

In 1996, we required, as I said, this US-VISIT system to have an exit component by 2005, and it is still not complete. Do you think that in 1996, Members of the Congress and Members of the Senate went out and told their constituents that we are working on immigration; we passed a bill that will have an exit system in 10 years or 9 years, and that will help us enforce the law, and I am so proud we passed that? What good is it to pass it if it never happens? It hasn't happened yet, and it is not required through the trigger, which is the only thing that can require it to work.

According to the Pew Hispanic Center's 2006 report entitled "Modes of Entry for Unauthorized Migrant Population":

4 to 5.5 million of the current illegal alien population "entered legally" and are non-immigrant visa overstayers.

Despite what we know about the overstay rates, the US-VISIT exit system is not made part of the trigger. That is a very big loophole.

I don't think we are serious if we don't have an exit system. One might say it is hard to do. We have had 10 years. I will say one thing, if President Bush wanted the exit system to be in place, he would have it in place. If Congress wanted it in place, we would have it in place.

A separate section of the bill does require the Department of Homeland Security to submit to Congress a schedule for developing an exit component. That is not good enough.

Loophole No. 3, one of these little spots in poor old Bill who got shot up because he didn't go to committee like he was supposed to learn in civics class. He is supposed to go to committee. Maybe some loopholes would have been closed if we had an opportunity to talk about it publicly before the whole world.

Loophole No. 3: The bill does not require the Department of Homeland Security to have enough bed space to actually end catch and release at the border and in the interior. It only requires Homeland Security to maintain its current level of bed space and establishes a "catch, pay, and release" program that benefits illegal aliens from countries other than Mexico who are caught at the border and who can post a \$5,000 bond.

A \$5,000 bond is not hard to post if you know how the system works and you are prepared. It can be done any number of ways. But let's say an individual has a cousin or uncle or someone in the United States and they come into the country and are apprehended, and they came from Europe or Brazil or someplace other than Mexico. All you have to do is post a bond and then you are released pending some hearing on deportation.

We have had this problem for a number of years. Secretary Chertoff has made some progress in ending it, and I give him credit for that. There was an article in a newspaper that showed

that people other than Mexicans—you see, it is not easy to deport them. It is easy to take a person back to Mexico, but how do you take a person back to Chile, Brazil, Indonesia, or Belarus? It takes some effort to do this. So they were releasing everyone on bail because they didn't have any bed space, and asking them to show up at some given time so they could deport them. If a person is willing to break into the country in violation of the laws, how many of those people are going to show up after they have been apprehended to be flown out of the country? No, not zero; 95 percent don't show up. That is what the number is. In fact, some of the rules smugglers told their people to follow is if you see an immigration officer, turn yourself in because they will take you further inland, they will process you, and let you out on bail, and you never have to come back, which is exactly what 95 percent are doing. It is a mockery of the law and, in some areas, we have made progress, but that is not a part of the trigger.

What about the bed space? You have to have a certain amount of bed space or you can't hold people. Over the past 2 years, the Senate appropriated money for 9,000 new beds, bringing us to a total of 27,500 beds. This is the current funding level, 27,500 beds. We have already funded that amount. Nothing new was added to the requirements of the trigger until the Gregg amendment was adopted earlier this week. Now the trigger requires Homeland Security to reach a detention bed space of 31,500 beds, 4,000 more.

The 27,500 beds, however, are far less than the 43,000 detention beds required under current law to be in place and constructed by the end of this year.

OK, cynics out there, does that provide fuel to your fire? How about that? Does that breach cynicism? We require in the Intelligence Reform and Terrorism Prevention Act of 2004 that this country have 43,000 beds by the end of this year, but when this bill came up, they only had in the trigger portion, the thing that would guarantee we reach that level, 27,500 beds. Senator GREGG raised the number to 31,500, but in 2004, when Senators went out and bragged that they raised our number to 43,000 detention beds, that was supposed to be met, and we have no intention of meeting it, I submit. Because it is in bill language doesn't mean it will ever happen.

This month, a Federal lawyer who used to be with the Bureau of Prisons, Joseph Summerill, wrote an op-ed piece—he used to be with the Bureau of Prisons, so he knows this issue. As a lawyer, he was a counsel for the Bureau of Prisons, and he now practices with the firm of Greenberg Traurig.

He says the following:

... the demand for deportation and removal operation detention space has grown much faster than available bed space has. . . .

He goes on:

Despite the fact that high-risk/high-priority immigrants include immigrants who

are associated with criminal investigations, have committed fraud, or are likely to abscond, these immigrants are often released because of the lack of detention bed space. . . .

The lack of detention bed space has resulted in creating a de facto amnesty program for illegal immigrants who are subject to removal, particularly those immigrants from countries "other than Mexico."

From 2002 to 2004, he explains:

DRO—

That is the detention and removal operation

DRO personnel levels grew by only 3 percent and the funding of bed space decreased by 6 percent. According to the inspector general, declining funds, the shortage of DRO personnel, and decreased bed space led to a 38 percent increase of illegal immigrants released by the DRO.

We are supposed to be fixing this catch-and-release program. I thought we were. Here this former lawyer with the Bureau of Prisons said we had a 38-percent increase in illegal immigrants being released. He concludes:

DRO has faced annual mandates by Congress, the President, and the American people to increase the number of illegal immigrants who are detained. Unfortunately, Federal funding has not kept pace with these mandates. . . .

So it is clear we need a lot more beds, and 31,500 beds, as we approved in an amendment the other day, is better than 27,500, but it is not enough.

So why are the American people cynical? We passed a law in 2004 requiring 43,000 beds by the end of this year. We are at 27,500. It is not likely to ever happen, and that is why they did not put it in the trigger because if they did, those bed spaces would have to be completed.

Mr. President, I see my distinguished colleague Senator BOND from Missouri in the Chamber. He is a most capable Senator. I appreciate his leadership. I have a number of loopholes I could talk about and will talk about in the days to come.

I am raising these issues to say I can't vote for a bill that is likely to clear the House of Representatives and be signed by the President with loophole after loophole after loophole. I cannot go to my constituents and say I am pleased we have now passed legislation that will actually work to create a lawful system, that will treat compassionately the people who are here, will create a flow in the future based on merit and competition, and will do a lot of other things we want done, the sponsors of this bill are saying they want done, and asking us to vote for this bill because they say it will accomplish that.

My disagreement is not with their principles and their stated goals, but my disagreement is the language in the legislation is dramatically ineffective to accomplish that.

I thank the Chair and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleagues for allowing me to speak