Rangel	Scott (VA)	Udall (CO)
Reyes	Serrano	Udall (NM)
Ross	Sherman	Van Hollen
Rothman	Skelton	Velázquez
Roybal-Allard	Slaughter	Visclosky
Ruppersberger	Smith (WA)	Wasserman Schultz
Rush	Snyder	Waters
Ryan (OH)	Solis	Watson
Sabo	Spratt	Watt
Salazar	Stark	Waxman
Sánchez, Linda T.	Strickland	Weiner
Sanchez, Loretta	Tanner	Wexler
Sanders	Tauscher	Woolsey
Schakowsky	Taylor (MS)	Wu
Schiff	Thompson (CA)	Wynn
Schwartz (PA)	Thompson (MS)	
Scott (GA)	Tierney	
	Towns	

NOT VOTING—7

Carter	Hinchey	Stupak
Eshoo	Hinojosa	
Feeney	Radanovich	

□ 1146

Messrs. BLUMENAUER, KANJORSKI, OBEY, RANGEL, and TIERNEY changed their vote from ''yea'' to ''nay.''

Mr. TANCREDO changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NOTICE OF INTENTION TO OFFER MODIFICATION TO NADLER AMENDMENT TO REAL ID ACT OF 2005

(Mr. NADLER asked and was given permission to address the House for 1 minute.)

Mr. NADLER. Mr. Speaker, I would like to take this time to explain a unanimous consent request I am about to make.

Mr. Speaker, I regret I must request unanimous consent to amend my amendment, which I am going to offer later, but the process the majority has chosen to use is, to say the least, unfair. The rule makes in order virtually a new bill, which we did not get to see until after the deadline for submitting amendments to the Committee on Rules.

There was no opportunity to draft our amendments to reflect the bill that we are now considering. My amendment would strike section 101 from the bill as amended by the manager's amendment. But the manager's amendment adds a provision to which we do not object, namely, raising the cap on asylum adjustments. This unanimous consent request would change my amendment so as not to change this good provision added at the last minute by the chairman. If we had seen the manager's amendment before the Committee on Rules deadline, this request would not be necessary.

□ 1145

If the majority is sincere in wanting a fair process, there should be no reason to object to this unanimous consent request. This unanimous consent request would not have been necessary if we had seen the manager's amendment before the rules deadline.

REQUEST FOR MODIFICATION TO AMENDMENT NO. 4 TO REAL ID ACT OF 2005

Mr. NADLER. Mr. Speaker, I ask unanimous consent that during further consideration of H.R. 418 pursuant to House Resolution 75, it may be in order to consider amendment No. 4 in House Report 109–4 in the modified form I have placed at the desk.

The SPEAKER pro tempore (Mr. FOSSELLA). The Clerk will report the amendment.

The Clerk read as follows:

AMENDMENT TO H.R. 418 OFFERED BY MR. NADLER OF NEW YORK

Strike section 101 of the bill (and redesignate the succeeding sections of title I accordingly).

Insert, Section 101:

(a) REMOVAL OF CAPS.—Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Service'' and inserting ''Department of Homeland Security''; and

(B) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security or the Attorney General'';

(2) in subsection (b)—

(A) by striking ''Not more'' and all that follows through ''asylum who—'' inserting ''The Secretary of Homeland Security or the Attorney general, in the Secretary's or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—''; and

(B) in the matter following paragraph (5), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security or the Attorney General''; and

(3) in subsection (c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security or the Attorney General.''

Mr. NADLER (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from New York?

Mr. SENSENBRENNER. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

REAL ID ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 75 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 418.

□ 1146

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 418) to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence, with Mr. UPTON (the Acting Chairman) in the chair.

The Clerk read the title of the bill.

The Acting CHAIRMAN. When the Committee of the Whole rose on Wednesday, February 9, 2005, all time for general debate pursuant to House Resolution 71 had expired. Pursuant to House Resolution 75, no further general debate shall be in order.

Pursuant to House Resolution 75, the amendment printed in part A of House Report 109–4 is adopted and the bill, as amended, shall be considered as the original bill for the purpose of further amendment and shall be considered read.

The text of H.R. 418, as amended, is as follows:

H.R. 418

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''REAL ID Act of 2005''.

TITLE I—AMENDMENTS TO FEDERAL LAWS TO PROTECT AGAINST TERRORIST ENTRY

SECTION 101. PREVENTING TERRORISTS FROM OBTAINING RELIEF FROM REMOVAL.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)) is amended—

(1) by striking ''The Attorney General'' the first place such term appears and inserting the following:

''(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General'';

(2) by striking ''the Attorney General'' the second and third places such term appears and inserting ''the Secretary of Homeland Security or the Attorney General''; and

(3) by adding at the end the following:

''(B) BURDEN OF PROOF.—

''(i) IN GENERAL.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be a central reason for persecuting the applicant.

''(ii) SUSTAINING BURDEN.—The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines, in the trier of fact's discretion, that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence without departing the United States. The inability to obtain corroborating evidence does not excuse

the applicant from meeting the applicant's burden of proof.

''(iii) CREDIBILITY DETERMINATION.—The trier of fact should consider all relevant factors and may, in the trier of fact's discretion, base the trier of fact's credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not made under oath), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. There is no presumption of credibility.''.

(b) WITHHOLDING OF REMOVAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the following:

''(C) SUSTAINING BURDEN OF PROOF; CREDIBILITY DETERMINATIONS.—In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).''.

(c) OTHER REQUESTS FOR RELIEF FROM REMOVAL.—Section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1230(c)) is amended—

(1) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

(2) by inserting after paragraph (3) the following:

''(4) APPLICATIONS FOR RELIEF FROM REMOVAL.—

''(A) IN GENERAL.—An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

''(i) satisfies the applicable eligibility requirements; and

''(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

''(B) SUSTAINING BURDEN.—The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant's application for relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines in the judge's discretion that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence without departing from the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the burden of proof.

''(C) CREDIBILITY DETERMINATION.—The immigration judge should consider all relevant factors and may, in the judge's discretion, base the judge's credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not made under oath), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. There is no presumption of credibility.''.

(d) STANDARD OF REVIEW FOR ORDERS OF REMOVAL.—Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding at the end, after subparagraph (D), the following: ''No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(C), unless the court finds that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.''.

(e) CLARIFICATION OF DISCRETION.—Section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

(1) by inserting ''or the Secretary of Homeland Security'' after ''Attorney General'' each place such term appears; and

(2) in the matter preceding clause (i), by inserting ''and regardless of whether the judgment, decision, or action is made in removal proceedings,'' after ''other provision of law,''.

(f) REMOVAL OF CAPS.—Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Service'' and inserting ''Department of Homeland Security''; and

(B) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security or the Attorney General'';

(2) in subsection (b)—

(A) by striking ''Not more'' and all that follows through ''asylum who—'' and inserting ''The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—''; and

(B) in the matter following paragraph (5), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security or the Attorney General''; and

(3) in subsection (c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security or the Attorney General''.

(g) EFFECTIVE DATES.—

(1) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect as if enacted on March 1, 2003.

(2) The amendments made by subsections (a)(3), (b), and (c) shall take effect on the date of the enactment of this Act and shall apply to applications for asylum, withholding, or other removal made on or after such date.

(3) The amendment made by subsection (d) shall take effect on the date of the enactment of this Act and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

(4) The amendments made by subsection (e) shall take effect on the date of the enactment of this Act and shall apply to all cases pending before any court on or after such date.

(5) The amendments made by subsection (f) shall take effect on the date of the enactment of this Act.

(h) REPEAL.—Section 5403 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 102. WAIVER OF LAWS NECESSARY FOR IMPROVEMENT OF BARRIERS AT BORDERS.

Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended to read as follows:

''(c) WAIVER.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.

''(2) NO JUDICIAL REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), no court, administrative agency, or other entity shall have jurisdiction—

''(A) to hear any cause or claim arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1); or

''(B) to order compensatory, declaratory, injunctive, equitable, or any other relief for damage alleged to arise from any such action or decision.''.

SEC. 103. INADMISSIBILITY DUE TO TERRORIST AND TERRORIST-RELATED ACTIVITIES.

(a) IN GENERAL.—So much of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) as precedes the final sentence is amended to read as follows:

''(i) IN GENERAL.—Any alien who—

''(I) has engaged in a terrorist activity;

''(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

''(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

''(IV) is a representative (as defined in clause (v)) of—

''(aa) a terrorist organization (as defined in clause (vi)); or

''(bb) a political, social, or other group that endorses or espouses terrorist activity;

''(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

''(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

''(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

''(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

''(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible.''

(b) ENGAGE IN TERRORIST ACTIVITY DEFINED.—Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended to read as follows:

''(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

''(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

''(II) to prepare or plan a terrorist activity;

''(III) to gather information on potential targets for terrorist activity;

''(IV) to solicit funds or other things of value for—

''(aa) a terrorist activity;

''(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

''(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

''(V) to solicit any individual—

''(aa) to engage in conduct otherwise described in this subsection;

''(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

''(cc) for membership in a terrorist organization or to any member of such an organization, described in clause (vi) or to any member of such an organization,'' (III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

''(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

''(aa) for the commission of a terrorist activity;

''(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

''(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi); or

''(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization. This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Attorney General, after consultation with the Secretary of State and the Secretary of Homeland Security, concludes in his sole unreviewable disrection, that this clause should not apply.''.

(c) TERRORIST ORGANIZATION DEFINED.—Section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)) is amended to read as follows:

''(vi) TERRORIST ORGANIZATION DEFINED.—As used in this section, the term 'terrorist organization' means an organization—

''(I) designated under section 219;

''(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

''(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).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

SEC. 104. REMOVAL OF TERRORISTS.

(a) IN GENERAL.—

(1) IN GENERAL.—Section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

''(B) TERRORIST ACTIVITIES.—Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendment, and section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)), as amended by such paragraph, shall apply to—

(A) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(B) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

SEC. 105. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting ''(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''Notwithstanding any other provision of law'';

(ii) in each of subparagraphs (B) and (C), by inserting ''(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law''; and

(iii) by adding at the end the following:

''(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in subparagraph (B) or (C), or in any other provision of this Act which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or pure questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.''; and

(B) by adding at the end the following:

''(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

''(5) EXCLUSIVE MEANS OF REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).'';

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting ''pursuant to subsection (f)'' after ''unless''; and

(B) in paragraph (9), by adding at the end the following: ''Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.''; and

(3) in subsection (g), by inserting ''(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''notwithstanding any other provision of law''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of the enactment of this Act and shall apply to cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this Act.

(c) TRANSFER OF CASES.—If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this Act, then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply.

(d) TRANSITIONAL RULE CASES.—A petition for review filed under former section 106(a) of the Immigration and Nationality Act (as in effect before its repeal by section 306(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, such petition

for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.

TITLE II—IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) DRIVER'S LICENSE.—The term ''driver's license'' means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term ''identification card'' means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(4) STATE.—The term ''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary of Transportation. Such certifications shall be made at such times and in such manner as the Secretary of Transportation, in consultation with the Secretary of Homeland Security, may prescribe by regulation.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

(1) The person's full legal name.

(2) The person's date of birth.

(3) The person's gender.

(4) The person's driver's license or identification card number.

(5) A digital photograph of the person.

(6) The person's address of principle residence.

(7) The person's signature.

(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, with defined minimum data elements.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person—

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS' LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) DISPLAY OF EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) RENEWAL.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

SEC. 203. LINKING OF DATABASES.

(a) IN GENERAL.—To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding sharing of driver license data, known as the ''Driver License Agreement'', in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.

(b) REQUIREMENTS FOR INFORMATION.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers' licenses and identification cards issued by the State.

(2) Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 204. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

Section 1028(a)(8) of title 18, United States Code, is amended by striking ''false authentication features'' and inserting ''false or actual authentication features''.

SEC. 205. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 206. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) COMPLIANCE WITH STANDARDS.—All authority to certify compliance with standards under this title shall be carried out by the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the States.

(c) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.

SEC. 207. REPEAL.

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 208. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

The Acting CHAIRMAN. No further amendment to the bill, as amended, shall be in order except those printed in part B of the report. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in part B of House Report 109–4.

AMENDMENT NO. 1 OFFERED BY MR. SESSIONS

Mr. SESSIONS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 1 offered by Mr. SESSIONS:

At the end of title I, add the following:

SEC. 105. DELIVERY BONDS.

(a) DEFINITIONS.—For purposes of this section:

(1) DELIVERY BOND.—The term ''delivery bond'' means a written suretyship undertaking for the surrender of an individual against whom the Department of Homeland Security has issued an order to show cause or a notice to appear, the performance of which is guaranteed by an acceptable surety on Federal bonds.

(2) PRINCIPAL.—The term ''principal'' means an individual who is the subject of a bond.

(3) SURETYSHIP UNDERTAKING.—The term ''suretyship undertaking'' means a written agreement, executed by a bonding agent on behalf of a surety, which binds all parties to its certain terms and conditions and which provides obligations for the principal and the surety while under the bond and penalties for forfeiture to ensure the obligations of the principal and the surety under the agreement.

(4) BONDING AGENT.—The term ''bonding agent'' means any individual properly licensed, approved, and appointed by power of attorney to execute or countersign surety bonds in connection with any matter governed by the Immigration and Nationality Act as amended (8 U.S.C. 1101, et seq.), and who receives a premium for executing or countersigning such surety bonds.

(5) SURETY.—The term ''surety'' means an entity, as defined by, and that is in compliance with, sections 9304 through 9308 of title 31, United States Code, that agrees—

(A) to guarantee the performance, where appropriate, of the principal under a bond;

(B) to perform the bond as required; and

(C) to pay the face amount of the bond as a penalty for failure to perform.

(b) VALIDITY, AGENT NOT CO-OBLIGOR, EXPIRATION, RENEWAL, AND CANCELLATION OF BONDS.—

(1) VALIDITY.—Delivery bond undertakings are valid if such bonds—

(A) state the full, correct, and proper name of the alien principal;

(B) state the amount of the bond;

(C) are guaranteed by a surety and countersigned by an agent who is properly appointed;

(D) bond documents are properly executed; and

(E) relevant bond documents are properly filed with the Secretary of Homeland Security.

(2) BONDING AGENT NOT CO-OBLIGOR, PARTY, OR GUARANTOR IN INDIVIDUAL CAPACITY, AND NO REFUSAL IF ACCEPTABLE SURETY.—Section 9304(b) of title 31, United States Code, is amended by adding at the end the following: ''Notwithstanding any other provision of law, no bonding agent of a corporate surety shall be required to execute bonds as a co-obligor, party, or guarantor in an individual capacity on bonds provided by the corporate surety, nor shall a corporate surety bond be refused if the corporate surety appears on the current Treasury Department Circular 570 as a company holding a certificate of authority as an acceptable surety on Federal bonds and attached to the bond is a currently valid instrument showing the authority of the bonding agent of the surety company to execute the bond.''.

(3) EXPIRATION.—A delivery bond undertaking shall expire at the earliest of—

(A) 1 year from the date of issue;

(B) at the cancellation of the bond or surrender of the principal; or

(C) immediately upon nonpayment of the renewal premium.

(4) RENEWAL.—Delivery bonds may be renewed annually, with payment of proper premium to the surety, if there has been no breach of conditions, default, claim, or forfeiture of the bond. Notwithstanding any renewal, when the alien is surrendered to the Secretary of Homeland Security for removal, the Secretary shall cause the bond to be canceled.

(5) CANCELLATION.—Delivery bonds shall be canceled and the surety exonerated—

(A) for nonrenewal after the alien has been surrendered to the Department of Homeland Security for removal;

(B) if the surety or bonding agent provides reasonable evidence that there was misrepresentation or fraud in the application for the bond;

(C) upon the death or incarceration of the principal, or the inability of the surety to produce the principal for medical reasons;

(D) if the principal is detained by any law enforcement agency of any State, county, city, or any politial subdivision thereof;

(E) if it can be established that the alien departed the United States of America for any reason without permission of the Secretary of Homeland Security, the surety, or the bonding agent;

(F) if the foreign state of which the principal is a national is designated pursuant to section 244 of the Act (8 U.S.C. 1254a) after the bond is posted; or

(G) if the principal is surrendered to the Department of Homeland Security, removal by the surety or the bonding agent.

(6) SURRENDER OF PRINCIPAL; FORFEITURE OF BOND PREMIUM.—

(A) SURRENDER.—At any time, before a breach of any of the bond conditions, if in the opinion of the surety or bonding agent, the principal becomes a flight risk, the principal may be surrendered to the Department of Homeland Security for removal.

(B) FORFEITURE OF BOND PREMIUM.—A principal may be surrendered without the return of any bond premium if the principal—

(i) changes address without notifying the surety, the bonding agent, and the Secretary of Homeland Security in writing prior to such change;

(ii) hides or is concealed from a surety, a bonding agent, or the Secretary;

(iii) fails to report to the Secretary as required at least annually; or

(iv) violates the contract with the bonding agent or surety, commits any act that may lead to a breach of the bond, or otherwise violates any other obligation or condition of the bond established by the Secretary.

(7) CERTIFIED COPY OF BOND AND ARREST WARRANT TO ACCOMPANY SURRENDER.—

(A) IN GENERAL.—A bonding agent or surety desiring to surrender the principal—

(i) shall have the right to petition the Secretary of Homeland Security or any Federal court, without having to pay any fees or court costs, for an arrest warrant for the arrest of the principal;

(ii) shall forthwith be provided 2 certified copies each of the arrest warrant and the bond undertaking, without having to pay any fees or courts costs; and

(iii) shall have the right to pursue, apprehend, detain, and surrender the principal, together with certified copies of the arrest warrant and the bond undertaking, to any Department of Homeland Security detention official or Department detention facility or any detention facility authorized to hold Federal detainees.

(B) EFFECTS OF DELIVERY.—Upon surrender of a principal under subparagraph (A)(iii)—

(i) the official to whom the principal is surrendered shall detain the principal in custody and issue a written certificate of surrender; and

(ii) the Secretary of Homeland Security shall immediately exonerate the surety from any further liability on the bond.

(8) FORM OF BOND.—Delivery bonds shall in all cases state the following and be secured by a corporate surety that is certified as an acceptable surety on Federal bonds and whose name appears on the current Treasury Department Circular 570:

''(A) BREACH OF BOND; PROCEDURE, FORFEITURE, NOTICE.—

''(i) If a principal violates any conditions of the delivery bond, or the principal is or becomes subject to a final administrative order of deportation or removal, the Secretary of Homeland Security shall—

''(I) immediately issue a warrant for the principal's arrest and enter that arrest warrant into the National Crime Information Center (NCIC) computerized information database;

''(II) order the bonding agent and surety to take the principal into custody and surrender the principal to any one of 10 designated Department of Homeland Security 'turn-in' centers located nationwide in the areas of greatest need, at any time of day during 15 months after mailing the arrest warrant and the order to the bonding agent and the surety as required by subclause (III), and immediately enter that order into the

National Crime Information Center (NCIC) computerized information database; and

''(III) mail 2 certified copies each of the arrest warrant issued pursuant to subclause (I) and 2 certified copies each of the order issued pursuant to subclause (II) to only the bonding agent and surety via certified mail return receipt to their last known addresses.

''(ii) Bonding agents and sureties shall immediately notify the Secretary of Homeland Security of their changes of address and/or telephone numbers.

''(iii) The Secretary of Homeland Security shall establish, disseminate to bonding agents and sureties, and maintain on a current basis a secure nationwide toll-free list of telephone numbers of Department of Homeland Security officials, including the names of such officials, that bonding agents, sureties, and their employees may immediately contact at any time to discuss and resolve any issue regarding any principal or bond, to be known as 'Points of Contact'.

''(iv) A bonding agent or surety shall have full and complete access, free of charge, to any and all information, electronic or otherwise, in the care, custody, and control of the United States Government or any State or local government or any subsidiary or police agency thereof regarding the principal that may be helpful in complying with section 105 of the REAL ID Act of 2005 that the Secretary of Homeland Security, by regulations subject to approval by Congress, determines may be helpful in locating or surrendering the principal. Beyond the principal, a bonding agent or surety shall not be required to disclose any information, including but not limited to the arrest warrant and order, received from any governmental source, any person, firm, corporation, or other entity.

''(v) If the principal is later arrested, detained, or otherwise located outside the United States and the outlying possessions of the United States (as defined in section 101(a) of the Immigration and Nationality Act), the Secretary of Homeland Security shall—

''(I) immediately order that the surety is completely exonerated, and the bond canceled; and

''(II) if the Secretary of Homeland Security has issued an order under clause (i), the surety may request, by written, properly filed motion, reinstatement of the bond. This subclause may not be construed to prevent the Secretary of Homeland Security from revoking or resetting a bond at a higher amount.

''(vi) The bonding agent or surety must—

''(I) during the 15 months after the date the arrest warrant and order were mailed pursuant to clause (i)(III) surrender the principal one time; or

''(II)(aa) provide reasonable evidence that producing the principal was prevented—

''(aaa) by the principal's illness or death;

''(bbb) because the principal is detained in custody in any city, State, country, or any political subdivision thereof;

''(ccc) because the principal has left the United States or its outlying possessions (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); or

''(ddd) because required notice was not given to the bonding agent or surety; and

''(bb) establish by affidavit that the inability to produce the principal was not with the consent or connivance of the bonding agent or surety.

''(vii) If compliance occurs more than 15 months but no more than 18 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 25 percent of the face amount of the bond shall be assessed as a penalty against the surety.

''(viii) If compliance occurs more than 18 months but no more than 21 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 50 percent of the face amount of the bond shall be assessed as a penalty against the surety.

''(ix) If compliance occurs more than 21 months but no more than 24 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 75 percent of the face amount of the bond shall be assessed as a penalty against the surety.

''(x) If compliance occurs 24 months or more after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 100 percent of the face amount of the bond shall be assessed as a penalty against the surety.

''(xi) If any surety surrenders any principal to the Secretary of Homeland Security at any time and place after the period for compliance has passed, the Secretary of Homeland Security shall cause to be issued to that surety an amount equal to 50 percent of the face amount of the bond: *Provided, however,* That if that surety owes any penalties on bonds to the United States, the amount that surety would otherwise receive shall be offset by and applied as a credit against the amount of penalties on bonds it owes the United States, and then that surety shall receive the remainder of the amount to which it is entitled under this subparagraph, if any.

''(xii) All penalties assessed against a surety on a bond, if any, shall be paid by the surety no more than 27 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III).

''(B) The Secretary of Homeland Security may waive penalties or extend the period for payment or both, if—

''(i) a written request is filed with the Secretary of Homeland Security; and

''(ii) the bonding agent or surety provides an affidavit that diligent efforts were made to effect compliance of the principal.

''(C) COMPLIANCE; EXONERATION; LIMITATION OF LIABILITY.—

''(i) COMPLIANCE.—A bonding agent or surety shall have the absolute right to locate, apprehend, arrest, detain, and surrender any principal, wherever he or she may be found, who violates any of the terms and conditions of his or her bond.

''(ii) EXONERATION.—Upon satisfying any of the requirements of the bond, the surety shall be completely exonerated.

''(iii) LIMITATION OF LIABILITY.—Notwithstanding any other provision of law, the total liability on any surety undertaking shall not exceed the face amount of the bond.''.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act and shall apply to bonds and surety undertakings executed before, on, or after the date of the enactment of this Act.

SEC. 106. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.

(a) IN GENERAL.—Section 236(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

''(2) subject to such reasonable regulations as the Secretary of Homeland Security may prescribe, shall permit agents, servants, and employees of corporate sureties to visit in person with individuals detained by the Secretary of and, subject to section 241(a)(8), may release the alien on a delivery bond of at least $10,000, with security approved by the Secretary, and containing conditions and procedures prescribed by section 105 of the REAL ID Act of 2005 and by the Secretary, but the Secretary shall not release the alien on or to his own recognizance unless an order of an immigration judge expressly finds and states in a signed order to release the alien to his own recognizance that the alien is not a flight risk and is not a threat to the United States''.

(b) REPEAL.—Section 286(r) of the Immigration and Nationality Act (8 U.S.C. 1356(r)) is repealed.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 107. DETENTION OF ALIENS DELIVERED BY BONDSMEN.

(a) IN GENERAL.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended by adding at the end the following:

''(8) EFFECT OF PRODUCTION OF ALIEN BY BONDSMAN.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall take into custody any alien subject to a final order of removal, and cancel any bond previously posted for the alien, if the alien is produced within the prescribed time limit by the obligor on the bond whether or not the Department of Homeland Security accepts custody of the alien. The obligor on the bond shall be deemed to have substantially performed all conditions imposed by the terms of the bond, and shall be released from liability on the bond, if the alien is produced within such time limit.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to all immigration bonds posted before, on, or after such date.

The Acting CHAIRMAN. Pursuant to House Resolution 75, the gentleman from Texas (Mr. SESSIONS) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 10 minutes.

The Chair recognizes the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in August 2004, the bipartisan chairman of the 9/11 Commission testified at the Select Committee on Homeland Security that border security combined with the routine and effective enforcement of immigration laws must be a top priority for Congress and the administration if our country can expect to secure the homeland and prevent another tragedy like what happened on 9/11 from happening again here in America.

The 9/11 Commission report states on page 384 that ''looking back, we can also see that the routine operations of our immigration laws, that is, aspects of the laws not specifically aimed at protecting against terrorism inevitably shaped al Qaeda's planning and opportunities.''

There is no more basic homeland security function of our legal system than deporting aliens who have been afforded due process and who have subsequently been ordered deported by a Federal judge. Sadly, according to our government's best statistics, only 13 percent of the aliens arrested entering the country illegally and ordered deported are actually removed.

As a result, people entering the country illegally with criminal or terrorist intent have quickly learned that, if arrested, they can be quickly released on their own word, and that they can be

confident in the knowledge that they do not have to show up for their hearing, knowing they will likely never be deported.

My amendment seeks to remedy this threat to our safety by clarifying the use of delivery bonds by the Department of Homeland Security. This concept is nothing new. The authority to leverage delivery bonds to compel attendance at Federal deportation proceedings already exists in Federal law. The Department simply needs guidance from Congress on how to best use its existing bond authority to reach the goal of 100 percent repatriation of all aliens ordered deported, and that is exactly what my amendment will provide.

Quite simply, the amendment makes certain before an alien is released from Department of Homeland Security detention pending an upcoming hearing, the Federal judge must first certify that the alien is not a flight risk, and more important, that he does not pose a security risk to the United States.

By improving this routine and fundamental operation of our laws, my amendment will limit terrorists' planning and opportunities to attack Americans here at home, and to begin fulfilling what the 9/11 Commission identified last summer as a top priority for Congress. I ask that all Members of this House support my amendment and build upon the strong deportation reform initiatives already included in H.R. 418.

Mr. Chairman, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me first of all say and repeat what I have said many times, that immigration does not equate to terrorism. Also I have said just recently, this morning, that the immigration reform question is a bipartisan question. I also took note of the fact that if one were to take polling numbers, there obviously is an overwhelming impression that what we are addressing today is an immigration bill.

Certainly the Sessions amendment deals more with immigration than it does with straight issues of terrorism, because there is no divide amongst the American people regarding securing the homeland.

My concern with this legislation is procedural, but it is also a question of fairness. This is a serious departure from the normal trends that we have now expressed by the body of this Congress and that is the establishment of the Department of Homeland Security. This in fact takes homeland security responsibilities and actually outsources them. The reason this is so challenging is that the Committee on Homeland Security, the gentleman from California (Chairman COX) and the gentleman from Mississippi (Mr. THOMPSON), the ranking member, have not had a chance to review this amendment.

This amendment has had no hearings, and here we are talking about giving extraordinary powers to bondsmen. This means if you are an immigrant undocumented in removal proceedings working with a lawyer, working with family members, you are then dispatching bondspersons with no direct immigration training to round you up and immediately bring you to a point of deportation where you are in the middle of a legal process.

If that is considered to be, one, a recommendation of the 9/11 Commission, I would severely and strongly disagree. Yes, individuals who are in line to be deported is an issue. We need more detention beds and more security at our borders, but we do not need to outsource to bondspersons, however financially opportunistic it may be, and as a former judge and someone who deals with these issues in my private practice before coming to Congress, I realize bondspersons have their role, but not to contract out to deal with this issue.

I know the gentleman from Texas (Mr. SESSIONS) has good intentions, but may I give a historical perspective, and that is of the 1850 Fugitive Slave Act. The truly frightening part of this legislation is it smacks of that kind of effort. The Fugitive Slave Act gave broad, virtually unfettered power to agents or slave owners to seize slaves in the free States and return or send them to slavery in the slave States, obviously with little regard for their legal status in free States with no due process and opportunity to defend themselves. That was 1850.

If we randomly give the opportunity to bondsmen who have no understanding of immigration laws, we can be assured that in a discriminatory fashion they will be rounding up people who look different and speak different languages, and we will be impacted in a very negative way.

I close by saying all of us in our congressional districts hear the hardship cases of immigrants who are seeking legal status who have been in line for long times who have had terrible things happen to them because of the complexity of the immigration system. That speaks for comprehensive immigration reform, but those are the very victims, those sad cases, that are going to be impacted by this amendment.

I rise in opposition to the amendment that my colleague Congressman SESSIONS has offered. This amendment would empower bail bondsman to enforce immigration laws by summarily rounding up and deporting people. It would outsource an important government immigration enforcement responsibility to the bail bonds industry, eliminating the few procedural due process rights immigrants have when challenging deportation. This would be a dramatic change in how we arrest and detain people in removal proceedings. Many people rounded up in this manner would turn out not to be deportable after all. They may be U.S. citizens; they may not be removable under the grounds charged; or they may be eligible for some form of relief. Yet this policy would treat them all as criminals.

I am particularly disturbed by the fact that these dramatic policy changes have never been reviewed or examined by a Congressional committee. There were no hearings. No debate occurred. No scrutiny at all. In fact, the language of this amendment was only recently made available.

Without Committee scrutiny, we would be giving bonding agents vast, unfettered authority to pursue, apprehend, detain and surrender immigrants—even when the bond is not breached. This is a certain recipe for misconduct, mistakes and the trampling of civil, due process and human rights.

Without Committee scrutiny, we would be allowing bonding agents to decide when people are flight risks and to round them up and hand them over to DHS for deportation.

Without Committee scrutiny we would be permitting bonds to be forfeited and people deported for not notifying DHS of changes of address prior to a move—even though DHS regulations give immigrants 10 days after a move to notify the agency of the change.

Without Committee scrutiny, we would be allowing bonding agents to have open access to all information held by the U.S. Government or any State or local government that may be helpful in locating or surrendering the person who is the subject of the bond.

Without Committee scrutiny, we would be compelling the disclosure of sensitive or confidential information to a bonding agent, such as: medical history; criminal investigation notes, location of witnesses, and information on victims of domestic violence.

I urge you to vote against this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SESSIONS. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH), a former subcommittee chairman for the Committee on the Judiciary.

Mr. SMITH of Texas. Mr. Chairman, I strongly support the Sessions amendment. This amendment helps ensure that deportable aliens are actually removed from the United States. Incredibly, only 13 percent of the illegal aliens arrested and ordered deported are actually removed from the country. Illegal aliens trying to sneak across the borders realize that, even if they get caught, they likely will never be required to leave. Of course, this only encourages illegal immigration.

The Sessions amendment helps correct this problem by giving the Department of Homeland Security guidance on the use of delivery bonds. Delivery bonds are already authorized under current law. This is nothing new. They require aliens to post a cash deposit and provide a written commitment they will appear in court. If the alien who posts bond violates any conditions of the bond, the bonding agent can take the alien into custody and surrender him to the Department of Homeland Security.

The Sessions amendment improves the use of delivery bonds by setting up 10 turn-in centers around the country to help bonding agents turn over deportable aliens to the Department of Homeland Security. It also sets up a system to encourage bonding agents to

keep looking for deportable aliens and turn them into DHS when they are found.

Illegal aliens, who comprise over 20 percent of all Federal prisoners today, are a serious problem in the United States and pose, obviously, a homeland security threat. We need to make sure that aliens who are deported by a court of law are in fact removed from the country. The Sessions amendment helps make sure that happens.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from Mississippi (Mr. THOMPSON), the newly appointed ranking member of the Committee on Homeland Security.

Mr. THOMPSON of Mississippi. Mr. Chairman, a better amendment title for this amendment would be The Bounty Hunter Act of 2005.

The amendment gives bail bondsmen authority to round up illegal immigrants and to have them deported without any sort of hearing or due process rights. This amendment would not make our homeland any safer or keep terrorists out. Instead, it would endanger civil rights and create fear in the immigrant community. We should not outsource the Department of Homeland Security's job to a bunch of bounty hunters.

As already has been said, the Fugitive Slave Act of 1850 has very similar language to this amendment. And for those Members who have not suffered from the ills of slavery and what people went through, I want to share and encourage you to look at this amendment very clearly before it comes to a vote.

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Let us give the Department of Homeland Security the 2,000 employees that we authorized for border security, not 2,000 bounty hunters. This is not a reality program. People will not be watching it on TV. We are turning over the Department of Homeland Security's enforcement responsibility to bounty hunters, people who have no training whatsoever, who absolutely can and possibly will infringe on civil rights of the people of this country.

Mr. Chairman, I encourage absolute opposition to this amendment.

Mr. SESSIONS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I rise today in very strong support of the bill, H.R. 418, and also the very fine amendment of the gentleman from Texas (Mr. SESSIONS).

I spoke on the floor last December in opposition to the conference report on the intelligence bill because it lacked the provisions that we are actually debating here today. I commend the leadership of, certainly, the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Texas (Mr. SESSIONS), for bringing this amendment to our attention and adding it to the bill. I am very pleased that they made good on their promise that we would be here today providing for the provisions that the gentleman from Wisconsin (Mr. SENSENBRENNER) had.

No issue is more important to this Congress than securing our borders and protecting our homeland, and I guarantee it is very important to our constituents.

When I was in the Florida senate, I headed up the Homeland Security Committee shortly after 9/11, and many of the provisions that are in this bill we actually included when we took on the driver's license issue, making the driver's licenses only last as long as the person was legally in the country. I applaud the gentleman from Wisconsin (Chairman SENSENBRENNER) and the House leadership for making good on their promise and enacting the recommendations made by the 9/11 Commission.

I urge my colleagues to vote for the bill and certainly for the amendment of the gentleman from Texas (Mr. SESSIONS), which just quite honestly makes common sense in that Members' constituents back home will very easily understand and say, Why was this not done a long time ago?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me make a point that I think should be very clear. This legislation will not just impact those who are undocumented. This legislation will impact those immigrants who have legal status. In the process of reviewing or revising that status, they too become part of the large webbed fishnet of hauling people in by people who are inexperienced in this area.

So I would offer to my colleagues that this is random, it is reckless, and it needs a bipartisan look and oversight committee assessment.

Mr. Chairman, I reserve the balance of my time.

Mr. SESSIONS. Mr. Chairman, I yield myself such time as I may consume.

This amendment that I have comes as a result of my paying attention to not only the 9/11 Commission, but also my service to the Select Committee on Homeland Security in the prior Congress. It was very obvious to members of the committee, as we heard testimony, including from the Immigration and Naturalization Service's Inspector General report from the Department of Justice where they recognized the deficiencies that they had, where a person who had gone through an entire process in front of a Federal judge was ordered removed and yet only 13 percent of those were removed from the country.

We have a problem. We have a problem that was enumerated in the 9/11 Commission report. We are utilizing the techniques that are not only available in the law, but also that many courts utilize today, Federal courts as well as city and State courts across the United States. We need to make sure that people who have gone through a hearing have been given the opportunity to make sure that they can present their case, but then have been ordered deported do so.

The United States and, I think, Members of this Congress need to make sure that the things which we do, we give the tools to implement those necessary ways to enforce the laws of the United States to be done; for those who have been ordered to be deported and have not done so, we are giving them a better tool kit. That is why the Sessions amendment is being offered.

I support this, and I hope the members will vote ''aye'' on the amendment.

Mr. Chairman, I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

First of all, let me also refer my colleagues to the 9/11 Commission report. What it said is that there were certain systems that needed improving or were broken. They suggested no such solution that the gentleman from Texas (Mr. SESSIONS) has offered.

We need to strengthen the Department of Homeland Security to be able to do its job, but more importantly, we need to be able to build those detention beds, thousands, if we will, to be able to have those that might be dangerous placed in detention locations.

This amendment does not solve that problem at all. The arresting and gathering up of those who might be deported, clearly with no place to go, makes a bigger and worse problem than we might have.

I would ask my colleagues to consider this not well directed and ask them to vote ''no.''

Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the manager on the Democratic side for yielding me this time.

Mr. Chairman, this amendment was brought to our attention yesterday evening, and at first blush, this is a shocking correlative point to be made and a comparison to the Fugitive Slave Act of 1850, in which agents were given the broad powers to return freed slaves in free States and return them back to slavery.

What we are doing here with bail bondsmen is giving them the ability to enforce immigration laws by summarily rounding up and deporting people and also gaining access to incredible private and secret material in data files.

And I just wanted to briefly ask the gentleman from Texas (Mr. SESSIONS) what inspired him to add this to a bill that we already had a considerable number of problems about and have never had any hearings on a provision such as this.

Mr. SESSIONS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Mr. SESSIONS. Mr. Chairman, I thank the gentleman for asking.

The impetus behind this is, these are aliens who have been ordered deported by a Federal judge as a result of a hearing, who do not show up. They have had their day in court. The process is through. They have been ordered deported, and only 13 percent actually are deported.

Mr. CONYERS. Mr. Chairman, I need my friend to know that they are in the process of having the claim heard. It has not been terminated or it is not all over. But we are arguing the substance.

What I was trying to figure out is, what inspired the gentleman at this late point in the proceedings, since we had hearings last year, we had no hearings this year, and we just found out about this yesterday.

The Acting CHAIRMAN (Mr. UPTON). All time has expired.

The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 2 printed in part B of House Report 109–4.

AMENDMENT NO. 2 OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 2 offered by Mr. CASTLE:

In section 204 of the bill, before ''Section'' insert ''(a) CRIMINAL PENALTY.—''.

At the end of section 204 of the bill, insert the following:

(b) USE OF FALSE DRIVER'S LICENSE AT AIRPORTS.—

(1) IN GENERAL.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) FALSE DEFINED.—In this subsection, the term ''false'' has the same meaning such term has under section 1028(d) of title 18, United States Code.

The Acting CHAIRMAN. Pursuant to House Resolution 75, the gentleman from Delaware (Mr. CASTLE) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 10 minutes.

The Chair recognizes the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer a simple amendment to the very thorough legislation before us today. The gentleman from Wisconsin's (Chairman SENSENBRENNER) dedication to fixing gaps in our security is commendable, and I am proud to join him in strengthening Federal identity requirements, protecting those who need political asylum, and improving our border security.

The 9/11 Commission identified gates for boarding airplanes is the last opportunity for our screeners to use sources of identification to ensure that people are who they say they are, and frankly, obviously, to check whether they are terrorists. To improve this process, Congress tasked the Department of Homeland Security with the goal of developing and building upon the aviation watch lists that our screeners commonly rely upon today.

My amendment is intended to enhance the information contained in Homeland Security's aviation security screening databases and to ensure that our security is not compromised through the use of falsified driver's licenses.

Specifically, the amendment would require Homeland Security to enter into the appropriate database any person convicted of using a false driver's license in attempting to board an airplane. Currently, aviation screeners at the Transportation Security Administration immediately detain individuals suspected of presenting false driver's licenses and then turn them over to the custody of either the Department of Justice or local authorities. The criminal justice system is then responsible for determining whether the suspect is guilty or innocent.

Under the present system, if convicted, this person is sentenced to federally mandated punishment, but the Department of Homeland Security is not required to put their name on a watch list.

My amendment would go a step further in protecting our Nation by also requiring the Department to enter a violator into one of its national aviation screening databases. Improving the quantity and quality of information contained in these passenger-screening databases is essential to enhancing our ability to identify potential threats and prevent terrorists from gaining access to our airliners.

When a person is convicted of trying to deceive security to get on an airplane, there is serious cause for alarm. My amendment would ensure that those convicted of using a false driver's license in attempting to board an airplane would be red-flagged for airport screeners.

The amendment does not impact persons who use false driver's licenses for other purposes. It allows the criminal justice system to run its course, and it is focused solely on the last line of defense before terrorists board an airplane. It is a simple, cost-effective way to enhance the Department of Homeland Security's ability to track potential high-risk passengers.

Again, I appreciate the opportunity to offer a small but important step in improving our security databases. My amendment would ensure that those convicted of using a false driver's license in attempting to board an airplane are red-flagged for airport screeners.

The people screening passengers at the gates do their best to make sure terrorists are not getting on these planes. Congress should do everything in our power to make their job easier.

Mr. Chairman, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, clearly this amendment has good intentions, and I think it is important to note that the amendment would require the Secretary of Homeland Security to enter into an aviation security database the name and other information about people who have been convicted of using a false driver's license for the purpose of boarding an airplane. The objective of this amendment is to enhance our ability to track and detect potential security threats, and as I indicated, I support the objective. I think it is a good idea to require the Secretary of the Department of Homeland Security to have information in his database about people who have been convicted of using a false driver's license.

But as they all say, the devil is in the details. Again, the same predicament or affliction that impacted the amendment of the gentleman from Texas (Mr. SESSIONS) impacts this. Where is the hearing? Where is the oversight? Where is the impact that will occur? Do these also include individuals who mistakenly have such a driver's license, if that may be the case, and where is the basis for it?

I was just looking at a letter from Commissioner Hamilton, who talked about controversial provisions that everyone suggests came out of the 9/11 Commission, and what he said very carefully was that these are, in fact, recommendations. As the intelligence bill did in the last session with enormous vetting, hearings, oversight, conference committees at the later stage, it almost became a hearing, none of these amendments have been given the kind of vetting that one would know that these are valuable and that the details have been worked out as to how we utilize the database or who gets into the database if, by chance, the utilization was a mistake even though they violated the law.

□ 1215

So you create this enormous database that has those who potentially would do us harm, but others, unfortunately, that got themselves into the criminal justice system. We hope, however, that this amendment will send notice to those who might try to use any false document in trying to get on an airplane for the potential damage it may do.

Mr. Chairman, I rise in opposition to the amendment that my colleague Congressman CASTLE has offered. This amendment would require the Secretary of Homeland Security to enter into an aviation security database the

name and other information about people who have been convicted of using a false driver's license for the purpose of boarding an airplane.

The objective of this amendment is to enhance our ability to track and detect potential security threats. I support this objective, and I think it is a good idea to require the Secretary of Homeland Security to have information in his data bases about people who have been convicted of using a false driver's license. As they say, however, "the devil is in the details." I would like a hearing and a markup on this amendment before deciding whether it should be enacted. I urge you to vote against the Castle amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CASTLE. Mr. Chairman, I yield myself 1 minute, because I think the gentlewoman from Texas has made some very valid points that need to be discussed.

One thing that is important and what we have done here is to understand that there has to be a conviction in this situation by a court of law before it can be entered into a database of the Transportation Security Administration. That is very important. It gives all the protection of what could happen there. We thought a lot about that because it was a matter of some concern. So a mere allegation or something that proves not to be true would never be entered into the database. I wanted to make that point.

Mr. Chairman, I yield 1 minute to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, the Castle amendment is a sensible amendment to the base bill, and I thank the gentleman from Delaware for offering it. People who present a false driver's license to the Transportation Security Administration are turned over to the proper authorities, but for some reason that is beyond me we do not add these people to our flight watch list. It blows me away that we do not already utilize this commonsense practice.

Improving the information contained in passenger screening databases will enhance our ability to identify potential terrorists from gaining access to airlines. We have taken some important steps to improve our security at airports, but we need to do more.

This amendment enhances our last line of defense by tracking potential high-risk passengers without interfering with the rights of everyday travelers. It just makes so much good sense, and I hope that we adopt it quickly.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the clarification offered by the gentleman from Delaware (Mr. CASTLE). I would inquire of the author of the amendment, one question: In your research, did we determine that DHS, new as it is, is not doing that? That is the first question.

On the second, let me have the gentleman restate it again. Because one of the concerns I have on the Select Committee on Homeland Security and watching, for example, TSA formulate itself and work to train certainly very professional employees, but the training does not necessarily lend itself to maybe the keenness of eye to see that false document. We obviously have to improve.

I was concerned as to whether or not it is the spotting of someone, saying you have a false driver's license, or can you restate that it is actually going through a judicial system with a conviction, determining that is what you ultimately did?

Mr. CASTLE. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I thank the gentlewoman for her good questions and for yielding.

We are not sure at this point whether they include that information or not at TSA, because simply they have databases and we do not know necessarily what is in their databases, and I do not blame them at all. They are not prone to reveal all of that. It is our judgment they should be doing this. We hope that they would be doing it. We do not know if they are for sure or not. I cannot confirm or deny that, because we simply do not know the answer to that particular question.

I would imagine, and I am putting myself in their position and I am not an expert on this, but if you are there and are in the security forces there, you are obviously trained in document recognition to some great degree. Some are better probably than others at this.

Obviously, if one has a database, it is obviously much more of a clear signal that this person needs to be looked at because they tried to do this before. That is the reason we feel it should be added into the database as it goes on.

I do not think this is going to change actually the way they look at licenses presently in the first instance or even in second instance. It is just a trigger mark as other things might be in terms of potential risks.

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming my time, let me pointedly ask the gentleman, you speak specifically to a judicial conviction going through, as opposed to being tapped and saying, you are carrying a false driver's license.

Mr. CASTLE. Yes.

Ms. JACKSON-LEE of Texas. The gentleman is talking about actually trial and conviction?

Mr. CASTLE. If the gentlewoman will yield further, it speaks very specifically to trial and conviction.

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming my time and I would simply say the comment on this is that I appreciate the distinguished gentleman from Delaware being open with his response.

One of the concerns I have is that we do not know whether DHS is doing this or what TSA is doing and hearings would have been appropriate. This is a valid issue, let us not doubt that; and, of course, I would hope that we would want a database to be secured.

I do have to raise red flags on making sure it is not random, making sure there is a conviction, and in knowing what happens with DHS. I would have wanted to have hearings, but I thank the gentleman for his answers.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I just wanted to ask the author of the amendment, would he have objected to having hearings on his amendment?

Mr. CASTLE. Mr. Chairman, if the gentlewoman would yield further, no, I would not have objected to having hearings. It is relatively simple. I do not mean to suggest it needs panels of hearings, but I never object to having a hearing.

Mr. Chairman, I believe the gentlewoman from Texas (Ms. JACKSON-LEE) has the right to close?

The Acting CHAIRMAN (Mr. UPTON). The gentlewoman from Texas (Ms. JACKSON-LEE) has the right to close.

Mr. CASTLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I really do not have anything new to add to this, except that I think it is very important that this be done. We tried to make it as simple as possible with all the judicial support behind it which would make it clearly fair to everybody who might be involved in this.

My sense is that if I were running TSA, which I am not and do not want to, but if I were doing so, this is certainly something that I would want to do; and I would hope that by passing this legislation we will make sure it happens now and into the future.

Part of my motivation for this, by the way, and some other amendments I introduced which were not allowed on this, is I am still convinced that a lot of 9/11, if not the entire procedure, could have been avoided if we had better security measures in place on some of these things.

So I think this is a very important area. While everything else in the 9/11 report is of huge importance, I have always felt that this particular area of making sure who is in this country and who is boarding planes or other transportation systems is vitally important. So I would hope we would be able to join together and pass an amendment like this and hopefully later the legislation.

Mr. Chairman, I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me just close by raising these points. It looks like we are moving quite quickly. It is the

question of having the answers. This has good intentions, but the answers of what DHS is doing, the training of TSA, what kind of standards are used in different airports. Some TSA person might say it is a mistake, go back. Others might make it in essence a Federal crime and that person is prosecuted. So some you get in the database, others you do not. It is just a question of concern as to how this will work.

Again, it is a good idea. Before I yield back my time, I would simply say that I would suggest that this amendment be addressed again in our hearings, to be able to detail out what would ultimately happen.

Mr. POE. Mr. Chairman, I rise in support of the amendment by my colleague from Delaware. This amendment takes a common sense approach in saying that those who want to board our Nation's airplanes must show documentation showing their full legal identity. The REAL ID Act, which I strongly support, requires that these driver's licenses must meet tough federal standards, chief among them are the requirements that applicants must demonstrate their legal presence. As a member of the Aviation Subcommittee and as a Member from the great state of Texas, I strongly feel we need to put just as much of an emphasis on protecting the skies as we do our land borders. This amendment would simply require the Homeland Security Department to better track those attempting to conceal their identities before boarding airplanes and allow those officials greater authority to screen these passengers and detect threats before they may occur. I urge my colleagues to support this amendment and the underlying bill.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield back my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Delaware (Mr. CASTLE).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 3 printed in part B of House Report 109–4.

AMENDMENT NO. 3 OFFERED BY MR. KOLBE

Mr. KOLBE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 3 offered by Mr. KOLBE:

At the end of the bill, insert the following new title:

TITLE III—BORDER INFRASTRUCTURE AND TECHNOLOGY INTEGRATION

SEC. 301. VULNERABILITY AND THREAT ASSESSMENT.

(a) STUDY.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, shall study the technology, equipment, and personnel needed to address security vulnerabilities within the United States for each field office of the Bureau of Customs and Border Protection that has responsibility for any portion of the United States borders with Canada and Mexico. The Under Secretary shall conduct follow-up studies at least once every 5 years.

(b) REPORT TO CONGRESS.—The Under Secretary shall submit a report to Congress on the Under Secretary's findings and conclusions from each study conducted under subsection (a) together with legislative recommendations, as appropriate, for addressing any security vulnerabilities found by the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security Directorate of Border and Transportation Security such sums as may be necessary for fiscal years 2006 through 2011 to carry out any such recommendations from the first study conducted under subsection (a).

SEC. 302. USE OF GROUND SURVEILLANCE TECHNOLOGIES FOR BORDER SECURITY.

(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Homeland Security for Science and Technology, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, and the Secretary of Defense, shall develop a pilot program to utilize, or increase the utilization of, ground surveillance technologies to enhance the border security of the United States. In developing the program, the Under Secretary shall—

(1) consider various current and proposed ground surveillance technologies that could be utilized to enhance the border security of the United States;

(2) assess the threats to the border security of the United States that could be addressed by the utilization of such technologies; and

(3) assess the feasibility and advisability of utilizing such technologies to address such threats, including an assessment of the technologies considered best suited to address such threats.

(b) ADDITIONAL REQUIREMENTS.—

(1) IN GENERAL.—The pilot program shall include the utilization of a variety of ground surveillance technologies in a variety of topographies and areas (including both populated and unpopulated areas) on both the northern and southern borders of the United States in order to evaluate, for a range of circumstances—

(A) the significance of previous experiences with such technologies in homeland security or critical infrastructure protection for the utilization of such technologies for border security;

(B) the cost, utility, and effectiveness of such technologies for border security; and

(C) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(2) TECHNOLOGIES.—The ground surveillance technologies utilized in the pilot program shall include the following:

(A) Video camera technology.

(B) Sensor technology.

(C) Motion detection technology.

(c) IMPLEMENTATION.—The Under Secretary of Homeland Security for Border and Transportation Security shall implement the pilot program developed under this section.

(d) REPORT.—Not later than 1 year after implementing the pilot program under subsection (a), the Under Secretary shall submit a report on the program to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary. The Under Secretary shall include in the report a description of the program together with such recommendations as the Under Secretary finds appropriate, including recommendations for terminating the program, making the program permanent, or enhancing the program.

SEC. 303. ENHANCEMENT OF COMMUNICATIONS INTEGRATION AND INFORMATION SHARING ON BORDER SECURITY.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, the Assistant Secretary of Commerce for Communications and Information, and other appropriate Federal, State, local, and tribal agencies, shall develop and implement a plan—

(1) to improve the communications systems of the departments and agencies of the Federal Government in order to facilitate the integration of communications among the departments and agencies of the Federal Government and State, local government agencies, and Indian tribal agencies on matters relating to border security; and

(2) to enhance information sharing among the departments and agencies of the Federal Government, State and local government agencies, and Indian tribal agencies on such matters.

(b) REPORT.—Not later than 1 year after implementing the plan under subsection (a), the Secretary shall submit a copy of the plan and a report on the plan, including any recommendations the Secretary finds appropriate, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary.

The Acting CHAIRMAN. Pursuant to House Resolution 75, the gentleman from Arizona (Mr. KOLBE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. KOLBE).

Mr. KOLBE. Mr. Chairman, I yield myself of such time as I may consume.

Mr. Chairman, I thank the chairman of the full committee for indulging me with this amendment. This amendment was legislation which was introduced by several of us that represent border districts last year as a freestanding bill. It is now incorporated here in this bill, or parts of it at least are incorporated in this bill.

I think it is entirely consistent with the goals of H.R. 418, because a key component of securing our borders is increasing technology and communication along the border regions. H.R. 418 is a bill about securing our homeland, and this amendment is a perfect complement to the vision of this very important legislation offered by the gentleman from Wisconsin.

Arizona has become a doormat for illegal immigrants. They pour across our porous border every day. In fact, there are more apprehensions of illegal immigrants in Arizona than the entire rest of the border combined. Many portions of the Arizona border are large

and unpopulated desolate desert areas. They are hard to patrol and difficult to monitor. In these areas and all along the border it is essential to advance ground technologies in order to officially understand and stop those who come through this back door to our Nation.

My amendment to H.R. 418 requires the Department of Homeland Security, working through the field offices of the Bureau of Customs and Border Protection, to get the technology, the equipment and the personnel needed to address security of our borders. Furthermore, the amendment requires that the Department of Homeland Security carry out ground surveillance programs that will improve border security.

While the National Intelligence Reform Act of 2004 designed a plan to enhance ground surveillance on the northern border, a similar program was not designed for the southern border. Improvements to ground technologies are absolutely essential in the large expanses of desert and unpopulated lands along the southern border.

Finally, this amendment requires the Department of Homeland Security to improve communications and information sharing with Federal, State and Tribal government agencies. The various agencies with jurisdiction over the southern border must be able to communicate.

This is particularly a problem in Arizona, because more than half of the entire border is covered by Tribal organizations, Tribal units, sovereign Tribal nations who are not generally covered by most of the Federal legislation we have on telecommunication sharing.

Having customs agents unable to communicate with border patrol agents or with the policemen from the Tohono O'Odham Nation around the same port of entry is really quite ridiculous. This portion of the amendment addresses problems with the use of incompatible communications technologies and requires that the Department of Homeland Security rectify this situation.

The amendment builds on the sentiment, it builds on the intention of H.R. 418, and through its enhancement of homeland security helps to ensure the safety and defense of our Nation. I think it will be a step, perhaps a small step, but one of the very important steps along our southern border to helping improve the technology and our ability to secure that southern border.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Is there a Member that is opposed to the amendment seeking time in opposition to the amendment?

Mrs. DAVIS of California. Mr. Chairman, although I support the amendment, I ask unanimous consent to claim the time in opposition.

The Acting CHAIRMAN. Without objection, the gentlewoman from California (Mrs. DAVIS) will control the 10 minutes in opposition.

There was no objection.

Mrs. DAVIS of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the Kolbe amendment. I am very glad to see my friend and colleague finding a good and realistic way to get 21st-century technology to complement the way we police and protect our borders.

Like many other Democrats, I have long supported monitoring our borders 24 hours a day, 7 days a week. I feel strongly that any plan for border security should include a comprehensive technology assessment, an analysis of high-altitude monitoring technologies for use with land-based systems and, importantly, full funding of the plan.

Even with the border fence, like we have in San Diego, technology is still needed to assist with monitoring and the effective placement of human resources. There are many companies in the private sector which offer all kinds of ways to enhance our ability to secure the border. Congress has passed laws increasing personnel and technology. So what we need most now is an evaluation of what it will take to secure our borders. An assessment of technology equipment and personnel would be extremely helpful to all of us in making future decisions about additional increases.

As we know, sensors and cameras are being used in many locations, including San Diego. But the Kolbe amendment represents a thoughtful approach: let us not just deploy equipment; let us ensure that the equipment works to address the gaps at our land borders.

□ 1230

Simply deploying equipment is not the answer. The solution must match the need. A ground surveillance program, in partnership with the remote aerial surveillance program, would go a long way towards achieving real border security.

Unfortunately, technologies have been employed on an ad hoc basis in the past and are not part of an overall technology deployment plan. The Kolbe amendment gives us realistic hope for an overall plan for smarter border security.

Technology and information-sharing is critical if our frontline personnel are to effectively secure our Nation's borders.

Importantly, I remind my colleagues that these surveillance systems still require Border Patrol agents to apprehend illegal border crossers and contraband. Border Patrol agents repeatedly tell me that they are inadequately staffed to do their job. Funding the 9/11 bill to authorize levels is a critical component of securing America's borders. If the President will not do it, Mr. Chairman, let us make sure that Congress does.

Mr. Chairman, I reserve the balance of my time.

Mr. KOLBE. Mr. Chairman, I reserve the balance of my time.

Mrs. DAVIS of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. ORTIZ).

(Mr. ORTIZ asked and was given permission to revise and extend his remarks.)

Mr. ORTIZ. Mr. Chairman, let me thank the gentleman from Arizona (Mr. KOLBE), my good friend, for introducing this amendment, but I would like to touch on another area that is also very, very important.

Let me say that the Border Patrol need all the help that they can get. We have another serious problem that I hope that we can touch on, and that is what is known as the OTMs, or Other Than Mexicans.

My district includes a portion of the McAllen Border Patrol sector. Last year, in the fiscal year, almost 17,000 OTMs came across through that Border Patrol sector, representing at least anywhere from 76 to 80 countries coming across into the United States. This worries me about the security of this country.

As I talk to the Border Patrol officials, they know one thing, that we do not have sufficient detention facilities. So what happens to them? They come across. They do not have to be picked up by the Border Patrol. They surrender themselves to the Border Patrol and say, I am from Colombia, I am from Egypt, I am from any other country; and they know that they do not have sufficient facilities.

So what happens? They go and process these individuals, and they come in clusters from Mexico. When they come across, it takes 10, 12, 15 Border Patrol people to come and bring them to the facilities to process them. It takes 2½ hours to do that. When this happens, in the meantime, the border is completely open, because those Border Patrol people were removed to process these individuals.

What happens next? After the 2½ hours, they go and take them to the bus station, and they give them a little piece of paper that says, you are supposed to appear on the 15th of whatever month, 60 to 90 days from now. One of these guys just finished paying $900 to be brought across. Do my colleagues think he is going to come in?

This is another issue that we need to study about.

Mr. KOLBE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I thank my colleague for yielding me this time. And I appreciate his bringing this amendment to the floor, and I support it.

It is absolutely critical that we secure our borders. Those of us who live in Arizona know that our borders are simply not secure. Arizona has become a doormat for illegal aliens. There are thousands and thousands that are apprehended every week and thousands more who are not apprehended. They slip through. The cost to Arizona is considerable.

Now, I happen to believe, along with my colleague, that we need comprehensive immigration reform that has to be part of our long-term plan. But in the interim, we certainly need to do some things, and this amendment goes a long way toward doing them. We need vulnerability and threat assessments. DHS needs to see what kind of technology, what kind of personnel and equipment is going to be needed.

All of us have viewed over the past couple of years the new technologies in land surveillance, surface surveillance, and they are promising. They are things that can be done that are not being done. We need a good assessment and recommendations made for us to follow through on.

We have aerial work that is being done; not enough, more surveillance is needed there. Also, this amendment calls for increased communications, better communications between those on the ground and those of us here as policymakers and those who implement the policy. We simply need better information to be able to have recommendations that we can follow up on.

We have, obviously, limited resources at our disposal. We need to make sure that they are employed in the best way possible, and this amendment will go a long way toward ensuring that.

Again, I commend the gentleman from Arizona for bringing this forward, and the chairman for insisting that this bill be brought forward.

Mrs. DAVIS of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in support of the Kolbe amendment. I also thank my colleague, the distinguished gentlewoman from California, for yielding me this time and, as well, my colleague and friend, the gentleman from Texas (Mr. ORTIZ). Let me express my appreciation for his leadership, because we have spent a good amount of time together at the southern border.

I have also spent a good deal of time at the northern border, both sides of the coast.

Clearly, this legislation is needed with respect to improved and increased technology, but I would also argue that the Secure Our Border Act, that was offered by the Select Committee on Homeland Security Democrats in the last Congress, really speaks to the broader question. And, frankly, I wish this amendment had gone a step further; that is that what we do not have are the necessary Border Patrol agents and their training equal to the enormous responsibility that comes with people coming across the border and, as well, adding that to the technology that is part of this particular amendment. And then, of course, detention beds.

The gentleman from Texas (Mr. ORTIZ) is absolutely right. The southern border now lends itself to the doorway of terrorism because of this concept of OTMs, and the idea that they are given just a piece of paper, as he said, that says, Show up, and no one is required to show up; or when I say, Required, there is no pressure, no enforcement, of their showing up.

So technology is certainly what we need, and I hope, as we move forward in the Select Committee on Homeland Security, we will, if you will, author bills that will give those resources to the northern and southern border.

But we need to understand what the gentleman is saying. This is a crisis as it relates to OTMs, particularly dealing with the potential of using that border for terrorists to come across. Technology is one thing, but human participation is another; not what has been offered by the President's budget of 200 Border Patrol agents, but the 2,000 that really will help us secure the borders as necessary. This amendment will go a long way.

I rise in support of the Kolbe amendment. The Kolbe amendment is one of the few ideas that have been proposed on the floor of the House during debate on HR 418 that would help secure our borders.

We must secure our land borders and putting 21st century technology to work for us is the heart of the solution. Homeland Security Democrats support monitoring our borders 24 hours a day—7 days a week.

While the Kolbe amendment falls short of asking for an interagency border security strategy, as Democrats did in the SECURE Border Act, it does get at the key issues of assessing technology and staffing. Now that Congress has passed laws increasing personnel and technology, what we need most is an evaluation of what it will take to secure out borders.

Additionally, while sensors and cameras are currently being used, simple deployment isn't always the answer. The solution must address the problem and take into consideration the terrain. A ground surveillance program in partnership with the remote aerial surveillance program which was mandated as part of the 9/11 bill will go a long way towards achieving real border security. One missing area element in this amendment seems to be a link between the air and ground surveillance programs. I hope that that's addressed. We cannot afford to build systems in isolation.

Lastly, while this amendment does add to the debate on border security, these surveillance systems still require border patrol agents to apprehend illegal border crossers and contraband. When Homeland Security Committee staff visited the southern border last year during a six month investigation, they found and heard Border Patrol agents tell them that they are inadequately staffed to monitor the expansive southern border.

One border patrol support staffer explained that staffing shortages meant that he was responsible for simultaneously viewing 26 cameras for illegal crossings and notifying agents when he saw any crossings. This same employee was also responsible for notifying agents about buried sensor activations numbering from 100–150 an hour, and running computer checks on all detainees. It is clear that despite the fact that we have increased border patrol numbers, Border Patrol still lacks critical support staff.

Funding Border Security is a critical component of securing America's borders. If the President won't do it—let's make sure that Congress does.

Mr. KOLBE. Mr. Chairman, I yield back the balance of my time.

Mrs. DAVIS of California. Mr. Chairman, I yield myself such time as I may consume.

I do want to close, if there are no further speakers, and acknowledge that we have important work to be done here. We have highly professional personnel at the border, and they are doing their job, but we need to provide more of them. We need to fund the border security proposals that we have been putting forward for some time. We need to be sure that we fund those.

But the other piece of that, and I am delighted that the gentleman from Arizona (Mr. KOLBE) has brought that forward, is to be certain that the most sophisticated applications of that technology are used on the border.

I speak to many companies in San Diego. I know that they have a great interest in this. They have been a part of some of these solutions in the past. Let us employ them; let us be sure that we are doing this in a comprehensive fashion.

So I want to thank the gentleman from Arizona (Mr. KOLBE). We must move forward in this area. We can do a far better job on the border than we have done before.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Arizona (Mr. KOLBE).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 4 printed in Part B of House report 109–4.

AMENDMENT NO. 4 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 4 offered by Mr. NADLER:

Strike section 101 of the bill (and redesignate the succeeding sections of title I accordingly).

The Acting CHAIRMAN. Pursuant to House Resolution 75, the gentleman from New York (Mr. NADLER) and a Member opposed each will control 10 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I claim the time in opposition.

The Acting CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I offer this amendment to strike section 101 of the bill relating to asylum seekers. Under the excuse of protecting national security, the asylum provisions in this bill make it much more difficult for legitimate victims to be granted asylum. The logic seems to be, if you keep out every

asylum seeker, including legitimate victims, then the system cannot be abused.

Proponents of this section make inaccurate, dramatic claims about terrorists who abuse the asylum system to get into the country, but the cases they cite are mostly pre-1996 when the law was changed. Since that 1996 change, asylum seekers are jailed, put in custody until a finding of reasonable fear of persecution is made, so they cannot pose a threat while they are in custody.

Because current law already places the burden of proof on the asylum applicant and places the applicant in custody until he or she meets the initial burden of proof, a terrorist who wishes to enter the United States would most likely attempt to do so by a tourist visa or on fraudulent papers. They are not going to claim political asylum and then be put in jail until they can show a credible fear of persecution.

But this bill seeks to raise the bar when people finally do get into court. If we pass this bill in its current form, mothers, fathers, children with legitimate asylum claims will be sent back to their persecutors with no benefit to national security.

Current law provides that an asylum seeker must prove a reasonable fear of persecution by reason of race, color, creed, national origin, sex, or political opposition. The new provision in this bill would require proof that one of these factors, race, color, creed, political opposition, is the ''central reason'' for the legitimate fear.

This is an almost insurmountable burden of proof since the persecutors rarely stop to explain their motives while they are committing torture, rape, and murder. The judge would be forced to look into the minds of the persecutor and decide what weight to give to a particular motive in cases of mixed motives, which they are, in order to prove, the burden of proof, that this is the central reason. Not one of the major reasons, a central reason. This is an impossible burden of proof with no purpose other than to deny the asylum claim.

This section would deny a victim asylum based on an immaterial inconsistency or inaccuracy in a prior statement. So an applicant who, at the airport, perhaps without a decent understanding of English or a mistranslation, forgets or misspeaks the date of her high school graduation, or the date of her wedding or her grandchildren's births, even though the dates might not be significant in her culture, unlike in ours, would later be denied safe haven from persecution, even though they have nothing to do with the legitimacy or lack of legitimacy of her claim for asylum under the law. This would be a ridiculously harsh outcome for an absurdly innocent mistake.

There are other things that this section does. We did not have time to review it properly. It did not go before the committee. The provisions that were considered by the House last year was only a 2-page provision. This became a 10-page provision 2 days ago. No one has had a chance to properly look through it, but we do know that it does a lot of other very harsh things.

Mr. Chairman, asylum law is supposed to be about protecting individuals from serious abuses of human rights. It is not supposed to be about seizing on any possible basis to deny a claim or to return people to harm's way.

This section is not about protecting our borders; it is about xenophobia and sending victims back to their torturers. It is, Mr. Chairman, in the larger sense, un-American.

I urge my colleagues to stand with me in voting for the Nadler-Meek-Jackson-Lee amendment to strike these provisions and keep our law humane and American.

Mr. Chairman, I reserve the balance of my time.

□ 1245

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the amendment, and I wish those that were arguing against the amendment read it and see what it says; and then I think they will be convinced that this is a commonsense change.

First of all, let me say that the asylum law was designed to provide safe haven to those who are fleeing persecution in their homeland. It is not to be used as a crutch for economic migrants who are coming to the United States because the grass is greener on our side of the border.

Now, the bill as it is currently before us takes away the cap of 10,000 approved asylum applicants who are admitted to permanent residency every year. The Nadler amendment strikes that. The bill as it is before us states that the applicant for asylum has the burden of proof to prove that he or she is eligible to receive asylum in our country. The Nadler amendment strikes it. But every petitioner, whether it is a plaintiff in a lawsuit or someone who is applying for Social Security disability benefits, has got the burden of proof to show that they are entitled to the relief that they are seeking.

This bill makes it clear that asylum applicants have to make the same burden of proof as others, and the Nadler amendment strikes that.

The other thing that the Nadler amendment strikes is a detailed explanation of how the immigration judge is to determine the credibility of the applicant and the witnesses that the applicant and the government put before the judge. Every trier of fact in court makes the determination based on the credibility of witnesses. Criminal juries can send someone to their death or to prison for life based on their determination of the credibility of the witnesses, and immigration judges should do so also.

The gentleman from New York (Mr. NADLER) says that 100 percent of the people who show up at the airport claiming asylum are detained. That is not right. Ninety percent of those people are released. Only 10 percent are detained past the airport. The gentleman from New York (Mr. NADLER) says that all of the statements or the instances that we raise were pre-1996 law change cases. I will give you two that were after that.

Nuradin Abdi who was a Somali national stood accused of providing material support to al Qaeda. The government alleged that Abdi admitted al Qaeda member Iyman Faris and others initiated a plot to blow up a Columbus, Ohio, area shopping small. Mr. Abdi was granted asylum in 1999. Later after traveling to a terrorist camp in Ethiopia, he was arrested when he reentered the United States, and his asylum status was revoked. It was revoked, as the U.S. Attorney's Office puts it, because with the exception of some minor biographical data, every aspect of the asylum application he submitted was false.

Now, giving a judge an opportunity to deny a claim based upon a determination that the applicant is lying is in my bill and the gentleman from New York (Mr. NADLER) tries to strike that.

Again, in 1999 an Egyptian national who had been granted asylum, despite the fact that the INS had provided classified evidence that the alien was a known member of a foreign terrorist organization designated by the Secretary of State, and according to the committee-hearing witness, the INS submitted a report from a New York City detective showing the alien's participation in a meeting with the infamous Sheik Omar Abdel Rahman, dedicated to planning acts of terrorism in which the pros and cons of hijacking an airplane were discussed. He got asylum too.

Now, while it is true that many terrorists are statutorily barred from receiving asylum, members of terrorist organizations are explicitly allowed to receive asylum. Further, despite any statutory bar to the contrary, asylum regulations and the courts have made it practically impossible for the government to ferret out terrorists who apply.

There are a number of reasons for this, including the fact that government attorneys are barred from asking foreign governments about any evidence they may possess about the veracity of asylum claims. Thus, the only evidence available to the government to support an asylum applicant is the lack of credibility to the applicant. However, the ninth circuit is preventing immigration judges from denying asylum claims when it is clear that the alien is lying. Furthermore, the ninth circuit has held that an alien can receive asylum on the very basis that the alien's government believes he is a terrorist, even if we agree.

This bill brings back sanity to the asylum laws by overturning these

rogue precedents from the ninth circuit. And if any jury in the country can convict a defendant based on its determinations of credibility, certainly an immigration judge should be able to do the same thing.

Vote down this amendment, and let us put some common sense into our asylum laws as well as giving hope and shelter to people who can legitimately claim and receive asylum.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield for the purposes of making a unanimous consent request to the gentleman from Michigan (Mr. CONYERS).

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I want to thank the gentleman from Florida (Mr. MEEK) for his work on this. It is credibly important.

This is perhaps the most objectionable part of the bill.

I rise in support of the Nadler/Meeks/Jackson-Lee Amendment to strike section 101 of H.R. 418 which imposes evidentiary requirements on asylum-seekers fleeing persecution and all immigrants who seek withholding of removal from deportation.

Without a doubt, if this section passes into law, genuine bona fide refugees who have fled horrible persecution that qualifies them for protection from our government will be returned to face more terror, torture and death at the hands of their persecutors.

Chairmen SENSENBRENNER is using the public's fear of terrorism to radically change asylum law for all asylees, not just those with some connection to terrorism.

Section 101 will not make us one bit safer from terrorist attack. Since we tightened some loopholes in asylum law in 1996, terrorists have not been ''abusing our asylum system'' as the proponents of this bill allege. Terrorists are already barred from receiving the benefit of asylum protection in the United States.

Those who support placing these new insurmountable hurdles on asylum-seekers have used examples of known terrorists to allegedly show that the asylum system makes us vulnerable to terrorist attack. But none of the people they talk about were granted asylum.

Ramzi Yousef and Sheik Omar Abdel Rahman, who were both involved in the first World Trade Center bombing in 1993, were never granted asylum. They filed applications for asylum that had not been adjudicated at the time of the bombing.

Mir Aimal Kansi, who killed two CIA employees in 1993, was never granted asylum. He had an asylum application pending at the time of the attack.

Gazi Ibrahim Abu Mezer, known as ''the Brooklyn bomber'' for his involvement in a planned attack on the New York City subway in 1997, was never granted asylum. He applied for asylum but withdrew his application before it was reviewed.

Ahmad Ajaj, who was involved in the first World Trade Center bombing, was never granted asylum His initial application for asylum was abandoned when he left the country, and his second application was denied.

Abdel Hakim Tizegha, who was involved in the planned Millennium attack in 1999, was never granted asylum. His application was denied in 1997 and his appeal was denied in 1999.

Hesham Mohamed Ali Hedayet, who killed two people at the El Al counter at Los Angeles International Airport in 2002, was never granted asylum. His application was denied in 1995.

Shahawar Matin Siraj, who has been accused of plotting to bomb the Harold Square subway station in New York City in August 2004, was never granted asylum. He asserts that he entered the United States legally as a teen, and he later filed an application for asylum that was suspended upon his arrest.

Immigrants cannot apply for asylum unless they are already in the United States. So it is not the fault of the asylum system that these terrorists, and terrorist suspects, entered the United States and section 101 of H.R. 418 would not have prevented their entry. In addition, filing an application for asylum should not be equated with actually receiving asylum protection and the right to remain in the United States that it grants. Many asylum applications are rejected, just as many tourist visas to enter the United States are rejected.

For people applying for asylum in 2005, under current law, extensive security checks are now done through the FBI, CIA, Homeland Security and State Department databases. Now, expedited removal rules mandate detention for people arriving without proper documents, and grant DHS authority to detain asylum-seekers throughout the adjudication of their application. Expedited processing of asylum claims now exists, and applicants are denied work authorizations that may have been a magnet for false applications before asylum reform. People who are already in the United States, who become terrorists while they are here, must be identified by intelligence and law enforcement. If they are, asylum or any other immigration benefit will be revoked under current law.

For that vast majority of asylum applicants who have no nexus to terrorism, other than being victims of it, section 101 will create high, new legal standards of evidence, and will severely limit judicial review of their cases.

First, the bill requires that refugees prove that one of the five grounds for asylum protection—race, nationality, membership in a social group, political opinion, or religion—is the ''central reason'' why they were persecuted. With little access to the documents and witnesses they left behind when fleeing their country, they must prove what was in the mind of their persecutor during the persecution. This would require an asylum-seeker from Darfur, Sudan to prove that the janjaweed attacked them and ran them off their land because they were black, and not because the militia wanted to steal the immigrant's cows, for example.

Second, the bill requires asylum-seekers to show evidence corroborating their testimony, and it would bar judicial review of decisions regarding that evidence. Yet many refugees are unable to flee with the people or paperwork that could back up their stories under evidentiary standards.

Third, the bill allows judges to deny applications if they find inconsistencies between the applicant's testimony and any statement they have made to a U.S. official, or inconsistencies in witness and documentary evidence that is provided. In addition, it allows denials on the basis of subjective assessments of an applicant's demeanor, a factor that is frequently misinterpreted by U.S. judges due to cultural differences. Thus, a person could be denied asylum due to an immaterial inconsistency in the evidence they present.

Finally, the bill strips courts from the power to review immigration judge's discretionary judgments in asylum and removal cases.

Unfortunately, this bill takes a significant step in turning our country away from its proud history as a nation of refuge for those fleeing persecution.

For these reasons, I urge my colleagues to support the Nadler/Meeks/Jackson-Lee amendment to strike section 101 of this bill.

Mr. NADLER. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Florida (Mr. MEEK).

(Mr. MEEK of Florida asked and was given permission to revise and extend his remarks.)

Mr. MEEK of Florida. Mr. Chairman, it is very hard for me to respond to what the chairman just shared with us because basically if we do not pass this amendment of striking this 101 section, we might as well just take all the language in 101 and say, if you are being persecuted or if you are being raped as a woman or you are being abused as a child, do not come to America because that is basically what this amendment is saying.

They were raising the bar beyond the capabilities of the individuals that are fleeing persecution. They are running for their lives literally, and many of these individuals are incarcerated. And where are the commercials? Where are the media reports of how lax our asylum laws are here in the United States? Because they are not. Where are the law enforcement agencies? Why are they not knocking down the doors in the halls of Congress saying, we really have to tighten up those asylum laws because they are too weak now? Where are they?

We are following the people who have focused on this the most, the 9/11 Commission, and what they are asking for is for us to review and make sure we have good asylum laws in place. We are not saying it is bad. We are not saying it is good. I commend my colleagues who are looking at this, but moving in haste and having this manager's amendment before the Congress and no one has seen it. All of the agencies, all of the religious organizations that are helping these individuals that we are trying to deal with now are saying that they support the Nadler/Meek/Jackson-Lee amendment.

I urge the Members to please support the amendment.

Mr. Chairman, I want to thank you for your comments and also the gentleman from New York (Mr. NADLER) for his leadership.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2½ minutes to the gentleman from Indiana (Mr. HOSTETTLER), the chairman of the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary.

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Chairman, I rise in opposition to this amendment.

The asylum provisions in H.R. 418 are vitally important to protect our constituents from child molesters, rapists, murderers, and other criminals, as well as terrorists seeking asylum in our country.

I believe that we must keep the asylum open and honest for those who have a good-faith claim to asylum. However, we must also protect our constituents from aliens who seek to abuse our asylum processes and do harm to our citizens. For instance, because he was free after applying for asylum, Mir Aimal Kansi was able to murder two CIA employees at CIA headquarters. Ramzi Yousef took advantage of the freedom he gained by applying for asylum to mastermind the first World Trade Center attack which killed six and injured 1,000 in the amendment author's district.

The asylum provisions in H.R. 418 do not prevent aliens from seeking asylum. Those who truly have been persecuted for religious or political grounds will be allowed to present their cases just as they are able to now. These provisions merely overturn Ninth Circuit Court decisions saying that immigration judges cannot use inconsistencies in an alien's statement to determine if he or she is being untruthful.

The bill also says that an asylum applicant may be asked to corroborate his claim with evidence, if such evidence can be obtained without leaving the United States. One of the goals of this bill is to ensure that our asylum system is consistent with our judicial system. If a judge or criminal jury can sentence a criminal defendant to life in prison or even execution because they did not believe the defendant's story, certainly an immigration judge can deny an asylum claim to an alien for the same basis.

When an American goes to court to settle a dispute, he bears the burden of proof to prove his claim. Requiring the asylum claimant to bear the burden of proof is consistent, both with our justice system and with international law.

Permitting the judge to require an asylum claimant to produce corroborating evidence he has or can obtain without leaving the United States is just common sense. If a claimant says, for example, that he fled his country because he received a threatening letter from a government official, the judge would be remiss if he failed to ask to see the letter or at least inquire about what happened to the letter.

The asylum protections in the REAL ID Act are vitally important to ensuring the honesty of the asylum system, as well as the security of our Nation and its citizens.

I urge my colleagues to support the underlying bill, H.R. 418, and oppose this amendment.

Mr. NADLER. Mr. Chairman, I yield 1½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), a cosponsor of the amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from New York (Mr. NADLER). I thank him for protecting so many of our constitutional rights.

Mr. Chairman, let me say that the asylum laws, as I was reminded by my good and dear colleague from Florida, started in World War II when we were reminded of the ugly scene of turning away the St. Louis, the 1,000 Jews who were fleeing persecution.

Let me just suggest that we do have an opportunity to review this issue and make it right, but I can tell you that Commissioner Kean and Commissioner Hamilton indicated that in advocating that these are recommendations of the 9/11 Commission; these are not recommendations of the 9/11 Commission. There is no proof or facts that terrorists have been able to pull one over on us in large numbers.

It is very important to let the Comptroller General's study go forward that evaluates the extent to which weaknesses in the United States' asylum system have been or could be exploited by terrorists. We need to understand this.

I do not expect that the report will show that that is happening. It is extremely important that we realize that the 9/11 hijackers entered and remained in the United States as nonimmigrant visitors. They were not individuals who sought asylum.

Let me correct my good friends about the 1993 bombing. These individuals sought asylum, but they were denied asylum. There is not a crisis here; but what is a crisis is when you turn people away from our shores who have come here downtrodden, who are seeking asylum because of religious persecution, because of mutilation of women, because of enormous child abuse or potentially child soldiers, and you turn them away because they do not look like you and because, in fact, they cannot make their case.

I would ask my colleagues to consider opposing this amendment.

I rise in support of the amendment that I have offered with my colleagues Representatives NADLER and MEEK. It would strike section 101 of H.R. 418, the REAL ID Act, which is entitled, ''Preventing Terrorists From Obtaining Relief From Removal.'' Notwithstanding that title, the provisions in section 101 codify evidentiary standards for asylum proceedings. The supporters of section 101 believe that terrorists are gaming our asylum system to enter and remain in the United States.

It is not clear that terrorists actually are gaming our asylum system. Section 5403 of the Intelligence Reform and Terrorism Prevention Act requires the Comptroller General to conduct a study to evaluate the extent to which weaknesses in the United States asylum system have been or could be exploited by terrorists. We need to wait until this study is completed before we rewrite our asylum laws. We cannot correct weaknesses that have not been identified yet.

I do not expect that report to show that terrorists are gaming our asylum system. The 9/11 hijackers entered and remained in the United States as nonimmigrant visitors. Visitors' visas are easy to get. It only requires a 2-minute interview with an American Consulate Officer to get a visitor's visa. The applicant just has to establish that he will return to his country at the end of the authorized period of stay. Moreover, it would be naive to think that terrorist organizations do not have ready access to fraudulent entry documents. In contrast, it is difficult and time consuming to enter the United States as an asylum applicant. The terrorist choosing this method would have to present himself at a border and then prove in expedited removal proceedings that he has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The section 101 provisions would not come into play during expedited removal proceedings in any event. They would not apply until the alien is before an immigration judge at an asylum hearing, and by then he has already entered the country.

The approach taken by the REAL ID Act is to raise the bar on the burden of proof for everyone who applies for asylum, which would result in a denial of relief to bona fide asylum seekers without any assurance that the changes would discourage terrorists from seeking asylum. In fact, terrorist organizations are in a much better position to fabricate evidence of persecution than the typical bona fide asylum applicant who has fled his country in fear for his life without any thought of meeting evidentiary standards at an asylum hearing.

For instance, in addition to showing that the alleged persecution would be ''on account of' one of the enumerated grounds, the applicant would have to establish that the persecution was or will be ''a central reason for persecuting the applicant.'' In effect, the asylum applicant would have to establish what was in the mind of the persecutor.

Section 101 has a subsection entitled, ''Credibility Determinations.'' It states that the trier of fact should consider all relevant factors. This is fine, unnecessary but fine. Then it provides that the trier of fact has the discretion of basing a credibility determination on any relevant factor, and it specifies relevant factors that can be the sole basis for a credibility determination. Near the end it mentions inconsistencies and inaccuracies or falsehoods in statements, ''without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim.'' In other words, it permits an immigration judge to make an adverse credibility finding in asylum proceedings on the basis of an inconsistency, inaccuracy, or falsehood that has no relevance to the asylum applicant's persecution claim. What has this got to do with preventing terrorists from obtaining relief from removal?

I urge you to vote for this amendment to strike section 101.

Mr. SENSENBRENNER. Mr. Chairman, I have the right to close and will close after the gentleman yields his time.

Mr. NADLER. Mr. Chairman, how much time remains?

The Acting CHAIRMAN (Mr. SIMPSON). The gentleman from New York (Mr. NADLER) has 3 minutes remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 1½ minutes remaining.

Mr. NADLER. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the Nadler amendment and ask Members, especially on my side of the aisle, to join us in striking section 101.

Section 101 purports to reform asylum—but it does not. Under the pretext that it mitigates terrorists' access to the United States, the provision actually does a grave injustice and disservice to the persecuted, such as religious believers, and all others who have a well-founded fear of persecution and who seek asylum in our country.

Section 101 imposes onerous new requirements on the persecuted, including those who have been traumatized by rape, torture, trafficking, and religious hate and persecution, to prove the persecutor's motive. Read the language. You have got to prove that persecution was a central reason you left and why you are seeking asylum.

I would remind my colleagues that I have been in Congress 25 years. Dictatorships and authoritarian regimes never persecute. It is always some other pretext, whether it be the People's Republic of China, Vietnam, Cuba. When it was Romania many years back, there was always a false reason. Slander against the Soviet state was used over and over again, never because you were Jewish or Christian or because you were an evangelical or some other reason. They always have a pretext.

I can guarantee if this is enacted into law that real asylum seekers will be denied, and then the piling on just begins to start.

How many Members have met persecuted people, traumatized people who are coming to our borders? They get their stories wrong. According to this language, if they have any inconsistency, even if it is not germane to the issue at hand, if they get a date wrong, how many Members have forgotten their wife's birthday, date or year? We all make mistakes. Get one of those things wrong and the trier of facts can exclude you based on that single situation.

□ 1300

This is an ugly provision. I say with respect to my friend and colleague from Wisconsin, I am against terrorism. 9/11 hurt people in my district. They were hurt big time.

This is an ugly provision, Mr. Speaker. It has not had, in my view, the kind of hearing needed in terms of the consequences that it will impose upon true asylum seekers. I hope Members will vote against this.

I have authored 3 Torture Victims Relief laws to help torture victims. I meet with a lot of torture victims. They forget; they have been traumatized. You forget something pursuant to these new requirements and you are a goner. You are being deported back to that country of origin where you have been persecuted.

Please vote against Section 101. Vote for the Nadler amendment.

Mr. NADLER. Mr. Chairman, I grant myself the remainder of the time.

The Acting CHAIRMAN (Mr. SIMPSON). The gentleman has 30 seconds remaining.

Mr. NADLER. Mr. Chairman, the gentleman from New Jersey and other speakers have made excellent points, but I want to make one different point.

This amendment, rather this section which we are trying to eliminate, is not focused on terrorism. It does not focus on terrorism. It does not focus on terrorists. All it does is put up additional bars to all asylum seekers, legitimate victims or otherwise. It has nothing to do with terrorism, does not claim to focus on terrorism. Does not do anything to distinguish between a terrorist and a legitimate victim of persecution or anybody else.

It simply sets the bar for all claimants at an unrealistically high level and ought to be defeated, and the amendment therefore ought to be passed for that reason.

I yield back.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, contrary to what my distinguished friend from New Jersey says, there are no onerous new requirements to meet the standard for asylum. Page 2 of the managers amendment incorporated in the bill says the applicant has to establish that he is a refugee within the meaning of this section. The applicant must establish that race, religion, nationality, membership in a particular cultural group or political opinion was or will be a central reason for persecuting the applicant.

Now, that means that all of the Jewish people who were turned away on the St. Louis prior to the Second World War would have qualified because they were being persecuted in Nazi Germany because of their religion.

People who have been engaged in what was used to be called anti-Soviet activities in the former Soviet Union, that was a political opinion, they would have been eligible for asylum.

And the comments that the gentleman from New Jersey makes about torture are simply not true. This bill does not impact the obligations of the United States under the convention to prevent torture by prohibiting the deportation of people to countries that torture them.

Now, simply what is stated is that the burden of proof is on the applicant, just like it ought to be, like it is on our constituents who apply for Social Security disability. And it sets up standards for determining the credibility of the witness. If the witness comes and says, Gee, I made a mistake because I forgot the birth date and admits to that mistake, that certainly is exonerating evidence.

Vote down the amendment. All of these arguments are a red herring.

Mr. PICKERING. Mr. Chairman, during the debate of the REAL ID Act of 2005, of which I am a co-sponsor, I was unavoidably detained and unfortunately missed the opportunity to vote on the amendment offered by Representative JERROLD NADLER. If I would have been present, I would have voted a resounding "no" against this amendment. The Nadler amendment would have stricken the provision in the REAL ID Act that tightens and improves our asylum system, which has been abused by terrorists with deadly consequences. The REAL ID Act will protect the American people by allowing immigration judges to determine witness credibility in asylum cases and ensuring that all terrorism-related grounds for inadmissibility are also grounds for deportation. In summary, as a co-sponsor of this bill, I believe that all of the provisions in the REAL ID Act are essential in protecting our citizens from future terrorist plots and I would have voted "no" on the Nadler Amendment.

Mr. SMITH of Texas. Mr. Chairman, I strongly oppose the Nadler amendment, which would strip the asylum reforms from the "REAL ID Act."

The asylum provisions in the REAL ID Act are essential. The 9/11 Commission specifically noted that "a number of terrorists . . . abused the asylum system."

Just last year, a Pakistani national who had applied for asylum was caught while planning to blow up a subway station during the Republican Convention in New York City.

Under a 9th Circuit decision, a judge can determine that an asylum applicant is lying and still be required to grant the applicant admission.

The DOJ Inspector General reported that it was common for asylum applicants to make claims that they were falsely accused of being terrorists. In this situation, even if the judge believes that the applicant is lying and is a terrorist, the judge may still be required to approve the application.

The REAL ID Act reverses this 9th Circuit decision and makes it harder for terrorists to exploit our asylum system. It allows immigration judges—like judges in most other courts—to determine whether the asylum seeker is telling the truth.

Judges in ordinary criminal courts of law are routinely allowed to determine whether they believe a defendant is lying. Yet, under current law, immigration judges cannot make this common sense determination.

The REAL ID Act is essential in stopping asylum abuse. This amendment would strike the asylum reform provisions and make it easier for suspected terrorists to receive asylum.

Mr. SENSENBRENNER. Mr. Chairman, and I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. NADLER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by

the gentleman from New York will be postponed.

The Acting CHAIRMAN. It is now in order to consider amendment Number 5 printed in part B the House report 109–4.

AMENDMENT NO. 5 OFFERED BY MR. FARR

Mr. FARR. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B, Amendment No. 5 printed in House Report 109–4 offered by Mr. FARR.

Strike section 102 of the bill.

The Acting CHAIRMAN. Pursuant to House Resolution 75, the gentleman from California (Mr. FARR) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. FARR).

(Mr. FARR asked and was given permission to revise and extend his remarks.)

Mr. FARR. Mr. Chairman, I yield myself such time as I may consume.

This amendment is simple and straightforward. It strikes Section 102, which is entitled the ''Waiver of Laws Necessary for the Improvement of Barriers and Borders'' from the bill. I think the provision is trying to fix a process that is not broken.

I offer this amendment to strike Section 102, not to stop construction of the remaining 3 miles of the border fence, but to preserve the rule of law that this country was founded on.

I want my colleagues to listen. I want to make this very clear. The breadth of this provision is unprecedented. The border fence in San Diego is under construction right now. Of the 14 miles authorized to be constructed, more than 9 miles of triple fence have been completed. Only two sections have not been finished. In order to finish the fence, the Customs and Border Patrol has proposed to fill a canyon known as Smugglers Gulch with over 2 million cubic yards of dirt. The triple fence would then be extended across the filled gulch.

In February 2004, the Coastal Commission of California determined that the Customs and Border Patrol had not demonstrated, among other things, that the project was consistent to ''maximize'' to the extent practicable with the policies of the California Coastal Management program, the State program approved under the Federal Coastal Zone Management Act.

The Coastal Zone Management Act requires Federal agency activity within and outside the coastal zone that affects any land use, water or other natural resources in the coastal zone to be carried out in a manner that is consistent, to the maximum extent practicable, with the policies of an approved State management program.

However, as stringent as these requirements are, if a Federal court finds a Federal activity to be inconsistent with an improved State program, the Secretary determines that the compliance is unlikely to be achieved through mediation, the President may exempt from compliance the activity if the President determines that the activity is in the paramount interest of the United States.

All the authority needed to build the barrier fence already exists in law. We can use laws and process that we have to get this fence built. There is no need for a blanket waiver to get any barrier constructed.

On October 26 of 2004 the Coastal Commission staff met with the Customs and Border Patrol/Homeland Security. In that meeting the Customs and Border Patrol explained why they did not believe additional comments, other than those that had already been agreed upon, were necessary to bring the project into compliance with the applicable coastal policies. Customs and Border Patrol maintained that it still wanted to continue to work with the Coastal Commission on measures they had agreed to, and the Coastal Commission indicated their continued willingness to work with them, despite the overall disagreement with some of the project components such as the Smugglers Gulch fill.

Coastal Commission informed Customs that in order to complete the Federal consistency review process, they would have to write a letter outlining their position. However, the Coastal Commission has not received any letter.

So why are we trying to fix something that is working through the established process of law? I ask because the reach of this amendment is actually the border fence in San Diego.

The proposed section 102 gives an unprecedented waiver and power to the Secretary of Homeland Security, not only for the border fence in San Diego but for any, any area. If enacted, the new 102 section would provide the Secretary of Homeland Security not only with the authority to waive all laws he determines necessary to ensure the expeditious construction of barriers and roads, but the requirement that the Secretary do so.

As I mentioned, there is no evidence that such an extraordinary rejection of the rule of law is necessary in the first instance.

Current law allows the DHS Secretary to waive the National Environmental Policy Act and the Endangered Species Act at the barrier, and this same provision was allowed to the Attorney General prior to the creation of the Department of Homeland Security.

This provision has never, to date, been used in San Diego nor am I aware at any other time the authority has been used on the barrier fence. So the remedies are there; they are in the law.

We forget in this debate that Mexico is the number one trading partner of California. It is the busiest border in the world for the legitimate transfer of people and commerce, and it is in the city and County of San Diego, and neither of those jurisdictions has asked for this draconian waiver. Neither has the State of California.

Why would the Government of the United States of America, at a time when we are advocating the support and enforcement of law, why would the government now want to forbid the use of our own law to finish the fence? Not even the importance of securing the border can justify placing a government official above the law.

As I mentioned, my colleagues ought to be wary of what is proposed here. It grants authority to waive all laws notwithstanding any other provision of the law. This section also says, notwithstanding any other provision of the law, no court shall have jurisdiction to hear a claim, to order any relief.

How can we celebrate elections in Iraq and the honor of law when we in Congress are now asking that we waive all laws?

Mr. Chairman, I rise today in strong opposition to H.R. 418 and I urge my colleagues to do the same.

This bill is a misguided attempt to implement immigration reform under the guise of Homeland Security. This bill turns its back on a core principle that distinguishes America from other nations; that of being a safe haven for the tired, poor, and weak. The three specific policies that the bill addresses—the border fence, asylum provisions and driver's licenses standards—should have been vetted through the Committee process. Instead, this legislation has been rushed through the process—without hearings, without debate, and with very little input from the minority side of the aisle. This bill is being debated simply for politics instead of going through a legitimate legislative process, a fact that should be of concern to every Member, Republican and Democrat alike.

Today I will offer an amendment. My amendment is simple and straight forward. It strikes section 102 from the ''REAL ID Act of 2005''. The proposed provision is trying to fIx a process that isn't broken. Section 102 gives an unprecedented waiver and power to the Secretary of Homeland Security. If passed, the Secretary has the sole discretion to wave all laws in order to expedite the construction of barriers and roads. There is no evidence that such an extraordinary rejection of the rule of law is necessary in the first instance. Current law already allows the DHS Secretary to waive the National Environmental Policy Act and the Endangered Species Act for the fence construction, the same exemption authorization that was allowed the Attorney General prior to creation of DHS. I look forward to the debate on my amendment.

As I stated before, H.R. 418 is not a good bill and even more troubling is that we had no hearings or committee debate on it. We need frank and productive dialogue about the state of our immigration system and this bill does nothing to open up the discussion that this country needs to have. I do not support illegal immigration, but I do support the people who have come to our country and played by the rules in order to obtain their citizenship status. Not only do we have a responsibility and a proud history of protecting those who seek

asylum in our country, which this bill is trying to thwart, we have a responsibility to legal immigrants who are contributing to our society to reduce the lengthy backlog to citizenship. Just earlier this week in meeting with some Bureau of Citizenship and Immigration Services employees, I was not surprised to learn that workers who were hired to help eliminate the backlog four years ago have been asked to stay on for another year. I do not often hear of temporary employees that are necessary for five years. I also learned that one of the reasons for the bureaucracy that legal immigrants experience is due to the antiquated state of technology the Bureau uses. As you can see, these are legitimate concerns about our immigration system that H.R. 418 does not address because it is a bill that has been brought up for political reasons, not legitimate policy reasons. The Republican Leadership of this Congress would do well to heed the President's comments to begin a dialogue on how to improve our immigration processes, and strengthen our national security, unlike the current legislation brought before us today.

The effects of the REAL ID Act are not only bad for domestic politics, they are destructive for the peace process in the Middle East. The Act states: "An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity." In the first place, the United States already has a formal, congressionally approved mechanism for designating foreign terrorist organizations and imposing sanctions on them. The PLO is not on the U.S. list of Foreign Terrorist Organizations. This sneaky, backdoor attempt to override the responsibility of the State Department and the will of Congress is an incredibly stupid way to execute U.S. diplomacy.

Second, we are now on the cusp of a historic moment in the Middle East peace process. The administration has promised that they will be actively engaged in the Middle East peace process. I find it hard to believe that they can be "actively" engaged in the peace process if the President will not be able to invite newly elected President Mahmoud Abbas to his Texas ranch, Camp David or any other location within the United States. President Abbas appears to be making considerable efforts in brokering peace, and the United States should be supporting his efforts. The effects of this provision will be a diplomatic nightmare and damage the United States's ability to be a fair broker in the peace process. This provision is an embarrassment to United States diplomacy—it is highly counterproductive to peace negotiations.

Furthermore, I have concerns with the national driver's license standards in this bill. Current law already addresses this issue, but the regulations have been implemented since this bill was passed only 10 weeks ago. National driver's license standards in this bill create an unfunded mandate for States. Under this bill, at least 10 States would be forced to make significant changes to their systems, despite the fact that security standards can be attained without the interference this bill creates. State control of the licensing and identification process is crucial to maintaining public safety, bolstering security, reducing fraud, keeping costs of car insurance down and protecting privacy and Federal standards for such documents should be limited to those enumerated in the intelligence Reform Act of 2004.

Additionally, the proponents of this bill do not want you to know that H.R. 418 would not have prevented 9/11 hijackers from obtaining a driver's license or ID. The breach of our security was a result of the hijackers having been issued legal visas to come to the United States, which many of them used to apply for driver's licenses and identification cards. Does H.R. 418 seek to address the root of the problem here? No, obviously not. Again, this bill is political posturing under the guise of national security.

Instead of debating H.R. 418, the House of Representatives should be focused on ensuring the successful enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 and working on comprehensively reforming our immigration system so that immigration is legal, safe, orderly, and reflective of the needs of American families, businesses, and national security.

Leadership should be ashamed to have brought a bill like this that will affect our environment, our citizens, and people from all around the world to the Floor in such a manner. I can not support the process nor the actual policy this bill proposes and I urge my colleagues vote no on H.R. 418.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, what I would like to find out, if the gentleman knows, has this ever occurred in the history of Federal legislation before that for a given instance all laws, local, State, national, will be waived all at one time for one specific purpose?

Mr. FARR. Mr. Chairman, it has never been done before, waiving all labor laws, all contract laws, all small business laws, all laws relating to sacred places. It is a broad sweep, just a total repeal of all of those laws or a waiver of all those laws.

Mr. CONYERS. I thank the gentleman.

Mr. FARR. Mr. Chairman, how much time do I have remaining?

The Acting CHAIRMAN. The gentleman from California (Mr. FARR) has 4 minutes remaining.

Mr. FARR. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to this amendment which continues to have endless litigation against plugging the hole in the fence south of San Diego. We were able to win World War II quicker than we were able to complete this fence. I think that shows why this amendment is a bad one.

I want to tell the membership the short story that illustrates why the fence has to be completed.

In early January, I sent two of my staff personally to inspect this area. On the day they visited the Imperial Beach Station at the Border Patrol, they asked to see a demonstration of the AFIS fingerprint system used to identify criminal aliens among those caught across the border. A man picked at random from a holding area of high-risk detainees, who had been apprehended the night before, was selected for fingerprint check.

Within 15 minutes the system returned a rap sheet that was 17 pages long. Crimes he committed across three different States included abusing his spouse, raping his daughter and multiple counts of theft. This man was apprehended not far from Smuggler's Gulch and came through the area where the fence is not complete. The Border Patrol says he is typical of the one in three aliens they apprehend coming through the 3-mile unfenced area along the beach.

This person is a criminal, and membership of the California delegation complained about the cost of California incarcerating criminal aliens. We can cut down that cost and incarcerate fewer criminal aliens by plugging the hole in this fence and keeping them south of the border.

Mr. Chairman, I reserve the balance of my time.

Mr. FARR. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from California (Ms. HARMAN).

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, many on this side of the aisle also support strong border protection. I certainly do, and I support the fence. This is not an argument, however, about whether to build a fence. It is about what process should be used, and this process is dead wrong.

Rather than reaching out to the governor of California, a leader in the party on the other side of the aisle, to reach compromise on this issue, the author of this bill has crafted language that will usurp all of Governor Schwarzenneger's power regarding the border fence. To take the radical steps of eliminating all State and local powers, let alone Federal, and rolling back all judicial review is the height of irresponsible legislating.

Mr. Chairman, this bill sets the dangerous precedent of policing a single Federal official, elected by no one, above all laws, and shields him from accountability, and the reach is beyond the San Diego border. According to the language in this legislation, it is all areas along and in the vicinity of our international borders with both Mexico and Canada.

This is the wrong way to do it. We need to do the right thing.

Mr. Chairman, I support this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. HUNTER), the Chairman of the Committee on Armed Services and one of the biggest supporters of Governor Schwarzenegger.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding me the time.

We started this fence about 20 years ago. We started it by building the first

steel fence across that 14-mile segment between the coastal hills of San Diego County and the Pacific Ocean. We did that because drug trucks were running that border at the rate of about 300 per month.

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We had about 10 people being murdered each year, along with numerous robberies and rapes, to such a high degree that the best-selling book, ''Lines and Shadows'' by Joseph Wambaugh, was written depicting this ''no man's land,'' where nobody wanted to be after dark. So we built that first line, which was the steel fence right on the border.

We then built the second fence, that is, the second tier of the so-called triple fence, after we passed a law signed by President Bill Clinton in 1996. And it was President Clinton who signed the bill waiving the Endangered Species Act and waiving NEPA because he thought it was so important that we have security at this, the most porous smugglers' corridor in the United States of America.

Now, I can just tell you, as a guy who has worked on this thing from the start, my staff went out and found those 79,000 steel landing mats to build this fence. If the extremists had discovered this fence before we got the first 12 miles built, that would not be built. We stopped those 300 drug trucks a month, stopped them dead. We eliminated the 10 murders a year, mostly of undocumented workers. We eliminated the hundreds of rapes of the people who were coming through there because we built that fence.

If the extremists had had their way, they would have gone to a sympathetic Federal court, tied us up in lawsuits and we would not have had the fence.

The Secretary of the Navy has written us a letter saying that completion of this project will enhance the security of our naval installations by reducing the potential threat environment created by an unsecured border. A few miles north of this gap in the fence is the biggest naval installation on the West Coast. Through this gap have come and been apprehended people from nations that sponsor terrorists, nations like North Korea, nations like Syria.

This is a security issue. And for people to say this is an environmental issue, this is the state of play right now, all these trails you see have been hammered into that ecosystem by the smugglers. None of my colleagues have been out there trying to stop them. They have hammered these trails by the hundreds into the ecosystem, hammered it into the marshlands and the estuary lands.

Good biologists say it will take hundreds of years for these areas to be restored, not by actions of the Border Patrol or by our security apparatus, but by the smugglers who come across this particular gap in the fence.

We need to secure this gap. The Secretary of the Navy recognizes that, President Clinton recognized that and gave an unprecedented waiver. We need to complete the border fence.

Mr. FARR. Mr. Chairman, how much time do we have remaining?

The Acting CHAIRMAN (Mr. SIMPSON). The gentleman from California (Mr. FARR) has 3 minutes remaining and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 5 minutes remaining.

Mr. FARR. Mr. Chairman, I yield myself such time as I may consume to respond, first, to the gentleman from California (Mr. HUNTER).

He is right, there is in existing law the authorization to waive those issues. It has never been used. It has never been used. This waives all laws, labor laws, every kind of law. This is a draconian approach to try to get the job done.

Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Chairman, I rise in favor of the Farr amendment. This bill gives the Secretary unprecedented authority to waive all laws to finish the construction of the security barrier. This bill denies due process to anyone challenging the Secretary's decision by prohibiting judicial review of the Secretary's waivers.

These provisions would undermine the Federal trust responsibility to Indian nations by allowing waivers of Federal requirements of providing tribal notification that are specifically designed to protect Native American burial grounds, religious shrines, and cultural and historical sites.

I urge my colleagues to support the Farr amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CUNNINGHAM), another big supporter of Governor Schwarzenegger.

Mr. CUNNINGHAM. Mr. Chairman, the gentleman from California (Mr. HUNTER) talked about, in 1990, when he came to me while I was still in the military asking me about landing mats to put up for the border. He and I have actually been down there welding to get that up.

Why? Why would we do that?

Take this floor, if this was a farmer's field and you had a single strand of wire that was lying on the ground, that is what separated the United States and Mexico. We had truckloads of drugs coming across in a 100-mile sector that we could not stop. In 1 year, there were a number of rapes and a number of murders by the coyotes and people on the U.S. side of people trying to get across. When my colleague arranged to put up that fence, it stopped all of it.

Now, there are all kinds of ways in which you can stop something here in this body. We can have hearings and say we are going to do this or that, but with the fence area, these 7 miles, another way is to waive the environmental things.

The gentleman from California (Mr. HUNTER) also showed that President Clinton did this. If we do not do this, my colleagues, we will not get it done.

And it will help security. Documents that we have captured from al Qaeda show that they consider the border vulnerable, with cells in Mexico itself. And so it is not just sealing off the border for security, but it is other things too.

In San Diego, in California, we have about 800,000 illegals in K-through-12 education. Use half of that, use 400,000. That is $2 billion a year out of California. That does not account for the $1.5 million a day for the school lunch. Now, I cannot stop those kids. I have been in those schools. There is no way I would take that lunch away from those critters. But we need to secure our border to stop the flow coming in.

If we know, with the bill of the gentleman from Wisconsin (Mr. SENSENBRENNER), who is there legally, it is much easier to tell who is there illegally. So I ask my colleagues to give this support because we really need to complete this.

Mr. FARR. Mr. Chairman, how much time do I have remaining?

The Acting CHAIRMAN. The gentleman from California (Mr. FARR) has 2¼ minutes remaining and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 3 minutes remaining.

Mr. FARR. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I yield to nobody my concern that this bill has regarding the environment, but that is not the point. We have already had our colleague, the gentleman from California (Mr. DUNCAN), talk about how we passed specific legislation signed by President Clinton that suspended the Endangered Species Act. What we are talking about here is far beyond this. It is talking about suspending all laws, health, safety, immigration, payment for private property. All laws, not the environment.

My colleagues would be creating not a couple of miles of exception to finish a fence, but you would be creating a zone 7,514 miles long under the terms of this bill, 5,500 in Canada, almost 2,000 with the border of Mexico, where all laws are suspended in the vicinity of the barrier. My colleagues have no idea how much land they are exempting from compensation.

Mr. Chairman, there are only 11,751 people who have been privileged to serve in this Chamber. I do not think any of them have ever been asked to vote on anything more irresponsible. It is a terrible precedent, unnecessary, and I urge its defeat.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DREIER), a close adviser of Governor Schwarzenegger and the chairman of the Committee on Rules.

Mr. DREIER. Mr. Chairman, I thank my friend for yielding me this time,

and let me just say what it is that got us here. I have listened to the arguments propounded by my colleagues on the other side of the aisle.

We are here because, as the chairman of the Judiciary said, it has taken longer to complete this fence than it did to win the Second World War. The problem that we have is, there needs to be recognition that the environmentally sound vote is to complete this fence.

The gentleman from California (Mr. HUNTER) held up a poster. If you look at where the fence has been completed, it is pristine, it is clean, it looks great, and it is securing our borders. If you look at that 3½-mile gap, you see all kinds of trash and devastation and you, of course, exacerbate the pressure with the flow of people coming into this country illegally, creating a wide range of problems.

We came this close, when we had strong support, 257 Members of this body in the last Congress who voted for the Ose amendment that should have been included in the 9/11 Committee's recommendation in the conference agreement that we had. The other body prevented us when we were working in the conference to bring it back here. We had indications from Democrats and Republicans alike that if we brought this measure up we could have strong support of it.

It is imperative, it is imperative that we complete this fence. Smugglers Gulch is an area which is, I believe, posing a very serious threat to our stability in this country and in California. So I urge my colleagues to oppose the Farr amendment and cast the environmentally sound vote, which is a ''no'' vote.

Mr. FARR. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, no person in our country should be given unfettered authority, unfettered discretion to waive any or all laws, for whatever the purpose.

Take this situation. In order to expedite construction of this fence, the Department of Homeland Security could select a contractor without competitive bidding, use undocumented workers, violate child labor laws, pay the workers less than the minimum wage, exempt contractors from Federal and State withholding; workers could be forced to put in 18-hour-days without overtime pay, in unsafe conditions, and be transported in trucks used for hazardous cargo; and allow the Secretary discretion to have these workers construct fences and roads through private property.

That is wrong. You can build a fence, but you do not have to violate all those laws.

Mr. FARR. Mr. Chairman, I yield myself the balance of my time.

We have heard a lot of talk here today, and I submit that this is not the answer, to emasculate all the laws. I would bet that if the gentleman from California (Mr. HUNTER), the gentleman from California (Mr. CUNNINGHAM), myself and any other interested party sat down, one meeting with all the interested parties, we could resolve this. But that is not the way they want to proceed.

This was not a recommendation of the 9/11 Commission. This is essentially emasculating all laws to get an environmental project completed. And emasculating all laws is not the way to do it.

This amendment is a good amendment because it does not allow my colleagues to emasculate all laws. What it allows us to do is to let this process work. And with the pressure that has been brought here today, we can get that fence built. The opposition on this side is not against the fence, it is against emasculating all the laws of the land in order to get there. So I ask for an ''aye'' vote.

Mr. Chairman, I submit for the RECORD a memorandum of the Congressional Research Service, dated February 7, 2005, regarding the REAL ID Act.

CONGRESSIONAL RESEARCH SERVICE,
February 7, 2005.

MEMORANDUM

To: House Committee on Homeland Security, Attention: Sue Ramanathan; and House Committee on the Judiciary, Attention: Kristin Wells.

From: Stephen R. Viña and Todd Tatelman, Legislative Attorneys, American Law Division.

Subject: Legal Analysis of Sec. 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders.

Pursuant to your request on February 3, this memorandum analyzes section 102 of H.R. 418, the REAL ID Act. Section 102, captioned ''Waiver of Laws Necessary for Improvement of Barriers at Borders,'' provides the Secretary of Homeland Security with authority to waive all laws he deems necessary for the expeditious construction of the barriers authorized to be constructed by §102 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) (P.L. 104–208, Div. C, codified at 8 U.S.C. §1103 note) and removes judicial review from such waiver decisions. Specifically, this memorandum discusses the extent to which Congress has passed laws that provide waivers comparable to §102 of H.R. 418 and outlines some of the legal issues that could potentially arise if §102 is passed in its current form. In view of the short time frame for response, the following analysis is necessarily brief and we refer you to CRS Report RS 22026, Border Security: Fences Along the U.S. International Border for background information on §102 of IIRIRA and the border fence.

H.R. 418, §102

Section 102 of H.R. 418 would amend §102(c) of IIRIRA to read as follows:

(c) WAIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.

(2) NO JUDICIAL REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), no court shall have jurisdiction—

(A) to hear any cause or claim arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1); or

(B) to order compensatory, declaratory, injunctive, equitable, or any other relief for damage alleged to arise from any such action or decision.

Waiver provisions

If enacted, the new §102 would provide the Secretary of Homeland Security with not only the authority to waive all laws he determines necessary to ensure the expeditious construction of the barriers and roads under §102 of IIRIRA, but the requirement that the Secretary do so. This provision could provide the Secretary with broader waiver authority than what is currently in §102(c) of IIRIRA. This authority would apparently include laws other than the Endangered Species Act and the National Environmental Policy Act, but may not include a waiver of protections established in the Constitution. All laws waived, however, must be determined by the Secretary to be necessary to ensure expeditious construction of the barriers and roads. The waiver authority provided by this amendment would also seem to apply to all the barriers that may be constructed under the authority of §102 of IIRIRA (i.e., barriers constructed in the vicinity of the border and the barrier that is to be constructed near the San Diego area).

Congress commonly waives preexisting laws, though the process necessary to complete the waiver and the number of laws waived vary considerably from provision to provision. Even more common is the use of the phrase, ''notwithstanding any other provision of law.'' While the use of a broad ''notwithstanding any other provision of law'' infrequently governs interpretation, such directives seem facially preclusive, and some courts have determined that ''notwithstanding'' language may serve to explicitly preempt the application of other laws. Other courts, however, have held that such provisions are generally not dispositive in determining the preemptive effect of a statute.

After a review of federal law, primarily through electronic database searches and consultations with various CRS experts, we were unable to locate a waiver provision identical to that of §102 of H.R. 418—i.e., a provision that contains ''notwithstanding language,'' provides a secretary of an executive agency the authority to waive all laws such secretary determines necessary, and directs the secretary to waive such laws. Much more common, it appears, are waiver provisions that (1) exempt an action from other requirements contained in the Act that authorizes the action, (2) specifically delineate the laws to be waived, or (3) waive a grouping of similar laws. The most analogous provisions that we located appear to be, at least on their face, the following:

43 U.S.C. §1652(c): Allows the Secretary of the Interior and other Federal officers and agencies the authority to waive any procedural requirements of law or regulation which they deem desirable for authorizations that are necessary for or related to the construction, operation, and maintenance of the Trans-Alaska oil pipeline system (e.g., rights-of-way, permits, and leases).

25 U.S.C. §3406: Allows the Secretaries of the Interior, Labor, Health and Human Services, and Education, notwithstanding any other law, to waive any statutory requirement, regulation, policy, or procedure promulgated by their agency that is identified by a tribal government as necessary to implement a submitted tribal plan under the Indian Employment, Training and Related Services Demonstration Act of 1992, as amended.

20 U.S.C. §7426: Provides almost identical waiver language to that of 25 U.S.C. §3406, but for plans submitted by tribal governments for the integration of education and related services provided to Indian students.

There are many other provisions that arguably grant broad waiver authority similar to that of §102, but contain qualifications or reporting requirements that seem to limit their breadth. For example, 43 U.S.C. §2008 allows the President to waive provisions of federal law he deems necessary in the national interest to facilitate the construction or operation of crude oil transportation systems, but such waivers must be submitted to Congress, and Congress must pass a joint resolution before the President can act on the waivers. As mentioned above and as the examples we have set forth arguably demonstrate, the breadth of waiver authority granted by §102 of H.R. 418 does not appear to be common in the federal law searched.

Judicial review provisions

By including the language ''no court,'' §102(c)(2) of H.R. 418 appears to preclude judicial review of a Secretary's decision to waive provisions of law by both federal and state courts. The preclusion of judicial review in state court and of state claims appears buttressed by the fact that §102(c) is explicitly intended to preclude judicial review of nonstatutory laws—a term which would seem to imply the inclusion of state constitutional and common law claims. It is generally accepted that Article III of the United States Constitution grants Congress the authority to regulate the jurisdiction, procedures, and remedies available in federal courts. However, what remains uncertain is whether Congress's authority, pursuant to Article III, extends to the jurisdiction, procedures, and remedies of state courts. In addition, it remains uncertain to what extent Congress has Article III authority to prevent courts, state or federal, from addressing and remedying issues arising under the United States Constitution.

With respect to Congress's ability to control the jurisdiction of state courts, the Supreme Court has ruled that subject to a congressional provision to the contrary, state courts have concurrent jurisdiction over all the classes of cases and controversies enumerated in Article III, except for suits between States, suits in which either the United States or a foreign state is a party, and those considered within the traditional jurisdiction of admiralty law. Thus, it appears possible to argue that Congress has a plenary power to allocate jurisdiction between the state and federal courts. In other words, if, for example, Congress can make jurisdiction over an area of law exclusively federal, thereby depriving state courts of any ability to hear the claim, it appears that Congress may also be able to remove a cause of action from state courts without concurrently granting jurisdiction to the federal courts.

State courts, however, are often considered to be independent and autonomous from the federal court system. This independent status has led some scholars to argue that because the Constitution appears to reserve to the states the authority to control the jurisdiction of their own courts, Congress's ''only means of allocating jurisdiction is through control of the federal court's jurisdiction.'' The argument that state courts are autonomous can be derived, in part, from the Supreme Court's doctrine with respect to its ability to review decisions from state courts. While the Court has the authority to review a decision of a state's highest court, it has repeatedly held that it will not do so if the decision rests upon adequate and independent state grounds. This rule is arguably designed to protect a state's interest in developing and applying its own laws. Thus, it would appear that an argument can be made that Congress does not possess the authority to regulate the jurisdiction of state courts directly. It may be the case, however, that Congress's ability to control the jurisdiction of the federal courts indirectly effects and alters the jurisdiction of the state courts, which would appear to preserve their autonomous status.

Turning to Congress's ability to remove jurisdiction with respect to claims arising under the Constitution, it appears that Supreme Court precedent requires that at least some forum be provided for the redress of constitutional rights. While it appears that the Supreme Court has not directly addressed whether there needs to be a judicial forum to vindicate all constitutional rights, it appears that the Court has taken to noting constitutional reservations about legislative denials for jurisdiction for judicial review of constitutional issues, as well as construction of statutes that purport to limit the Court's jurisdiction. At least one justice, however, has indicated that there have been particular cases, such as political question cases, where all constitutional review is in effect precluded.

Nevertheless, the Court has generally found a requirement that effective judicial remedies be present. For example, in cases involving particular rights, such as the availability of effective remedies for Fifth Amendment takings, the Court has held that ''the compensation remedy is required by the Constitution.'' In addition, lower federal courts appear to have held that, in most cases, some forum must be provided for the vindication of constitutional rights. Cases such as these would seem to provide a basis for the Court to find that parties seeking to vindicate other particular rights must have a judicial forum for such challenges; therefore, the Court may construe the provisions of H.R. 418 in a manner that preserves this right.

Mr. SENSENBRENNER. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, as chairman of the Subcommittee on International Terrorism and Nonproliferation, I have to ask, Who should be in charge of counterterrorism policy? Should it be the California Coastal Commission or should it be the Department of Homeland Security? That is the crux of this argument.

Now, environmental groups have successfully fought the completion of this fence over the years, claiming that it would have a serious impact on everything from the San Diego fairy shrimp to the San Diego button celery, all that in this 3.5 mile strip of desert along the border.

Does anyone think we can secure the border and save the button celery by putting up a fence to stop people from trampling on it? Yes, we can. Can we protect ourselves from al Qaeda operatives who have joined forces with alien smuggling rings like MS 13 in order to enter the United States through our porous southern border by stopping them from squishing the fairy shrimp as they slip through the gap in the fence? Yes, we can. It is a win-win.

In the interest of national security, we need to defeat this amendment.

Mrs. DAVIS of California. Mr. Chairman, I want to thank my colleague from Monterey for so clearly laying out the reasons that waiving all laws is a travesty of American governing principles.

I will focus on the issue driving this extreme language—completing the 3½ miles of border fencing, including the ocean section in my district.

A member stated that tens of thousands of illegal immigrants enter there and are chased all over the sensitive wetlands destroying them anyway. His facts were true 10 years ago. They are not today.

In 1993, the Border Patrol apprehended 165,000 people in this section. In 2003, the number had dropped 94 percent—to 10,000.

How many illegal entrants get past the Border Patrol today? They tell us 1,000 a year—three people per day. And that is with a fence you or I could easily walk around or through.

What should we do?

Finish building a secondary fence with the proposed level of environmental destruction.

Compromise has occurred, and plans exist for alternative road alignment. Appoint a task force to meet and reach consensus by a deadline.

One issue remains—a one-half mile wide river bed called Smuggler's Gulch—leading to internationally recognized wetlands restored at the cost of tens of millions of dollars.

The proposal lops off two adjacent mesas to dump 2 million tons of dirt into the gap to a height of 165 feet!—as high as two of the new giant airbuses stacked on top of one another!

It would cost $40 million just to move the dirt—money better spent purchasing high grade technology and funding the President's proposed increase of Border Patrol agents.

I urge you to support the Farr amendment.

Mr. BOEHLERT. Mr. Chairman, today I rise to express my concern over a provision in H.R. 418, the REAL ID Act of 2005. Section 102 of this Act states that the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws necessary to ensure expeditious construction of barriers and roads in the vicinity of the U.S. border in areas of high illegal entry. The provision also bars judicial review of any claim arising from the construction of barriers and roads at borders.

I understand that this provision is intended to apply primarily to the fence along the border near San Diego. The construction of that fence is critical to our national security and has been delayed for far too long and I think it is imperative that it be constructed as soon as possible.

However, I believe the provision currently contained in this bill is far too sweeping. It should not be necessary to waive all laws and judicial review relating to the construction of roads and barriers along the border in order to complete the fence near San Diego.

I hope that as the bill moves forward we can find a solution that will lead to the swift construction of this fence without sweeping away important laws.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. FARR).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. FARR. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. FARR) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order: Amendment No. 4 printed in part B, offered by the gentleman from New York (Mr. NADLER) and amendment No. 5 printed in part B, offered by the gentleman from California (Mr. FARR).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MR. NADLER

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on amendment No. 4 printed in part B of House Report 109–4, offered by the gentleman New York (Mr. NADLER), on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 236, not voting 12, as follows:

[Roll No. 28]

AYES—185

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Clay
Cleaver
Clyburn
Conyers
Costa
Costello
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Frank (MA)
Gonzalez
Green, Al
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Holt
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Simmons
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walsh
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOES—236

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Barton (TX)
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cooper
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pitts
Platts
Poe
Pombo
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skelton
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—12

Bass
Carter
Eshoo
Feeney
Green, Gene
Hinchey
Hinojosa
Honda
Oxley
Pickering
Sanchez, Loretta
Stupak

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1355

Mrs. BLACKBURN, Mrs. JOHNSON of Connecticut, and Messrs. REYNOLDS, SODREL, NEUGEBAUER, TOM DAVIS of Virginia, FORD, BACHUS, TANNER, MURPHY, and BRADY of Texas changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. BASS. Mr. Chairman, on rollcall No. 28 I was unavoidably detained. Had I been present, I would have voted "no."

AMENDMENT NO. 5 OFFERED BY MR. FARR

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on amendment No. 5 printed in Part B of House Report 109–4 offered by the gentleman from California (Mr. FARR) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 179, noes 243, not voting 11, as follows:

[Roll No. 29]

AYES—179

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boehlert
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Case
Clay
Cleaver
Clyburn
Conyers
Costello
Crowley
Cuellar
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Ehlers
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Grijalva
Gutierrez
Harman
Hastings (FL)
Higgins
Holt
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey

McCarthy
McCollum (MN)
McDermott
McGovern
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOES—243

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boucher
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cooper
Costa
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Emerson
English (PA)
Everett
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
McNulty
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—11

Carter
Eshoo
Feeney
Green, Gene
Hinchey
Hinojosa
Honda
Oxley
Sanchez, Loretta
Stupak
Weiner

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1405

Mr. MURTHA and Mr. SHAYS changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I recognize the importance of having standardized drivers' licenses and identification cards. This should be done on a bipartisan basis, however. The REAL ID Act was not bipartisan, and it was moved too quickly through the legislative process. It was passed without any Committee hearings or markups.

Mr. UDALL of Colorado. Mr. Chairman, I cannot in good conscience vote for the REAL ID Act, H.R. 418 because, despite the intention of the bill's sponsors to strengthen our borders, it has the opposite effect, by making homeland security and an effective war against terrorism more difficult with unnecessary provisions aimed at legitimate asylum seekers. Moreover, I am guided in my judgment about this bill by the opposition of the National Governors Association and the National Council of State Legislatures.

This bill tightens asylum laws in a way that inhibits, rather than enhances our national security. Currently individuals who participate in terrorist activity are not allowed to gain asylum status in this country. Terrorists have not been able to use the current asylum system to gain entry into the country, thus the tightening of these laws only makes gaining asylum status more difficult for those legitimately seeking asylum. Provisions such as requiring applicants to prove the ''central reason'' for their persecution or allowing judges to require applicants to produce corroborating evidence are unnecessary.

While national security must be our top priority, immigration policy should not create unnecessary requirements for legitimate asylum seekers who are arguably our best allies in the fight against international terrorism. The asylum provisions of this bill will not enhance our security or our standing in the world.

I also have concerns that the bill allows and directs the Secretary of Homeland Security to waive all laws which he or she deems necessary to complete the construction of barriers along any and all U.S. borders. Some have argued that this provision is needed to ensure the construction of a fence along three and a half miles of the U.S.-Mexico border near San Diego. However, the language of the bill is not limited to the construction of a fence in this location. Instead, it instructs the Secretary to waive all laws for all U.S. borders; this includes the U.S.-Mexico border, the U.S.-Canada border, and maybe even the border between Alaska and Russia. The bill also removes any judicial review of the waiving of these laws.

This would give far too much unchecked authority to the Secretary of Homeland Security and does not provide the protection of judicial review of this authority.

There are two amendments, one offered by my colleagues Mr. Nadler and Mr. Meeks, and the other offered by Mr. Farr, which would strike portions of the bill that do not address our national security regarding the asylum system and our borders. However, in light of their failure, I am left no option but to vote against this bill.

I find the driver's license standards established in this bill to be unnecessary as well, as they already exist in current law. Last fall's Intelligence bill, which I supported, included a provision which already implements the 9/11 Commission Report's recommendations to create national minimum standards for driver's licenses. This provision allowed for States to participate with the Department of Transportation and the Department of Homeland Security in a rulemaking process.

H.R. 418 repeals these provisions and replaces them with standards established without State input. The issuance of driver's licenses has always been within State jurisdiction. Even with the measures passed in the Intelligence bill, States will largely be organizing and conducting the implementation of these standards. Their participation in establishing and implementing driver's license standards is essential for these provisions to be successful. This bill simply ignores State involvement altogether in these standards.

Though the bill does provide grants for the costs of implementing these standards, with the current fiscal climate, many States fear they will be left with the burden of paying a portion of these costs. Most States are faced with the same fiscal crisis that the Federal Government is currently experiencing. Creating an unfunded mandate for States is unfair, especially when they are excluded from the rulemaking process.

There are portions in this bill which I believe are beneficial to our national security. For instance, I am pleased the amendment offered by Mr. SESSIONS passed by a voice vote, as it will strengthen our ability to ensure the deportation of individuals who are illegally present in the United States.

Unfortunately, the egregious measures in the bill far outweigh the beneficial provisions. Thus, I must vote against this bill and hope that the Senate will remove the portions of this bill which are unnecessary and attack the balance of power in our country.

Mr. ISSA. Mr. Chairman, I rise today in strong support of H.R. 418, the REAL ID Act of 2005. This bill includes provisions that are essential to preventing terrorists and other criminals from obtaining fraudulent identification and provides security at our borders.

Last year, Congress passed legislation based on the recommendations of the 9/11 Commission but failed to address vital national security and homeland security issues. This Legislation addresses theses issues and further secures our Nation in a post 9/11 world.

H.R. 418 requires States to implement new minimum regulations for State drivers' license

and identification document security standards that must be met within 3 years. It also establishes a process to enable States to use an existing Department of Transportation communication system to confirm that drivers' licenses presented are genuine and validly issued to the person who is carrying them. The 19 terrorists who attacked America on 9/11 had obtained over 63 valid forms of identification between them to breach our homeland security. Improving document security is necessary to counter threats from foreign terrorism.

This legislation also takes important steps regarding asylum reform. It prevents terrorists and scam artists from abusing our asylum system and gives immigration judges the tools they need to undercut asylum fraud before it happens.

Most importantly, H.R. 418 is critical to the continued construction of the Southwest border fence in San Diego. Despite efforts by the Federal Government and the border patrol, California's Coastal Commission has objected to and stopped the final phase of fence construction. Completion of the fence will reduce the number of illegal crossings, and will allow the Border Patrol to re-deploy manpower and resources to other problem areas in San Diego. Completion of the 3-mile gap in the fence, known as ''Smugglers Gulch,'' would be a strong step toward securing our border.

Mr. Chairman, I made a promise to my constituents to continue to fight for security enhancements to curb illegal immigration and secure our borders. This legislation is essential to national security and I urge my colleagues to vote in support of H.R. 418.

Mr. BLUMENAUER. Mr. Chairman, today's bill would not be nearly as flawed or controversial if it had the benefit of going through the committee process. Unfortunately, we are faced with costly legislation that overturns States rights and does little to address the problems of our immigration system or to protect Americans from another terrorist attack.

Instead, this bill places enormous regulatory and financial burdens on State governments and makes Department of Motor Vehicles (DMV) employees de facto immigration officers. This policy promises to be ineffective as there are approximately 70 different kinds of immigration related documents issued by the Federal Government. This bill will not deter illegal immigration; it will probably mean illegal immigrants will drive without licenses.

In addition, in order to complete three miles of a border fence near San Diego, Section 102 of this bill suspends all laws, from public health and labor to the environment and property compensation. In fact, all barriers and roads along 7,514 miles of U.S. borders would be exempt from all laws. One person in the Department of Homeland Security would be above the law without any judicial appeal or remedy. This is unprecedented. Some of the environmental laws waived would include the Noise Control Act, the Clean Water Act, the Farmland Protection Policy Act, and the Bald Eagle Act. In addition to being bad public policy, this exemption is unnecessary, as most of these laws have security exemptions already written into them.

This legislation will not make us safer or reduce illegal immigration. In the end, it is hard to imagine a more dangerous precedent.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to H.R. 418 the REAL ID Act, because, contrary to its sponsors' claims, this bill will not improve our country's security. Instead, it will weaken law enforcement's ability to do its job, and make driving on our roads more dangerous. In addition, this bill eliminates critical provisions in the Intelligence Reform and Terrorism Prevention Act passed by Congress in 2004. Finally, the REAL ID Act makes it much more difficult for immigrants who are fleeing persecution to gain refuge in the United States.

Mr. Chairman, while there are many good reasons to oppose this bill, as I previously outlined, I will focus on the driver's license provision and the asylum provision.

Barring undocumented immigrants from accessing driver's licenses is a dangerous proposal. Withholding driver's licenses from these individuals will not fix our broken immigration system. It will only make us less safe by having unlicensed and uninsured drivers on our roads. The American Automobile Association (AAA) Foundation for Traffic Safety report entitled, ''Unlicensed to Kill,'' found that unlicensed drivers are almost five times more likely to be in fatal car accidents than are validly licensed drivers. Clearly, our goal should be to have more, not fewer, licensed drivers.

Denying licenses to undocumented immigrants will also hurt our national security by depriving law enforcement officials of critical information on millions of adults who are in the United States. Licensed individuals are registered, photographed and in some states fingerprinted. This information is then entered into a database accessible to local and state law enforcement, FBI personnel and immigration officers, helping law enforcement to separate otherwise law abiding individuals from terrorist or criminals. In fact, because many of the 9/11 hijackers did have a driver's license, the records kept by state departments of motor vehicles were invaluable after 9/11 in tracking where the terrorist had been and with whom they had associated. This information was used to prosecute many individuals who would not have been discovered otherwise. Passage of the REAL ID Act will mean that law enforcement will be less able to find people who may be security threats, and will have less information with which to prevent and solve crimes.

Mr. Chairman, there is no doubt that we must be proactive in the defense of our nation by identifying weaknesses in our security systems and making appropriate changes that will protect us from a terrorist attack. For this reason, Congress and the President charged the 9/11 Commission to study our intelligence failures and make recommendations that would improve our systems. Those recommendations were, enacted into law with the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 just three months ago. The intelligence reform bill required states to establish stringent standards for the issuance of driver's licenses and identification cards. Among the new standards are requirements that licenses contain digital photographs, employ machine readable technology and contain security features to prevent tampering, counterfeiting or duplication. Currently, effective and workable federal standards that will strengthen driver's license security are in the process of being implemented. The REAL ID Act will dismantle the safeguards Congress just enacted. Congress and the President should instead be focused on implementing the provisions of the Intelligence Reform and Terrorism Prevention Act such as, adding 10,000 new border patrol agents, 40,000 new detention beds, and 4,000 immigration and customs investigators.

Furthermore, the asylum provisions in the REAL ID Act do nothing to enhance our nation's security. Instead, the REAL ID Act serves only to deny people who are fleeing religious persecution, torture and other horrors the ability to escape into safety. Given the fact that an asylum seeker is immediately held in detention before his claim is processed, a terrorist would not risk claiming asylum to enter our country.

Mr. Chairman, REAL ID Act is a real bad idea for America. This bill will make our roads more dangerous, inhibit the work of law enforcement, and undermine the homeland security measures enacted in the Intelligence Reform and Terrorism Prevention Act of 2004. I urge my colleagues to oppose this bill and instead focus on implementing the counter-terrorism provisions enacted into law just a few months ago.

Mr. GRAVES. Mr. Chairman, I come to the floor today to speak in support of the REAL ID Act. It is clear that in order to secure our country from terrorists we need to reform the requirements and standards for driver's licenses. A valid driver's license is like a hall pass that allows terrorists to easily roam throughout the United States.

Indeed 19 terrorists did just that with dozens of legal driver's licenses and identification cards. The hijackers used these IDs to rent cars and apartments, open bank accounts, take flying lessons, and otherwise blend into American society while they planned their attacks. Those terrorists murdered 3,000 Americans and yet this gap still remains open.

In every State, the driver's license (and its counterpart, the State ID card) is the primary document used to establish identity and proof of legal residence. Making driver's licenses accessible to illegal aliens gives them the means to pass themselves off as legal residents of the United States. Additionally, the REAL ID Act does not create a national ID card.

In addition to establishing standards for the issuance of licenses, H.R. 418 includes provisions to prevent terrorists from gaming our asylum system. Court decisions in recent years have so distorted the asylum process that terrorists are now able to claim asylum specifically because they are terrorists. This legislation represents a critical first step toward gaining control over our borders and protecting American lives. These are commonsense measures that should be implemented immediately.

Terrorism may have no borders, but we can certainly make it more difficult for terrorists to cross ours. Having a uniform policy that relies on common sense will do more to keep America open and free than having a policy that relies on hope.

Mr. ETHERIDGE. Mr. Chairman, I rise today in opposition to H.R. 418.

Although I support the goals of this legislation, H.R. 418 unfortunately contains too many misguided provisions. Last year, I voted to pass the 9/11 Commission's bipartisan recommendations to reform identification standards and beef up security on our nation's border. This legislation would repeal that new law before it has a chance to work. Had the provisions of H.R. 418 been in place prior to September 11, 2001, they would not have stopped

a single one of the 19 terrorists. H.R. 418 would force virtually every adult in the United States to go to the DMV to get a new driver's license, and with 14,000 local jurisdictions in this country currently issuing identification, it would be impossible to impose a single standard within in the three-year limit in the bill. I will also vote to remove provisions in the bill allowing the DHS Secretary to waive laws currently on the books. Finally, many of my constituents have expressed concerns to me that H.R. 418 would create a national ID system that would lead to intrusive government action like a gun registry and gun control on targeted groups. For these reasons, I will vote ''no'' on H.R. 418.

Mrs. CUBIN. Mr. Chairman, on September 11th, the terrorists didn't just use box cutters and airplanes to attack America, they used our own laws against us to help them murder thousands of people. H.R. 418, the REAL ID Act, will fix these loopholes in current law and also take steps to close gaping holes in our land borders, which are the first line of defense against terrorist infiltration, not just for the border states, but also for my home state of Wyoming and the rest of the nation.

We all know how the 9/11 terrorists manipulated our asylum laws to stay in our country, and utilized lax drivers' license standards to help them carry out their plans. We know that human traffickers continue to take advantage of the gaps in our borders, helping terrorist and criminal aliens gain entry into our country. Yet some still question the need to turn this invaluable knowledge into meaningful action.

As an original cosponsor of the REAL ID Act, I ask my colleagues to look beyond the false rhetoric that has clouded this debate and realize what is really at stake—the safety and security of our nation. I refuse to gamble with the lives of American citizens, rolling the dice on flawed policies that have already failed to protect us against terrorism.

Today we have the opportunity—and more importantly, the responsibility—to pass this legislation and make the terrorist handbook obsolete.

Mr. STARK. Mr. Chairman, I'm starting to wonder if the Republican Majority was listening to the President when he called for the United States to act as a beacon of freedom for the world. For our first substantive legislation of the year, they would make it nearly impossible for victims of torture and religious persecution to seek refuge in the U.S. and they would get us ever closer to establishing a national ID.

We all accept that sometimes freedom must be sacrificed for security, but the 9/11 Commission itself said that these big brother, anti-immigrant provisions do nothing to enhance national security.

This bill makes changes to the asylum process and state drivers licenses, presumably to address the widely-reported anecdote that the first World Trade Center bombers abused the asylum system and had a total of 63 drivers licenses. However, you have to question the motives of the supporters of this bill when the asylum system was already strengthened ten years ago and the 63 drivers licenses are simply an urban legend. The 9/11 Commission found that the hijackers actually had 13, and this bill would not have prevented any of them from being issued.

So without making the country safer, we're going to deny refugees and victims of torture, rape, and other atrocities safe haven in this supposed beacon of freedom. I guess the asylum system, which is the most rigorous immigration process in this country, resulting in 30,000 denials last year, is not good enough for the immigrant-bashers. If this bill were to become law, an asylum applicant would have to provide documentary evidence of persecution. I hope that residents of the Darfur region of Sudan remember to grab their personal files as their villages are being burned, because under this law, the presumption of credibility would go to the torturers and rapists.

The bill would also retroactively make legal donations, even donations made decades ago, grounds for deportation of green-card holders who have lived here for decades if the organization to which a donation was made was later added to a government terrorist list.

The last section of the bill then goes after American citizens. The sponsors know that nobody would support a national ID, so they're just going to turn your drivers license into one without telling you. It'll look the same, but if this bill became law, all states would have to share all drivers license information in a national database, including identifying information, drivers' histories, and motor vehicle violations.

On behalf of the oppressed people of this world who actually believed President Bush when he said the U.S. would stand with them, and on behalf of Americans who don't confuse secret databases with security, I will vote No on this bill.

Mr. SHUSTER. Mr. Chairman, I rise today in support of the underlying legislation, known as the ''REAL ID Act'' H.R. 418. There is no greater responsibility placed upon myself and my colleagues than providing for a safe and secure homeland for America's citizens. We must and can do better to secure our borders, this legislation takes necessary and reasonable steps toward that goal.

I strongly support this legislation because it will close current loopholes in our laws that terrorists have been taking advantage of to gain entry and have free reign within our borders. Every measure within the REAL ID Act is present because it closes a loophole a terrorist has used previously. For example, the September 11th the hijackers had within their possession at least 15 valid drivers licenses and numerous state issued identity cards with a large variety of addresses allowing them to get on U.S. airliners. This legislation includes a number of common sense measures aiming to establish minimum document and issuance standards for federal acceptance of drivers' licenses and state-issued personal identification cards and would require applicants to provide proof they are in the country legally. Additionally, this measure would require identity documents to expire at the same time as the expiration of lawful entry status which will prevent individuals who have illegally entered or are unlawfully present in the United States from having valid identification documents.

The REAL ID Act will also strengthen and clarify our process for granting immigrants asylum within our borders. While America has always been and always will be a safe harbor for those being persecuted by tyrannical governments we must be vigilant to ensure those individuals are not taking advantage of America's generosity and good will. Our first responsibility is to protect the American people and we cannot put on blinders to expect that everyone who seeks asylum does so in good faith. This legislation closes one of the most egregious loopholes that currently exists—the REAL ID Act would prevent liberal judges from granting asylum to aliens on the basis that their governments believe they are terrorists. It is only reasonable that our laws do not force our country to provide safe harbor to those individuals that are being sought out by their governments due to their terrorist ties.

I have given just a few examples of why this legislation is so important to further our ability to strengthen our border security and increase our ability to remove illegal aliens from our country. There are numerous other provisions within this bill that work toward those goals as well. I strongly encourage my colleagues to join me today in voting in support of this important border security legislation because it will help better defend our homeland.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 418, the REAL ID Act. Not only has the House failed to consider the sweeping changes in this bill through the thoughtful and deliberative committee process, we have failed our duty to the American people to ensure that this bill will not have unintended consequences.

You may ask, ''Dingell, what unintended consequences? Doesn't this bill just keep the bad guys from harming us again?''

Well, my friends, read the fine print.

Look at Section 102 of the bill. That section allows the Secretary of Homeland Security to waive ANY and ALL federal, state, or local law that the Secretary determines should be waived to ensure the construction of physical barriers and roads to deter illegal border crossings.

It would also allow waiver of laws to knock down existing structures or other obstacles.

It would give power to the Secretary of Homeland Security to waive any public health law such as the Safe Drinking Water Act, the Clean Water Act, as well as transportation safety, hazardous materials transportation and road construction standards.

In addition, it would grant DHS unchecked authority to abrogate criminal law, child labor laws, laws that protect workers, civil rights laws, ethics laws for clean contracting and procurement policy.

It goes even further. No procedures for using this authority are established, and judicial review by federal or state courts is expressly prohibited. It even appears there would be NO judicial review concerning the taking of private property.

The breadth of this provision is unprecedented and must not stand.

Now let's look at Section 101. This section requires that in certain asylum claims, applicants must prove that their race, religion, nationality, membership in a particular social group, or political opinion ''was or will be a central reason'' for their persecution.

In effect, this will bar many legitimate refugees who have fled brutal human rights abuses, including torture, rape, and other horrific violence, from receiving asylum.

This section creates new burdens on those seeking asylum, including a corroborating evidence test, empowering an immigration officer or immigration judge to deny asylum to a refugee because he believes, in his discretion, that the refugee should have somehow been able to obtain a particular document when fleeing her country.

Mr. Chairman, I understand that we must protect our borders, but we must still allow those decent freedom loving people fleeing their countries to be able to continue to seek asylum.

I would also note that Sec. 103 specifically identifies officers, officials, representatives or spokesmen of the Palestinian Liberation Organization as terrorists, thus not able to enter the United States. Mr. Speaker, this would mean that Palestinian Authority President Mahmoud Abbas would be barred from the United States. Given the great progress we have seen in the Middle East in the past week and that the Bush Administration is in the process of setting up meetings with Dr. Abbas in Washington, it hardly seems wise to pass a bill barring the newly elected President of the Palestinian Authority from the country.

Finally, I note that I have concerns about this bill and its unintended consequences on the Second Amendment rights of gun owning Americans like myself.

Section 203 calls for the linking of databases and creates a floor for the requirements of what can be included in the database. However, this legislation fails to create a ceiling. What could stop a State from requiring databases to contain information about gun licenses issued and gun ownership records?

Mr. Chairman, I urge my colleagues to oppose this broad overreaching legislation. Let's have hearings. Let's have real deliberation and debate. I will vote against this legislation.

Mr. HOLT. Mr. Chairman, I rise in opposition to H.R. 418, the REAL ID Act. This legislation was crafted under the guise of protecting our borders and improving homeland security. However, it would make it more difficult for victims of persecution to obtain asylum impose expensive mandates on the States, and authorize the Secretary of Homeland Security to waive any and all laws to construct barriers at our international borders—none of which will make this country any safer from terrorists. This legislation would also effectively undo the important immigration and security reforms passed by the 108th Congress, putting us at greater risk for future attacks.

The 9/11 Commission's immigration-related recommendations focused on targeting terrorist travel through reliable identification systems and effective, integrated information sharing. Instead, this legislation seeks to change immigration laws broadly and in ways unrelated to essential intelligence reform.

This legislation would expand the authority for expedited alien removal without further hearing or review, impose stringent restrictions on asylum seekers hoping to be given an interview with an asylum officer, and require unreasonable standards of proof for aliens seeking asylum. None of the 9/11 hijackers sought or were granted asylum; rather, they were granted legal visas to enter the United States using fraudulent documents overseas. Furthermore, current law explicitly bars terrorists or members of terrorist organizations from gaining asylum, and asylum-seekers already undergo thorough background checks through the FBI, CIA, Department of Homeland Security, and Department of State databases. The onerous restrictions offered by H.R. 418 would keep highly-vulnerable victims of heinous crimes from escaping their persecutors, and they do not address the real vulnerabilities in our immigration system.

A report released this week by the United States Commission on International Religious Freedom underscores the dangerous impact these so-called reforms would have on our asylum process. According to the commission, the current expedited removal process in the U.S. places victims of persecution at great risk for further trauma, while the severity of conditions and deprivation imposed on asylum seekers was ''shocking.'' Rather than address this serious situation in the ways recommended by the commission, today this Congress would force even more innocent asylum seekers into expedited removal or send them back to their persecutors without an opportunity to appeal their case to an immigration judge.

H.R. 418 would also impose statutory requirements for State-issued driver's licenses and repeal the important identification security measures enacted by the bipartisan Intelligence Reform and Terrorism Prevention Act. Rather than permit local, State, and Federal officials to work together to create minimum security standards for driver's licenses and identification cards as authorized by Congress last year, H.R. 418 would mandate statutory standards for States and require them to share personal information on all licensed drivers in a massive national database.

H.R. 418 would dismantle the carefully crafted immigration and security reforms enacted by Congress last year in the Intelligence Reform bill. That law will toughen our border security by adding 10,000 new border patrol agents over the next 5 years, strengthening visa application requirements, and adding 4,000 new immigration and customs investigators. It fortifies identification security while allowing the State officials charged with making those changes to be a part of the process.

Mr. Chairman, this law implemented key 9/11 Commission recommendations without jeopardizing our legal immigration system or the ability of legitimate asylum seekers to escape persecution. Our country was founded on the principle of immigration, and we must not close our doors to those who lawfully seek to share in the freedom and democracy that Americans have always held dear. The Congress must do everything in its power to protect our citizens and our borders. H.R. 418, however, does not achieve those important goals, and I urge my colleagues to oppose this legislation.

Mr. MEEHAN. Mr. Chairman, I rise to oppose H.R. 418, the REAL ID Act. This bill is an expansion of the Patriot Act intended to punish immigrants without making America any safer.

Any time a bill is brought to the floor with no hearings, no committee markup, and few opportunities for amendments, it indicates that its sponsors are trying to protect it from scrutiny.

That's certainly the case here. Indeed a close look at this bill shows that its true purpose is not to make America safer, but to advance an agenda of ending America's tradition of welcoming and protecting the rights of immigrants.

This bill is about much more than driver's licenses. It upends the process of granting asylum to individuals and families who have suffered torture or persecution in other countries. It expands the PATRIOT Act to allow more deportations for people with no connection to terrorism.

No one doubts the need to review standards for issuing driver's licenses. That is why Congress worked on a bipartisan basis to implement the recommendations of the 9/11 Commission.

The recently enacted 9/11 bill established minimum Federal standards to ensure the integrity of drivers' licenses issuance and verification. The regulations are in the process of being developed, with the input of the state agencies that issue driver's licenses. Enacting a new bill that prescribes eligibility for driver's licenses would delay and disrupt the implementation of the 9/11 bill's standards even before they have been put in place.

The strongest reason to approach this issue thoughtfully is that the process of applying for driver's licenses brings new people into government databases, which can be cross-referenced with FBI and terrorist watch lists. The only reason we had any information about the 9/11 hijackers, their whereabouts, and their connections to others, is because we could track information from driver's license databases. Shutting off this flow of information is not a smart or effective way to combat terrorism.

This bill is only the latest example of how this Congress has ignored regular order to rush a partisan bill to the floor with little deliberation or debate. I oppose this process and this bill.

Mr. BILIRAKIS. Mr. Chairman, I rise today in strong support of H.R. 418, the REAL ID Act. As a member of the Congressional Immigration Reform Caucus, I join with my colleagues to raise attention to the serious flaws in our immigration system which leave our Nation exposed to potential threats.

The 9/11 Commission made several recommendations which were not enacted as part of the National Intelligence Reform Act of 2004 (Public Law 108–458), including provisions to strengthen identification document standards and to secure our borders. The commission specifically recommended that the Federal government should set standards for the issuance of birth certificates and sources of identification such as driver's licenses. In addition, the commission recommended the Department of Homeland Security's, DHS, completion of a biometric entry-exit screening system and the improvement of U.S. border security standards for travel and border crossing.

I was disappointed that the conference committee on the intelligence reform bill opted to remove the immigration-related provisions approved by the House during its consideration of H.R. 10 last fall. I commend House leadership for honoring the commitment made to Chairman SENSENBRENNER to allow the consideration of the bill we have before us today.

We have a real opportunity to adopt meaningful reforms to improve our immigration system. H.R. 418 establishes strict proof of identity for all applicants for State-issued driver's licenses and identification documents. This bill serves to protect the integrity of our immigration laws by requiring States, in effect, to confirm lawful immigration status or disclose the lack of confirming identification on the face of cards issued.

H.R. 418 also makes aliens deportable for terrorism-related offenses to the same extent that they would be inadmissible for the same grounds. If nothing else, our immigration system must prevent potential terrorists from entering the United States. We would not be exercising our responsibility to protect national security if we were to allow our immigration

system to be exploited by those malevolent individuals who seek to destroy Americans and our way of life.

Mr. Chairman, there are many flaws in our immigration system which need to be fixed. H.R. 418 does not address them all, but it does represent a good step forward in discouraging lawbreaking by those who would choose to exploit our welcoming nature. As a cosponsor of the REAL ID Act, I urge my colleagues to improve our Nation's security and strengthen our immigration laws by voting for H.R. 418.

Mr. GOODLATTE. Mr. Chairman, I rise today in support of h.r. 418, the REAL ID Act.

I supported the Intelligence Reform and Terrorism Prevention Act last December. That legislation helped to streamline the intelligence community and tightened some asylum rules that allowed potential terrorists to remain in our country. That was a good bill, but it did not go far enough. So I am pleased that the House is debating H.R. 418—A bill that I believe will continue to strengthen our borders, further improve identification standards, and close even more asylum loopholes.

We know that Mohamed Atta and his gang of terrorists exploited weak identification rules, and, as stated in the 9/11 Commission Report, ''All but one of the 9/11 hijackers acquired some form of identification document, some by fraud.'' H.R. 418 will require that Federal agencies only accept licenses and State-issued ID cards when States have determined that the holder is lawfully present in the country. The bill will also require that temporary visitors to our country receive only temporary identification, and that this identification expire when the terms of the visit expire. Mr. Chairman, this only makes sense.

I am also pleased that this bill further reforms our asylum system, a system that has unfortunately been ripe for corruption for years. We are also addressing the San Diego border fence issue and will ensure the expeditious completion of the border fence. Further, the bill makes aliens deportable for terrorism-related offenses. Incredibly, current law provided that not all terrorism-related grounds for keeping an alien out of the country are also grounds for deportion. This bill closes that loophole.

The simple fact is that we need to secure our borders. Today's bill is another step toward this effort and I believe it will make our country safer. I urge my colleagues to support the REAL ID Act.

Mr. BACA. Mr. Chairman, I rise in strong opposition of this bill.

It does nothing to make America safer. It is simply anti-immigrant legislation placed under the mask of homeland security.

The bill will prevent States from giving licenses to undocumented immigrants. It will not prevent terrorists from obtaining identification forms. All of the 9/11 hijackers were in this country legally.

In fact, allowing immigrants to have licenses actually improves homeland security by allowing our government to track who is in our borders.

This bill will also raise insurmountable hurdles for refugees seeking asylum and will deport victims of persecution into the hands of their persecutors.

Proponents of this provision claim that we need to tighten asylum laws, yet, they cannot pinpoint a single terrorist given asylum in the United States.

This bill will also require the completion of a fence on the Mexican border, waiving environmental laws in California. This fence is a complete waste of money and resources. People will go over it, under it and around it to enter our country.

Our immigration system is a broken system that needs to be fixed. We need reform that provides hardworking people of good character with a real path towards citizenship.

But this bill is simply a Band-Aid on the problem that will not provide lasting reform.

Mr. RYUN of Kansas. Mr. Chairman, on September 11, we were attacked by terrorists who took advantage of weaknesses in our border security. After infiltrating our country, the terrorists were able to conceal their real identities, and thereby plot their attacks without fear of being apprehended. If we, as a Congress, want to seriously address the problem of terrorism, then we must address the issue of border security.

For this reason, I rise to express my support for the REAL ID Act. This bill contains urgent border security reforms that were not addressed in the Intelligence Reform Bill that President Bush signed into law in December.

Foremost in this bill are provisions that would prevent terrorists from obtaining a United States driver's license. Without a license, potential terrorists will have a much harder time opening a bank account, traveling, and conducting other business necessary to plot an attack.

I think we all understand that preserving freedom is not an easy process. Freedom is a difficult journey filled with enemies who will try to destroy it if they are left unchecked. For this reason, I strongly urge my colleagues to vote for the REAL ID Act.

Mr. PAUL. Mr. Chairman, I rise in strong opposition to H.R. 418, the REAL ID Act. This bill purports to make us safer from terrorists who may sneak into the United States, and from other illegal immigrants. While I agree that these issues are of vital importance, this bill will do very little to make us more secure. It will not address our real vulnerabilities. It will, however, make us much less free. In reality, this bill is a Trojan horse. It pretends to offer desperately needed border control in order to stampede Americans into sacrificing what is uniquely American: our constitutionally protected liberty.

What is wrong with this bill?

The REAL ID Act establishes a national ID card by mandating that States include certain minimum identification standards on driver's licenses. It contains no limits on the government's power to impose additional standards. Indeed, it gives authority to the Secretary of Homeland Security to unilaterally add requirements as he sees fit.

Supporters claim it is not a national ID because it is voluntary. However, any State that opts out will automatically make non-persons out of its citizens. The citizens of that State will be unable to have any dealings with the Federal Government because their ID will not be accepted. They will not be able to fly or to take a train. In essence, in the eyes of the Federal Government they will cease to exist. It is absurd to call this voluntary.

Republican Party talking points on this bill, which claim that this is not a national ID card, nevertheless endorse the idea that ''the Federal Government should set standards for the issuance of birth certificates and sources of identification such as driver's licenses.'' So they admit that they want a national ID but at the same time pretend that this is not a national ID.

This bill establishes a massive, centrally coordinated database of highly personal information about American citizens: at a minimum their name, date of birth, place of residence, Social Security number, and physical and possibly other characteristics. What is even more disturbing is that, by mandating that states participate in the Drivers License Agreement, this bill creates a massive database of sensitive information on American citizens that will be shared with Canada and Mexico.

This bill could have a chilling effect on the exercise of our constitutionally guaranteed rights. It re-defines ''terrorism'' in broad new terms that could well include members of firearms rights and anti-abortion groups, or other such groups as determined by whoever is in power at the time. There are no prohibitions against including such information in the database as information about a person's exercise of first amendment rights or about a person's appearance on a registry of firearms owners.

This legislation gives authority to the Secretary of Homeland Security to expand required information on driver's licenses, potentially including such biometric information as retina scans, fingerprints, DNA information, and even radio frequency identification, RFID, radio tracking technology. Including such technology as RFID would mean that the Federal Government, as well as the governments of Canada and Mexico, would know where Americans are at all time of the day and night.

There are no limits on what happens to the database of sensitive information on Americans once it leaves the United States for Canada and Mexico—or perhaps other countries. Who is to stop a corrupt foreign government official from selling or giving this information to human traffickers or even terrorists? Will this uncertainty make us feel safer?

What will all of this mean for us? When this new program is implemented, every time we are required to show our driver's license we will, in fact, be showing a national identification card. We will be handing over a card that includes our personal and likely biometric information, information which is connected to a national and international database.

H.R. 418 does nothing to solve the growing threat to national security posed by people who are already in the U.S. illegally. Instead, H.R. 418 states what we already know: that certain people here illegally are ''deportable.'' But it does nothing to mandate deportation.

Although Congress funded an additional 2,000 border guards last year, the administration has announced that it will only ask for an additional 210 guards. Why are we not pursuing these avenues as a way of safeguarding our country? Why are we punishing Americans by taking away their freedoms instead of making life more difficult for those who would enter our country illegally?

H.R. 418 does what legislation restricting firearm ownership does. It punishes law abiding citizens. Criminals will ignore it. H.R. 418 offers us a false sense of greater security at the cost of taking a gigantic step toward making America a police state.

I urge my colleagues to vote ''no'' on the REAL ID Act of 2005.

Mr. GUTIERREZ. Mr. Chairman, I rise today in strong opposition to H.R. 418. The proponents of this dangerous and divisive bill

have mischaracterized and misrepresented it as a measure that focuses on national security. This could not be further from the truth.

I would urge my colleagues today to listen beyond the harsh rhetoric and to closely examine this legislation. Because further study will reveal that H.R. 418 is really nothing more than a bill designed to bash immigrants and punish refugees.

H.R. 418 ignores our Nation's proud history of protecting those fleeing brutal human rights abuses, torture and persecution. It would force our country to turn its back on women, children, and victims of religious persecution. The bill would create insurmountable hurdles for legitimate asylum-seekers and slam the door shut on refugees who have fled brutal human rights abuses. That is not America.

H.R. 418 also ignores the reality that there are an estimated 10 million or more undocumented immigrants living in our country. This bill would do nothing to prevent undocumented migration to the United States. If anything, this bill will only further compound the flaws in our Nation's immigrations laws. And it would make the job of protecting our homeland even more challenging.

H.R. 418 will make the vital job of law enforcement to arrest criminals and root out potential terrorists almost impossible. In short, immigration enforcement will continue to expend their valuable, but limited, resources and energy in pursuing hardworking busboys and nannies, instead of bad actors who mean us real harm. Immigration officers represent our frontline forces in protecting our homeland. Let's not make their jobs even more demanding. Let's give them the policies, the resources and the tools they need to succeed.

Mr. Chairman, imagine your neighbors, the families who live across the street, the men and women who join us at church—all of the hard working people who share the roads with us. Now imagine these hundreds of thousands, perhaps millions of people, driving without a license, without car insurance or registration. Such a policy will wreak havoc on our streets and highways. It also will do nothing to address our broken immigration system. It will just force hard working people further into the shadows and create an increased demand for the black market of fake identity documents.

I agree that Congress must examine how to improve enforcement of immigration law, but we first must create laws that are enforceable and in step with reality.

Let me close by saying this. I am not alone in my strong opposition to this misguided and mean-spirited legislation. Also opposing the bill are the National Governor's Association, the National Council of State Legislatures, many other national, State and local organizations, security and immigration policy experts, immigration attorneys, more than 100 religious organizations, Hispanic and Asian organizations, the U.N. Commissioner for Refugees, the AFL–CIO, the Service Employees International Union and other labor unions. The list goes on and on, and I consider myself very good company.

Mr. Chairman, I strongly urge my colleagues to oppose this bill. The only thing ''real'' about the REAL ID Act is that it is real bad for America.

Mr. HONDA. Mr. Chairman, I rise today to strongly oppose H.R. 418, the REAL ID Act. This bill merely recycles the anti-immigrant and refugee provisions that did not make it into the Intelligence Reform and Terrorism Prevention Act of 2004 passed and signed into law late last year. H.R. 418 does not improve our national security.

H.R. 418 would repeal some of the bipartisan provisions that were set forth in the Intelligence Reform Act, including increasing the number of new border patrol agents, strengthening visa application requirements, and allowing security experts at Department of Homeland Security to establish strict new minimum standards for driver's licenses.

I am particularly concerned with section 101, which would have the effect of preventing legitimate asylum seekers from obtaining relief in the United States. The REAL ID Act would require asylum applicants to prove that their persecutors' ''central motive'' for harming or wishing to harm them was race, religion, nationality, membership in a particular social group, or political opinion. Applicants may be denied based on any inconsistencies or inaccuracies in their stories.

We must remember those who flee brutal human rights abuses, however, often escape from situations that do not allow them to gather any of the documentation necessary to present ''corroborating evidence.'' An escapee from the Darfur region cannot go back and ''track'' evidence of their persecution without facing threatening life situation.

Moreover, the REAL ID Act would implement a national standard for driver's licenses, requiring all States to overhaul their procedures and to meet Federal standards within 3 years. Setting a national standard for driver's licenses infringes on States' rights and sends another unfunded mandate to the States.

The border and fence security provision in this bill will neither deter nor detect the many non-citizens who continue to enter the U.S., while granting the Secretary of Department of Homeland Security power to waive any law upon determining that a waiver is ''necessary for the expeditious construction'' of the border barriers. Under this waiver, the DHS would be free to construct anywhere along our borders without legal limitation, liability, or oversight.

Furthermore, this provision will allow DHS to destroy endangered habits and species, as well as archaeological sites containing 7,000-year-old Native American artifacts when constructing the additional fencing.

H.R. 418 does not address the greater problems of our current broken immigration system. In order to fix our immigration problems, we need a comprehensive immigration reform.

The Acting CHAIRMAN (Mr. SIMPSON). There being no further amendments, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BASS) having assumed the chair, Mr. SIMPSON, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 418) to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence, pursuant to House Resolution 75, he reported the bill, as amended pursuant to that rule, back to the House with further sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. REYES

Mr. REYES. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. REYES. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Reyes of Texas moves to recommit the bill H.R. 418 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

At the end of section 203, add the following:

(c) RESTRICTIONS ON INFORMATION CONTAINED IN DATABASE.—A State motor vehicle database may not include any information about a person's exercise of rights guaranteed under the first, second, or 14th amendment to the Constitution of the United States.

Mr. SENSENBRENNER (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (REYES) is recognized for 5 minutes.

Mr. REYES. Mr. Speaker, this motion to recommit provides for restrictions on the information contained in the national database. This bill as it stands requires that the database shall contain at a minimum all information contained on the driver's licenses as well as driving history. This would create no limit as to what other information may eventually be incorporated in the database. This motion would simply protect the privacy rights of Americans from a national ID database in this bill.

In particular, this amendment guarantees that the database cannot become a centralized storage place for sensitive personal information on nearly every American about whether they own guns, what guns they own and whether they have purchased any guns. This could be the national gun registry that we have all feared for years.

This motion to recommit would also bar information on the exercise of first

amendment and fourteenth amendment rights from being included in the driver's license database. We should not have a government database of political activities of law-abiding citizens.

As Bob Barr, our former colleague, said in the Washington Times last year in opposition to nearly identical provisions, ''You know something is askew when we second amendment conservatives keep finding common cause with the American Civil Liberties Union.''

Groups strongly opposed include the Gun Owners of America, the ACLU, the Republican Liberty Caucus, the League of United Latin Americans Citizens, the American Conservative Union, and the Privacy Rights Clearinghouse.

Our constituents have set aside partisan concerns in recognition of the dangerous consequences, unintended consequences, of passing this misguided legislation. This bill would establish a National Interstate Computer Database to track the personal information of every single American, laying the foundation, I believe, for a national ID system.

Moreover, H.R. 418 places privacy limitations on the use of centralized data. It does not even prohibit the Federal Government from sharing personal information with other people, companies, and foreign governments.

This system, I believe, is ripe for abuse, Mr. Speaker. By forcing State governments to maintain and share files on almost every adult in the Nation, this bill will truly usher in the era of Big Brother. The database could be used to track Americans' movements, store information on political activities, and even store information on gun ownership.

Mr. Speaker, I hope that the rest of my colleagues are not fooled by H.R. 418. This is nothing less than a bureaucratic back door to a national ID system.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Wisconsin is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, this bill does not require the States to do anything or not do anything. It has been very clear from the beginning of the debate on this legislation. What the bill does is it says that a driver's license has to meet certain standards if it is to be acceptable for Federal ID purposes, such as getting on an airplane.

What the motion to recommit does is force the States to do something, or not do something; and that goes directly against the notion of federalism that is contained in this bill and which was drafted by the Committee on Government Reform.

The first vote that we had yesterday on this legislation was on whether we should waive the law relative to unfunded mandates. The vote on that was 228 ''aye'' to 191 ''no.'' The author of this motion to recommit, as well as the 190 who joined him in saying that we should not waive the unfunded mandate law, is now asking the States to have another unfunded mandate.

I would urge all of the 191 who voted ''no'' on the Jackson-Lee objection to consideration of the rule to bring this up to join me in voting ''no'' on this motion to recommit, together with the 228 who voted the right way yesterday.

Vote ''no'' on the motion to recommit; vote ''aye'' on passage.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. REYES. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of final passage.

The vote was taken by electronic device, and there were—ayes 195, noes 229, not voting 9, as follows:

[Roll No. 30]

AYES—195

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Duncan
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Holden
Holt
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—229

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cox
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Ehlers
Emerson
English (PA)
Everett
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Carter	Green, Gene	Honda
Eshoo	Hinchey	Sanchez, Loretta
Feeney	Hinojosa	Stupak

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The Acting SPEAKER pro tempore (Mr. BASS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1432

So the motion to recommit with instruction was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 261, nays 161, not voting 11, as follows:

[Roll No. 31]

YEAS—261

Aderholt	Cunningham	Hulshof
Akin	Davis (AL)	Hunter
Alexander	Davis (FL)	Hyde
Bachus	Davis (KY)	Inglis (SC)
Baker	Davis (TN)	Issa
Barrett (SC)	Davis, Jo Ann	Istook
Barrow	Davis, Tom	Jenkins
Barton (TX)	Deal (GA)	Jindal
Bass	DeFazio	Johnson (CT)
Bean	DeLay	Johnson (IL)
Beauprez	Dent	Johnson, Sam
Berry	Doolittle	Jones (NC)
Biggert	Drake	Kanjorski
Bilirakis	Dreier	Keller
Bishop (GA)	Duncan	Kelly
Bishop (UT)	Edwards	Kennedy (MN)
Blackburn	Ehlers	King (IA)
Blunt	Emerson	King (NY)
Boehlert	English (PA)	Kingston
Boehner	Everett	Kirk
Bonilla	Fitzpatrick (PA)	Kline
Bonner	Flake	Knollenberg
Bono	Foley	Kolbe
Boozman	Forbes	Kuhl (NY)
Boren	Ford	LaHood
Boucher	Fortenberry	Latham
Boustany	Fossella	LaTourette
Boyd	Foxx	Leach
Bradley (NH)	Franks (AZ)	Lewis (CA)
Brady (TX)	Frelinghuysen	Lewis (KY)
Brown (SC)	Gallegly	Linder
Brown-Waite, Ginny	Garrett (NJ)	Lipinski
	Gerlach	LoBiondo
Burgess	Gibbons	Lucas
Burton (IN)	Gilchrest	Lungren, Daniel E.
Butterfield	Gillmor	
Buyer	Gingrey	Mack
Calvert	Gohmert	Manzullo
Camp	Goode	Marchant
Cannon	Goodlatte	Marshall
Cantor	Gordon	Matheson
Capito	Granger	McCaul (TX)
Cardoza	Graves	McCotter
Case	Green (WI)	McCrery
Castle	Gutknecht	McHenry
Chabot	Hall	McHugh
Chandler	Harris	McIntyre
Chocola	Hart	McKeon
Coble	Hastings (WA)	McMorris
Cole (OK)	Hayes	McNulty
Conaway	Hayworth	Melancon
Cooper	Hefley	Mica
Costa	Hensarling	Miller (FL)
Costello	Herger	Miller (MI)
Cox	Herseth	Miller, Gary
Cramer	Hobson	Moran (KS)
Crenshaw	Hoekstra	Murphy
Cubin	Holden	Musgrave
Cuellar	Hooley	Myrick
Culberson	Hostettler	Neugebauer
Ney	Reynolds	Stearns
Northup	Rogers (AL)	Strickland
Norwood	Rogers (KY)	Sullivan
Nunes	Rogers (MI)	Sweeney
Nussle	Rohrabacher	Tancredo
Osborne	Ross	Tanner
Otter	Royce	Taylor (MS)
Oxley	Ryan (OH)	Taylor (NC)
Pearce	Ryan (WI)	Terry
Pence	Ryun (KS)	Thomas
Peterson (MN)	Salazar	Thornberry
Peterson (PA)	Saxton	Tiahrt
Petri	Schwarz (MI)	Tiberi
Pickering	Scott (GA)	Turner
Pitts	Sensenbrenner	Upton
Platts	Sessions	Walden (OR)
Poe	Shadegg	Walsh
Porter	Shaw	Wamp
Portman	Shays	Weldon (FL)
Price (GA)	Sherwood	Weldon (PA)
Pryce (OH)	Shimkus	Weller
Putnam	Shuster	Westmoreland
Radanovich	Simmons	Whitfield
Ramstad	Simpson	Wicker
Regula	Skelton	Wilson (SC)
Rehberg	Smith (TX)	Wolf
Reichert	Sodrel	Young (FL)
Renzi	Souder	

NAYS—161

Abercrombie	Inslee	Pastor
Ackerman	Israel	Paul
Allen	Jackson (IL)	Payne
Andrews	Jackson-Lee (TX)	Pelosi
Baca		Pombo
Baird	Jefferson	Pomeroy
Baldwin	Johnson, E. B.	Price (NC)
Becerra	Jones (OH)	Rahall
Berkley	Kaptur	Rangel
Berman	Kennedy (RI)	Reyes
Bishop (NY)	Kildee	Ros-Lehtinen
Blumenauer	Kilpatrick (MI)	Rothman
Boswell	Kind	Roybal-Allard
Brady (PA)	Kucinich	Ruppersberger
Brown (OH)	Langevin	Rush
Brown, Corrine	Lantos	Sabo
Capps	Larsen (WA)	Sánchez, Linda T.
Capuano	Larson (CT)	
Cardin	Lee	Sanders
Carnahan	Levin	Schakowsky
Carson	Lewis (GA)	Schiff
Clay	Lofgren, Zoe	Schwartz (PA)
Cleaver	Lowey	Scott (VA)
Clyburn	Lynch	Serrano
Conyers	Maloney	Sherman
Crowley	Markey	Slaughter
Cummings	McCarthy	Smith (NJ)
Davis (CA)	McCollum (MN)	Smith (WA)
Davis (IL)	McDermott	Snyder
DeGette	McGovern	Solis
Delahunt	McKinney	Spratt
DeLauro	Meehan	Stark
Diaz-Balart, L.	Meek (FL)	Tauscher
Diaz-Balart, M.	Meeks (NY)	Thompson (CA)
Dicks	Menendez	Thompson (MS)
Dingell	Michaud	Tierney
Doggett	Millender-McDonald	Towns
Doyle		Udall (CO)
Emanuel	Miller (NC)	Udall (NM)
Engel	Miller, George	Van Hollen
Etheridge	Mollohan	Velázquez
Evans	Moore (KS)	Visclosky
Farr	Moore (WI)	Wasserman Schultz
Fattah	Moran (VA)	
Filner	Murtha	Waters
Frank (MA)	Nadler	Watson
Gonzalez	Napolitano	Watt
Green, Al	Neal (MA)	Waxman
Grijalva	Oberstar	Weiner
Gutierrez	Obey	Wexler
Harman	Olver	Wilson (NM)
Hastings (FL)	Ortiz	Woolsey
Higgins	Owens	Wu
Holt	Pallone	Wynn
Hoyer	Pascrell	Young (AK)

NOT VOTING—11

Bartlett (MD)	Ferguson	Honda
Carter	Green, Gene	Sanchez, Loretta
Eshoo	Hinchey	Stupak
Feeney	Hinojosa	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BASS) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1441

Mrs. DAVIS of California changed her vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FERGUSON. Mr. Speaker, I missed the vote on final passage of H.R. 418. Had I been able, I would have cast a vote in the affirmative as I am a strong proponent of the legislation and the goals it sets to achieve in reforming immigration policy in our country.

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, I regret that I had to return to my district last evening and today. Had I been present, I would have voted ''no'' on rollcall 27 and 31. I would have voted ''yes'' on rollcall 24, 25, 26, 28, 29, and 30.

Mr. CARTER. Mr. Speaker, on February 10, 2005, during rollcall votes 28, 29, 30 and 31, I had to return to my Congressional district on an urgent matter and was unavoidably detained. If I had been present, I would have voted ''no'' on rollcall votes 28, 29, 30 and ''yea'' on rollcall vote 31, final passage.

Mr. HONDA. Mr. Speaker, on rollcall votes Nos. 28, 29, 30 and 31, I was unavoidably detained. Had I been present, I would have voted: ''yea'' on rollcall vote No. 28, the Nadler/Meek Amendment, which would strike section 101 of the bill which imposes new burdens on persons seeking asylum: ''yea'' on rollcall No. 29, the Farr Amendment, which would strike section 102 of the bill regarding waivers to expedite construction of physical barriers and roads along the border; ''yea'' on rollcall No. 30, the motion to recommit; and ''no'' on rollcall No. 31, final passage of H.R. 418—REAL ID Act of 2005.

LEGISLATIVE PROGRAM

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Mr. Speaker, I yield to my friend, the majority leader, the gentleman from Texas (Mr. DELAY), for the purposes of informing us of the schedule.

Mr. DELAY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, the House will convene on Tuesday at 2 p.m. for legislative business. We will consider several measures under suspension of the rules. The final list of those bills will be sent to Members' offices at the end of the week and any votes called for on these will be rolled to 6:30 p.m.

On Wednesday and Thursday the House will convene at 10 a.m. We will likely consider additional legislation under suspension of the rules, as well as H.R. 310, the Broadcast Decency Enforcement Act. In addition, we are working on the continuity of government legislation. It is anticipated to be similar to H.R. 2844, the Continuity in Representation Act passed by the House last year. We hope to move quickly and bring that legislation to the floor next week.