offered an amendment that showed how we don't have enough bed spaces to end catch and release, saying you had to have more. They accepted that. I offered amendment after amendment, and they accepted them. I thought, why is this? So I offered amendments to change the policy to make the law actually enforceable, and they got voted down.

Why would that be so easy? Because the brain trust that was proposing that bill last year knew the history of 1986; they knew how Congress worked, and they knew they never had any intention of funding all the Border Patrol agents and the fencing and the prison beds. We could pass an authorization bill to build prisons, and they are never going to get built, I am telling you. I will show you examples. It means nothing.

So I offered a trigger. It finally dawned on me what this was about, how the game was going to be played out. I offered an amendment that said: You don't get any of this amnesty until the Secretary of Homeland Security certifies that he has operational control over our lawless border. They voted that down.

So Senator ISAKSON, from Georgia, picked that up and wrote it in even more detail when the bill came to the floor and offered the amendment. We had quite a debate over this because it was important—the trigger was important. The cabal who put all of it together said: We cannot do that because it would upset our delicate compromise in the groups that participated in writing this bill—not the American people—and they would oppose it. They voted it down. It was a fairly close vote, but they voted down the trigger because they really didn't want that trigger because they never intended to do the things that were in the bill. The trigger would have said: You have to build a fence, you have to build the prison beds, and you have to hire the people. If you don't do those things—and actually do them—the other stuff doesn't become law, the amnesty. That was the debate last year.

This year, they say: We got the message, we are going to have a trigger. Well, good. I was happy about that. That sounded good. This is one of our principles. This time, we are not going to mislead the American people. We are really going to do what we promised and have a trigger, and you can relax, SESSIONS, because we are not going to fool you this time. It is not going to be like 1986.

But the problem is that the trigger doesn't get us there. I just have to tell you that. The trigger only applies to the guestworker program and taking illegal aliens off the probationary Z visa, and all other programs in the bill will begin immediately. So if the trigger is never met—if the trigger that is supposed to be met is never met, these requirements we put in there to ensure that we were going to follow through with enforcement, if they are never met, the probationary status in the amnesty group never expires.

After the bill passes, Homeland Security has 180 days to begin accepting Z visa applications. They would accept them for 1 year and can extend the application filing for another year. When the trigger is met, if it ever is, Homeland Security will start approving the applications they have been processing and adjudicating. What happens if the trigger is never met? Will the probationary amnesty end or expire? Those are pretty good questions. If the trigger is never met, I can answer it for you: The Z visa probationary status never ends in the bill.

It is explained on page 291, line 17:

> Probationary authorization document does not expire until "6 months after the date on which the Secretary begins to approve applications for Z visas."

So if the trigger is never met, if the Department of Homeland Security never starts approving the applications and the 6-month clock never starts ticking, therefore, the probationary authorization document never expires.

My staff asked about this in one of the briefings by the group promoting the bill. The staffers asked: Does the Z visa probationary card ever expire? The answer was: Well, because the triggers are going to get met sometime, in fact, it is not going to expire.

So, in addition, we need to remember that there is no guarantee that the additional enforcement items—I talked about that earlier—in title I and title II of this legislation that purport to be effective in enforcing the law—there are dozens of things there that are not listed in the trigger. The question is, Will they ever be funded?

You should be aware, sophisticated Americans and Members of the Senate, that there is no obligation or requirement whatsoever that these things ever get funded in the future. The bill itself acknowledges that in many different places.

So with regard to some of the things in the bill that are supposed to make enforcement better and make the system work better, they use this phrase—they say, "subject to the availability of appropriations."

That phrase is used 18 times in the bill. What does that mean? It means we are going to increase our prison beds, increase border patrol, and do all these things which are in our law, and we are going to enforce the law subject to the availability of appropriations. Well, somebody probably wants a bridge in their home State or a highway or a university grant in their home district—more money for this or that, good programs or bad programs, but that is how these things get lost out in the competition for spending. They don't get done. They acknowledge that.

The phrase "authorized to be appropriated" is used 20 times. So they are saying we are authorizing to be appropriated money to do this, that, and the other. They are going to make this bill good. So our masters of the universe come out and say: Don't worry, American people, I know you think we are not going to enforce the law, but we have new Border Patrol officers and prison spaces and fencing, and they add the phrase. But all it really says in the legislation is that it is authorized to be appropriated. There is no way they can guarantee that Congress next year is going to appropriate the money for what they put in the bill.

All of that was key to the trigger effect. I have to tell you that, in my view, the trigger is not nearly strong enough. It has been undermined, and virtually everything in the trigger has already been completed or is soon to be completed. It doesn't have some of the new things that have been promised here in the trigger.

Loophole No. 2. This is very important. The enforcement trigger does not require that the U.S. visa exit portion of US–VISIT—the biometric border check system that records that you have come into the country—will be implemented. It was required by Congress in 1996. Over 10 years ago, we required that the US–VISIT exit system be in place; that is, if you have a visa to the United States for 6 months or 30 days or a year, you come in and present your card, it goes into the computer system, like at the bank or like your timeclock where you work, it clocks you in, and then it clocks you out. If you don't exit when you are supposed to, red flags can go up that you didn't exit when you were supposed to. You are an "overstay." It is an absolutely critical step in creating a lawful immigration system that will work. It was required to be completed in 2005. Here we are in 2007, and it is not completed. Did we promise to complete it as part of the trigger? No, no, no. There would be no way to ascertain whether people exit when they are supposed to.

Under the bill, it says a certain number of people come seasonably, or certain people for 2 years, and sometimes family members can come for 30 days, and sometimes family members can come for 2 years—those kinds of things. Who is going to find out if they didn't go home when they were supposed to? Over a third of the people in our country illegally came legally but overstayed their visa, and many have no intention of returning to their home country whatsoever. We don't even know they didn't return because we have no way to clock out when they left. We have no idea who left when they were supposed to leave.

This is why I say the legislation before us was designed to fail. I am not sure the Members all designed it to fail, but the effort, when it came down to it, when confronted with things which would actually work and which are critical to the success of an effective border system, they weren't in there, and that sends you a signal on what is really there.