are also barred. These individuals could not obtain entry with this amendment. It was wrong to misrepresent the amendment that way. It is inflammatory to say the Leahy-Coleman amendment would aid members and supporters of designated terrorist organizations. It does not. It does not. It does not. This amendment in no way changes current law as suggested, but it would do something for those people who have been raped, tortured, or forced into helping terrorist organizations.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have opposed the Leahy amendment because it redefines what constitutes material support for a terrorist. It redefines and narrows the definition of what is a terrorist organization. Those are complex subjects. There could have been hearings in the Judiciary Committee where the Senator from Vermont is the ranking member. I was wrong about Hamas when I made that representation. But as to the Kurdish terrorists, we did not identify PKK but other Kurdish terrorists in Turkey. I did not refer to the Basque ETA but to other Basque terrorists in Spain. When you have these far-reaching changes, there should have been hearings. There is adequate recourse under existing law for the Secretary of State to grant waivers for those providing material support to terrorist organizations, as she did recently for 9,300 ethnic Karen refugees to come out of Thailand.

I move to table the Leahy amendment and 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 bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—79

Alexander	DeWine	McConnell
Allard	Dodd	Menendez
Allen	Dole	Mikulski
Baucus	Domenici	Murkowski
Bayh	Dorgan	Murray
Bennett	Durbin	Nelson (FL)
Biden	Ensign	Nelson (NE)
Bond	Feinstein	Pryor
Boxer	Frist	Roberts
Brownback	Graham	Santorum
Bunning	Grassley	Schumer
Burns	Gregg	Sessions
Burr	Hagel	Shelby
Byrd	Hatch	Smith
Cantwell	Hutchison	Snowe
Carper	Inhofe	Specter
Chambliss	Isakson	Stabenow
Clinton	Johnson	Stevens
Coburn	Kohl	Talent
Cochran	Kyl	Thomas
Collins	Landrieu	Thune
Conrad	Lautenberg	Vitter
Cornyn	Lincoln	Voinovich
Craig	Lott	Warner
Crapo	Lugar	Wyden
Dayton	Martinez	
DeMint	McCain	

NAYS—19

Akaka	Jeffords	Reed
Bingaman	Kennedy	Reid
Chafee	Kerry	Salazar
Coleman	Leahy	Sarbanes
Feingold	Levin	Sununu
Harkin	Lieberman	
Inouye	Obama	

NOT VOTING—2

Enzi Rockefeller

The motion was agreed to.

Mr. BOND. I move to table the vote.

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

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I understand we are going to have another rollcall vote.

Mr. LEAHY. Parliamentary inquiry: Are these 10-minute rollcall votes now?

The PRESIDING OFFICER. The next votes are 10-minute rollcall votes.

Mr. LEAHY. We should be able to finish in 40 or 45 minutes?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 4177

The PRESIDING OFFICER. There is now 2 minutes equally divided on the Grassley amendment. The Senator from Iowa is recognized.

Mr. GRASSLEY. The Immigration Reform and Control Act of 1986 made it unlawful for employers to knowingly hire or employ someone who is not authorized to work in the United States; and it required employers to check the identity and work authorization documents of all new employees.

The current employment verification process relies on a paper form known as the ''I–9.'' To complete this form, employers must examine one or more documents from a list of nearly 30 different documents. If the document provided by the employee appears to be genuine, the employer has met his obligation.

The employer is not allowed to solicit additional documents and the employee is not required to produce additional documents. In fact, an employer's request for more or different documents, or a refusal to honor documents that appear to be genuine, can potentially be treated as an unfair immigration-related employment practice. This obviously puts employers in a very difficult situation. If he accepts the document, he may be hiring an illegal worker. If he does not accept the document, he may be sued for employment discrimination.

The easy availability of counterfeit documents has made a mockery of the current I–9 process. Fake documents are produced by the millions and can be obtained easily and cheaply. Thus, the current system benefits unscrupulous employers who do not mind hiring illegal aliens but want to show that they have met their legal requirements, and it harms employers who don't want to hire illegal aliens but have no choice but to accept documents they may suspect of being counterfeit.

The failure of the current process is evidenced by the millions of ''no match'' letters generated each year by the Social Security Administration. Each year, the Social Security Administration processes about 250 million W–2s. It is able to match more than 95 percent of these. However, nearly 9 million W–2s contain names and social security numbers that do not match the Social Security Administration's records. It is widely believed that many, if not most, of these no matches are due to the employment of illegal aliens.

This problem must be addressed. We cannot control our boarders, or create an enforceable guest worker program, until we have a reliable and secure employment verification system.

I supported the creation of the Basic Pilot program in 1996 which allows employers to voluntarily check the employment status of their new employees. At the time, it was a pilot in 6 states. In 2003, I authored the law that provided all 50 states the option to use the Basic Pilot program. Unfortunately, those who are most likely to hire illegal workers are the least likely to use this system.

My amendment today would create a new worker verification system for employers to use to determine if their workers are eligible to work in the United States. While this new system is based on the Basic Pilot, there are a number of important differences. The new system will be mandatory for all employers who hire any new employees beginning 18 months after Congress appropriates the funds needed to implement the system.

The system can be compared to a ''red light,'' ''green light,'' and ''yellow light'' verification. The employer, in the course of hiring a new worker, must submit certain information within 3 days of the hiring. The Secretary of Homeland Security, with the assistance of the Commissioner of Social Security, will turn around, in less than 10 days, and provide a positive confirmation or a tentative non-confirmation—that is a ''green light'' or a ''yellow light.'' If DHS provides a tentative non-confirmation—a ''yellow light''—then the burden will be on the worker to resolve the matter. If the worker contests the non-confirmation, DHS will have 30 days to provide a final response to the employer. If the final response is negative—a ''red light''—the employer is required to discharge the worker.

The new system would be Internet based. However, the Secretary will also provide access through a toll-free telephone number so that small, rural, and underserved areas can use the system as well. There are a number of important worker protections built into this new system. During the initial implementation of the system, if DHS cannot resolve their worker's status within 30 days, DHS will grant an automatic default confirmation. If the worker loses his job through no fault of his own due to a mistake by the system, he can seek administrative and judicial review to recover lost wages. The system would also give workers the ability to verify their own information prior to obtaining or changing

jobs. This would give workers the ability to know their status before applying for a job and give them the opportunity to correct any mistakes.

Finally, until the Secretary of Homeland Security certifies that the system is able to correctly resolve 99 percent of all the cases involving eligible workers within 30 days, then the automatic default confirmation will remain in effect. This safeguard is designed to ensure that no eligible worker is denied a job due to bureaucratic delays or excessive workloads at DHS or SSA. Once the system is certified by the secretary, the automatic default confirmation is changed to an automatic default non-confirmation. There have been some concerns raised that once illegal workers are no longer able to use phony IDs and fake social security cards, they will attempt to steal someone else's identity. We have addressed this problem by allowing workers—on a purely voluntary basis—to put a ''block'' on their own SSN. This would work much like a ''credit freeze'' or the ''do not call'' list that already exists under current law.

A worker could block his own number to prevent someone else from using it and then unblock his number whenever he needed to obtain or change jobs. The amendment also provides important protections for employers who use the system. They will no longer be forced to choose between questionable documents or an employment discrimination lawsuit. They will be able to rely on the information provided by the system. They will be protected from liability if they fire a worker based on that information. Finally, the amendment provides safeguards to prevent the unauthorized disclosure of information contained in the system. Individuals and employers will not have direct access to Federal databases. Rather, they will submit information and only receive back a confirmation or non-confirmation of that information. The amendment also provides that the information in the system cannot be used for any purpose other than provided by law.

With respect to information sharing, the amendment contains important language regarding the use of tax return information.

The protection of taxpayer information is a cornerstone of our voluntary tax system. These protections are found in section 6103 of the tax code and are designed to strike the balance between taxpayer privacy and legitimate law enforcement. Several members raised this issue during the Judiciary Committee markup. I urged my colleagues to defer any action in this area until the members of the Finance Committee had an opportunity to review this issue.

Some of the proposals in the Judiciary Committee were very broad. In this amendment, we have taken a more focused approach. We identified the specific information that would be needed to identify potentially illegal workers and crafted an amendment to 6103 that permits such use while maintaining all of the privacy protections afforded by 6103.

Specifically, we allow the Social Security Administration to share taxpayer identity information with DSH for the next 3 years. The information that can be shared would be for those employers who had more than 100 employees with names and numbers that do not match, and employers who used the same social security number for more than 10 employees.

In addition, DHS would be able to request that SSA provide information to identify employers who are not participating in the system, and employers who are not verifying all of their new employees. This information sharing would sunset after 3 years unless Congress extends this authority. We will closely monitor the use of this authority to determine if it should be extended.

Relying on Social Security records to help enforce immigration law also raises a critical issue with respect to the Social Security Administration's ability to perform its primary functions. This amendment addresses this concern by requiring DHS to reimburse SSA in advance for the cost of any data it obtains.

Let me again point out that—unlike the House bill—this amendment only applies to new hires, with some limited exceptions under the discretionary authority of DHS.

However, I would note that despite the high turnover rate seen among some workers, many workers are employed by the same employer for many years.

According to the Bureau of Labor Statistics, nearly one-half of all workers have been employed by the same employer for 5 or more years. More than one-quarter have been employed by the same employer for 10 or more years.

Without verification for all employees, many illegal workers might never be detected under a system that only checks new hires.

I understand that a requirement to verify all employees is viewed as overly burdensome. But, as mentioned earlier, the Social Security Administration processes roughly 250 million W–2s each and every year and is able to verify more than 95 percent. It might turn out that the additional burden of checking everyone would be very minimal. I suspect we will have to revisit this issue in conference with the House—if we make it that far.

In conclusion, let me urge my colleagues to support this amendment. It represents a significant step forward in creating a more reliable and secure employment verification system.

Mr. KENNEDY. I yield 30 seconds to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, I congratulate Senator GRASSLEY and all who worked on this amendment. This is probably the single most important thing we can do in terms of reducing the inflow of undocumented workers—making sure we can actually enforce in a systematic way rules governing who gets hired.

It is an amendment that has bipartisan support, as Senator GRASSLEY indicated. It will increase fines. It will provide for an electronic data system that is effective.

I urge all colleagues on my side of the aisle to vote for the amendment.

The PRESIDING OFFICER. Who seeks time in opposition?

The Senator from Texas.

Mr. CORNYN. Mr. President, notwithstanding my tremendous admiration and support for the chairman of the Finance Committee, Mr. GRASSLEY, I must oppose this amendment.

Secretary Chertoff of the Department of Homeland Security, who is responsible for actually implementing this program, has called the requirements of this amendment a poison pill. Why in the world would we design a verification system, which I agree is the linchpin of comprehensive enforcement, that fails? Why would we design a system to fail in which the very person who is responsible for enforcing it calls it a poison pill? The administration does not support this amendment. I suggest the underlying bill is a better bill with which to go to conference and work out our differences.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

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

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—58

Akaka	Feinstein	McCain
Baucus	Graham	Menendez
Bayh	Grassley	Mikulski
Biden	Gregg	Murray
Bingaman	Hagel	Nelson (FL)
Bond	Harkin	Obama
Boxer	Inouye	Pryor
Brownback	Jeffords	Reed
Byrd	Johnson	Reid
Cantwell	Kennedy	Salazar
Carper	Kerry	Sarbanes
Chafee	Kohl	Schumer
Clinton	Landrieu	Snowe
Collins	Lautenberg	Specter
Conrad	Leahy	Stabenow
Dayton	Levin	Stevens
DeWine	Lieberman	Warner
Dodd	Lincoln	Wyden
Durbin	Lugar	
Feingold	Martinez	

NAYS—40

Alexander	DeMint	Nelson (NE)
Allard	Dole	Roberts
Allen	Domenici	Santorum
Bennett	Dorgan	Sessions
Bunning	Ensign	Shelby
Burns	Frist	Smith
Burr	Hatch	Sununu
Chambliss	Hutchison	Talent
Coburn	Inhofe	Thomas
Cochran	Isakson	Thune
Coleman	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	McConnell	
Crapo	Murkowski	

NOT VOTING—2

Enzi	Rockefeller

The amendment (No. 4177) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. LEVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4106

Mr. KENNEDY. Mr. President, I understand that now before the Senate is the amendment I offered earlier, is that correct?

The PRESIDING OFFICER. That is correct. There are 2 minutes equally divided.

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, when American workers go to work every day, they expect to go into a workplace that is safe and secure. American families expect their husbands or their wives to come home to them because they work in a place that is safe and secure. For the last 16 years, we have not increased any of the penalties—the maximum penalties—on OSHA, the Fair Labor Standards Act—any of these penalties. This amendment does do so in a very reasonable and modest way.

We have just done that with mine safety, and later this evening we are going to pass mine safety, virtually unanimously. One of the important parts of the mine safety amendment is the increase in the penalty. We are doing for American workers and for future American workers the same thing we have done for mine safety: We are making sure, through having penalties that are reasonable and responsible, that we have safe working conditions. That is what the Kennedy amendment does.

The PRESIDING OFFICER. The time of the Senator has expired. Who seeks time in opposition?

Mr. SPECTER. Mr. President, I remind my colleagues this is a 10-minute vote. Time will be strictly enforced; 10 plus 5. I ask my colleagues to stay on the floor for these last 2 votes. I yield the remaining time to the Senator from Georgia.

Mr. ISAKSON. Mr. President, there have been no hearings on this amendment. The Senator from Massachusetts knows full well the mine safety bill has been heard for over 6 months. I have worked with him.

This amendment takes civil penalties and makes them criminal. I worry about the worker going to work and getting hurt, but I worry about destroying the incentive to employ anyone by imposing punitive, arbitrary assessments on them, all because we sneak an amendment in at the last minute on a bill that is on an entirely different subject. I urge everybody to vote with me, because I am going to move to table the Kennedy amendment, and I encourage a yea vote.

Mr. President, I move to table the 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 assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Maryland (Mr. SARBANES) 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. 141 Leg.]

YEAS—56

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Kohl	Thomas
Collins	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

NAYS—41

Akaka	Durbin	Lincoln
Baucus	Feingold	Menendez
Bayh	Feinstein	Mikulski
Biden	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Jeffords	Obama
Byrd	Johnson	Pryor
Cantwell	Kennedy	Reed
Carper	Kerry	Reid
Clinton	Landrieu	Salazar
Conrad	Lautenberg	Schumer
Dayton	Leahy	Stabenow
Dodd	Levin	Wyden
Dorgan	Lieberman	

NOT VOTING—3

Enzi	Rockefeller	Sarbanes

The motion was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I think we have had a fast-moving day. I have been authorized by the leader to say there will be no further rollcall votes tonight after this vote. We start tomorrow morning at 8:30 with the McConnell amendment. We will vote at 9:30 on the McConnell amendment. Of course, we have a cloture vote at 10 o'clock.

I thank my colleagues for their cooperation. I yield 1 minute to the Senator from Texas, Mr. CORNYN.

AMENDMENT NO. 4142

The PRESIDING OFFICER (Mr. MARTINEZ). The next vote is on the Durbin amendment. There is 2 minutes equally divided.

The Senator from Illinois is recognized for 1 minute.

Mr. DURBIN. Mr. President, last week, by a vote of 99 to 0, we created a humanitarian waiver for undocumented people in the United States who are seeking to get on the pathway to legalization. We said we would allow a nonreviewable look by the Secretary of Homeland Security at the cases of certain undocumented immigrants who would otherwise by ineligible for legalization.

This amendment says if you are currently legally in the United States and, as a result of changes in the law made by this bill, may be deportable for failing to include a piece of information on an immigration form, an immaterial omission, you also could qualify for the same kind of humanitarian waiver, nonreviewable by a court.

It is the same standard for legal residents that last week we approved for the undocumented. I hope the Senators on both sides will support the amendment.

Mr. CORNYN. This amendment would waive deportation for aggravated felons. It would result in a green card, irrespective of legalization, requiring no payment of taxes, no requirement of learning English, and no fine.

I believe it would result in the legalization of roughly 6 million individuals under this standard contained in this amendment.

I urge my colleagues to vote ''no'' on this amendment.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the Durbin amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The result was announced—yeas 63, nays 34, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—63

Alexander	Crapo	Martinez
Allard	DeMint	McCain
Allen	DeWine	McConnell
Baucus	Dole	Murkowski
Bayh	Domenici	Nelson (NE)
Bennett	Dorgan	Pryor
Bond	Ensign	Roberts
Brownback	Frist	Santorum
Bunning	Graham	Schumer
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Byrd	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Johnson	Thomas
Collins	Kyl	Thune
Conrad	Lincoln	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner

NAYS—34

Akaka	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Nelson (FL)
Boxer	Kennedy	Obama
Cantwell	Kerry	Reed
Carper	Kohl	Reid
Clinton	Landrieu	Salazar
Dayton	Lautenberg	Specter
Dodd	Leahy	Stabenow
Durbin	Levin	Wyden
Feingold	Lieberman	
Feinstein	Menendez	

NOT VOTING—3

Enzi	Rockefeller	Sarbanes

The motion was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I understand from the chairman we will not do any further work on the bill this evening. I would, therefore, ask unanimous consent that Senator SHELBY be allowed to speak for up to 8 minutes, immediately following this statement, and that I then be allowed to speak for up to 5 minutes following that.

The PRESIDING OFFICER. Is there objection?

Ms. LANDRIEU. Mr. President, reserving the right to object, could I just be added to the list of speakers?

Mr. CRAIG. I ask the Senator, how much time would she like?

Ms. LANDRIEU. Thirty minutes.

Mr. CRAIG. I follow Senator SHELBY. I ask unanimous consent that the Senator from Louisiana be allowed up to 30 minutes following me.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, while S. 2611, the immigration bill, contains important titles addressing border security and worksite enforcement, the bill, as everyone knows, also contains titles relating to amnesty for illegal aliens and the creation of a massive new guest worker program which will undermine true immigration reform, in my opinion.

The most problematic provisions of S. 2611 are as follows:

One, I want you to know I opposed amnesty 20 years ago. It did not work then, and I do not believe it will work now.

Two, our first priority should be to secure our borders. Any discussion of amnesty takes away from that priority, in my judgment.

Three, supporters of these amnesty provisions say it is not amnesty but what they call ''earned legalization.'' I am not here to argue about semantics or labels. Whether you call it: ''amnesty,'' ''status adjustment'' or ''guest worker,'' the result is that individuals who came here illegally will now be considered legal workers and on their way toward citizenship. That is the bottom line.

Four, under the so-called compromise that is working here, those who have broken the law the longest are treated the best.

Five, those who can prove they have been here 2 to 5 years still do not have to leave the country and are, hence, still treated better than those waiting to enter legally.

Six, the bill has minimal requirements on proving that an illegal alien has worked or will work in the future. What few provisions there are seem very vulnerable to fraud.

Seven, this bill mandates that illegal workers are paid a higher wage than many American workers in the same position with the same qualifications.

Eight, the supporters of this bill claim that back taxes will be paid for past labor. But a close reading of the bill shows that these back taxes will only be paid, if at all, 8 years down the road when applying for a green card, not as a requirement to receive the H–2C visa.

Nine, this bill drastically increases the number of employment-based green cards issued annually. What will happen to the American worker when unemployment goes up and so many foreign workers, who are willing to work for less, have been given citizenship?

Ten, today, before the implementation of any reforms, the ability of our immigration officials to process applicants who are following the law is severely taxed. This bill will surely have a negative impact on those foreign workers who have followed the rules and are waiting patiently in their home country to legally come to this country.

Eleven, while others say comprehensive immigration reform must include these amnesty provisions, I feel strongly they will only serve to encourage further illegal immigration in the years to come.

And my 12th reason, the bottom line is, this bill, in my judgment, rewards past lawbreaking and encourages future lawbreaking. I am willing to bet that if this bill is enacted, we will only revisit this problem 20 years—perhaps before 20 years—down the road. Only then, we might be talking about 20 million to 30 million illegal immigrants.

Those are some of the reasons—and there are many others—why I will vote ''no'' on the final passage of this legislation.

Ms. COLLINS. Mr. President, I rise today to express my support for a provision in S. 2611 that will level the playing field for minor league sports teams that depend on getting the best athletic talent. Under current law, minor league players who have to use the H–2B visa category face severe visa shortages, while Major League players qualify automatically for plentiful P–1 visas. This unfair discrepancy in the law needs to be remedied, and my amendment, which was accepted by the Judiciary Committee and is now in the underlying bill, provides a commonsense solution.

By way of background, H–2B visas are intended for use by industries facing seasonal demands for labor, such as the hospitality and agricultural industries. What many people do not know is that, in addition to loggers, hotel and restaurant employees, and many other types of seasonal workers, the H–2B visa category is also used by many talented, highly competitive foreign athletes who are recruited by U.S. teams.

A chronic H–2B visa shortage over the last few years has posed challenges for all industries using the H–2B visa category. In both fiscal years 2004 and 2005, the 66,000 visa cap was met early in the year. While we were successful last year in crafting a temporary 2-year fix for the H–2B shortage, this fix will expire at the end of the current fiscal year. I commend my colleague from Maryland, Senator MIKULSKI, for offering an amendment to this bill that would extend the current exemption of returning H–2B workers until 2009.

However, solving this problem goes beyond fixing the H–2B visa cap. Minor league players simply do not belong in the same visa category as seasonal workers. There is no reason why Major League players can qualify automatically for P–1 visas, which are granted to talented athletes, artists, and entertainers, while minor league players cannot. My amendment would remedy this unfair situation.

The problem of requiring minor league athletes to use the H–2B visa category has posed a particular challenge to those of us in Maine who enjoy cheering on our sports teams. The MAINEiacs, a Canadian junior hockey league team that plays its games in Lewiston, ME, has faced tremendous difficulties obtaining the H–2B visas necessary for the majority of its players to come to the United States to play in the team's first home games.

Last year, due to uncertainty surrounding the availability of H–2B visas at the end of the fiscal year, the team had to reschedule its season home opener and cancel several early season games. This forced the team to schedule make-up games for those normally

played in September. The problems created by the visa situation creates an unnecessary hardship for this team, in addition to threatening the revenue the team generates for the city of Lewiston and businesses in the surrounding area.

The Portland Sea Dogs, a Double-A baseball team affiliated with the Boston Red Sox, is another of the many teams that relies on H–2B visas to bring some of its most skilled players to the United States. Thousands of fans come each year to see this team, and others like it across the country, play one of America's favorite sports. Due to the shortage of H–2B visas, however, Major League Baseball reports that, in 2004 and early 2005, more than 350 talented young, foreign baseball players were prevented from coming to the U.S. to play for minor league teams. These teams have been a traditional proving ground for athletes hoping to make it to the major leagues and players often move from these teams to major league rosters.

The inclusion of these highly skilled athletes in the H–2B visa category seems particularly unusual when you consider that major league athletes are permitted to use an entirely different non-immigrant visa category—the P–1 visa. This visa is available to athletes who are deemed by the Citizenship and Immigration Services to perform at an ''internationally recognized level of performance.'' Arguably, any foreign athlete whose achievements have earned him a contract with an American team would meet this definition.

CIS, however, has interpreted this category to exclude minor and amateur league athletes. Instead, the P–1 visa is typically reserved for only those athletes who have already been promoted to major league sports. Unfortunately, this creates something of a catch-22 for minor league athletes—if an H–2B visa shortage means that promising athletes are unable to hone their skills, and to prove themselves, in the minor leagues, they are far less likely to ever earn the major league contract currently required to obtain a P–1 visa.

A simple, commonsense solution would be to expand the P–1 visa category to include minor league and certain amateur-level athletes who have demonstrated a significant likelihood of graduating to the major leagues. Major League Baseball strongly supports the expansion of the P–1 visa category to include professional minor league baseball players. In correspondence to me, the league has pointed out that, by making P–1 visas available to this group of athletes, teams would be able to make player development decisions based on the talent of its players, without being constrained by visa quotas. The P–1 category, the league believes, is appropriate for minor league players because these are the players that Major League clubs have selected as some of the best baseball prospects in the world.

There is no question that Americans are passionate about sports. We have high expectations for our teams, and demand only the best from our athletes. By expanding the P–1 visa category, we will make it possible for athletes to be selected based on talent and skill, rather than visa availability. In addition, we would reduce some pressure on the H–2B visa category making more of those visas available to the industries that need them.

I am pleased that this important provision is included in S. 2611, and I thank the Judiciary Committee for their willingness to incorporate it into the underlying bill.

I ask unanimous consent that letters endorsing my amendment from the Lewiston MAINEiacs Hockey Club and Major League Baseball be printed in the RECORD.

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

LEWISTON MAINEIACS
HOCKEY CLUB, LLC,
Lewiston, ME, April 7, 2006.

Re ''MAINEiacs'' amendment to enable American sports teams to recruit talented players from abroad.

Hon. SUSAN M. COLLINS,
Russell Senate Office Building,
Washington, DC

DEAR SENATOR COLLINS: I wish to express the Lewiston MAINEiacs Hockey Club's support for your efforts with regards to ''MAINEiacs'' amendment to enable American sports teams to recruit talented players from abroad.

The Lewiston MAINEiacs Hockey Club is the sole U.S. based franchise in the 18-member Quebec Major Junior Hockey League (QMJHL). The QMJHL together with the Ontario Hockey League (OHL) and the Western Hockey League (WHL) make up the Canadian Hockey League which comprises a total of 58 teams. Of those 58 franchises, 9 are located in the United States (OHL–3, WHL–5, QMJHL–1).

The CHL is the largest developer of talent for the National Hockey League (NHL). More than 70% of all players, coaches and general managers who have played in the NHL are graduates of the Canadian Hockey League.

The majority of players in the Canadian Hockey League are Canadian, although each team is permitted to have a maximum of 2 Europeans on their rosters. There is also an increasing number of elite U.S. born players now playing in the league.

In January of 2004, the City of Lewiston purchased the Colisée in order to complete the first round of renovations to the facility which was in excess of two million dollars. The Colisée has undergone a second phase of renovations in excess of 1.8 millions dollars that entails a three-story addition to the front of the building providing for new offices, box office, pro-shop, food and beverage concessions and a new private VIP suite that can accommodate more than 130 fans per game. The City of Lewiston contracted the day-to-day management of the Colisée to Global Spectrum, a subsidiary of Comcast-Spectacor, one of the largest and most successful facility management companies in North America.

The results of the current visa laws have forced all U.S. based franchises in the CHL to delay the commencement of their regular season until or after October 1 of each year due to the restrictions of the of the H–2B temporary work visa regulations. This has caused significant hardship on teams, their facilities and the 3 leagues. U.S. based franchises are forced to try and make-up games that would normally be scheduled in the month of the September later in the season, putting both the teams and their fans at disadvantage before the season even commences.

Under your leadership, should congressional legislation make available P–1 visas to Major Junior players of the CHL, the success of all 9 U.S. based CHL franchises would be greatly enhanced by ensuring that all 58 teams have an equal chance at attracting and developing the best available talent.

It is the hope of the Lewiston MAINEiacs that your colleagues in the Senate follow your leadership and endorse your recommendations for the amendment to the immigration reform bill to ensure the viability and success of not only our franchise—but the 8 other U.S. based clubs in the Canadian Hockey League.

Sincerely,

MATT MCKNIGHT,
Vice President & Governor.

OFFICE OF THE COMMISSIONER,
MAJOR LEAGUE BASEBALL,
New York, NY, April 27, 2006.

Hon. SUSAN M. COLLINS,
Russell Senate Office Building,
Washington, DC.

Re legislation for nonimmigrant alien status for certain athletes.

DEAR SENATOR COLLINS: I write to express Major League Baseball's support as you redouble your efforts to make Minor League players eligible for P–1 work visas.

Unlike other professional athletes, baseball players need substantial experience in the Minor Leagues to develop their talents and skills to Major League quality. To get that necessary experience, young players are signed by Major League Clubs and assigned to play for Minor League affiliates throughout the United States, such as Maine's own Portland Sea Dogs.

Approximately 40 percent of these young players come from foreign countries, and MLB must obtain H2–B visas in order for them to enter the U.S. Under current law, however, these visas are capped, and the demand for them is so great across a wide range of industries, many Minor Leaguers are not being afforded the opportunity to play here and develop into Major League baseball players.

The lack of available visas prevented more than 350 young baseball players from performing in the United States in 2004 and 2005, and will prevent even more from doing so this year. Additionally, over the past few years several Clubs have shied away from drafting foreign (mostly Canadian) players whom they otherwise might have selected in the annual First-Year Player Draft, because of the risk of not being able to obtain visas for those players. In fact, in 2004, signings of Canadian players declined 80% over the previous year, and in 2005 only four of the twenty-five Canadian players who were drafted were eventually signed by a Club. The resulting impact on the quality of the product on the field is significant, particularly for almost forty million Americans who attend Minor League Baseball games each year.

Under your leadership, Congress can ensure that the best baseball prospects from around the world will have the opportunity to develop here in the United States, without the constraint that the H–2B visa cap imposes. Minor League Baseball shares our support of your efforts. The Major League Baseball Players Association also supports allowing the best young players to develop here in the United States.

Major Legue Baseball hopes that your Senate colleagues will follow your leadership

and pursue a legislatiye remedy to a problem that is threatening to weaken Baseball's Minor League system.

Sincerely,

ROBERT A. DUPUY,
President & Chief Operating Officer.

Mr. ENSIGN. Mr. President, I ask unanimous consent that a copy of a letter addressed to me from Mark J. Sprinkle in support of amendment No. 4076, which was agreed to yesterday, amending S. 2611, be printed in the RECORD.

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

SENATOR: I returned home last night from my two weeks of Annual Training (AT) with the National Guard. I was able to meet many of the soldiers I will serve with in Iraq. They all seem great and I look forward to working with them to accomplish our mission of delivering fuel to units throughout the country. We did some excellent training in Hawthorne. We were able to see some examples of IEDs, work on convoy procedures and tactics, and do innovative things like firing M-16s from the windows of our moving trucks at targets 50 and 250 meters away. This training was enjoyable and it really tied into what we'll be doing over there.

When I got home, I caught a replay of the Armed Services Committee meeting regarding the role and mission of the National Guard on the border. I agree with the comments of Lt. General Blum of the NGB that the Guard will prove more than capable and effective in helping to secure the border. All people enjoy accomplishing tasks and helping others. I think it would be a great feeling for an engineer to build a road that will be there for decades and for a helicopter medevac crew-member to rescue a sick or injured person in the desert. It is a tremendous idea to use the Guard in this capacity. It will help units stay sharp and prepared by having them use the same skill sets that they will use in fulfilling their missions during natural disasters and in warzones. I also like the idea of having units rotate in during their two week AT. That would be great training and it sure beats sitting in an armory for 15 days. Your amendment to reimburse states with federal funds is great and I hope that governors will allow their units to assist the Border Patrol in accomplishing their vital mission of securing the border. Well Senator, just some thoughts and observations from your local guardsman.

Sincerely,

MARK J. SPRINKLE.

The PRESIDING OFFICER. The Senator from Idaho.

BREACH OF SECURITY WITHIN VA

Mr. CRAIG. Mr. President, I come to the floor of the Senate briefly this evening to visit with my colleagues about an issue that we all now know about to some degree; and that, of course, is the very serious breach of security that occurred within the VA earlier this month.

My office, like yours, is lighting up with phone calls from concerned veterans wanting to know how this could happen and what type of risk they are facing.

So I thought I would take this moment, as the chairman of the Veterans Affairs Committee in the Senate, to visit with my colleagues about it: No 1, to lay out the facts as we know them—they are limited because this is an ongoing investigation and, therefore, the FBI has denied VA the right to talk in any great detail about this breach of security—and, No. 2, to provide all of you with some context in which to think about this issue.

First, what we know is that the information was taken to the home of a VA employee in violation of VA policy. We also know that the employee who took the information was authorized to view it. So this was not a case of unauthorized personnel looking at sensitive information. We also know that the employee was the person who brought the loss of the information to the attention of VA officials.

So what we have is an employee, authorized to view information, who took the information home, apparently to do work in violation of agency policy, and then immediately informed the agency when the theft of the data became apparent.

Certainly, the employee should face some consequence for his or her action. Obviously, he or she should have known not to remove that type of information from VA's protected data system. However, at this point, the actual removal of the data does not appear to be a crime at all.

Of course, the FBI is still investigating whether any criminal behavior occurred. At this point, they do not suspect any foul play on the part of this longtime Federal employee. Rather, they only suspect a random act of burglary at the employee's home that, unfortunately, compromised this very important information.

I must tell you that I struggle—a little—with the question of whether VA, or any Government agency, should keep information like the type that was lost without any real reason to do so. But I also know that when Americans contact their Government or veterans file a claim, they expect, in this day and age, that they will have their information. So there is a disconnect with what we expect and the security we expect it to be held with or if that information should be held at all.

So given the expectations of our consumers, in this case our constituents, I think we need to make sure we have a uniform set of guidelines for training our employees all across Government, and that then we work on putting in place a system with enough checks and balances to be sure that no employee can abuse information data bases of any agency.

Frankly, this problem is not likely limited to VA. Many Federal agencies keep records on citizens that contain sensitive information. It is not just IRS or HHS. There is information maintained by the Department of Education, that comes from the free application for Federal student loans or the Department of Agriculture, which provides crop assistance plans and crop insurance and a variety of other kinds of things.

All of these agencies have names and addresses and Social Security numbers. They must be secure. At the same time, we need employees who can use that information for legitimate purposes to serve our constituencies in a timely fashion.

All of this will require thoughtful balancing on the part of this Congress. We have to balance every doctor's need to see a veteran's medical records with the legitimate concern that one too many nurses on the floor have access to those records for no reason.

I hope what took place at the VA a few weeks ago is only an isolated incident of bad judgment by a dedicated employee seeking to do a little work at home on his or her own time. But we must not ignore the fact that it appears, at this time, that getting that information to his or her home was very easy. That cannot be tolerated because it may well have been a breach of policy but not a violation of law.

So my committee will hold hearings this Thursday with VA officials to examine what their policies and practices are with respect to sensitive information and how we can assure that a breach of security such as this does not happen in the future.

We will also be asking the right questions about the security of veterans themselves and if VA is doing all they possibly can do at this time now, along with the IRS and the Social Security Administration, to make sure that veterans whose names were on that list—some 26 million, of which 19 million had critical information—be treated fairly and responsive to assure, if we can, the protection of their information base.

It is fundamentally important that our Government and the Veterans' Administration respond as quickly as they can. And there is every indication, at least at this moment—which our hearing, I trust, will bear out—that they are moving in the right direction to assure that.

This may have been the largest breach of ID in our Nation's history. We need to make sure, as a Congress and as a Senate, that this cannot happen in the future and that there are exacting guidelines to assure this will not occur. In a day of electronic data and access that is unique and sometimes very easy, we need to make sure we are current with all of our needs, without providing names and information that is not necessarily needed to be held by our Government.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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