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4 MARKUP OF H.R. 2278, THE STRENGTHEN AND FORTIFY ENFORCEMENT

5 ACT (THE SAFE ACT)

6 Tuesday, June 18, 2013

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:39 a.m., in
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Sensenbrenner,
14 Coble, Smith of Texas, Chabot, Bachus, Issa, Forbes, King,
15 Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy,
16 Amodei, Labrador, Farenthold, Holding, Collins, DeSantis,

17 Smith of Missouri, Conyers, Nadler, Scott, Watt, Lofgren,
18 Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Deutch,
19 Gutierrez, Bass, Richmond, DelBene, Garcia, and Jeffries.

20 Staff Present: Shelley Husband, Majority Staff
21 Director; Branden Ritchie, Majority Deputy Staff
22 Director/Chief Counsel; Allison Halataei, Majority
23 Parliamentarian, Kelsey Deterding, Clerk; Dimple Shah,
24 Majority Counsel; Perry Apelbaum, Minority Staff Director;
25 Danielle Brown, Minority Parliamentarian; and Tom Jawetz,
26 Minority Counsel.

27

28 Chairman Goodlatte. Good morning.

29 [Disturbance in hearing room.]

30 Chairman Goodlatte. The individuals who are protesting
31 will be removed immediately by the Capitol Police.

32 [Disturbance in hearing room.]

33 Chairman Goodlatte. I want to remind members of the
34 audience that they are the guests of the House Judiciary
35 Committee, and any further disruptions will result in
36 additional members of the audience being removed by the
37 Capitol Police.

38 [Pause.]

39 Mr. Conyers. Mr. Chairman, this does not help their
40 cause. This is unhelpful to orderly process, and I urge
41 everyone here to follow the recommendations of the chairman.

42 Chairman Goodlatte. I thank the ranking member for his
43 comments, and I know that there are many Members on both
44 sides of the aisle who would like to address the problem of
45 immigration reform. There are disagreements about how to do
46 that and the process to follow, but I think the objective
47 for many of us is the same.

48 And the committee will work its will and, hopefully,

49 notwithstanding these kind of disruptions, be able to move
50 in the direction that some of the people who are expressing
51 these emotions would like to see the House of
52 Representatives, and particularly the Judiciary Committee,
53 move.

54 So, at that point and with that statement having been
55 made, pursuant to notice, I now call up H.R. 2278 for
56 purposes of markup and move that the committee report the
57 bill favorably to the House.

58 The clerk will report the bill.

59 The Clerk. H.R. 2278, to amend the Immigration and
60 Nationality Act, to improve immigration --

61 Chairman Goodlatte. Without objection, the bill is
62 considered as read and open for amendment at any point.

63 [The information follows:]

64

65 Chairman Goodlatte. I will begin by recognizing myself
66 for an opening statement.

67 Mr. Conyers. Mr. Chairman, before you begin, can we
68 have security even reduce the amount of noise that is going
69 on outside? I think it makes it impossible for us to
70 deliberate in a fair and even manner.

71 Chairman Goodlatte. The gentleman's point is well
72 taken, and the committee will suspend while we ask the
73 Capitol Police to clear the corridor outside in the hallway,
74 outside the hearing room.

75 [Pause.]

76 Chairman Goodlatte. The chair would note that we have
77 additional members of the audience who have availed
78 themselves of the opportunity to show us that they are
79 graduates of high schools or colleges, for which we are very
80 proud of them.

81 But I would also indicate that if you are intent upon
82 staying and listening to this very important debate, you are
83 welcome to stay. If you want to participate in the
84 protests, you will need to leave not only the hearing room,
85 but also this portion of the building because the committee

86 does have important work to do, as has been noted by the
87 ranking member, and it is not possible to conduct that work
88 with constant disruptions of the committee.

89 I will proceed with my opening statement.

90 Today, the House Judiciary Committee will mark up its
91 first immigration bill. Over the past 6 months, the
92 committee has convened numerous hearings on immigration and
93 introduced several pieces of legislation that address many
94 of the issues plaguing our immigration system.

95 We have and will continue to take a step-by-step
96 approach to immigration reform, thoroughly examining each
97 piece in detail. Today's markup is important to the
98 immigration debate and the future enforcement of our laws,
99 but it is important to note that it is one component of the
100 larger process. There are still many issues left to
101 address.

102 In 1986, Americans were promised vigorous interior
103 enforcement, but that promise was never kept. Today, nearly
104 30 years later, this committee is marking up an immigration
105 bill which delivers the robust interior enforcement that
106 Americans demand. It is a fulfillment of our longstanding

107 promise to the American people.

108 Successful immigration reform must address effective
109 interior enforcement. This is an integral piece of the
110 puzzle. We can't just be fixated on securing the border,
111 which undoubtedly is an issue of paramount concern. We must
112 also focus on what to do with aliens who make it past the
113 border and legal immigrants who violate the terms of their
114 visas.

115 As many members of the law enforcement community have
116 told us, any real immigration reform effort must guarantee
117 that our laws will be enforced within the U.S. so that
118 future generations do not have to once again grapple with
119 these issues. H.R. 2278, the immigration enforcement bill
120 introduced by Trey Gowdy, chairman of the Subcommittee on
121 Immigration and Border Security, decisively strengthens
122 Federal immigration enforcement.

123 The primary reason why our immigration system is broken
124 today is because the present and past administrations have
125 largely ignored the enforcement of our immigration laws. If
126 we want to avoid the mistakes of the past, we cannot allow
127 the President to continue shutting down Federal immigration

128 enforcement efforts unilaterally. The SAFE Act will not
129 permit that to happen.

130 Any enforcement provisions Congress passes are subject
131 to implementation by the current administration, which fails
132 to enforce the laws already on the books. DHS has released
133 thousands of illegal and criminal immigrant detainees, while
134 providing ever-changing numbers to Congress regarding the
135 same.

136 DHS is forbidding ICE officers from enforcing the laws
137 they are bound to uphold. One Federal judge has already
138 ruled DHS's actions are likely in violation of Federal law.

139 DHS is placing whole classes of unlawful immigrants in
140 enforcement-free zones in violation of congressional intent.
141 DHS claims to be removing more aliens than any other
142 administration but has to generate bogus numbers in order to
143 do so.

144 The American people have little trust that an
145 administration which has not enforced the law in the past
146 will do so in the future. Real immigration reform needs to
147 have mechanisms to ensure that the President cannot simply
148 turn off the switch on immigration enforcement.

149 Mr. Gowdy's bill contains such a mechanism. Not only
150 does the bill strengthen immigration enforcement by giving
151 the Federal Government the tools it needs to enforce our
152 laws, but it also ensures that where the Federal Government
153 fails to act, States can pick up the slack.

154 The SAFE Act provides States and localities with
155 specific congressional authorization to assist in the
156 enforcement of Federal immigration law. States and
157 localities can also enact and enforce their own immigration
158 laws as long as they are consistent with Federal law. The
159 SAFE Act shows how to avoid the mistakes of the past with
160 regard to immigration law enforcement, especially the 1986
161 immigration law.

162 The bill expands the types of serious criminal activity
163 for which we can remove aliens, including criminal gang
164 membership, drunk driving, manslaughter, rape, and failure
165 to register as a sex offender. The bill would help people
166 like Jamiel Shaw, whose son was a star high school football
167 player gunned down by an illegal alien gang member. The
168 bill would do so by enabling DHS to deport alien gang
169 members.

170 Additionally, as Chris Crane, the head of the ICE union,
171 indicated, the SAFE Act lives up to its name and provides
172 much-needed assistance to help U.S. Immigration and Customs
173 Enforcement officers carry out their jobs of enforcing
174 Federal immigration laws while keeping them safe.

175 Unfortunately, the Senate bill actually weakens interior
176 enforcement in many areas or is simply ineffectual. The
177 Senate bill allows aggravated felons, who are currently
178 subject to mandatory detention, to be released in the care
179 of advocacy organizations. The Senate bill directs DHS to
180 ignore criminal convictions under State laws for crimes such
181 as human smuggling, harboring, trafficking, and gang crimes
182 when adjudicating applications for legalization.

183 The SAFE Act provides a robust interior enforcement
184 strategy that will maintain the integrity of our immigration
185 system for the long term. I will be offering a manager's
186 amendment to strengthen and clarify some of the provisions
187 in this bill. Most importantly, my amendment is designed to
188 ensure that liberal Federal judges cannot undermine the
189 ability of States and localities to assist with the
190 enforcement of immigration laws, and it provides that

191 illegal immigrants convicted of DUIs will be detained so
192 that they cannot continue to imperil innocent lives.

193 This legislation is being considered through an open
194 process in which Members will have the opportunity to fully
195 vet it and offer improvements through amendments. We
196 welcome all ideas and suggestions to improve our immigration
197 system.

198 To be clear, the committee is engaged in a step-by-step
199 process to methodically look at each piece of immigration
200 reform in detail. We also intend to look at proposals to
201 reform our legal immigration laws and to address the
202 millions of individuals currently living unlawfully in the
203 United States.

204 Today, we review a game-changing piece of legislation,
205 and I thank Mr. Gowdy for introducing it.

206 And it is now my pleasure to recognize the ranking
207 member of the committee, the gentleman from Michigan, Mr.
208 Conyers, for his opening statement.

209 Mr. Conyers. Thank you, Mr. Chairman.

210 We will all recall this is very similar to a piece of
211 legislation that the Judiciary Committee passed just 8 years

212 ago in 2005. The committee considered a bill that would
213 turn millions of undocumented immigrants into criminals
214 overnight, turned police, local police, into feared
215 immigration agents, and trampled due process.

216 And at that time, I am reminded that I said the bill was
217 so heinous and extreme that the Democrats on this committee
218 agreed that this bill cannot be fixed. It is a nonstarter,
219 and it gives me no pleasure to say the same words about the
220 bill before us today.

221 I am greatly disappointed after the contentious
222 legislative hearing that we would be here today for a markup
223 because it moves our conversation in the wrong direction.
224 It returns the immigration debate to partisan solutions that
225 have failed in the past and makes a dangerous approach to a
226 complicated problem that will harm communities all across
227 the United States.

228 Among the greatest shortcomings of this measure being
229 marked up today is that it makes it a crime, potentially a
230 felony, to be undocumented in this country. That is not the
231 kind of tough, but fair solution our Nation needs. And not
232 surprisingly, a similar proposal considered in the past was

233 rightly rejected. We should do so the same as was done
234 then.

235 Another major problem with the bill is that by giving
236 State and local enforcement officers unprecedented authority
237 to enforce Federal immigration laws, this act will actually
238 make our communities less safe. The SAFE Act will make our
239 communities less safe. By immediately converting all police
240 officers into immigration agents, this bill will effectively
241 force them to make public safety a distant second priority.

242 I urge my colleagues to listen carefully to the
243 discussion as it proceeds. Study after study has shown that
244 when police officers become immigration agents, crime
245 victims and witnesses fear to come forward. They are
246 reluctant, and it leaves crimes unreported and unresolved
247 and thereby diminishes public safety.

248 And if the States and localities decide the best way to
249 promote public safety and community policing is to adopt
250 policies regarding the immigration enforcement actions of
251 our police officers, this bill denies those jurisdictions
252 the Cops on the Beat grants. The Cops on the Beat grants
253 will be denied.

254 Although these grants are specifically designed to
255 promote public safety and enhance community policing, this
256 measure before us today would prioritize immigration
257 enforcement over public safety in every community across our
258 Nation. We do not really want that.

259 The legislation will result in a widespread racial
260 profiling and unconstitutional arrests of citizens and
261 immigrants alike. How do we know this? Because it has
262 happened in jurisdictions across this country that entered
263 into 287(g) agreements with the Department of Homeland
264 Security.

265 We have seen it in Maricopa County where a Federal judge
266 just ordered Sheriff Joe Arpaio to cease his
267 unconstitutional conduct. We have seen it in Alamance
268 County, North Carolina, which had its 287(g) agreement
269 terminated based on findings of abuse by the Department of
270 Justice.

271 So what does the bill do? Rather than improve on
272 current practice and require more oversight on these 287(g)
273 agreements, it grants total enforcement authority with no
274 checks at all.

275 And finally, I am troubled by the lack of due process in
276 the legislation. The bill authorizes State and local
277 governments to hold a person for 14 days based on nothing
278 more than the belief that the person has violated
279 immigration laws. And if a State or local official issues a
280 detainer on such a person, the detention can continue until
281 the Department of Homeland Security assumes custody.

282 Wade Henderson, leader of the Leadership Council on
283 Civil and Human Rights, correctly characterizes this bill as
284 heavy-handed and irresponsible.

285 And so, in closing, the premise of the SAFE Act is that
286 we can enforce our way out of the problem created by a
287 system, an immigration system that has been broken for
288 decades. But we have tried this before, and it has failed
289 before.

290 And so, I repeat the quote that I made 8 years ago when
291 a similar bill came up. It is so extreme and heinous that
292 this committee cannot -- can do nothing but reject this
293 bill, consider it a nonstarter, because the bill cannot be
294 fixed.

295 Thank you, Mr. Chairman.

296 Chairman Goodlatte. The chair thanks the gentleman and
297 recognizes the chairman of our Subcommittee on Immigration
298 and Border Security, Trey Gowdy of South Carolina, for his
299 opening statement.

300 Mr. Gowdy. Mr. Chairman, I want to start by thanking
301 you for your leadership thus far in our hearings on
302 immigration reform. Your experience as an immigration
303 attorney has been helpful to the committee, and frankly, Mr.
304 Chairman, it has been helpful to me as a fellow member.

305 I also want to take this opportunity to thank my
306 colleagues whose perspectives have helped this debate.
307 Throughout the 113th Congress, I have benefited from the
308 perspectives of my friends like Raul Labrador and Judge Poe
309 and Jeff Denham and others on this side of the aisle. Mr.
310 Chairman, I have also benefited from the perspectives of Zoe
311 Lofgren and Mr. Mel Watt and Luis Gutierrez.

312 Real, sustainable immigration reform has proven illusive
313 to prior Congresses, and there is an emerging consensus
314 within this Congress that the current system is broken.
315 Whether we can agree on a remedy remains to be seen, but at
316 least there is an emerging consensus that the status quo is

317 not good for America.

318 The Senate is pursuing its version of a remedy. We have
319 a group in the House that are pursuing another version of a
320 remedy, and this committee will pursue a remedy step-by-step
321 and increment-by-increment. But there has to be a first
322 step, Mr. Chairman, and enforcing the law strikes me as a
323 reasonable place to begin.

324 But let us be clear about something, just so there is no
325 misunderstanding. This is just the first step. It is a
326 first step in what everyone agrees to be a longer journey.

327 Mr. Chairman, virtually all the hearings held by the
328 full committee and the subcommittee have been fair and
329 collegial and instructive and fact centric. There are
330 divisions and differences, but the hearings have been
331 formative, and everyone on the committee seems to understand
332 that there are going to be other bills dealing with legal
333 and illegal immigration.

334 There is an agricultural guest worker bill to follow.
335 There is an E-Verify bill to follow. There is a high-skill
336 visa bill. There are bills related to border security,
337 children brought here while they were minors, those who

338 serve our country in time of war.

339 There are Members who are working on nonagricultural
340 worker bills. Mr. Chaffetz has done wonderful work on high-
341 skill visas. There are Members working on pass the status.
342 There are Members working to include and group many of these
343 components into a single legislation.

344 Mr. Chairman, that is the legislative process. Members
345 come armed with their ideas, and debate commences and votes
346 are taken. And I am reminded throughout it all of our
347 colleague from Vermont who sits on the other side of the
348 aisle. Early, early on in the 112th Congress, he took me
349 aside and said you are free to disagree with your colleagues
350 as much as your conscience dictates, but never question the
351 motives of another Member. You don't know why Members hold
352 the positions that they do, so debate the facts, but not the
353 motives.

354 Each of us had a life before we came to Congress. Some
355 practiced immigration law, Mr. Chairman, like you and Ms.
356 Lofgren and Mr. Labrador. Some were judges. Some were
357 successful in business and law enforcement, education.

358 Some of us worked in the justice system. We saw the

359 power and the majesty of the law. It is both a sword and a
360 shield. It is what allows the poor to challenge the richest
361 of the rich on level ground. It is what provides order and
362 structure and predictability.

363 The overwhelming majority of our laws, Mr. Chairman, are
364 enforced and investigated by men and women who work for
365 State and local law enforcement agencies, and we trust them
366 to enforce laws ranging from capital murder to shoplifting
367 and everything in between. The overwhelming majority of
368 criminal offenses are prosecuted by the women and men of
369 local district attorney's offices.

370 And the overwhelming majority of issues, Mr. Chairman,
371 are resolved by State and local judges. We trust them with
372 prosecuting child sex abuse cases, drug trafficking,
373 burglary. Surely we can trust them to enforce immigration
374 laws. I trust them to follow the law -- statutory law, case
375 law, and the common law.

376 So, Mr. Chairman, in conclusion, if people don't like
377 this bill, don't vote for it. Just make sure that whatever
378 you do vote for ultimately is enforced. Because the
379 selective enforcement of the law is destructive to our

380 system, and ignoring laws because we wish they weren't laws
381 is destructive to the system.

382 In my judgment, starting with the enforcement of our law
383 is significant in part because of a rising sense within our
384 country that the law simply doesn't matter anymore. So
385 regardless of what bill we start with, hopefully what will
386 emerge at the end is an immigration system worthy of the
387 trust of the people we work for, an immigration system that
388 is worthy of being enforced, an immigration system that is
389 best for our country.

390 And I thank those who are committed to a civil, fact-
391 centric debate. And I hope that not only can we find
392 respect for the rule of law, but ultimately, Mr. Chairman,
393 we can find something where we actually believe in adherence
394 to the rule of law.

395 And with that, I would yield back.

396 Chairman Goodlatte. I thank the gentleman for his
397 statement.

398 And the chair now recognizes the ranking member of the
399 Subcommittee on Immigration and Border Security, the
400 gentlewoman from California, Ms. Lofgren, for her opening

401 statement.

402 Ms. Lofgren. Thank you, Mr. Chairman.

403 This bill must be opposed. It would turn millions of
404 undocumented immigrants into criminals overnight. It would
405 turn State and local enforcement officers around the country
406 into immigration agents. It would expand mandatory and
407 prolonged detention. It would deny due process and judicial
408 review. It ignores the problems of racial profiling and
409 unlawful discrimination that are sure to result from the
410 language in this bill.

411 We had a similar bill 8 years ago, which I opposed for
412 the same reasons, and unfortunately, this bill in some ways
413 is even worse. On last Thursday, we had an at times
414 contentious hearing about the bill. My colleagues and I
415 pointed out that while the entire country is looking for
416 solutions to our broken immigration system, which must
417 include a path to earned permanent legal residence for the
418 undocumented, this bill would instead turn those people into
419 criminals.

420 On Friday afternoon, we received Chairman Goodlatte's
421 proposed amendment to the bill. And rather than remedying

422 this fatal flaw, an approach that was soundly rejected 8
423 years ago, the chairman proposes to add yet another criminal
424 penalty onto the backs of the undocumented.

425 This penalty for unlawful presence comes directly from
426 the bill 8 years ago. So now undocumented immigrants in
427 this country could face prosecution for two separate
428 criminal offenses, one being alive in America.

429 The country has considered and rejected mass deportation
430 or self-deportation, and members of this committee for the
431 most part have admitted that is not realistic. So how can
432 it make any more sense to imprison all of those people, and
433 what comes after imprisonment? The bill doesn't say, but it
434 certainly suggests that it would involve prolonged
435 detention, no due process, and ultimately deportation.

436 I need to focus on another aspect of this bill, the
437 decision to delegate immigration enforcement authorities to
438 State and local officials and agencies without any checks at
439 all. The bill does this in several different ways, and
440 taken together, I believe will endanger public safety,
441 increase racial profiling, and infringe basic due process
442 rights.

443 The bill would allow every single State and local
444 government to pass its own immigration laws. It is bad
445 enough that the bill makes undocumented immigrants guilty of
446 two Federal crimes. By allowing States and localities to
447 pass similar criminal laws, the bill will make the situation
448 infinitely worse.

449 The bill also eviscerates minimal protections against
450 discrimination and abuse that currently exist in the 287(g)
451 program. We know those protections don't work. The
452 evidence of racial profiling and unlawful detentions and
453 arrests in 287 jurisdiction is piling up. But instead of
454 making the situation better out of respect for the
455 Constitution, this bill does the opposite.

456 I spent a good part of the last 4 years working with
457 people on both sides of the aisle to find compromise on the
458 issue of immigration. I have had many conversations one-on-
459 one with Republicans and Democrats alike. And on the issue
460 of immigration, at this time, I believe there can be more
461 areas of agreement than disagreement, but this bill does not
462 reflect that common ground.

463 I believe we agree that our immigration situation is

464 broken, that we need a solution that respects the rule of
465 law and our common humanity. I believe we want to empower
466 State and local enforcement personnel to do their jobs,
467 which means, first and foremost, keeping our communities
468 safe.

469 I believe we want to respect the Constitution and ensure
470 that people are not deprived of liberty without due process
471 or as a result of racial profiling or other forms of
472 discrimination. However, and unfortunately, this bill
473 simply fails to meet all of these shared goals. Instead,
474 the bill takes us back in time to an approach that has long
475 been rejected by the American people.

476 Now I hope that the committee's consideration of this
477 bill is merely a bump in the road because I believe that we
478 have been making solid progress up to this point, and this
479 bill puts in doubt that shared belief that we can come
480 together and solve the problem of our broken immigration
481 system together on a bipartisan basis.

482 None of us want to see proceedings of the House
483 disrupted, but I understand why demonstrators were here this
484 morning. This is very personal to families whose family

485 members are threatened, people who live in fear, who want to
486 become Americans.

487 And I think if this bill were to become law, we would
488 expect, as we saw 8 years ago, millions of American citizens
489 taking to the street to demonstrate to protect members of
490 their family and members of their community from the wrong
491 things that this bill would incur.

492 I offer amendments to the bill, but frankly, I don't
493 believe the bill can be corrected. And I am very sorry that
494 we are proceeding with the markup.

495 I yield back.

496 Chairman Goodlatte. The chair thanks the gentlewoman.

497 Mr. Bachus. Mr. Chairman?

498 Chairman Goodlatte. I have an amendment at the desk,
499 and the clerk will report the amendment.

500 The Clerk. Amendment to H.R. 2278, offered by Mr.
501 Goodlatte of Virginia. Page 5, line 11, strike "penalties"
502 and insert "penalties without regard to ancillary issues,
503 such as the availability of probation or pardon."

504 Chairman Goodlatte. Without objection, the amendment is
505 considered as read.

506 [The amendment of Chairman Goodlatte follows:]

507

508 Chairman Goodlatte. And I recognize myself to explain
509 the amendment.

510 This manager's amendment is crucial to ensuring that
511 liberal Federal courts cannot frustrate the ability of State
512 and local law enforcement to voluntarily assist in the
513 enforcement of our immigration laws. Mr. Gowdy's bill is
514 designed to end the current state of affairs in which the
515 Nation's immigration laws go largely unenforced because the
516 President has directed his administration to simply not
517 enforce them.

518 Mr. Gowdy's bill provides that States and localities may
519 enact and enforce their own immigration laws as long as they
520 are consistent with Federal immigration law. His bill also
521 ensures that State and local law enforcement officers can
522 investigate, identify, apprehend, detain, or transfer to
523 Federal custody aliens in the United States for the purpose
524 of enforcing Federal immigration laws.

525 However, a recent decision by the U.S. District Court
526 for the District of Arizona imperils the reforms contained
527 in Mr. Gowdy's bill. On May 24th, the court enjoined
528 Maricopa County, Arizona, from engaging in a number of

529 immigration enforcement efforts.

530 In its opinion, the court ruled that Maricopa County law
531 enforcement officers can no longer detain persons who they
532 believe to be illegal aliens. The court noted that unlawful
533 presence is not in itself a Federal crime and ruled that the
534 county's policies focused on removable aliens, as opposed to
535 aliens who have committed criminal offenses, violates the
536 strictures against unreasonable seizures set forth in the
537 Fourth Amendment.

538 Additionally, the court ruled that when Maricopa County
539 detains a vehicle's occupants because a deputy believes that
540 the occupants are not legally present in the country but has
541 no probable cause to detain them for any other reason, the
542 deputy violates the Fourth Amendment rights of the
543 occupants.

544 Courts that adopt this radical analysis will bar State
545 and local law enforcement officers from detaining illegal
546 aliens even if Mr. Gowdy's bill becomes law. They will
547 claim that the bill is unconstitutional and, therefore, help
548 prevent the immigration laws from being enforced in their
549 jurisdictions.

550 There is a simple way to shut these courts down and to
551 allow States and localities to assist in the enforcement of
552 our immigration laws. Illegal entry to the U.S. is already
553 a Federal misdemeanor offense. My manager's amendment
554 simply provides that illegal presence in the United States
555 will also be a Federal misdemeanor.

556 There does not need to be a single Federal prosecution
557 under this provision. The provision itself provides State
558 and local law enforcements the hook they need to help
559 enforce our immigration laws, regardless of what Federal
560 judicial district they are unfortunate enough to operate in.

561 Keep in mind that liberal courts give us no alternative
562 if we want to allow State and local law enforcement to
563 assist in the enforcement of our immigration laws. But also
564 keep in mind that illegal entry has long been a Federal
565 crime, a misdemeanor for the first offense, and that the
566 majority of unlawful aliens in the U.S. have entered the
567 U.S. illegally and, therefore, have violated Federal
568 criminal law.

569 It can easily be argued that aliens who are kind enough
570 to give visas to -- give visas, who abuse our hospitality --

571 who we give visas to, who abuse our hospitality and overstay
572 in order to work illegally, are just as culpable as aliens
573 who entered the U.S. illegally.

574 There is another provision in the manager's amendment
575 that I want to focus on. Federal immigration law provides
576 for the mandatory detention of aliens, legal or illegal, who
577 have been convicted of removable crimes. My amendment
578 provides that illegal immigrants who have been convicted of
579 at least one DUI offense should also be subject to mandatory
580 detention.

581 In a very tragic case, an illegal immigrant who was in
582 removal proceedings and who had been convicted of a DUI
583 twice in the past killed Sister Denise Mosier in Virginia
584 while driving drunk. The illegal alien had not been
585 detained by ICE. In fact, an anonymous ICE official has
586 stated that two drunk driving incidents aren't enough to
587 warrant detention.

588 Had ICE's policy been different, this tragedy could have
589 been prevented. Drunk driving involves a high degree of
590 recidivism. Mandatory detention of illegal immigrants
591 already convicted of DUI would prevent them from getting

592 behind the wheel of a car during their removal proceedings
593 and killing or maiming innocent Americans.

594 I urge my colleagues to support the manager's amendment,
595 and I recognize the gentleman from Michigan, Mr. Conyers,
596 for his remarks to the manager's amendment.

597 Mr. Conyers. Mr. Chairman and members of this
598 committee, the bill we considered last Thursday was
599 troubling enough. It would turn millions of undocumented
600 immigrants into criminals overnight, undermine the ability
601 of the State and local law enforcement to keep our
602 communities safe, impose a prolonged, indefinite, and
603 mandatory detention on countless people without any due
604 process at all.

605 Even though we clearly expressed these serious concerns
606 at this hearing, we are now confronted with a manager's
607 amendment that makes the bill even worse. Under this
608 amendment, it would be a crime for an individual to
609 knowingly overstay a visa for even a single day and subject
610 him or her to imprisonment for 6 months or longer.

611 If a student on a visa stops attending classes because
612 he or she is hospitalized for a serious medical condition,

613 he would not only lose his status but would become a
614 criminal. If a spouse of an H-1B worker volunteers as a
615 substitute teacher at her child's school, not only does she
616 lose her status, but she would become a criminal.

617 Unfortunately, the proposed manager's amendment doesn't
618 stop here. It establishes an entirely new crime of
619 "unlawful presence" that it layers on top of the other
620 crimes already created in the bill. Now a person who
621 overstays a visa would not only be guilty of the new crime
622 created in the base bill but would, in addition, be subject
623 to prosecution to the new crime established in the manager's
624 amendment.

625 At last Thursday's hearing, I observed that obvious
626 conflict between this bill, which would convert millions of
627 undocumented immigrants into criminals overnight, and the
628 committee's bipartisan Task Force on Over-Criminalization,
629 which was coincidentally scheduled to meet the next day.

630 Now both the chair and I agree that the pace at which we
631 are creating new Federal crimes is unsustainable, and so I
632 am unable to reconcile the laudable goals of the task force
633 with this amendment, which imposes a second criminal penalty

634 on the same undocumented immigrants who are already
635 penalized once under the underlying bill.

636 This is not only a terrible proposal, but an inhumane
637 policy as well. And because I hope we can turn the corner
638 on that flawed approach, I must strongly oppose the
639 manager's amendment and urge my colleagues to join me.

640 And I yield back my time.

641 Mr. Bachus. Mr. Chairman?

642 Chairman Goodlatte. For what purpose does the gentleman
643 from Alabama seek recognition?

644 Mr. Bachus. I have an amendment to the manager's
645 amendment.

646 Chairman Goodlatte. The clerk will report the amendment
647 to the manager's amendment.

648 The Clerk. Amendment offered by Mr. Bachus to the
649 amendment offered by Mr. Goodlatte of Virginia --

650 Mr. Bachus. I ask that the --

651 Chairman Goodlatte. Without objection, the amendment
652 will be considered as read.

653 [The amendment of Mr. Bachus follows:]

654

655 Chairman Goodlatte. And the gentleman is recognized for
656 5 minutes to explain his amendment.

657 Mr. Bachus. Yes, let me speak to all my colleagues,
658 including Mr. Conyers and Ms. Lofgren. We have talked about
659 this misdemeanor, and I know the chairman, I have read what
660 his intent is, and I agree with him that -- well, let me say
661 this. I think our policy, what we are all trying to
662 accomplish is to address the 11 million undocumented
663 individuals who are in our country.

664 And at the end of that period or as we do that -- and I
665 know, Mr. Conyers, you are saying why those that are here?
666 We are going to create a process, hopefully, the Senate and
667 the House, for many of those to become legal in our country.
668 Whether that is citizenship or permanent residence, that is
669 to be seen.

670 But at some point it is going to be necessary to
671 establish that you are here either legally or you are not
672 here. And I think the chairman, his amendment is designed
673 to ensure that our immigration laws are enforced in the
674 future after Congress has passed a legalization plan. But I
675 do not believe that these criminal provisions that are being

676 proposed should apply to those undocumented, as some have
677 said, unlawful, as some have said, individuals who we decide
678 to legalize.

679 For that reason, Mr. Chairman, my amendment provides
680 that the provisions as to criminalization do not apply until
681 2015, by which time Congress will have acted on the
682 legalization of millions of individuals who are in this
683 country. We may not decide to legalize the entire
684 population of undocumented immigrants.

685 For instance, we might insist that illegal immigrants
686 have been present in the United States for a certain period
687 of time. That is one of the proposals in the Senate in
688 order to be eligible for legalization or perhaps
689 citizenship.

690 The Senate bill requires that immigrants have been
691 present since December 2011. Thus, we would not want to
692 provide as a blanket matter that these criminal penalties do
693 not apply to any illegal immigrants present in the United
694 States on the date of enactment of this bill. So --

695 Mr. Conyers. Mr. Chairman? Would the gentleman yield?

696 Mr. Bachus. Yes.

697 Mr. Conyers. Could I ask him what would happen if the
698 Senate hasn't acted by 2015?

699 Mr. Bachus. Well, and I understand. I understand. We
700 are dealing with a situation that we don't know what the end
701 result will be. So I think it is important that we act as
702 if, and I know you know that I have expressed my desire that
703 the Congress act this year. And I think anything short of
704 that will be a failure not only for America -- our country,
705 our citizens -- but also for those 11 million individuals
706 who are here.

707 But surely, by 2015, the country is going to demand that
708 we address this problem. But in doing so --

709 Mr. Gowdy. Could I ask the gentleman from Alabama a
710 question? I think the answer to Mr. Conyers' question is if
711 the Senate hasn't acted, this isn't law. I mean, I am not
712 being flippant, but if the Senate hasn't acted, this doesn't
713 become the law. Am I mistaken, the gentleman from Alabama?

714 Mr. Bachus. You know, let me say this. This is
715 something that has been done overnight in response to my
716 concern because we have all said, I think -- not all of us.
717 I can't speak for everyone. Let me say that some of us have

718 said we don't want to -- this to apply to those who are
719 already in our country and that we will at some point
720 legalize.

721 And I think that the vast majority of this Congress
722 knows that that there are going to be millions of
723 individuals who are here who are undocumented that we will
724 legalize. But at some point in the future, as we do that,
725 we have also set enforcement in the future.

726 Mr. Conyers. Could I ask the gentleman this? Do I get
727 the notion that he supports comprehensive policy --

728 Mr. Bachus. Absolutely. I have said that time and time
729 again.

730 Mr. Conyers. Oh, I thank the gentleman.

731 Mr. Bachus. And, but let me say this. I am also for
732 the House and Senate to act and at some point to come to an
733 agreement.

734 Ms. Lofgren. Mr. Chairman?

735 Chairman Goodlatte. For what purpose does the
736 gentlewoman from California seek recognition?

737 Ms. Lofgren. To strike the last word.

738 Chairman Goodlatte. The gentlewoman is recognized for 5

739 minutes.

740 Ms. Lofgren. Mr. Chairman, I certainly acknowledge the
741 spirit in which this amendment has been offered by our
742 colleague from Alabama and that he is acting in good faith.
743 However, I cannot support the amendment.

744 First, we don't have a legalization plan before the
745 committee. So the idea that this would not go into effect
746 unless there were a legalization plan is speculation.

747 Number two, being alive and breathing in the country
748 hasn't been a crime before, and I don't think it should
749 become a crime. If we are able to pass top-to-bottom
750 immigration reform, I do not disagree that we are going to
751 need robust enforcement. I do not, however, think that that
752 robust enforcement should include criminalizing people who
753 are in technical violation of their visas.

754 Many of us have, at one time or another, done,
755 represented people in immigration law. It is very easy,
756 frankly, to run afoul of a temporary visa. I have seen
757 people do it frequently, where you are a student and you
758 change your major, or you flunk out of classes and you don't
759 leave that week. Or you are writing your thesis on a

760 visitor's visa instead of an F-1 visa, and that is a
761 violation of your visitor's visa. I mean, that would make
762 you a criminal under this.

763 And I know that the gentleman is trying to fix this, and
764 I am not -- I am very positive about the effort you are
765 trying to make. I am just saying that I think this would be
766 a bad policy.

767 Mr. Bachus. I think it --

768 Ms. Lofgren. And I would yield.

769 Mr. Bachus. I think my time has expired. But I would
770 love to further -- if it hadn't -- let me say this. I
771 understand what you are saying. But even if you oppose
772 making it a misdemeanor to remain in this country, this
773 clarifies, in my mind -- and I am seeking a way to do that --
774 - that this would not -- that we would postpone this or
775 delay it until January 1, 2015.

776 That has got to be an improvement, Ms. Lofgren --

777 Ms. Lofgren. I understand.

778 Mr. Bachus. -- over criminalizing it today.

779 Ms. Lofgren. Regaining my time, and I do understand,
780 and I am sure the former chairman of the committee will

781 recall that we had a similar question before the House 8
782 years ago. There was a measure to make it a felony to be in
783 violation of status, which I opposed.

784 There was an effort to make that a misdemeanor instead,
785 which I also opposed because the issue is right now it is a
786 civil law violation. I agree that if we are able to do top-
787 to-bottom reform, we are going to have to have very rigorous
788 enforcement. And frankly, there are things that I have
789 objected to over the years, robust E-verify that is
790 ubiquitous, that I think we are going to have to buy into.
791 I accept that.

792 But I do not believe it is wise policy to create
793 criminal law violation penalties for what has always been
794 civil law violations. And again, I credit you, Mr. Bachus.
795 I know what you are trying to do. I am not critical of your
796 motives in any way. I just find it not possible to support
797 the amendment.

798 Mr. Bachus. Well, I understand that. And let me, if
799 the lady will yield?

800 Ms. Lofgren. I would yield.

801 Mr. Bachus. We all agree. No, we don't. You and I

802 agree.

803 [Laughter.]

804 Mr. Bachus. You and I agree that until we are able to
805 solve this Rubik's cube, that the 11 million -- and I call
806 them undocumented -- individuals who are here, that they
807 should -- that these shouldn't apply to them until we
808 determine which of those individuals will remain here,
809 become legal residents and perhaps citizens. I don't know
810 the final part.

811 But we also agree that at some point -- because part of
812 the problem we have today is we didn't enforce our laws in
813 the past, and people came here with the expectation they
814 could work, they could raise a family, and --

815 Ms. Lofgren. Reclaiming my time --

816 Mr. Bachus. And I think that at some point, we have to
817 have a bright line and say, no, you can't just come here and
818 disregard our law.

819 Ms. Lofgren. Reclaiming my time, I don't disagree with
820 that, Mr. Bachus. But how that is done is very important to
821 me.

822 Mr. Bachus. Well --

823 Ms. Lofgren. And if I may?

824 Chairman Goodlatte. Without objection, the gentlewoman
825 is recognized for an additional minute.

826 Ms. Lofgren. To create criminal law penalties I think
827 is just bad policy, and I can't support it. I understand
828 what you are trying to do. I credit you for trying to make
829 this better. I just can't support it.

830 I do think it is -- we could find common ground on
831 making, enhancing the drunk driving provisions. I think we
832 will get bipartisan support on that. But to make mere
833 overstay a criminal law violation I think is a policy
834 mistake that I cannot support.

835 I understand you are trying to postpone it so that it
836 would have a more workable effect down the line, and I
837 credit you for trying to do that. I cannot support making
838 mere presence a crime in America, and I wanted to explain,
839 much as I credit your effort to improve this bill, why I
840 cannot support it.

841 And I yield to the gentleman.

842 Mr. Bachus. I think we ought -- if we are going to get
843 to a solution, we have to all approach this as a work in

844 progress. And I think the majority on both sides wants to
845 work together to see that happen. And that is the spirit I
846 offer this amendment.

847 Ms. Lofgren. Thank you, Mr. Chairman. I yield back.

848 Chairman Goodlatte. The time of the gentlewoman has
849 expired.

850 The chair recognizes himself. I will support this
851 amendment because I think it is offered in the spirit with
852 which this whole process is designed to get to a point where
853 we can address all three of the major issues with regard to
854 our broken immigration system.

855 We need reform of our legal immigration programs, and we
856 will bills to address that. We need to have stronger, surer
857 enforcement of our immigration laws, and this bill is
858 designed to address that. And we need to address what
859 becomes of the 11 million or more people who are unlawfully
860 present in the United States. And I believe that in order
861 to get through this entire process, we have to address that
862 issue as well.

863 So in order to make it very clear that as we figure out
864 how to address that, we are not attempting to create a new

865 misdemeanor status for the people who are here until we
866 figure out. Some of them may not be allowed to stay here.
867 Some of them have other criminal convictions and so on. We
868 won't have to worry about that, but others may have other
869 things that we decide disable their ability to stay here.

870 But what is clear is that as long as we are going to
871 have courts obstructing the ability of State and local law
872 enforcement to supplement the efforts of the 5,000-strong
873 ICE agents who cover more than 3 million square miles and
874 more than 300 million people, we have got to come up with a
875 mechanism that allows them to have a reasonable
876 participation in this process, protecting for the civil
877 liberties of people. We don't want those civil liberties
878 violated, but we do want people enforcing the law.

879 So what the amendment offered by the gentleman from
880 Alabama to the manager's amendments does is it puts off this
881 provision of a misdemeanor penalty until 2015, until January
882 1, 2015. I think that is a fair way to work on this.

883 The gentleman is also correct that this is definitely a
884 work in progress. We know that. We know the gentlewoman
885 from California, the gentleman from Illinois have worked

886 with the gentleman from Idaho and others for months and in
887 the case of some of them for years to try to find common
888 ground here.

889 So this is a good proposal to keep all of the discussion
890 open as we move forward on this. We can fine-tune other
891 aspects of it as we move forward, but I support the effort
892 of the gentleman from Alabama because I think he helps move
893 the process forward to discuss all aspects of the bill, and
894 I would urge my colleagues to support his amendment to the
895 amendment.

896 And who seeks recognition? The gentleman from Illinois?
897 Mr. Gutierrez. Thank you very much, Mr. Chairman.

898 I move to strike the last word.

899 Chairman Goodlatte. The gentleman is recognized for 5
900 minutes.

901 Mr. Gutierrez. Thank you so much.

902 First of all, to Congressman Bachus, thank you for
903 always reaching to this side of the aisle to work in a
904 bipartisan manner to resolve our broken immigration system.
905 And I, too, will not come here to question anyone's motives.
906 As a matter of fact, the more I hear, the better I feel.

907 Although I will not support this particular bill, and I
908 think it is deeply flawed, I am heartened by the fact that
909 Mr. Gowdy, who is offering the bill, is talking about how
910 this is a work in progress and a beginning of a conversation
911 and a dialogue. I know, because I have spent many an
912 evening and many an afternoon with Mr. Labrador from Idaho,
913 how he sees the world, and so I am happy that he is here.

914 I would like to say to the chairman that there is a
915 basic fundamental flaw in the manner in which we are
916 conducting ourselves on this issue, and that is that we are
917 beginning by saying that those that we wish to support and
918 ultimately legalize are, for the most part, murderers,
919 rapists, drug dealers, people who drink and drive and mow
920 people down.

921 I just want to make clear for this side of the aisle
922 those are despicable people. The law should be enforced to
923 its ultimate consequences. They should be jailed, and once
924 they are jailed, they should be seamlessly, a seamless
925 process of deportation from the United States of America
926 because, for me, they are not immigrants. They are simply
927 foreigners in our country who are doing harm.

928 The problem is that if you look at the hearing on which
929 this legislation is based and the evidence brought forward,
930 you would think that there are 11 million criminals in the
931 United States. We all know because we have the evidence, as
932 has been brought forward.

933 And let me just say there was hearing after hearing
934 after hearing, and all of those hearings, they were fact
935 based. Yes, Mr. Gowdy, they were fact based, and there were
936 people coming forward, and they were giving us evidence, and
937 they were giving us information so that we could all work
938 together.

939 But what did we learn? What we learned was that the
940 majority of people who today are doing back-breaking work,
941 filthy, dirty work, and tonight we will benefit from their
942 work as we sit down at our dinner table and have our lettuce
943 and tomato, as we have our fruits and our salad, as we eat
944 those strawberries. We know who picked that, and it doesn't
945 matter whether I am with Mr. Garcia in Florida or whether I
946 am in Washington State in an orchard grove.

947 It doesn't matter whether it is the garlic pickers who
948 have to pick on their knees to pick that garlic that

949 enhances our food. We know who these people are who are
950 working tireless each and every other day, and they aren't
951 drug dealers. They aren't murderers and rapists. They are
952 working hard, and they provide a service which is
953 fundamental to our economy. And we all benefit.

954 And yet we will all leave here today, and we will enjoy
955 the fruit of their labor as we criminalize them here today.
956 That is the problem. It is the imbalance that we have as we
957 look at them.

958 We say we want to help 11 million people and fix our
959 broken immigration system, but at the same time, we want to
960 say to young people if you came here with your parents while
961 you were young, you, too, will be a criminal in the United
962 States of America.

963 And that is fundamentally wrong because I just want my
964 colleagues on the other sides of the aisle as we proceed to
965 understand that those that you would criminalize today share
966 a church pew with me on Sunday. Their children go to school
967 with my children. They come to my home. They are my
968 neighbors. They are my friends.

969 And to millions upon millions of Americans, they are

970 their uncles and aunts, their cousins, their brothers and
971 sisters, and their parents. And we should not put them in a
972 situation where we call upon one family member to denounce
973 another family member. We should really hold family values
974 high and not use this.

975 Immigration policy, as we all know, is fundamentally
976 about families. Fundamentally about families. So let us
977 not criminalize one family member against another.

978 I am going to work really, really hard because I want to
979 fix our broken immigration system so that we never have a
980 system like the one we have today. I believe we should work
981 tirelessly so that there is no longer an illegal immigration
982 system in the United States, but one that only follows the
983 rule of law. But we should do it in a compassionate manner
984 and in a manner that respects the work, the work and the
985 contributions that immigrants make each and every day.

986 And respect the fact that for some of us, they are more
987 than just another citizen in the United States or another
988 person. They are our family, and we care for them deeply,
989 as I know many of my colleagues on the other side of the
990 aisle.

991 So I look forward, and I am heartened, actually. I
992 mean, I am in a good place. We may not be here today
993 together, but I think, ultimately, I want to work to be with
994 you together.

995 Thank you so much for extending the period of time, Mr.
996 Chairman.

997 Chairman Goodlatte. Who seeks recognition? For what
998 purpose does the gentleman from Iowa seek recognition?

999 Mr. King. Thank you, Mr. Chairman.

1000 Chairman Goodlatte. The gentleman is recognized for 5
1001 minutes.

1002 Mr. King. Thank you, Mr. Chairman.

1003 I am listening to this dialogue here and the gentleman
1004 from Illinois. You know, enforcing the law as it stands
1005 means enforce it as it stands. The President has defied the
1006 law that has been established by Congress and signed by the
1007 previous chief executive officer. That is a big reason why
1008 we are here today, and I am not confident we can convince
1009 him that he should enforce a future law or any future
1010 enforcement laws that we might bring forward.

1011 But I would remind the gentleman that according to a GAO

1012 report of just 2 or 3 years ago, there are 25,064 criminal
1013 aliens currently in U.S. prisons for homicide. The families
1014 of those victims don't think that enforcing the law after
1015 the fact is good enough.

1016 And as I listened to the dialogue from the gentlelady
1017 from California that she opposed making it a felony to be
1018 unlawfully present in the United States and opposed making
1019 it a misdemeanor to be unlawfully present in the United
1020 States, I remember that debate. I remember the floor
1021 debate, and it is true that the bill that came out of this
1022 committee made it a felony to be unlawfully present in the
1023 United States.

1024 But on the floor, Mr. Sensenbrenner offered an amendment
1025 to strike that language and remove making it a felony to be
1026 unlawfully present in the United States. And it is also
1027 true that 194 Democrats opposed that amendment because they
1028 wanted to use it for political purposes. And I believe that
1029 the Democrats that are on this committee -- that remain on
1030 this committee, that have not graduated into retirement,
1031 that process, did vote along with all 194 Democrats to
1032 oppose, striking the felony provision from that bill.

1033 So I wanted to put a couple of those things on the
1034 record here and just inform the committee that I like the
1035 manager's amendment better than I like the Bachus amendment.
1036 If we are going to pass any amendments here that contemplate
1037 what the Senate might do, what the House might do, what the
1038 President might do, and try to give it a lead to 2015, I
1039 think that is a bridge too far for us.

1040 I think we need to assert ourselves. And we need to
1041 take our position here in this committee. That always
1042 should be our process. What is the right thing --

1043 Ms. Lofgren. Would the gentleman yield?

1044 Mr. King. I would be happy to yield.

1045 Ms. Lofgren. I would just like to take exception to the
1046 gentleman's description of my motives. As I --

1047 Mr. King. I didn't describe your -- reclaiming my time,
1048 I didn't describe your motive.

1049 Ms. Lofgren. I would like -- I would like -- if the
1050 gentleman will yield?

1051 Mr. King. And I would yield again.

1052 Ms. Lofgren. To suggest -- I pointed out in my
1053 statement that I voted against making presence a misdemeanor

1054 because I don't believe it should be a crime to breathe in
1055 America. To say, as the gentleman did, that that was for
1056 political purposes is insulting and incorrect, and I object
1057 to the comment. I am not going to ask that your words be
1058 taken down --

1059 Mr. King. Reclaiming my time. And I am reclaiming my
1060 time.

1061 Ms. Lofgren. We need to get past -- okay. Mr.
1062 Chairman, I ask that the gentleman's words be taken down
1063 here.

1064 Mr. King. I hold the time. I hold the time.

1065 Chairman Goodlatte. What specific words expressed by
1066 the gentleman from Iowa does the gentlewoman ask be taken
1067 down?

1068 Ms. Lofgren. That the gentlelady from California's
1069 motives in voting to oppose creating a felony to a
1070 misdemeanor was politically motivated.

1071 Chairman Goodlatte. The gentlelady's request is not
1072 timely because there had been additional dialogue that took
1073 place prior to the request of the gentlewoman.

1074 The gentleman from Iowa has the time.

1075 Mr. King. Thank you, Mr. Chairman.

1076 In deference, though, to the gentlelady from California,
1077 I believe what I said was it was a Democrat motive. I hope
1078 it wasn't specifically targeted at the gentlelady in
1079 California, and if so, I would ask her forgiveness for such
1080 a pointed statement had I made it. And it wasn't my
1081 intention. However --

1082 Ms. Lofgren. The apology is accepted.

1083 Mr. King. Thank you.

1084 My point remains 194 Democrats voted against striking
1085 the felony requirement that was in the Sensenbrenner bill
1086 and the previous engagement we had in immigration here, and
1087 I think that tells you something about what the strategy
1088 was. It wasn't a political position. It was a strategy.

1089 And so, as I asked time to speak, it was this that I
1090 believe that delaying, delaying the implementation of this
1091 goes contrary to the principles that we should hold together
1092 in this Congress, that we cannot adequately anticipate what
1093 the Senate, the House, in conjunction with each other what
1094 conference report may or may not come to the floor of the
1095 House or the Senate, or what the President might do with his

1096 veto pen.

1097 And so, I think it is important for us to put the marker
1098 down on what we believe our position is in this committee
1099 with our best prudential judgment that we have. And that is
1100 that I support the underlining manager's amendment, and I am
1101 not supportive of the gentleman from Alabama's amendment.

1102 Thank you, Mr. Chairman. I yield back.

1103 Chairman Goodlatte. Who seeks recognition? For what
1104 purpose does the gentlewoman from Texas seek recognition?

1105 Ms. Jackson Lee. Mr. Chairman, thank you very much.

1106 Chairman Goodlatte. The gentlewoman is recognized for 5
1107 minutes.

1108 Ms. Jackson Lee. My delay initially in this committee
1109 was due to being in the Border Security and Maritime
1110 Security Committee. I recognize the dual jurisdiction of
1111 both of those committees, Homeland Security. It amazes me,
1112 however, that in the Homeland Security Committee, we were
1113 able to craft a border security bill that was bipartisan and
1114 thorough as relates to our jurisdiction.

1115 I know that this particular bill arises to include
1116 internal enforcement and focuses a lot on ICE. And as I

1117 note on both the manager's amendment, but more importantly
1118 the underlying bill, I am going to have the opportunity just
1119 to make a few points about where we are.

1120 Certainly, I hope that and always hope that we would
1121 have an opportunity in this committee to find common ground
1122 on reasoned analysis and thought as it relates to
1123 comprehensive immigration reform. And I cannot help but say
1124 to the gentlelady from California, I have never known you to
1125 not be principled on an area that you and both of us have
1126 studied for a very long time, you as a professor and
1127 certainly counsel on these issues.

1128 And so, I am disappointed that we have raised this
1129 question. And I say it over and over again because it has
1130 been said by many that the whole construct of comprehensive
1131 immigration reform is about getting votes, whether they are
1132 votes for Republicans or votes for Democrats. People's
1133 lives are in jeopardy.

1134 With again, if we are combining this discussion with
1135 principled thought about immigration reform with, again,
1136 with the greatest amount of respect, I cannot, for the life
1137 of me, see the principled basis of the SAFE Act. And the

1138 discussion that I came in on, on Mr. King, emphasizes that
1139 because there is no discussion about the principles. There
1140 is discussion about politics.

1141 And I would hope as we go through these amendments, we
1142 will not be challenging people's politics if you are fearful
1143 of what the vote tally will be based upon allowing people to
1144 be beneficiaries of the values of this Nation, which have
1145 been given to the Irish, the Italians, the British, the
1146 Germans, and others from Western Europe in an ongoing basis.
1147 Certainly, the Irish are probably advocates of comprehensive
1148 immigration reform, and no one asked the question about how
1149 they would vote or why we should not allow them in. Then we
1150 would look at this as a tool of this Nation to provide the
1151 kind of constitutional response, meaning that the three
1152 branches of Government have a duty. We are doing ours.

1153 We have a legislative duty to fix something that is
1154 broken, and this system generates business persons, people
1155 who serve in the United States military, young people who
1156 are valedictorians and salutatorians who I have seen and
1157 shook their hands as I have stood on stages in high school
1158 graduations and college graduations. It has been builders,

1159 as Shakespeare said, for eternity of those who have built
1160 this Nation and continue to build it.

1161 So I hope this afternoon, as we approach this afternoon,
1162 we will not have to hear discussions about politics, but we
1163 will hear discussion about the merits of a comprehensive
1164 package. And I hesitate to say that what we have before us
1165 takes that process away.

1166 But I am willing to engage in a deliberative discussion,
1167 but I am not willing to diminish my principles and to be
1168 able to -- and to be able to say to those who have been
1169 waiting in line, legal immigrants, those who are under the
1170 law, prosecutorial discretion, which is, in fact, something
1171 that is not illegal and inappropriate.

1172 And might I just say as I make these points, let me
1173 thank Director Morton for his service. And he should not,
1174 in fact, be the target for following the directives that
1175 were legitimately under the law by this administration that,
1176 likewise, functioned under the law.

1177 So I argue for sanity. I argue for a bill that will
1178 come from the Gang of Eight that we can look at in the
1179 House. And I argue for the border security bill that was

1180 passed in Homeland Security because it was a bipartisan
1181 bill.

1182 With that, Mr. Chairman, I yield back.

1183 Mr. Sensenbrenner. Mr. Chairman?

1184 Chairman Goodlatte. For what purpose does the gentleman
1185 from Wisconsin seek recognition?

1186 Mr. Sensenbrenner. In opposition to the amendment to
1187 the amendment.

1188 Chairman Goodlatte. The gentleman is recognized for 5
1189 minutes.

1190 Mr. Sensenbrenner. Mr. Chairman, I appreciate the chair
1191 scheduling this bill and the others that he has talked
1192 about, both publicly and privately, to deal with our broken
1193 immigration system. And as the one who tried to do it last,
1194 and we got a bill passed through the House but not through
1195 the Senate, let me say that the job is going to be much more
1196 difficult this time around, again because about 7 1/2 years
1197 of time has elapsed, and water has gone over the dam.

1198 I don't think that there is any member of this committee
1199 on either side of the aisle that approaches this issue with
1200 malice in mind. And all of the talk about respecting each

1201 other's viewpoint I think is a change in what was the case
1202 in 2005 and 2006.

1203 And I deeply appreciate that because I hope that those
1204 who are on both sides of the issue would talk to supporters
1205 outside the Congress to keep this debate on the issues, on
1206 the merits, and to recognize that there are two sides to the
1207 issue. Because some of the things that I saw on TV in
1208 demonstrations against my bill certainly went after my
1209 motives, certainly went after the motives of those who
1210 believe that we do have to enforce the law. Because if we
1211 don't enforce the law, nobody is going to obey it.

1212 I look at the first commission that was appointed by
1213 President Carter back in 1979 and was headed by Father Ted
1214 Hesburgh, who is the retired president of Notre Dame. And
1215 he is a political liberal in the context of today -- he is
1216 still alive; we honored him a couple weeks ago -- as well as
1217 during his period as president and as chair of the U.S.
1218 Civil Rights Commission.

1219 And he said that there had to be employer security.
1220 There had to be -- border security, excuse me, and employer
1221 sanctions. And there should not be what he referred to as

1222 legalization or amnesty of undocumented or illegal
1223 immigrants because if we did that without first securing the
1224 border and enforcing employer sanctions, we would only be
1225 encouraging more illegal immigration.

1226 Unfortunately, in the Simpson-Mazzoli bill in 1986,
1227 Congress ignored Father Hesburgh and his commission's
1228 recommendations. Father Hesburgh was right. Ronald Reagan
1229 was wrong. And we now have a problem that involves many
1230 more people, many more families, including families who are
1231 mixed, as undocumented immigrants and smaller children who
1232 were born here and, thus, are United States citizens.

1233 Now let me talk about why I think the issue of having
1234 some type of criminal penalty for illegal presence in the
1235 United States is vital. The bill that I authored had a
1236 felony penalty. I was convinced after talking to a lot of
1237 people on both sides of the issue that the felony penalty
1238 was much too severe. I offered an amendment to reduce that
1239 to a misdemeanor, which, for a variety of reasons that are
1240 really not relevant here, was voted down on the House floor.

1241 But the reason we have to do something different than we
1242 are doing now is that the civil penalty provisions for

1243 illegal immigrants in this country is not being enforced. I
1244 don't have current statistics, but the vast majority of
1245 removal orders issued by immigration courts are default
1246 orders because the respondent didn't appear.

1247 In other words, they got an order to appear before an
1248 immigration judge to make a determination on whether a
1249 removal order should be issued, and they just blew it off.
1250 They didn't appear. And for failure to appear, there was a
1251 default order that was entered. It was put into the FBI's
1252 criminal identification file, and someone who was the
1253 subject of a removal order was picked up and detained when
1254 they had a traffic stop, just like anybody else who blew off
1255 a traffic ticket and that they didn't pay the forfeiture and
1256 didn't show up in court and had a bench warrant issued
1257 against them by the presiding judge.

1258 Now having said that, if we continue the present system
1259 where people have been getting away with not showing up when
1260 a judge has ordered them in an immigration court, we are
1261 going to continue to have an unenforceable system. People
1262 will continue to blow off these orders to appear.

1263 And that is why I think that having a misdemeanor, which

1264 is not something that you carry with you like a felony, is
1265 the way to go. I believed it in 2005. I believe it today.
1266 But I certainly respect the arguments that have been made by
1267 people like my friend from Illinois, Mr. Gutierrez.

1268 Chairman Goodlatte. The chair thanks the gentleman.

1269 For what purpose does the gentlewoman from California
1270 seek recognition?

1271 Ms. Chu. I move to strike the last word.

1272 Chairman Goodlatte. The gentlewoman is recognized for 5
1273 minutes.

1274 Ms. Chu. I oppose this amendment and the manager's
1275 amendment because I don't think we should be criminalizing
1276 now or in the year 2015 in such a drastic manner. And
1277 whether it is now or 2015, the SAFE Act takes the wrong
1278 approach for our country by relying on the same failed
1279 enforcement-only approach that we have tried for the last
1280 decade.

1281 Today, we spend more money on immigration enforcement
1282 than all the other Federal law enforcement agencies
1283 combined, including the FBI, ATF, the U.S. Marshals, and the
1284 Secret Service. In the last 10 years, we have deported more

1285 people than we did in the entire 20th century.

1286 Enforcement is a necessary part of any immigration
1287 reform bill, but this bill makes it the only one, and it
1288 turns immigrants who have been living here for years, living
1289 with their American families, contributing to our American
1290 society, and working toward the American dream, into
1291 criminals. This bill makes it a crime to knowingly enter
1292 the United States without proper documentation.

1293 It will cause the arrest and prosecution of mothers and
1294 fathers. It would tear apart families for the nearly 4.5
1295 million U.S. citizen children in this country who have at
1296 least one undocumented parent.

1297 And what about someone like Asha? In her home country
1298 in East Africa, she took care of a wealthy woman's house.
1299 They got along so well that the woman asked her to go to the
1300 U.S. and work for her relatives. At first, Asha refused,
1301 but when the wealthy woman promised to pay to send her kids
1302 to school, Asha agreed. So the woman arranged a tourist
1303 visa for Asha.

1304 But her job in Seattle was terrible. She worked like
1305 slave labor over 100 hours a week, 100 hours. They wouldn't

1306 let her leave the house. The couple paid her only \$70 a
1307 month, and they forbade her from talking to anyone outside
1308 the family.

1309 Because Asha knew that she wasn't legally in the U.S.,
1310 she couldn't leave. She had no money, and she couldn't
1311 speak the language. This bill would force Asha to spend 6
1312 months in jail and pay a fine. And it would do the same to
1313 any victim of human trafficking without any exception at
1314 all.

1315 If this weren't bad enough, the SAFE Act delegates
1316 complete and unchecked control of immigration enforcement to
1317 State and local law enforcement agencies. It allows 50
1318 different States and thousands of cities and counties to
1319 create their own immigration laws and enforce them.

1320 Imagine trying to drive one town over to buy something
1321 at the closest grocery store. In your hometown, you are
1322 legal. But in that other town, while buying milk, you are
1323 not. That would create chaos for families, businesses, and
1324 communities.

1325 We know that turning cops into immigration agents leads
1326 to racial profiling, discrimination, and unconstitutional

1327 arrests and detention. That happens even when the Federal
1328 Government is providing supervision through the 287(g)
1329 program. This bill delegates that authority without any
1330 supervision at all. And in 170 pages, the SAFE Act doesn't
1331 even mention racial profiling or discrimination.

1332 It would be wrong to say that the bill turns a blind eye
1333 to the dangers ahead. The bill actually seems to welcome
1334 it. My Republican colleagues say that the bill is just the
1335 first step in fixing our immigration system. But this
1336 punitive bill is fundamentally at odds with any approach to
1337 actually addressing the nearly 11 million undocumented
1338 immigrants in this country.

1339 It criminalizes those who pose no safety risk, who are
1340 strengthening our communities and growing our Nation. And
1341 it only further drives undocumented immigrants into the
1342 shadows. Enforcement should focus on those who pose an
1343 actual danger to public safety or national security.

1344 So I urge my colleagues to reject both amendments and
1345 instead commit to working in a bipartisan manner to finally
1346 pass comprehensive immigration reform.

1347 I yield back.

1348 Chairman Goodlatte. Would the gentlewoman yield?

1349 Ms. Chu. Yes.

1350 Chairman Goodlatte. I thank the gentlewoman for
1351 yielding.

1352 I just want to point out to her that the victims of
1353 human trafficking that she cited in her remarks are exempt
1354 from the provision that deals with the misdemeanor status
1355 for people who are not lawfully present in the United
1356 States.

1357 And --

1358 Ms. Chu. And would the gentleman yield?

1359 Chairman Goodlatte. It is your time.

1360 Ms. Chu. But not for overstaying a visa.

1361 Chairman Goodlatte. Yes, they are. They are exempt.

1362 Who seeks recognition?

1363 Mr. Nadler. Mr. Chairman?

1364 Chairman Goodlatte. For what purpose does the gentleman
1365 from New York seek recognition?

1366 Mr. Nadler. Just to ask you to clarify that, where in
1367 the bill it states that people who overstay their visas are
1368 exempt from that?

1369 Chairman Goodlatte. It is in the manager's amendment.

1370 The question occurs now on the amendment offered by the
1371 gentleman from Alabama to the manager's amendment.

1372 All those in favor, respond by saying aye.

1373 Opposed, no.

1374 In the opinion of the chair, the noes have it, and the
1375 amendment is not agreed to.

1376 Ms. Lofgren. Mr. Chairman, I would like to request a
1377 recorded vote.

1378 Chairman Goodlatte. The gentlewoman requests a recorded
1379 vote, and the clerk will call the roll.

1380 Ms. Deterding. Mr. Goodlatte?

1381 Chairman Goodlatte. Aye.

1382 Ms. Deterding. Mr. Goodlatte votes aye.

1383 Mr. Sensenbrenner?

1384 Mr. Sensenbrenner. No.

1385 Ms. Deterding. Mr. Sensenbrenner votes no.

1386 Mr. Coble?

1387 Mr. Coble. No.

1388 Ms. Deterding. Mr. Coble votes no.

1389 Mr. Smith?

1390 [No response.]

1391 Ms. Deterding. Mr. Chabot?

1392 Mr. Chabot. No.

1393 Ms. Deterding. Mr. Chabot votes no.

1394 Mr. Bachus?

1395 Mr. Bachus. Aye.

1396 Ms. Deterding. Mr. Bachus votes aye.

1397 Mr. Issa?

1398 [No response.]

1399 Ms. Deterding. Mr. Forbes?

1400 [No response.]

1401 Ms. Deterding. Mr. King?

1402 Mr. King. No.

1403 Ms. Deterding. Mr. King votes no.

1404 Mr. Franks?

1405 Mr. Franks. No.

1406 Ms. Deterding. Mr. Franks votes no.

1407 Mr. Gohmert?

1408 [No response.]

1409 Ms. Deterding. Mr. Jordan?

1410 Mr. Jordan. Yes.

1411 Ms. Deterding. Mr. Jordan votes aye.
1412 Mr. Poe?
1413 Mr. Poe. Yes.
1414 Ms. Deterding. Mr. Poe votes aye.
1415 Mr. Chaffetz?
1416 Mr. Chaffetz. Aye.
1417 Ms. Deterding. Mr. Chaffetz votes aye.
1418 Mr. Marino?
1419 Mr. Marino. Aye.
1420 Ms. Deterding. Mr. Marino votes aye.
1421 Mr. Gowdy?
1422 Mr. Gowdy. Yes.
1423 Ms. Deterding. Mr. Gowdy votes aye.
1424 Mr. Amodei?
1425 Mr. Amodei. Yes.
1426 Ms. Deterding. Mr. Amodei votes aye.
1427 Mr. Labrador?
1428 Mr. Labrador. Yes.
1429 Ms. Deterding. Mr. Labrador votes aye.
1430 Mr. Farenthold?
1431 Mr. Farenthold. Yes.

1432 Ms. Deterding. Mr. Farenthold votes aye.

1433 Mr. Holding?

1434 Mr. Holding. No.

1435 Ms. Deterding. Mr. Holding votes no.

1436 Mr. Collins?

1437 Mr. Collins. No.

1438 Ms. Deterding. Mr. Collins votes no.

1439 Mr. DeSantis?

1440 Mr. DeSantis. No.

1441 Ms. Deterding. Mr. DeSantis votes no.

1442 Mr. Smith?

1443 Mr. Smith of Missouri. No.

1444 Ms. Deterding. Mr. Smith votes no.

1445 Mr. Conyers?

1446 Mr. Conyers. No.

1447 Ms. Deterding. Mr. Conyers votes no.

1448 Mr. Nadler?

1449 Mr. Nadler. No.

1450 Ms. Deterding. Mr. Nadler votes no.

1451 Mr. Scott?

1452 Mr. Scott. No.

1453 Ms. Deterding. Mr. Scott votes no.
1454 Mr. Watt?
1455 [No response.]
1456 Ms. Deterding. Ms. Lofgren?
1457 Ms. Lofgren. No.
1458 Ms. Deterding. Ms. Lofgren votes no.
1459 Ms. Jackson Lee?
1460 Ms. Jackson Lee. No.
1461 Ms. Deterding. Ms. Jackson Lee votes no.
1462 Mr. Cohen?
1463 Mr. Cohen. No.
1464 Ms. Deterding. Mr. Cohen votes no.
1465 Mr. Johnson?
1466 Mr. Johnson. No.
1467 Ms. Deterding. Mr. Johnson votes no.
1468 Mr. Pierluisi?
1469 Mr. Pierluisi. No.
1470 Ms. Deterding. Mr. Pierluisi votes no.
1471 Ms. Chu?
1472 Ms. Chu. No.
1473 Ms. Deterding. Ms. Chu votes no.

1474 Mr. Deutch?

1475 Mr. Deutch. No.

1476 Ms. Deterding. Mr. Deutch votes no.

1477 Mr. Gutierrez?

1478 Mr. Gutierrez. No.

1479 Ms. Deterding. Mr. Gutierrez votes no.

1480 Ms. Bass?

1481 Ms. Bass. No.

1482 Ms. Deterding. Ms. Bass votes no.

1483 Mr. Richmond?

1484 Mr. Richmond. No.

1485 Ms. Deterding. Mr. Richmond votes no.

1486 Ms. DelBene?

1487 [No response.]

1488 Ms. Deterding. Mr. Garcia?

1489 Mr. Garcia. No.

1490 Ms. Deterding. Mr. Garcia votes no.

1491 Mr. Jeffries?

1492 Mr. Jeffries. No.

1493 Ms. Deterding. Mr. Jeffries votes no.

1494 Chairman Goodlatte. Are there other Members who wish to

1495 vote who have not voted?

1496 [No response.]

1497 Chairman Goodlatte. The clerk will report.

1498 The Clerk. Mr. Chairman, 10 Members voted aye; 24

1499 Members voted nay.

1500 Chairman Goodlatte. And the amendment is not agreed to.

1501 The question occurs on the manager's amendment.

1502 All those in favor, respond by saying aye.

1503 Those opposed, no.

1504 In the opinion of the chair, the ayes have it.

1505 Ms. Lofgren. Mr. Chairman, I would ask for a recorded

1506 vote.

1507 Chairman Goodlatte. A recorded vote is requested, and

1508 the clerk will call the roll.

1509 Ms. Deterding. Mr. Goodlatte?

1510 Chairman Goodlatte. Aye.

1511 Ms. Deterding. Mr. Goodlatte votes aye.

1512 Mr. Sensenbrenner?

1513 Mr. Sensenbrenner. Aye.

1514 Ms. Deterding. Mr. Sensenbrenner votes aye.

1515 Mr. Coble?

1516 Mr. Coble. Aye.

1517 Ms. Deterding. Mr. Coble votes aye.

1518 Mr. Smith of Texas?

1519 Mr. Smith of Texas. Aye.

1520 Ms. Deterding. Mr. Smith of Texas votes aye.

1521 Mr. Chabot?

1522 Mr. Chabot. Aye.

1523 Ms. Deterding. Mr. Chabot votes aye.

1524 Mr. Bachus?

1525 Mr. Bachus. Aye.

1526 Ms. Deterding. Mr. Bachus votes aye.

1527 Mr. Issa?

1528 [No response.]

1529 Ms. Deterding. Mr. Forbes?

1530 [No response.]

1531 Ms. Deterding. Mr. King?

1532 Mr. King. Aye.

1533 Ms. Deterding. Mr. King votes aye.

1534 Mr. Franks?

1535 Mr. Franks. Aye.

1536 Ms. Deterding. Mr. Franks votes aye.

1537 Mr. Gohmert?

1538 Mr. Gohmert. Aye.

1539 Ms. Deterding. Mr. Gohmert votes aye.

1540 Mr. Jordan?

1541 Mr. Jordan. Yes.

1542 Ms. Deterding. Mr. Jordan votes aye.

1543 Mr. Poe?

1544 Mr. Poe. Yes.

1545 Ms. Deterding. Mr. Poe votes aye.

1546 Mr. Chaffetz?

1547 Mr. Chaffetz. Aye.

1548 Ms. Deterding. Mr. Chaffetz votes aye.

1549 Mr. Marino?

1550 Mr. Marino. Aye.

1551 Ms. Deterding. Mr. Marino votes aye.

1552 Mr. Gowdy?

1553 Mr. Gowdy. Aye.

1554 Ms. Deterding. Mr. Gowdy votes aye.

1555 Mr. Amodei?

1556 Mr. Amodei. Aye.

1557 Ms. Deterding. Mr. Amodei votes aye.

1558 Mr. Labrador?

1559 Mr. Labrador. Yes.

1560 Ms. Deterding. Mr. Labrador votes aye.

1561 Mr. Farenthold?

1562 Mr. Farenthold. Yes.

1563 Ms. Deterding. Mr. Farenthold votes aye.

1564 Mr. Holding?

1565 Mr. Holding. Aye.

1566 Ms. Deterding. Mr. Holding votes aye.

1567 Mr. Collins?

1568 Mr. Collins. Aye.

1569 Ms. Deterding. Mr. Collins votes aye.

1570 Mr. DeSantis?

1571 Mr. DeSantis. Aye.

1572 Ms. Deterding. Mr. DeSantis votes aye.

1573 Mr. Smith of Missouri?

1574 Mr. Smith of Missouri. Aye.

1575 Ms. Deterding. Mr. Smith of Missouri votes aye.

1576 Mr. Conyers?

1577 Mr. Conyers. No.

1578 Ms. Deterding. Mr. Conyers votes no.

1579 Mr. Nadler?

1580 Mr. Nadler. No.

1581 Ms. Deterding. Mr. Nadler votes no.

1582 Mr. Scott?

1583 Mr. Scott. No.

1584 Ms. Deterding. Mr. Scott votes no.

1585 Mr. Watt?

1586 [No response.]

1587 Ms. Deterding. Ms. Lofgren?

1588 Ms. Lofgren. No.

1589 Ms. Deterding. Ms. Lofgren votes no.

1590 Ms. Jackson Lee?

1591 Ms. Jackson Lee. No.

1592 Ms. Deterding. Ms. Jackson Lee votes no.

1593 Mr. Cohen?

1594 Mr. Cohen. No.

1595 Ms. Deterding. Mr. Cohen votes no.

1596 Mr. Johnson?

1597 Mr. Johnson. No.

1598 Ms. Deterding. Mr. Johnson votes no.

1599 Mr. Pierluisi?

1600 Mr. Pierluisi. No.

1601 Ms. Deterding. Mr. Pierluisi votes no.

1602 Ms. Chu?

1603 Ms. Chu. No.

1604 Ms. Deterding. Ms. Chu votes no.

1605 Mr. Deutch?

1606 Mr. Deutch. No.

1607 Ms. Deterding. Mr. Deutch votes no.

1608 Mr. Gutierrez?

1609 Mr. Gutierrez. No.

1610 Ms. Deterding. Mr. Gutierrez votes no.

1611 Ms. Bass?

1612 Ms. Bass. No.

1613 Ms. Deterding. Ms. Bass votes no.

1614 Mr. Richmond?

1615 Mr. Richmond. No.

1616 Ms. Deterding. Mr. Richmond votes no.

1617 Ms. DelBene?

1618 [No response.]

1619 Ms. Deterding. Mr. Garcia?

1620 Mr. Garcia. No.

1621 Ms. Deterding. Mr. Garcia votes no.
1622 Mr. Jeffries?
1623 Mr. Jeffries. No.
1624 Ms. Deterding. Mr. Jeffries votes no.
1625 Chairman Goodlatte. Are there Members who have not
1626 voted who wish to vote? The gentlewoman from Washington?
1627 Ms. DelBene. No.
1628 The Clerk. Ms. DelBene votes no.
1629 Chairman Goodlatte. The clerk will report.
1630 The Clerk. Mr. Chairman, 21 Members voted aye; 16
1631 Members voted nay.
1632 Chairman Goodlatte. And the amendment is agreed to.
1633 The committee will stand in recess for the lunch hour,
1634 and we will reconvene at 1:00 p.m.
1635 [Whereupon, at 12:09 p.m., the committee recessed, to
1636 reconvene at 1:00 p.m., the same day.]
1637 Chairman Goodlatte. The committee will reconvene.
1638 When we recessed, we were considering H.R. 2278, and the
1639 bill is open for amendment.
1640 For what purpose does the gentleman from Alabama seek
1641 recognition?

1642 Mr. Bachus. Mr. Chairman, I have an amendment at the
1643 desk.

1644 Chairman Goodlatte. The clerk will report the
1645 amendment.

1646 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
1647 Bachus of Alabama. Page 13 --

1648 Chairman Goodlatte. Without objection, the amendment
1649 will be considered as read.

1650 [The amendment of Mr. Bachus follows:]

1651

1652 Chairman Goodlatte. And the gentleman from Alabama is
1653 recognized for 5 minutes to explain his amendment.

1654 Mr. Bachus. Mr. Chairman, this amendment is a simple
1655 clarification that DHS has the same authority for processing
1656 after detainers are issued that it has under current law.

1657 If you look at Section 108, it requires DHS to pick up
1658 those individuals who are in custody, the custody of local
1659 law enforcement. The legislative intent of Section 108,
1660 from talking to the chairman and reading it, was not to
1661 change the process and procedure after DHS had taken custody
1662 of an individual.

1663 So my amendment simply clarifies that we are not
1664 attempting to change the process after the detainer is
1665 issued. And I think this is an important clarification of
1666 Department of Homeland Security's authority.

1667 I would offer that amendment and be glad to answer any
1668 questions.

1669 Chairman Goodlatte. Who seeks recognition?

1670 For what purpose does the gentleman from Florida, seek
1671 recognition?

1672 Mr. Deutch. Move to strike the last word.

1673 Chairman Goodlatte. The gentleman is recognized for 5
1674 minutes.

1675 Mr. Deutch. Thank you, Mr. Chairman.

1676 Mr. Chairman, I would like to speak in opposition to
1677 this amendment.

1678 The likely intent of this amendment was to make clear
1679 that although under the SAFE Act, DHS was required to
1680 apprehend someone soon after detainer is issued, DHS must
1681 only do so for the purpose of making a custody or removal-
1682 related detention. The amendment would help ensure that
1683 when custody is transferred from State or local law
1684 enforcement to DHS, DHS retains the option to release them
1685 without further immigration action to detain or use
1686 alternative detention, including release on recognizance,
1687 release on order of supervision, bond, or an ankle bracelet.

1688 And, Mr. Chairman, we agree with the spirit of this
1689 amendment, and know that Representative Bachus has a strong
1690 interest in the government not putting in costly mass
1691 detention anyone who doesn't need to be there.

1692 Representative Bachus has been becoming increasingly
1693 outspoken about this and has shown genuine interest in

1694 promoting sensible detention policies that respect due
1695 process and public funds.

1696 However, this amendment does not really achieve, I don't
1697 believe, what it sets out to. It fails to address the many
1698 other parts of this bill that expand mandatory detention
1699 without review or prospect of release, and authority
1700 prolonged, or indefinite detention without due process.

1701 The SAFE Act, Mr. Chairman, is a massive detention bill.
1702 And we are already detaining record numbers of people.

1703 The SAFE Act aggressively expands costly immigration
1704 detention in many ways. Section 107 directs the
1705 construction or acquisition of additional detention
1706 facilities, so that there is adequate detention space to
1707 detain all those pending removal or undergoing immigration
1708 proceedings.

1709 Despite the availability of effective alternatives to
1710 detention, the SAFE Act would exponentially increase the
1711 number of people held in costly detention when Americans are
1712 already spending \$2.2 billion a year on detention.

1713 Moreover, the overdetection policy that our Nation
1714 continues to pursue takes substantial toll on hardworking

1715 people and families in our communities. And it is also
1716 financially costly to our Nation, our States and localities.

1717 It costs \$164 a day to detain someone. We currently
1718 spend, as I said, more than \$2 billion a year, \$5.5 million
1719 per day. This is approximately \$45,000 to \$60,000 per
1720 person per year who is detained when there are so many other
1721 options that can cost anywhere between \$.30 per day and \$14
1722 per day.

1723 Title III of the SAFE Act expands the categories of
1724 persons subject to mandatory detention to cover decades-old
1725 offenses, including those that predate the creation of the
1726 mandatory detention authority 15 years ago.

1727 The act also allows for detention with no time limit or
1728 opportunity for bond hearing, even for those with no
1729 criminal record.

1730 The expansion isn't necessary to protect public safety.
1731 Truly dangerous individuals can be detained under existing
1732 law.

1733 And so we agree that the type of individual assessment
1734 that Representative Bachus's amendment attempts to
1735 accomplish is wholly necessary, and categorical approaches

1736 to detention aren't consistent with the criminal justice
1737 system or basic American values of due process. But this
1738 bill will move us away from alternatives to detention.

1739 And we look forward to working with Representative
1740 Bachus going forward to accomplish the intended objectives
1741 of this amendment, but cannot offer support for the
1742 amendment at this time.

1743 I yield back.

1744 Mr. Bachus. Could I ask for clarification? When you
1745 say "we cannot," who --

1746 Mr. Deutch. I'm sorry, Mr. Bachus. "I cannot."

1747 Mr. Bachus. Oh, okay.

1748 Mr. Deutch. I cannot, and I look forward to working
1749 with you, because I know this is such an interest and
1750 commitment of yours. And I hope that we can work together.

1751 Mr. Bachus. Thank you.

1752 Chairman Goodlatte. The chair recognizes himself in
1753 support of the amendment.

1754 This amendment provides a simple clarification to
1755 Section 108 of the SAFE Act. Section 108 requires the
1756 Department of Homeland Security to pick up the aliens

1757 encountered by local law enforcement, at which point, under
1758 existing authorities, DHS can detain; place in removal
1759 proceedings; release; or remove the alien, depending on the
1760 transgressions of alien.

1761 The amendment essentially clarifies subsequent actions
1762 that can be taken by the Department of Homeland Security
1763 once they pick up an alien encountered by local law
1764 enforcement to make them consistent with the existing
1765 process.

1766 And I think this is a very sensible amendment that
1767 improves the legislation. I urge my colleagues to support
1768 the amendment.

1769 The question occurs on --

1770 For what purpose does the gentleman from Iowa seek
1771 recognition?

1772 Mr. King. Move to strike the last word.

1773 Chairman Goodlatte. The gentleman is recognized for 5
1774 minutes.

1775 Mr. King. Thank you, Mr. Chairman.

1776 I just wanted to address this, that your clarification
1777 is something I appreciate, in that it clarifies DHS's

1778 existing authority, and I am supportive of the Bachus
1779 amendment, and I yield back.

1780 Chairman Goodlatte. The chair thanks the gentleman.

1781 The question occurs on the amendment offered by the
1782 gentleman from Alabama, Mr. Bachus.

1783 All those in favor, respond by saying aye.

1784 Opposed, no.

1785 In the opinion of the chair, the ayes have it, and the
1786 amendment is agreed to.

1787 Mr. Deutch. I ask for a recorded vote.

1788 Chairman Goodlatte. A recorded vote is requested by the
1789 gentleman from Florida. The clerk will call the roll.

1790 Ms. Deterding. Mr. Goodlatte?

1791 Chairman Goodlatte. Aye.

1792 Ms. Deterding. Mr. Goodlatte votes aye.

1793 Mr. Sensenbrenner?

1794 Mr. Sensenbrenner. Aye.

1795 Ms. Deterding. Mr. Sensenbrenner votes aye.

1796 Mr. Coble?

1797 Mr. Coble. Aye.

1798 Ms. Deterding. Mr. Coble votes aye.

1799 Mr. Smith of Texas?

1800 [No response.]

1801 Ms. Deterding. Mr. Chabot?

1802 Mr. Chabot. Aye.

1803 Ms. Deterding. Mr. Chabot votes aye.

1804 Mr. Bachus?

1805 Mr. Bachus. Aye.

1806 Ms. Deterding. Mr. Bachus votes aye.

1807 Mr. Issa?

1808 [No response.]

1809 Ms. Deterding. Mr. Forbes?

1810 Mr. Forbes. Aye.

1811 Ms. Deterding. Mr. Forbes votes aye.

1812 Mr. King?

1813 Mr. King. Aye.

1814 Ms. Deterding. Mr. King votes aye.

1815 Mr. Franks?

1816 [No response.]

1817 Ms. Deterding. Mr. Gohmert?

1818 [No response.]

1819 Ms. Deterding. Mr. Jordan?

1820 Mr. Jordan. Yes.

1821 Ms. Deterding. Mr. Jordan votes aye.

1822 Mr. Poe?

1823 [No response.]

1824 Ms. Deterding. Mr. Chaffetz?

1825 Mr. Chaffetz. Aye.

1826 Ms. Deterding. Mr. Chaffetz votes aye.

1827 Mr. Marino?

1828 Mr. Marino. Yes.

1829 Ms. Deterding. Mr. Marino votes aye.

1830 Mr. Gowdy?

1831 Mr. Gowdy. Yes.

1832 Ms. Deterding. Mr. Gowdy votes aye.

1833 Mr. Amodei?

1834 [No response.]

1835 Ms. Deterding. Mr. Labrador?

1836 Mr. Labrador. Yes.

1837 Ms. Deterding. Mr. Labrador votes aye.

1838 Mr. Farenthold?

1839 [No response.]

1840 Ms. Deterding. Mr. Holding?

1841 Mr. Holding. Aye.

1842 Ms. Deterding. Mr. Holding votes aye.

1843 Mr. Collins?

1844 Mr. Collins. Aye.

1845 Ms. Deterding. Mr. Collins votes aye.

1846 Mr. DeSantis?

1847 Mr. DeSantis. Aye.

1848 Ms. Deterding. Mr. DeSantis votes aye.

1849 Mr. Smith of Missouri?

1850 Mr. Smith of Missouri. Yes.

1851 Ms. Deterding. Mr. Smith of Missouri votes aye.

1852 Mr. Conyers?

1853 Mr. Conyers. No.

1854 Ms. Deterding. Mr. Conyers votes no.

1855 Mr. Nadler?

1856 Mr. Nadler. No.

1857 Ms. Deterding. Mr. Nadler votes no.

1858 Mr. Scott?

1859 [No response.]

1860 Ms. Deterding. Mr. Watt?

1861 [No response.]

1862 Ms. Deterding. Ms. Lofgren?
1863 [No response.]
1864 Ms. Deterding. Ms. Jackson Lee?
1865 [No response.]
1866 Ms. Deterding. Mr. Cohen?
1867 [No response.]
1868 Ms. Deterding. Mr. Johnson?
1869 [No response.]
1870 Ms. Deterding. Mr. Pierluisi?
1871 Mr. Pierluisi. No.
1872 Ms. Deterding. Mr. Pierluisi votes no.
1873 Ms. Chu?
1874 Ms. Chu. No.
1875 Ms. Deterding. Ms. Chu votes no.
1876 Mr. Deutch?
1877 Mr. Deutch. No.
1878 Ms. Deterding. Mr. Deutch votes no.
1879 Mr. Gutierrez?
1880 [No response.]
1881 Ms. Deterding. Ms. Bass?
1882 [No response.]

1883 Ms. Deterding. Mr. Richmond?

1884 [No response.]

1885 Ms. Deterding. Ms. DelBene?

1886 Ms. DelBene. No.

1887 Ms. Deterding. Ms. DelBene votes no.

1888 Mr. Garcia?

1889 [No response.]

1890 Ms. Deterding. Mr. Jeffries?

1891 [No response.]

1892 Mr. Issa. Mr. Chairman, how am I recorded? I vote yes.

1893 Ms. Deterding. Mr. Issa votes aye.

1894 Chairman Goodlatte. The gentleman from Virginia?

1895 Mr. Scott. No.

1896 Ms. Deterding. Mr. Scott votes no.

1897 Chairman Goodlatte. Are there other members who wish to

1898 have their vote recorded, who have not voted?

1899 The clerk will report.

1900 Ms. Deterding. Mr. Chairman, 17 members voted aye;

1901 seven members voted nay.

1902 Chairman Goodlatte. And the amendment is agreed to.

1903 For what purpose does the gentleman from Michigan seek

1904 recognition?

1905 Mr. Conyers. Mr. Chairman, I have an amendment at the
1906 desk, and I ask that it be reported.

1907 Chairman Goodlatte. The clerk will report the
1908 amendment.

1909 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
1910 Conyers.

1911 Chairman Goodlatte. Without objection, the amendment
1912 will be considered as read.

1913 [The amendment of Mr. Conyers follows:]

1914

1915 Chairman Goodlatte. And the gentleman from Michigan is
1916 recognized for 5 minutes to explain his amendment.

1917 Mr. Conyers. Members of the committee, my amendment
1918 simply strikes Title I, which has more than two pages of
1919 reasoning.

1920 Of course, the whole act, 2278, represents a step
1921 backwards -- doesn't it? -- in our Nation's efforts to
1922 reform our immigration system. But Title I is the most
1923 troublesome part of the bill.

1924 First of all, it repeats a history of failed policy
1925 proposals. This is all Title I. Then it overturns the
1926 Supreme Court's decision in Arizona v. The United States,
1927 creating an immigration enforcement regime that is
1928 unworkable, decreases public safety, and adversely impacts
1929 our Nation's foreign relations.

1930 This same title, by its expansion of State and local
1931 enforcement of immigration laws, will irreparably harm our
1932 economy and businesses.

1933 Then Title I will require the Federal Government to
1934 expend billions of dollars unnecessarily detaining
1935 individuals, such as DREAMers and veterans, who in reality

1936 pose no threat to public safety.

1937 Title I will strip the ability of States and localities
1938 to direct policing resources based on the needs of their
1939 community, and would expand to 287(g), a failed program with
1940 a history of documented abuses.

1941 And then finally, it completely ignores the needs of law
1942 enforcement. As Riverside Police Chief Sergio Diaz said
1943 only yesterday: You might have noticed these kinds of laws,
1944 like 2278, and Arizona's 1070, don't originate with police
1945 chiefs. We are not asking for this kind of direction from
1946 legislators. We know that these laws will make crime worse
1947 and not better.

1948 That sentiment has been echoed by law enforcement chiefs
1949 and associations around the country, who have long opposed
1950 turning cops into immigration agents. They also have
1951 opposed filling the National Crime Information Center
1952 database with millions of noncriminal immigration records.
1953 Under Title I, records pertaining to noncitizens who have
1954 overstayed their visas receive voluntary departure or final
1955 orders of removal, or had their visas revoked, will be
1956 placed in NCIC, unnecessarily cluttering the system and

1957 making it more difficult for law enforcement officers to
1958 determine which action is appropriate.

1959 My amendment would eliminate Title I of the bill. This
1960 will help promote public safety and community policing, and,
1961 at the very least, prevent the spread of racial profiling
1962 and unconstitutional arrests and detentions around the
1963 country.

1964 I ask all the members of the committee to support this
1965 amendment. And I return the balance of my time.

1966 Chairman Goodlatte. The chair thanks the gentleman, and
1967 recognizes himself in opposition to the amendment.

1968 I strongly oppose this amendment. This amendment
1969 strikes the most crucial provision of Mr. Gowdy's bill, the
1970 provision ensuring that State and local law enforcement can
1971 participate in the enforcement of our immigration laws.

1972 Section 102 is designed to end the current state of
1973 affairs in which the Nation's immigration laws go largely
1974 unenforced, because the President has directed his
1975 administration simply not enforce them.

1976 The section partially overturns the Supreme Court's
1977 decision in *Arizona v. The United States*, and grants States

1978 and localities specific congressional authorization to enact
1979 and enforce criminal and civil penalties that penalize
1980 conduct prohibited by criminal and civil provisions of
1981 Federal immigration law, as long as the penalties do not
1982 exceed the relevant Federal penalties and Federal law does
1983 not otherwise prohibit such laws.

1984 The section also provides that law enforcement personnel
1985 of States and localities may investigate, identify,
1986 apprehend, detain, or transfer to Federal custody aliens in
1987 the United States for the purpose of enforcing the
1988 immigration laws of the United States. Without the
1989 assistance of State and local law enforcement, we have no
1990 mechanism to ensure that the immigration laws will be
1991 enforced despite the changing winds in the White House.

1992 The amendment also strikes other important provisions in
1993 the bill. It would strike the provision providing that the
1994 Department of Homeland Security may not refuse, absent
1995 compelling reason, to enter into 287(g) cooperative
1996 agreements at the request of States and localities who want
1997 to assist in the enforcement of Federal immigration laws.

1998 It would strike the provision providing that State and

1999 local law enforcement officers assisting in the enforcement
2000 of Federal immigration laws are immune from personal
2001 liability to the same extent as our Federal immigration
2002 officers.

2003 It would strike the provision requiring information-
2004 sharing between States and localities from the Federal
2005 Government regarding removable aliens.

2006 It would strike the provision mandating that the Federal
2007 Government take removable aliens into its custody at the
2008 request of States or localities.

2009 It would strike the provision providing grants to local
2010 law enforcement agencies that assist in immigration law
2011 enforcement.

2012 It would strike the provision requiring that State and
2013 local law enforcement agencies honor Federal detainers for
2014 removable aliens, so that Federal agents can assume custody
2015 of the aliens.

2016 And finally, it would strike the provision that would
2017 withhold State criminal alien assistance program grants, law
2018 enforcement grants, and DHS grants from States and
2019 localities that violate Federal immigration law by being

2020 sanctuary jurisdictions.

2021 I urge my colleagues to oppose this amendment.

2022 For what purpose does the gentlewoman from California
2023 seek recognition?

2024 Ms. Lofgren. To speak in favor of Congressman Conyers'
2025 amendment.

2026 Chairman Goodlatte. The gentlewoman is recognized for 5
2027 minutes.

2028 Ms. Lofgren. I think we have a fundamental disagreement
2029 about how best to proceed on immigration, evidenced by this
2030 bill.

2031 I agree, pretty much, with your outline of what the
2032 Conyers amendment would strike. And I think those
2033 provisions should be struck.

2034 I was recalling, and it is not clear to me whether the
2035 liability relief in the underlying bill covers criminal
2036 conduct, potentially. But we had to actually arrest police
2037 officers in East Haven, Connecticut, because of their abuse
2038 of immigrants and their discriminatory practices. I don't
2039 think that there should be relief from liability, if you are
2040 discriminating against individuals.

2041 We had a situation where the Department of Justice has
2042 had to go in and take action relative to Sheriff Arpaio in
2043 Arizona, because of his discriminatory actions. I don't
2044 think that that should be permitted.

2045 I think it is a mistake to mandatorily detain
2046 individuals who pose no threat to the Nation. And I think
2047 it is generally just a problem to double-down on enforcement
2048 before we reform the system.

2049 I was mentioning to one of the members, while we were
2050 waiting for the committee to commence, that we have, under
2051 current law, 5,000 visas a year, permanent resident visas a
2052 year, for nontech-employment-based immigration. We have 2
2053 million migrant farmworkers in the United States, the vast
2054 majority of them are undocumented.

2055 We can't succeed as a Nation with the system that we
2056 have allowed to continue. We need to reform the system, top
2057 to bottom. Doubling down on immigration will not accomplish
2058 that goal.

2059 And so I do think that Mr. Conyers' amendment is a valid
2060 one, and I support it wholeheartedly.

2061 And I would yield to back.

2062 Mr. Conyers. Will the gentlelady yield?

2063 Ms. Lofgren. I would yield to Mr. Conyers.

2064 Mr. Conyers. I just want to thank her. I hope other
2065 members of the committee are thinking about community
2066 policing and local enforcement, and the kinds of issues here
2067 that I merely commented on by naming, but one of which would
2068 be expanding 287, and ignoring the needs of law enforcement,
2069 which some law enforcement officers have already commented
2070 on.

2071 I thank the gentlelady for her support.

2072 Ms. Lofgren. If I may reclaim my time rather than
2073 yielding it back, I did want to comment further on the issue
2074 of noncompliance with the terms or conditions of the alien's
2075 admission or parole into the United States.

2076 The chairman had indicated, in response to Ms. Chu's
2077 comments, that there was an exemption for the victims of
2078 trafficking. And there is an exemption for victims of
2079 trafficking, but it does not actually, apparently, by the
2080 plain terms of the bill, work when there has been a
2081 violation of the terms or conditions of the alien's
2082 admission or parole in the United States found on page 102,

2083 line 15.

2084 I would note also, as I mentioned in my prior
2085 statements, it can be quite easy to run afoul of our very
2086 complicated immigration system.

2087 And I will give you just a real-life example of
2088 something that came to my attention in the past couple of
2089 years, which was a gentleman who was a foreign student. He
2090 was getting his Ph.D. at Stanford University, and he had
2091 been on a student visa for a number of years. He went back
2092 to Germany, but he needed to write his thesis. And so he
2093 got a visitor's visa, and he came back to Stanford and he
2094 started writing his thesis, except that he was supposed to
2095 be on an F-1 instead of a B-1, and he actually got in
2096 trouble with the immigration service.

2097 Under this bill, not only would there be a need to
2098 straighten that out, it would be a misdemeanor. And I think
2099 that is unwarranted and unwise.

2100 I see my time has expired, so I would yield back.

2101 Chairman Goodlatte. For what purpose does the gentleman
2102 from South Carolina seek recognition?

2103 Mr. Gowdy. Move to strike the last word.

2104 Chairman Goodlatte. The gentleman is recognized for 5
2105 minutes.

2106 Mr. Gowdy. Thank you, Mr. Chairman.

2107 Mr. Chairman, there are about 5,000 ICE agents who have
2108 the duty of enforcing our Nation's immigration laws. These
2109 agents have to deal with at least 11 million undocumented
2110 immigrants in the United States, and many thousands of
2111 aliens, both legal and illegal, who have committed
2112 deportable crimes.

2113 This number is, on its face, clearly insufficient, if we
2114 ever hope to enforce our immigration laws. And just by way
2115 of comparison, Mr. Chairman, there are 34,000 police
2116 officers in New York City, juxtaposed with 5,000 in the
2117 United States to deal with our immigration laws. There are
2118 over 730,000, however, Mr. Chairman, State and local law
2119 enforcement officers.

2120 If State and local law enforcement agencies could assist
2121 ICE in enforcing immigration laws on a totally voluntary
2122 basis, I hasten to add, consider the significant multiplier
2123 this could be for ICE.

2124 Mr. Chairman, I would also like the committee and others

2125 to consider the case of the 9/11 hijackers, four of whom
2126 were pulled over for traffic infractions during the months
2127 before September 2001. Unfortunately, police officers did
2128 not check their immigration status. They had all violated
2129 Federal immigration laws and could have been detained by
2130 State or local officers. And we can scarcely imagine how
2131 that tragedy could have been averted, if local law
2132 enforcement had been able to cooperate with Federal
2133 immigration officials.

2134 Mr. Chairman, I remain vexed and confounded. We trust
2135 State and local law enforcement officers to enforce murder
2136 laws, drug laws, robbery laws, every other category of
2137 crime. There is not a task force in existence in this
2138 country that does not State and local officers working with
2139 Federal law enforcement.

2140 I think of nothing as more inherently interstate, for my
2141 friends who want to argue preemption, or enumerated powers,
2142 there is nothing more inherently interstate than our
2143 interstate highway system.

2144 Who patrols it? Is there a Federal highway patrol that
2145 I have not met yet? No. They are all State and local

2146 highway patrol officers. And guess what? They are
2147 arresting people for misdemeanors, like speeding.

2148 So if you trust them for something as inherently
2149 interstate as the interstate highway system, and rape, and
2150 robbery, and child pornography, but you can't trust them to
2151 enforce immigration laws?

2152 Mr. Chairman, the other thing that I find confounding
2153 and vexing is there are Governors and mayors and city
2154 council members, some of whom serve in the same districts as
2155 some of our colleagues throughout this country, who brazenly
2156 ignore Federal law. They are proud of the fact that they
2157 have nullified our Federal immigration laws, and they have
2158 created what they like to call sanctuary cities.

2159 I would love for someone to reconcile for me how a State
2160 or local city official can nullify Federal law, but God
2161 forbid a State and local police officer actually help
2162 enforce Federal law. I would love for someone to reconcile
2163 that for me, Mr. Chairman.

2164 And, anticipating that, I will yield back the remainder
2165 of my time.

2166 Chairman Goodlatte. The question occurs on the

2167 amendment offered by the gentleman from Michigan.

2168 All those in favor, respond by saying aye.

2169 Those opposed, no.

2170 In the opinion of the chair, the noes have it. The

2171 amendment is not agreed to.

2172 Mr. Conyers. I request a recorded vote.

2173 Chairman Goodlatte. The gentleman requests a recorded

2174 vote, and the clerk will call the roll.

2175 Ms. Deterding. Mr. Goodlatte?

2176 Chairman Goodlatte. No.

2177 Ms. Deterding. Mr. Goodlatte votes no.

2178 Mr. Sensenbrenner?

2179 Mr. Sensenbrenner. No.

2180 Ms. Deterding. Mr. Sensenbrenner votes no.

2181 Mr. Coble?

2182 [No response.]

2183 Ms. Deterding. Mr. Smith of Texas?

2184 [No response.]

2185 Ms. Deterding. Mr. Chabot?

2186 Mr. Chabot. No.

2187 Ms. Deterding. Mr. Chabot votes no.

2188 Mr. Bachus?

2189 Mr. Bachus. No.

2190 Ms. Deterding. Mr. Bachus votes no.

2191 Mr. Issa?

2192 [No response.]

2193 Ms. Deterding. Mr. Forbes?

2194 [No response.]

2195 Ms. Deterding. Mr. King?

2196 Mr. King. No.

2197 Ms. Deterding. Mr. King votes no.

2198 Mr. Franks?

2199 [No response.]

2200 Ms. Deterding. Mr. Gohmert?

2201 [No response.]

2202 Ms. Deterding. Mr. Jordan?

2203 Mr. Jordan. No.

2204 Ms. Deterding. Mr. Jordan votes no.

2205 Mr. Poe?

2206 [No response.]

2207 Ms. Deterding. Mr. Chaffetz?

2208 Mr. Chaffetz. No.

2209 Ms. Deterding. Mr. Chaffetz votes no.
2210 Mr. Marino?
2211 Mr. Marino. No.
2212 Ms. Deterding. Mr. Marino votes no.
2213 Mr. Gowdy?
2214 Mr. Gowdy. No.
2215 Ms. Deterding. Mr. Gowdy votes no.
2216 Mr. Amodei?
2217 [No response.]
2218 Ms. Deterding. Mr. Labrador?
2219 Mr. Labrador. No.
2220 Ms. Deterding. Mr. Labrador votes no.
2221 Mr. Farenthold?
2222 [No response.]
2223 Ms. Deterding. Mr. Holding?
2224 Mr. Holding. No.
2225 Ms. Deterding. Mr. Holding votes no.
2226 Mr. Collins?
2227 Mr. Collins. No.
2228 Ms. Deterding. Mr. Collins votes no.
2229 Mr. DeSantis?

2230 Mr. DeSantis. No.

2231 Ms. Deterding. Mr. DeSantis votes no.

2232 Mr. Smith of Missouri?

2233 Mr. Smith of Missouri. No.

2234 Ms. Deterding. Mr. Smith of Missouri votes no.

2235 Mr. Conyers?

2236 Mr. Conyers. Aye.

2237 Ms. Deterding. Mr. Conyers votes aye.

2238 Mr. Nadler?

2239 Mr. Nadler. Aye.

2240 Ms. Deterding. Mr. Nadler votes aye.

2241 Mr. Scott?

2242 Mr. Scott. Aye.

2243 Ms. Deterding. Mr. Scott votes aye.

2244 Mr. Watt?

2245 [No response.]

2246 Ms. Deterding. Ms. Lofgren?

2247 Ms. Lofgren. Aye.

2248 Ms. Deterding. Ms. Lofgren votes aye.

2249 Ms. Jackson Lee?

2250 [No response.]

2251 Ms. Deterding. Mr. Cohen?

2252 [No response.]

2253 Ms. Deterding. Mr. Johnson?

2254 Mr. Johnson. Aye.

2255 Ms. Deterding. Mr. Johnson votes aye.

2256 Mr. Pierluisi?

2257 Mr. Pierluisi. Aye.

2258 Ms. Deterding. Mr. Pierluisi votes aye.

2259 Ms. Chu?

2260 Ms. Chu. Aye.

2261 Ms. Deterding. Ms. Chu votes aye.

2262 Mr. Deutch?

2263 Mr. Deutch. Aye.

2264 Ms. Deterding. Mr. Deutch votes aye.

2265 Mr. Gutierrez?

2266 [No response.]

2267 Ms. Deterding. Ms. Bass?

2268 [No response.]

2269 Ms. Deterding. Mr. Richmond?

2270 [No response.]

2271 Ms. Deterding. Ms. DelBene?

2272 Ms. DelBene. Aye.

2273 Ms. Deterding. Ms. DelBene votes aye.

2274 Mr. Garcia?

2275 Mr. Garcia. Aye.

2276 Ms. Deterding. Mr. Garcia votes aye.

2277 Mr. Jeffries?

2278 [No response.]

2279 Chairman Goodlatte. The gentleman from California?

2280 Mr. Issa. No.

2281 Chairman Goodlatte. The gentleman from Virginia?

2282 Mr. Forbes. No.

2283 Chairman Goodlatte. The gentleman from North Carolina?

2284 Mr. Coble. No.

2285 Chairman Goodlatte. The gentleman from Nevada?

2286 Mr. Amodei. No.

2287 Chairman Goodlatte. The gentlewoman from Texas?

2288 Ms. Jackson Lee. Aye.

2289 Chairman Goodlatte. The gentleman from Illinois?

2290 Mr. Gutierrez. Yes.

2291 Chairman Goodlatte. Are there other members who wish to

2292 vote who have not voted?

2293 The clerk will report.

2294 Ms. Deterding. Mr. Chairman, 12 members voted aye; 18
2295 members voted nay.

2296 Chairman Goodlatte. And the amendment is not agreed to.

2297 For what purpose does the gentleman from Iowa seek
2298 recognition?

2299 Mr. King. I have an amendment at the desk.

2300 Chairman Goodlatte. The clerk will report the
2301 amendment.

2302 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
2303 King of Iowa. Page 174 --

2304 Chairman Goodlatte. Without objection, the amendment
2305 will be considered as read.

2306 [The amendment of Mr. King follows:]

2307

2308 Chairman Goodlatte. And the gentleman is recognized for
2309 5 minutes to explain his amendment

2310 Mr. King. Thank you, Mr. Chairman.

2311 I am hopeful the amendment that was taken up was King
2312 No. 45, which addresses the Morton memos.

2313 Are we in agreement with that with the clerk? Okay,
2314 thank you.

2315 This is an amendment that is similar in its effect to an
2316 amendment that I brought to the floor a couple weeks ago,
2317 and what it does is it nullifies the Morton memos.

2318 The Morton memos are a series of memos, I believe about
2319 a half-dozen of them, that erode the enforcement of
2320 immigration law. And they do so, I believe, in an
2321 unconstitutional fashion, and I have long said that. The
2322 memo that is particularly egregious is the June 15, 2012,
2323 memo from Janet Napolitano and supported by John Morton,
2324 currently secretary of ICE and perhaps not much longer.

2325 What that amendment does is it create four classes of
2326 people -- excuse me, what that memo does, and my amendment
2327 eliminates it. It creates four classes of people, and these
2328 classes of people are defined as those who are in school,

2329 gone to school and received a degree, entered into in the
2330 military, or received a GED.

2331 The memo itself, it is pretty interesting reading
2332 through that. And what it does is it contemplates, I think,
2333 that Janet Napolitano has contemplated a court challenge to
2334 the executive amnesty that has been promoted and supported
2335 by the President and technically ratified by Janet
2336 Napolitano and John Morton.

2337 And six times in this memo of June 15th, it references
2338 prosecutorial discretion. Two other times it says on an
2339 individual basis only. When I read through this memo, it is
2340 clear to me that they understood that the administration,
2341 the executive branch, must prosecutorial discretion, because
2342 if not, they would be bogged down with millions of law
2343 violations that we have. Instead, they need to redirect
2344 their resources so that the prosecution is as effective as
2345 it can be.

2346 But there is no definition of prosecutorial discretion
2347 that contemplates the idea of the executive being able to
2348 create entire groups or classes of people, and then exempt
2349 them from the law, which is exactly what this particular

2350 memo, the June 15, 2012, memo, does.

2351 And that is the reason that some of us have brought
2352 litigation against the Secretary of Homeland Security.

2353 And by the way, I made that announcement to Janet
2354 Napolitano from this very seat as she sat down here as a
2355 witness before this committee.

2356 That litigation is now known as Crane v. Napolitano.

2357 And in the Northern District of Texas, Judge Reed
2358 O'Connor has found in favor of the rule of law and the lead
2359 plaintiff, Chris Crane, who is the president of the ICE
2360 union, in nine out of 10 arguments, and the 10th argument is
2361 sent back to the administration to rewrite and redefine,
2362 because it wasn't clear enough for Judge O'Connor to make a
2363 decision on it.

2364 This is a constitutional vote, Mr. Chairman. This is a
2365 vote that asserts -- let me say reasserts -- the Article I
2366 legislative authority that this Congress has over the
2367 executive branch. And I will point out that President
2368 Obama, on March 28th, I believe the year was 2011, in giving
2369 a speech to a high school here in Washington, D.C., said: I
2370 know you want me to implement the DREAM Act by executive

2371 order, but I don't have the constitutional authority to do
2372 that. If you have studied your civics, you will know that
2373 it's Congress's job to legislate. It is my job to enforce
2374 the laws as the chief executive officer of the United
2375 States. And it is the court's job to interpret the law.

2376 We have gone to court to interpret the law. So far, the
2377 court has found in favor of Article I authority of Congress
2378 to write immigration law. There is a series of efforts on
2379 the part of this administration to undermine that clear,
2380 distinct authority of Article I authority of this United
2381 States Congress.

2382 Our Founding Fathers did not envision that a Congress
2383 would capitulate to the whim of the President. They
2384 believed that each branch of government would jealously
2385 guard its constitutional authority. And the President's
2386 oath of office includes that he take care, so that the laws
2387 be faithfully executed. Instead, he has essentially
2388 executed the law.

2389 And now I see a Senate that is poised to conform to the
2390 whim of the President, which I think undermines Article I
2391 authority substantially. If we let him continue to do this,

2392 there will be no rule of law that can be asserted with
2393 regard to immigration, at a minimum, and perhaps broader
2394 than that.

2395 So this is the right place for this amendment,
2396 especially because we are before the House Judiciary
2397 Committee, and among us, of course, are the Constitutional
2398 Subcommittee. And we are all, I believe, on this committee,
2399 constitutionalists.

2400 And the effort that I brought forward here to nullify
2401 the Morton memos, which is shorthand for this whole series
2402 of half a dozen memos, that I brought forward here, this
2403 preserves the Constitution and the rule of law, and the
2404 application of the law, as the chairman of the subcommittee
2405 has, I think, articulated very well.

2406 So I urge its adoption, and I yield back the balance of
2407 my time.

2408 Mr. Gowdy. [Presiding] The gentleman from Iowa yields
2409 back.

2410 Ms. Lofgren. Mr. Chairman?

2411 Mr. Conyers. Mr. Chairman?

2412 Mr. Gowdy. [Presiding] Yes, for what purpose does the

2413 gentleman from Michigan seek recognition?

2414 Mr. Conyers. Mr. Chairman, to speak against this
2415 amendment.

2416 Mr. Gowdy. The gentleman is recognized for 5 minutes.

2417 Mr. Conyers. I thank the chair.

2418 Well, the best thing I got out of the defense of the
2419 amendment by its author is that he recognizes that
2420 prosecutorial discretion is sometimes good and beneficial.
2421 But in this particular instance, he doesn't think much of
2422 it.

2423 But I would like to point out, members of the committee,
2424 that prohibiting the finalizing and implementing and
2425 administering of various ICE memos authorizing prosecutorial
2426 discretion, including deferred action for childhood
2427 arrivals, would be very, very destructive, even if they
2428 weren't in this bill.

2429 Prosecutorial discretion is a longstanding and
2430 fundamental principle of law enforcement. I can remember a
2431 number of years back, when both Republican and Democratic
2432 Members of Congress, including our colleagues Smith of Texas
2433 and Sensenbrenner of Wisconsin, sent a letter urging the use

2434 of prosecutorial discretion in immigration enforcement. It
2435 stated the principle of prosecutorial discretion is well-
2436 established. And that letter went to Janet Reno, then
2437 Attorney General, and Doris Meisner, then the Commissioner
2438 of Immigration and Naturalization.

2439 And it was a thoughtful letter, and I think that it
2440 shows that prosecutorial discretion is, in fact, a
2441 longstanding and fundamental principle of law enforcement.

2442 Prosecutorial discretion keeps America safe by ensuring
2443 the smart use of enforcement resources. Everyone agrees
2444 that ICE officers and prosecutors should target drug
2445 smugglers, terrorists, human traffickers, and others who
2446 pose a threat to our communities. No one wants prosecutors
2447 to waste taxpayer resources trying to deport hardworking
2448 parents, veterans, and children.

2449 And also, every law enforcement agency in the United
2450 States exercises prosecutorial discretion. Every prosecutor
2451 and police officer daily make decisions about how to
2452 allocate enforcement resources based on judgments about
2453 which cases are the most egregious, which cases have the
2454 strongest evidence, which cases should be settled, and which

2455 should be brought forward to trial.

2456 And this same discussion ensures fair and just outcomes.
2457 It ensures that law enforcement officials can take into
2458 account compelling circumstances in an individual case, such
2459 as contributions to the community, or strong family ties to
2460 United States citizens, or lawful permanent residents, or
2461 the length of residence in the United States, and
2462 disability.

2463 In the words of Attorney General Eric Holder, equal
2464 justice depends on individualized justice, and smart law
2465 enforcement demands it.

2466 And one thing I would like to disabuse anybody of, the
2467 notion that -- prosecutorial discretion is not amnesty.
2468 Prosecutorial discretion is done on a case-by-case basis.

2469 It is a temporary and tenuous operation and does not
2470 result in legal status. Most people granted prosecutorial
2471 discretion are still at risk of future enforcement and
2472 deportation.

2473 And so I urge that we turn down the well-intentioned
2474 King amendment.

2475 Thank you, Mr. Chairman.

2476 Mr. Gowdy. I thank the gentleman from Michigan.

2477 The chair will now recognize himself for 5 minutes.

2478 President Obama sought to rewrite immigration laws
2479 passed by Congress by taking administrative action via
2480 policy memorandum.

2481 In our constitutional system, however, it is Congress
2482 that has plenary constitutional authority to establish U.S.
2483 immigration policy. Fundamental reform requires legislative
2484 action.

2485 The President cannot just change immigration laws on his
2486 own. And the Administration's recent effort to do so by
2487 announcing that it would seek deportation only for unlawful
2488 aliens who have committed "serious crimes" in the United
2489 States undercuts the rule of law.

2490 It is unlikely that any President could expel each and
2491 every undocumented immigrant in the United States, perhaps
2492 upwards of 11 million individuals. Resources to identify,
2493 apprehend, process, and promptly deport millions of
2494 undocumented aliens have been lacking for years, and,
2495 arguably, so has the political will to do so.

2496 But President Obama's new policy announced in recent

2497 years is fundamentally different from the flawed immigration
2498 enforcement records of previous Presidents. The
2499 administration has stated that deportation efforts will be
2500 focused solely on aliens with "serious criminal records" and
2501 enforcement action will not be taken on other types of
2502 cases. Aliens who have avoided apprehension at the border
2503 and not been convicted of a "serious enough offense" since
2504 arriving to the United States will no longer face any
2505 prospect of deportation, the most basic means of immigration
2506 enforcement.

2507 Far from simply prioritizing the use of limited
2508 resources, the administration's policy effectively rewrites
2509 the law.

2510 It names the vast majority of undocumented immigrants
2511 and low level, whatever that means, criminal aliens need no
2512 longer fear any immigration law enforcement. This applies
2513 even to those aliens who are now in deportation proceedings,
2514 where resources have already been expended.

2515 Limiting the possibility of deportation in this manner
2516 eliminates entirely any deterrent effect the immigration
2517 laws have been, and also states plainly that those laws can

2518 be ignored with impunity.

2519 The President has, in a very real sense, suspended
2520 operation of those laws with respect to a very large and
2521 identifiable class of offenders.

2522 And I was listening carefully, as I always do, to the
2523 gentleman from Michigan. I respect what he had to say about
2524 prosecutorial discretion. I know a little bit about it,
2525 because I have exercised it throughout my career. And it is
2526 exercised on a case-by-case basis.

2527 When you ignore entire categories of law, that is not
2528 prosecutorial discretion. That is anarchy. Prosecutorial
2529 discretion is looking at a particular fact pattern and
2530 either saying the facts don't support the charge, or we're
2531 not going to use the resources. But prosecutorial
2532 discretion is not saying we are going to ignore in whole
2533 cloth an entire body of law passed by a coequal branch of
2534 government.

2535 So in conclusion, let me say this, process matters. It
2536 is the reason that we have something called substantive due
2537 process and procedural due process. It is not just the
2538 result we reach. It is also the manner in which we get

2539 there.

2540 So I will say this to my friend from Illinois, my friend
2541 from California, my friend from Michigan, I, and I suspect
2542 scores of others, support an abbreviated path to citizenship
2543 for the children that are at issue.

2544 But let's at least show them that the country that they
2545 will soon be joining has respect for the rule of law.

2546 And with that, I would recognize the gentlelady from
2547 California.

2548 Ms. Lofgren. Thank you, Mr. Chairman.

2549 I support Mr. Conyers' opposition to this amendment.

2550 We use prosecutorial discretion all the time. I would
2551 note that when we have temporary protected status for
2552 individuals who are present in the United States, but for
2553 one reason or another cannot return home, that is an
2554 exercise of discretion. And it is certainly specified and
2555 permitted under law.

2556 I would draw the attention of the committee to the
2557 recent case before the Supreme Court, Arizona v. The United
2558 States, on page 4. And here is what the Supreme Court said
2559 in that case, and I quote. " A principal feature of the

2560 removal system is the broad discretion exercised by
2561 immigration officials. ... Federal officials, as an initial
2562 matter, must decide whether it makes sense to pursue removal
2563 at all. If removal proceedings commence, aliens may seek
2564 asylum and other discretionary relief allowing them to
2565 remain in the country or at least to leave without formal
2566 removal. ... Discretion in the enforcement of immigration
2567 law embraces immediate human concerns. Unauthorized workers
2568 trying to support their families, for example, likely pose
2569 less danger than alien smugglers or aliens who commit a
2570 serious crime. The equities of an individual case may turn
2571 on many factors, including whether the alien has children
2572 born in the United States, long ties to the community, or a
2573 record of distinguished military service. Some
2574 discretionary decisions involve policy choices that bear on
2575 this Nation's international relations. Returning an alien
2576 to his own country may be deemed inappropriate even where he
2577 has committed a removable offense or fails to meet the
2578 criteria for admission. The foreign state may be mired in
2579 civil war, complicit in political persecution, or enduring
2580 conditions that create a real risk that the alien or his

2581 family will be harmed upon return. The dynamic nature of
2582 relations with other countries requires the executive branch
2583 to ensure that enforcement policies are consistent with this
2584 Nation's foreign policy with respect to these and other
2585 realities."

2586 I would note that the items referenced by the Supreme
2587 Court in *Arizona v. The United States* are in fact the types
2588 of factors that the administration, the Department of
2589 Homeland Security, has cited in their prosecutorial
2590 discretion memorandum.

2591 And if it is, as the Supreme Court as indicated, the
2592 realm of the executive to reach conclusions based on what
2593 cases should be brought, it is certainly also possible, and
2594 a longstanding principle of immigration law, that the
2595 policies can be broadly laid out for the administration and
2596 the individuals who work with the administration to carry
2597 out.

2598 Otherwise, the temporary protected status would not
2599 exist, and the Court would not have indicated that the broad
2600 discretion may be exercised by immigration officials.

2601 I think, aside from the legal basis for doing this, it

2602 just makes sense that we, rather than eliminate the
2603 discretionary action that allowed for young individuals who
2604 entered the United States who didn't make a decision on
2605 their own, who were brought here by their parents, rather
2606 than arrest those young people and hold them in detention,
2607 and potentially deport them, that we would instead use the
2608 resources that the taxpayers have provided to us to instead
2609 pursue those who have committed violent crimes, who have
2610 engaged in human trafficking, you have done other acts that
2611 pose a vital threat to the United States.

2612 So I think the King amendment is ill-advised. I would
2613 hope that the committee would reject it.

2614 Mr. Conyers. Will the gentlelady yield?

2615 Ms. Lofgren. And I would be happy to yield to the
2616 ranking member.

2617 Mr. Conyers. I thank her for an excellent statement
2618 that used a lot of material in the Supreme Court decision.

2619 But I noticed that even Chairman Gowdy agreed with you,
2620 that he supports prosecutorial discretion. And I think even
2621 he agrees that it turns on individual circumstances. So we
2622 are really not that far apart.

2623 And I am hoping that the King amendment, with your help,
2624 will be turned back, and that we will at least make this
2625 bill less unacceptable.

2626 And I thank the gentlelady for yielding.

2627 Ms. Lofgren. I thank you.

2628 And my time has expired. I yield back.

2629 Mr. Gowdy. Thank the gentlelady from California and the
2630 gentleman from Michigan.

2631 Who seeks time?

2632 The gentleman from Texas, the former chairman of the
2633 Judiciary Committee.

2634 Mr. Smith of Texas. Thank you, Mr. Chairman. I will
2635 yield my time to the gentleman from Iowa, Mr. King.

2636 Mr. King. I thank the gentleman from Texas for
2637 yielding. And I would point out that there is broad
2638 agreement here across this committee. There is no
2639 disagreement that prosecutorial discretion is a well-
2640 established foundation of our law enforcement and necessary.

2641 What my amendment does is it restores prosecutorial
2642 discretion to our law enforcement officers, and it restores
2643 it back to an individual basis. The President, through his

2644 executive edict, has wiped out prosecutorial discretion for
2645 our law enforcement officers and said, you shall not enforce
2646 the law against people that are unlawfully present in the
2647 United States.

2648 We heard the president of the ICE union, sitting down at
2649 this table just last week, say, even if they are in jail, I
2650 cannot interfere, because I am prohibited by the rules and
2651 by the guidance of the executive branch of government.

2652 So this restores prosecutorial discretion to our law
2653 enforcement officers. As an institution, it is necessary
2654 for safe and useful application of our resources. It
2655 reverts it back to prior to March 2, 2011, when the first
2656 one of these Morton memos was filed. And it restores again
2657 the rule of law and moves us away from anarchy.

2658 And I would remind you that this idea of prosecutorial
2659 discretion that is in the Morton memos is not on an
2660 individual basis. As many times as they repeat the word and
2661 the term "prosecutorial discretion, "individual basis only,"
2662 it is not. It takes out entire classes of people.

2663 And according to USCIS report dated May 17, 2013 --
2664 excuse me, April 30, 2013, USCIS has received 515,922 DACA

2665 applications. That is Deferred Action for Childhood
2666 Arrivals -- 515,922. They are all, by the rule of the
2667 President, being processed now. All but 8/10 of 1 percent
2668 that have been processed have been approved. That is not an
2669 individual basis. That is classes of people.

2670 And this Congress must assert its constitutional
2671 authority and preserve prosecutorial discretion. We can do
2672 that with this vote on this amendment.

2673 I thank the gentleman from Texas, and I yield back.

2674 Mr. Smith of Texas. Mr. Chairman, I yield back as well.

2675 Mr. Gowdy. The gentleman from Texas yields.

2676 The gentlelady from Texas, Ms. Jackson Lee?

2677 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

2678 And I thank my colleagues for this debate.

2679 I take issue with the underlying bill, but also with the
2680 amendment of the gentleman from Iowa, but also its premise.

2681 Our colleague from California read adequately and
2682 pointedly language from the Supreme Court decision. I would
2683 hope that if any committee could adhere to the law of the
2684 land and a Supreme Court decision, it could at least be the
2685 Judiciary Committee. Frighteningly, it seems that we do not

2686 want to adhere to it.

2687 But I do want to recount, again, comments that were made
2688 about Mr. Obama's indication that he could not implement the
2689 DREAM Act -- it is a legislative matter -- or to pass it
2690 singlehandedly as a President. And he was correct. And he
2691 did not do that with the amendments that were promoted by
2692 the director of ICE.

2693 What was done by the director of ICE was not a passage
2694 of law, but an emphasis on the implementation of law. And
2695 that is, we have recounted that the prosecutorial discretion
2696 has been part of the legal system for a very long time. But
2697 I would imagine that any prosecutor would indicate that they
2698 are guided by certain principles, of which the President's
2699 directives and the documents by the director of ICE frame
2700 those principles that allow prosecutorial discretion in
2701 relation to those principles.

2702 If some of those had to do with a premise that a child
2703 who had been brought here through no fault of his or her own
2704 posed no threat to the society, then you can use your
2705 prosecutorial discretion. That is quite appropriate, and it
2706 is not unconstitutional. And it is not an indication that

2707 the President has passed any law.

2708 It is, in fact, what it is, prosecutorial discretion.

2709 I cannot imagine that any U.S. attorney in using
2710 prosecutorial discretion does not fall back either on past
2711 experience with the law, the law, interpretation of law,
2712 court interpretation of the law. And, therefore, in this
2713 instance, to be able to use the determination from someone
2714 who is under the auspices of Homeland Security and the
2715 Justice Department, which is supposed to safeguard the
2716 American people, they made a decision that resulted in a
2717 prosecutorial decision by discretion that these individuals
2718 would not be a threat.

2719 And so the gentleman's effort to counter what has been
2720 used thoughtfully seems to me to be punitive. And it has no
2721 constructive point to it, because I don't know, out of the
2722 5,000 applications, whether or not he can now cite any
2723 number of terrorists that might have used prosecutorial
2724 discretion.

2725 With the review that is required by ICE, I hold
2726 confidence in ICE that, in fact, they would not have the
2727 prosecutorial discretion or utilize it to pass over and to

2728 allow individuals who would do harm to this country.

2729 So I am disappointed that we have an amendment such as
2730 this before us. There have been a tangle with these
2731 amendments over and over again, with these -- particularly
2732 prosecutorial discretion. But no one can point to where
2733 they have undermined our legal system, where they have
2734 thwarted ICE from doing its work. It may have caused
2735 disagreement among some ICE employees who disagree
2736 politically with the impetus of this issue. But it is not a
2737 political issue. And that is fair enough for them to have
2738 the disagreement.

2739 But I don't believe that they can suggest that it is
2740 inappropriate, and that the memos do not give the
2741 appropriate guidance under prosecutorial discretion, as
2742 evidenced by the putting forward by the director of ICE.

2743 So I would say to my colleagues, however you try to get
2744 around this, and however the gentleman from Iowa tries to
2745 classify this as dictating to the ICE officers, that is not
2746 the case.

2747 Mr. Conyers. Will the gentlelady yield?

2748 Ms. Jackson Lee. I would be happy to yield.

2749 Mr. Conyers. I just wanted to commend her on her
2750 analysis, and remind all of our members that prosecutorial
2751 discretion is a longstanding principle of law enforcement.
2752 For us to be debating it, as if there is a good side and a
2753 bad side, and whether we should have it or not have it,
2754 seems a little unusual.

2755 Prosecutorial discretion has ensured fair and just
2756 outcomes in so many occasions. And I think law enforcement
2757 officials themselves have testified before this committee in
2758 support of it.

2759 And I thank the gentlelady for yielding.

2760 Ms. Jackson Lee. I welcome that.

2761 I will just conclude, Mr. Chairman, by simply saying, it
2762 is longstanding. And if there is any offer put before this
2763 committee of unfairness, in this instance, dealing with
2764 these particular factors, on the gentleman from Iowa's
2765 amendment, then it has not been put forward.

2766 I would ask my colleagues to reject the amendment and
2767 accept the longstanding principle of prosecutorial
2768 discretion.

2769 I yield back.

2770 Mr. Gowdy. I thank the gentlelady from Texas.

2771 The chair will now recognize the gentleman from
2772 Virginia, Mr. Forbes.

2773 Mr. Forbes. Mr. Chairman, thank you. I just appreciate
2774 so much the input of all the members on this committee on
2775 this issue, and their expertise.

2776 Certainly, we know that there are some longstanding
2777 principles of law that we have talked about here that we all
2778 support. Enforcing the law is a long-term principle that we
2779 embrace. Equal protection of the law is where we enforce it
2780 to everybody is a longstanding principle.

2781 And certainly, prosecutorial discretion, nobody disputes
2782 that prosecutorial discretion is a longstanding principle.
2783 We just differ on what prosecutorial discretion is.

2784 And the gentlelady from California, I know, has a lot of
2785 expertise in this. And she talked about temporary protected
2786 status, as if that was prosecutorial discretion.

2787 And I would just ask her how that is prosecutorial
2788 discretion, because I thought that was statutorily laid
2789 down?

2790 And I appreciate her input on that.

2791 Ms. Lofgren. If the gentleman would yield?

2792 Mr. Forbes. Yes, please.

2793 Ms. Lofgren. We have legislatively, from time to time,
2794 extended the temporary protected status, but it is actually
2795 an executive action.

2796 And I will give you an example where, in Honduras, there
2797 was a huge hurricane. There was tremendous damage. The
2798 country was barely able to cope. And Hondurans who were in
2799 the United States and who were out of status and subject to
2800 deportation were permitted to remain in the United States by
2801 executive action in a temporary protected status as an
2802 exercise of judicial --

2803 Mr. Forbes. Reclaiming my time, it is my understanding
2804 that we had given that legislative authority --

2805 Ms. Lofgren. No, it is a matter of prosecutorial
2806 discretion.

2807 Now, we have legislatively extended from time to time,
2808 but it is not necessary for the legislature to act.

2809 And I will give you another example. Liberians who were
2810 out of status, the executive -- and it wasn't President
2811 Obama, it was a prior President -- decided they couldn't be

2812 deported back to Liberia, because of the civil --

2813 Mr. Forbes. And sometimes that ends in some very
2814 difficult situations.

2815 For example, in Massachusetts, where we had the young
2816 girl obviously who had some severe attacks on her by
2817 individuals that were protected by temporary protected
2818 status, where they were members of a violent criminal gang,
2819 and they were here illegally. But because of that action,
2820 there was nothing law enforcement could do to them.

2821 The other question I would just raise on prosecutorial
2822 discretion, because Mr. Gowdy is one of the best prosecutors
2823 I know, and as he mentioned, he described prosecutorial
2824 discretion in the way that I always viewed it, which was on
2825 a case-by-case basis.

2826 Could the gentlelady just outline for me the other
2827 situation she knows, so we can go back and just review them,
2828 of where an executive has entered a broad mandate to
2829 prosecutors, where they couldn't enforce laws like they did
2830 under this particular one, or maybe your --

2831 Ms. Lofgren. Sure. The executive has made decisions
2832 based on nursing mothers, for example. And it is actually

2833 no longer TPS. DED is the current acronym. I want to be
2834 accurate about this deferred action.

2835 Mr. Forbes. Again, I don't want to cut off, but I'm
2836 losing my time. But I am just looking at the code under
2837 Section 1254(a), temporary protected status, where we
2838 outlined statutory authority and give that specific right to
2839 the executive branch to do that.

2840 Ms. Lofgren. If the gentleman would yield?

2841 Mr. Forbes. Sure.

2842 Ms. Lofgren. He is correct. We have now legislated
2843 that. It was initially part of a discretionary action. The
2844 DED action continues as part of discretionary action.

2845 And in answer to the gentleman's prior question,
2846 categories of individuals, for example nursing mothers, or
2847 in the case of --

2848 Mr. Forbes. And again, I am losing my time. But the
2849 temporary protected status was 1991. So it hasn't been just
2850 recently that we did it.

2851 And the last thing was, did we give any such authority
2852 to the President to issue this executive order that he
2853 issued regarding the illegal immigration situation?

2854 Ms. Lofgren. The President has the executive authority
2855 under the Constitution to make these judgments, as the Court
2856 most recently in Arizona pointed out.

2857 Mr. Forbes. With that, Mr. Chairman, I thank you for
2858 the time, and I yield back.

2859 Mr. Gowdy. I thank the gentleman from Virginia.

2860 The chair will now recognize the gentleman from
2861 Illinois, Mr. Gutierrez.

2862 Mr. Gutierrez. Thank you so much.

2863 First of all, the Congress of the United States, this
2864 committee and Congress, gave the President the authority to
2865 use prosecutorial discretion. As a matter of fact, there
2866 was a letter signed by Republicans and Democrats. I think
2867 it was 1999. One of the signatures to the letter is the
2868 former chairman of the Judiciary Committee, Mr. Lamar Smith,
2869 when he suggested to the presidential administration of
2870 Clinton that they might use prosecutorial discretion more
2871 frequently.

2872 So there were one, two, three former general counsels to
2873 the INS who each signed a letter indicating that the
2874 President had this authority under law. And these are the

2875 general counsels of the -- and here is the letter. It is
2876 November 4, 1999, to then Janet Reno: guidelines for use of
2877 prosecutorial discretion in removal proceedings. And it was
2878 to the Attorney General, and was signed by Henry Hyde, Lamar
2879 Smith. It says use it.

2880 So I think it is pretty well-established that the
2881 Congress of the United States has given this authority to
2882 the President of the United States. And he used it.

2883 Now I also want to go back to a very important point
2884 that I think Mr. Gowdy made about doing it on a case-by-case
2885 basis. It is on a case-by-case basis. Each and every case
2886 has to be judged individually.

2887 Many people think that the prosecutorial discretion
2888 under DACA, on the removal of youth, that all they have to
2889 do is show up and say, "I arrived here before I was 16."
2890 No. There are very stringent rules and regulations and
2891 matters of proof that they were here before 16.

2892 The first thing they get back in the mail is a letter
2893 saying, come on down and share with us your fingerprints, so
2894 that we can make sure that you are not a criminal.

2895 And so what is prosecutorial discretion? It is saying

2896 that, in the case of youth, it is saying, let me see, we can
2897 go after the head of the soccer team at the local high
2898 school, or we can go after the gang banger. We can go after
2899 the class valedictorian, or we can go after the rapist. We
2900 can go after the head of the debate team at the local
2901 college, or we can go after a criminal element.

2902 The fact is that we have limited resources. And what
2903 prosecutorial discretion allows us to do is to go after bad
2904 people while leaving people alone, as they are caught up in
2905 the morass of our broken immigration system.

2906 I think most people will agree that as you look at the
2907 youth, they are Americans in everything but a piece of
2908 paper. They like the same music our kids like. They dance
2909 the same. Dance as our kids dance. They go same school.

2910 You know something? I wish we would all go to a
2911 classroom and watch them day in and day out put their hands
2912 over their heart and pledge allegiance to the same flag that
2913 each and every one of us pledges allegiance to every day
2914 before we start a session of the Congress of the United
2915 States.

2916 All we are trying to do is have the paperwork catch up

2917 to who they really are. They are really American in
2918 everything but that piece of paper.

2919 They came here as children. This is the only country
2920 they know.

2921 And you want to know something? This is the country
2922 they love.

2923 And so part of the law is justice, right? Part of the
2924 law is justice, making sure that it is fair. And I think
2925 that is part of prosecutorial discretion.

2926 And please, to say that the President of the United
2927 States just made this up, and he did it, and somehow he made
2928 this up so that he could follow some new political -- are
2929 you kidding?

2930 Chairman Gowdy, I have to tell you, I was there in the
2931 room with him and he said he wouldn't use it for the
2932 DREAMers. He said he wouldn't use it for undocumented
2933 immigrants who have American citizen children. He told us
2934 no. I still remember when Senator Bob Menendez said to the
2935 President of the United States, right there in the dining
2936 room at the White House, that he would defend any action
2937 taken by the Congress of the United States to take away his

2938 prosecutorial discretion if he used it.

2939 He used it because a community of people demanded that
2940 he be fair, because the deportations were so ruthlessly
2941 dividing our families and crippling our ability to just
2942 breathe free in our neighborhoods.

2943 So I just want to say, look at who they are. I want to
2944 tell you, come on down to the Fourth Congressional District
2945 Office over on 3400 W. North Avenue, and come and meet Jose
2946 Quintero. He is going to go to architectural school. I
2947 hired him as soon as he got his documents. Come and meet
2948 Nancy. She is 24 years old. She is filling out more and
2949 more forms. She loves this country.

2950 You should see those two youngsters. They love it. And
2951 I am happy I hired them. Because you want to know
2952 something? It sets an example for others.

2953 And I want to say to Chairman Gowdy, sometimes we don't
2954 focus on what we are saying to one another. I heard you
2955 very clearly. I look forward to the moment when you and I
2956 can work on advancing citizenship for young people in this
2957 country. And I want to thank you for having made that
2958 statement as part of what you have said here today. I look

2959 forward to the day we work on that.

2960 Thank you so much, because that, again, I have to tell
2961 you, lifts my heart.

2962 Thank you, Mr. Chairman.

2963 Mr. Gowdy. I thank the gentleman from Illinois.

2964 The chair will now recognize the gentleman from Idaho,
2965 Mr. Labrador?

2966 Mr. Labrador. Thank you, Mr. Chairman.

2967 I just have a couple questions. Actually, I am a little
2968 bit confused by the arguments on both sides. So I have a
2969 couple questions for Mr. King.

2970 Is your amendment saying that the President has no
2971 discretion in the enforcement mechanisms that he has been
2972 given?

2973 Mr. King. No, actually, I think I have been very clear
2974 about that on the floor and before this committee. It
2975 actually restores prosecutorial discretion. The President
2976 took it away from his executive officers and his enforcement
2977 officers.

2978 I agree, we must have prosecutorial discretion. It is a
2979 longstanding principle. My position is that for the

2980 President to set aside entire classes of people, that
2981 actually runs contrary to the language within the memo
2982 itself that was so carefully noted six times "prosecutorial
2983 discretion," two times "on an individual basis only." I
2984 think that contemplated the litigation that has brought us
2985 to this point. We need to restore Article I and our
2986 constitutional authority, Mr. Labrador.

2987 Mr. Labrador. Thank you, Mr. King.

2988 So does the President have -- are you saying that he is
2989 not constitutionally able to exercise this discretion that
2990 he exercised in these four memos?

2991 Mr. King. I believe in the memos, that it defines
2992 classes of people in the memos. If you break that down and
2993 move it around into classes of people, and I do not believe
2994 that prosecutorial discretion allows him to classify and
2995 then exempt entire classes of people from the law.

2996 And by the way, I would point out, the President seems
2997 to be in disagreement with himself on this issue.

2998 Mr. Labrador. And you pointed that out very, very
2999 eloquently, Mr. King.

3000 So what in the Constitution prevents him from exercising

3001 this discretion on classes of people?

3002 Mr. King. It is a clearly defined principle in that, in
3003 the President's oath of office, it implied -- it is in the
3004 Constitution specifically. And it is linked to the
3005 President's specific oath that he take care that the laws be
3006 faithfully executed.

3007 Instead, as I said, he has executed the law by
3008 establishing classes of people. And there is no precedent
3009 out there that I know of that would rule that there is an
3010 authority to define classes of people and exempt them from
3011 the law. Furthermore, the President creates a work permit
3012 out of thin air, and that is clearly legislating by
3013 executive edict.

3014 Mr. Labrador. Thank you.

3015 The gentlelady from California, as you were reading the
3016 Supreme Court decision, I agree with everything the Supreme
3017 Court said in that decision. So what you are saying is your
3018 interpretation of that decision is that the President can
3019 pretty much exercise his discretion in any way he wants to.

3020 For example, if he decides tomorrow that he does not
3021 want to deport anybody in the United States who entered 5

3022 years ago, does he have that discretion to do that?

3023 Ms. Lofgren. I think that certainly no President would
3024 make that decision. But if you read the decision of the
3025 Court, there is broad discretion to make reasoned decisions.

3026 Mr. Labrador. Reclaiming my time, it is a simple yes or
3027 no question. Do you believe that the President tomorrow
3028 could determine that he will exercise his discretion and
3029 anybody who entered the United States 5 years ago or before,
3030 he will not deport.

3031 Ms. Lofgren. I suppose you could come up with a
3032 scenario where there would be reasons that could be cited,
3033 but I think there are limits to the exercise of discretion.

3034 Mr. Labrador. And what is that -- if I could follow-up
3035 with a question --

3036 Ms. Lofgren. I am not writing the Supreme Court
3037 decision, but I think there are certainly limits to
3038 executive authority, just as there are limits to
3039 congressional authority.

3040 Mr. Labrador. Okay.

3041 Reclaiming my time, this is a troubling issue, because I
3042 think the President clearly exceeded his authority. He

3043 clearly did it for a political reason, which is what
3044 concerns me the most.

3045 You had a member of the Senate who is working on
3046 legislation that was going to fix this problem. You had
3047 members in the House who were working on legislation, that
3048 were trying to fix this problem. And as soon as the
3049 President realized that there was something that could
3050 potentially pass the House and the Senate, he decided to
3051 exercise his discretion.

3052 What I am troubled -- and I still haven't decided how I
3053 am going to vote on this amendment, because I am not sure
3054 that the President doesn't have the authority to do what he
3055 did. And in fact, the law is pretty clear that if somebody
3056 is given this kind of deferred adjudication, they can
3057 receive work permits. The law is very clear about that.

3058 The problem is how he got all these people into the
3059 deferred adjudication problem. And that is what is really
3060 troubling me.

3061 Thank you. I yield back my time.

3062 Mr. Gowdy. Who else seeks time?

3063 Okay, the question is on the amendment.

3064 Those in favor, say aye.

3065 Those opposed, no.

3066 In the opinion of the chair, the ayes have it, and the
3067 amendment is --

3068 Ms. Lofgren. Mr. Chairman, I would ask for a recorded
3069 vote.

3070 Mr. Gowdy. A recorded vote is requested. The clerk
3071 will call the roll.

3072 Ms. Deterding. Mr. Goodlatte?

3073 Chairman Goodlatte. Aye.

3074 Ms. Deterding. Mr. Goodlatte votes aye.

3075 Mr. Sensenbrenner?

3076 Mr. Sensenbrenner. Aye.

3077 Ms. Deterding. Mr. Sensenbrenner votes aye.

3078 Mr. Coble?

3079 [No response.]

3080 Ms. Deterding. Mr. Smith of Texas?

3081 Mr. Smith of Texas. Aye.

3082 Ms. Deterding. Mr. Smith of Texas votes aye.

3083 Mr. Chabot?

3084 Mr. Chabot. Aye.

3085 Ms. Deterding. Mr. Chabot votes aye.

3086 Mr. Bachus?

3087 [No response.]

3088 Ms. Deterding. Mr. Issa?

3089 [No response.]

3090 Ms. Deterding. Mr. Forbes?

3091 Mr. Forbes. Aye.

3092 Ms. Deterding. Mr. Forbes votes aye.

3093 Mr. King?

3094 Mr. King. Aye.

3095 Ms. Deterding. Mr. King votes aye.

3096 Mr. Franks?

3097 Mr. Franks. Aye.

3098 Ms. Deterding. Mr. Franks votes aye.

3099 Mr. Gohmert?

3100 [No response.]

3101 Ms. Deterding. Mr. Jordan?

3102 Mr. Jordan. Yes.

3103 Ms. Deterding. Mr. Jordan votes aye.

3104 Mr. Poe?

3105 [No response.]

3106 Ms. Deterding. Mr. Chaffetz?

3107 Mr. Chaffetz. Aye.

3108 Ms. Deterding. Mr. Chaffetz votes aye.

3109 Mr. Marino?

3110 [No response.]

3111 Ms. Deterding. Mr. Gowdy?

3112 Mr. Gowdy. Aye.

3113 Ms. Deterding. Mr. Gowdy votes aye.

3114 Mr. Amodei?

3115 Mr. Amodei. Yes.

3116 Ms. Deterding. Mr. Amodei votes aye.

3117 Mr. Labrador?

3118 Mr. Labrador. Yes.

3119 Ms. Deterding. Mr. Labrador votes aye.

3120 Mr. Farenthold?

3121 Mr. Farenthold. Yes.

3122 Ms. Deterding. Mr. Farenthold votes aye.

3123 Mr. Holding?

3124 [No response.]

3125 Ms. Deterding. Mr. Collins?

3126 Mr. Collins. Aye.

3127 Ms. Deterding. Mr. Collins votes aye.

3128 Mr. DeSantis?

3129 Mr. DeSantis. Yes.

3130 Ms. Deterding. Mr. DeSantis votes aye.

3131 Mr. Smith of Missouri?

3132 Mr. Smith of Missouri. Yes.

3133 Ms. Deterding. Mr. Smith of Missouri votes aye.

3134 Mr. Conyers?

3135 Mr. Conyers. No.

3136 Ms. Deterding. Mr. Conyers votes no.

3137 Mr. Nadler?

3138 Mr. Nadler. No.

3139 Ms. Deterding. Mr. Nadler votes no.

3140 Mr. Scott?

3141 Mr. Scott. No.

3142 Ms. Deterding. Mr. Scott votes no.

3143 Mr. Watt?

3144 [No response.]

3145 Ms. Deterding. Ms. Lofgren?

3146 Ms. Lofgren. No.

3147 Ms. Deterding. Ms. Lofgren votes no.

3148 Ms. Jackson Lee?

3149 Ms. Jackson Lee. No.

3150 Ms. Deterding. Ms. Jackson Lee votes no.

3151 Mr. Cohen?

3152 [No response.]

3153 Ms. Deterding. Mr. Johnson?

3154 Mr. Johnson. No.

3155 Ms. Deterding. Mr. Johnson votes no.

3156 Mr. Pierluisi?

3157 Mr. Pierluisi. No.

3158 Ms. Deterding. Mr. Pierluisi votes no.

3159 Ms. Chu?

3160 Ms. Chu. No.

3161 Ms. Deterding. Ms. Chu votes no.

3162 Mr. Deutch?

3163 Mr. Deutch. No.

3164 Ms. Deterding. Mr. Deutch votes no.

3165 Mr. Gutierrez?

3166 Mr. Gutierrez. No.

3167 Ms. Deterding. Mr. Gutierrez votes no.

3168 Ms. Bass?

3169 Ms. Bass. No.

3170 Ms. Deterding. Ms. Bass votes no.

3171 Mr. Richmond?

3172 Mr. Richmond. No.

3173 Ms. Deterding. Mr. Richmond votes no.

3174 Ms. DelBene?

3175 Ms. DelBene. No.

3176 Ms. Deterding. Ms. DelBene votes no.

3177 Mr. Garcia?

3178 Mr. Garcia. No.

3179 Ms. Deterding. Mr. Garcia votes no.

3180 Mr. Jeffries?

3181 Mr. Jeffries. No.

3182 Ms. Deterding. Mr. Jeffries votes no.

3183 Chairman Goodlatte. [Presiding] The gentleman from North
3184 Carolina?

3185 Mr. Coble. Aye.

3186 Chairman Goodlatte. The gentleman from Tennessee?

3187 Mr. Cohen. No.

3188 Chairman Goodlatte. The gentleman from California?

3189 Mr. Issa. Yes.

3190 Chairman Goodlatte. The gentleman from Texas?

3191 Mr. Gohmert. Yes.

3192 Chairman Goodlatte. Are there the members who are not
3193 recorded who wish to vote?

3194 The gentleman from Alabama. I'm sorry.

3195 Mr. Bachus. No.

3196 Ms. Deterding. Mr. Bachus votes no.

3197 Chairman Goodlatte. The clerk will report.

3198 Ms. Deterding. Mr. Chairman, 20 members voted aye; 15
3199 members voted nay.

3200 Chairman Goodlatte. And the amendment is agreed to.

3201 For what purpose does the gentlewoman from California
3202 seek recognition?

3203 Ms. Lofgren. Mr. Chairman, I have an amendment, but I
3204 note that we have been called to votes on the floor. And
3205 I'm reluctant to offer it and bifurcate the argument. I
3206 realize that the chairman is eager to work through all the
3207 amendments and wants to use all the time. But I have a
3208 proposal for you.

3209 In exchange for not bifurcating the argument on the
3210 Lofgren No. 7, we will agree not to offer amendment No. 5.

3211 Chairman Goodlatte. It sounds like a pretty good deal.
3212 And as a result of that bilateral agreement, the committee
3213 will stand in recess, and we will reconvene as soon as these
3214 votes are completed.

3215 [Recess.]

3216 Chairman Goodlatte. The committee will reconvene.
3217 Under consideration are amendments to H.R. 2278. And before
3218 we turn to the gentlewoman from California for her
3219 amendment, I need to note that the final vote count on the
3220 King amendment was incorrectly reported. We initially
3221 indicated that the amendment was adopted by a 20 to 15 vote;
3222 however, after consultation with the clerks and the
3223 stenographer, we have determined that the amendment actually
3224 passed by a 19 to 17 vote.

3225 So I ask unanimous consent that the record be changed to
3226 reflect the actual result in which the committee agreed to
3227 the King amendment by a vote of 19 members voting yes and 17
3228 members voting no.

3229 And without objection, the record will be changed to
3230 correctly reflect the vote.

3231 And the chair now turns to the gentlewoman from

3232 California, Ms. Lofgren.

3233 Ms. Lofgren. Thank you, Mr. Chairman. I would like to
3234 have the clerk report Lofgren 7. It is striking Section
3235 102.

3236 Chairman Goodlatte. The clerk will report the
3237 amendment.

3238 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.
3239 Lofgren, beginning on page 5 --

3240 Chairman Goodlatte. Without objection, the amendment
3241 will be considered as read.

3242 [The amendment of Ms. Lofgren follows:]

3243

3244 Chairman Goodlatte. And the gentlewoman is recognized
3245 for 5 minutes to explain her amendment.

3246 Ms. Lofgren. Mr. Chairman, Section 102 of the bill
3247 would permit States or localities to both enact and
3248 implement criminal or civil laws punishing immigration
3249 violations, as well as, as has been earlier discussed, grant
3250 State and local law enforcement personnel the same authority
3251 as Federal law enforcement personnel to arrest or detain
3252 undocumented individuals and to enforce Federal immigration
3253 law.

3254 This is an unprecedented expansion in State and local
3255 authority to create, as well as enforce, immigration laws.
3256 And I believe that the provision will harm our economy,
3257 undermine community policing, and increase racial profiling,
3258 as well as enforcement errors. This amendment would strike
3259 Section 102 and restore the primacy of the Federal
3260 government to create and enforce immigration laws.

3261 Section 102 essentially overturns the Supreme Court's
3262 decision in *Arizona v. the United States*, and I believe it
3263 will create an unworkable immigration regime that will
3264 decrease public safety and potentially adversely impact our

3265 Nation's foreign relations.

3266 Imagine under Title I, all 50 States and really tens of
3267 thousands of cities and counties adopting their own
3268 immigration laws. This would undermine the ability of the
3269 Federal government to ensure consistent, effective, and
3270 cost-effective immigration enforcement.

3271 I also believe that Section 102 will harm local
3272 economies and businesses. I will not go through all of the
3273 States and their losses, but just for example, in Arizona,
3274 which was the subject of the Supreme Court decision, the
3275 estimate is that Arizona lost \$141 million in conference
3276 cancellations alone, and lost \$253 million in overall
3277 economic output because of the separate Arizona law.

3278 I also believe that separate State and local immigration
3279 enforcement can ensnare international investors who want to
3280 do business in the United States. For example, in November
3281 of 2011, and I was down in Birmingham, Alabama the day after
3282 this happened, a German Mercedes Benz executive was visiting
3283 an auto plant in Tuscaloosa, Alabama, and he was arrested
3284 during a routine traffic stop for failing to produce
3285 evidence that he was in the United States lawfully. And I

3286 remember the headline in Oklahoma at the time was that they
3287 were trying to get Mercedes Benz to move to Oklahoma rather
3288 than Arizona. And the pitch was, we are the show me State,
3289 not the show me your papers State. Certainly, the impact on
3290 our international treaties and our international
3291 competitiveness would be impacted.

3292 Section 102 I think also undermines public safety by
3293 making victims and witnesses of crime afraid to come
3294 forward. And I would note that the amicus brief filed by
3295 the Major Cities Chiefs of Police Association, the Police
3296 Executive Research Forum, and the National Latino Peace
3297 Officer Association, as well as 18 present or former chiefs
3298 of police, explained to the Court in the Arizona case why
3299 this provision is adverse for law enforcement.

3300 I also would note that Section 102 permits States and
3301 localities, even those with a history of discriminatory
3302 practices -- and regrettably there are some, and we noted
3303 them the other day in the hearing -- where police officers
3304 were arrested for beating immigrants. And the Justice
3305 Department has had to step forward to take action against
3306 sheriffs. And even in those cases, the discriminating

3307 localities would be permitted to adopt immigration measures
3308 as well as enforcement measures.

3309 Section 102 further does not provide any training to
3310 those localities who might engage in adoption of their own
3311 immigration laws. And it is worth noting that, as I said
3312 the other day, there are circumstances where one may gain
3313 United States citizenship through the nationality of one's
3314 parents. And at the time, I did not have this estimate.
3315 Professor Jacqueline Stevens, whose research supported the
3316 U.S. Immigration and Customs Enforcement, may have
3317 incarcerated over 20,000 United States citizens in the last
3318 numbers of years, and has deported thousands more. And
3319 actually, I have run into several cases where individuals
3320 were incarcerated or, in some cases, were deported, and they
3321 were Americans.

3322 So I would like to ask unanimous consent, Mr. Chairman,
3323 to put in the record statements from the chief of police in
3324 Salt Lake City in opposition to the bill and, particularly,
3325 the provision that this amendment would strike, as well as
3326 Sheriff Mark Curran, the sheriff of Lake County, Illinois,
3327 as well as the chief of police in Riverside, California, all

3328 opposing the bill, and particularly outlining the objections
3329 to Section 102.

3330 And I see that my time is expiring, so --

3331 Chairman Goodlatte. Without objection, the letters will
3332 be made a part of the record.

3333 [The information follows:]

3334

3335 Chairman Goodlatte. And the gentlewoman's time has
3336 expired.

3337 And the chair recognizes himself in opposition to the
3338 amendment.

3339 This amendment strikes the most crucial provision in Mr.
3340 Gowdy's bill, the provision ensuring that State and local
3341 law enforcement can participate in the enforcement of our
3342 immigration laws. Section 102 is designed to end the
3343 current state of affairs in which the Nation's immigration
3344 laws go largely unenforced because the President has
3345 directed his Administration to simply not enforce them.

3346 The section partially overturns the Supreme Court's
3347 decision in *Arizona v. U.S.*, and grants States and
3348 localities specific congressional authorization to enact and
3349 enforce criminal and civil penalties that penalize conduct
3350 prohibited by criminal and civil provisions of Federal
3351 immigration law, as long as the penalties do not exceed the
3352 relevant Federal penalties and Federal law does not
3353 otherwise prohibit such laws.

3354 The section also provides that law enforcement personnel
3355 of States and localities may investigate, identify,

3356 apprehend, detain, or transfer to Federal custody aliens in
3357 the United States for the purpose of enforcing the
3358 immigration laws of the United States. Without the
3359 assistance of State and local law enforcement, we have no
3360 mechanism to ensure that the immigration laws will be
3361 enforced, despite the changing winds in the White House.

3362 I urge my colleagues to oppose this amendment, and would
3363 remind everyone on both sides of the aisle here that as we
3364 move forward to try to find accommodation in all three areas
3365 of immigration reform, we are going to have to satisfy those
3366 who are concerned that our current immigration laws are
3367 simply not being enforced, and find new ways to accomplish
3368 that.

3369 We welcome everyone's ideas on how to accomplish that,
3370 but I, in particular, oppose efforts to remove the ones that
3371 we already have in Mr. Gowdy's bill.

3372 And I yield back my time.

3373 Who seeks recognition?

3374 The gentleman from Georgia, Mr. Johnson, is recognized
3375 for 5 minutes.

3376 Mr. Johnson. Thank you. Move to strike the last word.

3377 And I would yield to my colleague from California.

3378 Ms. Lofgren. Thank you, Mr. Johnson. I wanted to
3379 mention another reason why 102 is problematic. As we know,
3380 in the current law, there is a provision that allows for
3381 victims of violent crime, those who are seeking asylum, to
3382 obtain relief. The U visas that we have talked about
3383 actually require participation of local law enforcement for
3384 the victim of crime or the witnesses to gain status, but
3385 oftentimes these individuals do not actually get
3386 documentation for some period of time while the process is
3387 going forward.

3388 I think it is highly likely that Section 102 will lead
3389 to the arrest and detention of victims of violent crime who
3390 are applicants for U visas, as well as asylum seekers, and
3391 also relatives of United States citizens who may lack
3392 documentation, but are entitled to immigration relief.

3393 I also think it would be just --

3394 Mr. Labrador. I wonder if the gentlelady would yield to
3395 a question.

3396 Ms. Lofgren. Certainly.

3397 Mr. Labrador. Gentlelady, I keep being confused by the

3398 argument from the other side against loss. Is your position
3399 that under current law, all these people are going to be
3400 subjected to removal and deportation, or are you envisioning
3401 a world where we actually have immigration reform, and this
3402 current bill only applies to the new people who have entered
3403 illegally?

3404 Ms. Lofgren. Reclaiming Mr. Johnson's time, this bill
3405 has no trigger relative to going into effect when
3406 immigration reform has been accomplished. I am taking this
3407 at face value. It is an enforcement only bill, and I think
3408 it is --

3409 Chairman Goodlatte. Would the gentlewoman yield?

3410 Ms. Lofgren. Not at this moment. If I could finish my
3411 thought, and then I would be happy to.

3412 Chairman Goodlatte. Thank you.

3413 Ms. Lofgren. I know the chairman has many ways to get
3414 time.

3415 Think about the practicality of the 17 cities in my
3416 county adopting their own immigration laws, which is what
3417 this would permit. You have, consistent with Federal law,
3418 the crime of harboring, and you can have harboring with a

3419 commercial purpose, or you can have harboring with a non-
3420 commercial purpose. We have seen instances where States and
3421 localities believed that harboring was a United States'
3422 citizen teenage daughter driving her undocumented mother to
3423 the dentist. In the town next door, harboring could be only
3424 for a fee, acting as a coyote, helping people to break the
3425 law.

3426 This would be chaotic. And I think there is a reason
3427 why the Constitution provides for a uniform immigration law
3428 in the United States. It is because we need to have
3429 consistency of the laws among the States and localities.
3430 And I also think, as the Court recognized in the *Arizona*
3431 decision, immigration law is intricately connected with
3432 foreign policy.

3433 I am not going to go into the various communications
3434 many members have had with various countries in Latin
3435 America, but the idea that immigration is unrelated to
3436 foreign policy is incorrect. And I think that is an
3437 additional reason why the laws should be uniform.

3438 So I think that this amendment is an important one. And
3439 now that I have been able to make that point, Mr. Chairman,

3440 I would be happy to yield to you.

3441 Chairman Goodlatte. I thank the gentlewoman for
3442 yielding. I simply want to agree with you that there should
3443 be uniform enforcement of our immigration laws. The fact of
3444 the matter is today there is not uniform enforcement. You
3445 have sanctuary cities that refuse to cooperate with Federal
3446 law enforcement.

3447 All this bill says is that you cannot exceed the
3448 authority of the Federal law, but you can enforce within
3449 that Federal law. So it seems to me that the goal of
3450 consistency is not in any way changed by this effort. It
3451 simply says that State and local law enforcement can
3452 participate in enforcing the laws.

3453 Ms. Lofgren. Reclaiming my time, as you know --

3454 Chairman Goodlatte. The time belongs to the gentleman
3455 from Georgia.

3456 Ms. Lofgren. -- so-called sanctuary cities may not
3457 amend Federal law. And when it comes to the secure
3458 community issue, I think it is very clear that States and
3459 localities, according to the various court decisions, may
3460 not be commandeered by the Federal government in order to

3461 enforce the Federal law. There is a long line of cases on
3462 that. The idea of a request for detainer is just that, a
3463 request that can be either agreed to or not agreed to by
3464 local governments. I realize the chairman does not agree
3465 with those local governments and police agencies who have
3466 reached a conclusion different than his own, but certainly
3467 the law provides and allows for them to do so.

3468 And I see that Mr. Johnson's time has expired, so I
3469 would yield back to Mr. Johnson with thanks.

3470 Chairman Goodlatte. The question occurs on the
3471 amendment offered by the gentlewoman from --

3472 Ms. Jackson Lee. Mr. Chairman?

3473 Chairman Goodlatte. For what purpose does the
3474 gentlewoman from Texas seek recognition?

3475 Ms. Jackson Lee. To strike the last word.

3476 Chairman Goodlatte. The gentlewoman is recognized for 5
3477 minutes.

3478 Ms. Jackson Lee. Mr. Chairman, I likewise join with my
3479 colleague from California and propose striking the bill, the
3480 particular section myself. And I wanted to draw another
3481 sort of comparison or another reason for being concerned

3482 about this provision.

3483 Let us not forget that we are in the middle of
3484 sequestration. I am not sure in the totality of this bill
3485 are we expecting to provide extra magical funding for all
3486 that we are now asking local government to do. I may raise
3487 that issue of unfunded mandates that has not been raised in
3488 this Congress for a long time. But for a number of years,
3489 we understood what unfunded mandate meant. It meant that
3490 you would burden a local government, tell them to do
3491 something, and give them no money.

3492 And so, it specifically says in Section 102 that the
3493 States or political subdivision of States may enact,
3494 implement, and enforce criminal penalties that penalize the
3495 same conduct that is prohibited in the criminal provisions
3496 of the immigration law. The only respect for the
3497 immigration laws is that they should not exceed the Federal
3498 penalties, but they can have differing penalties. And in
3499 local government, where there may be a range of discretion
3500 under Federal law of some sort, in local government, they
3501 may decide to utilize the statute and have a consistent
3502 penalty.

3503 But the use of the law entraps and brings in people who,
3504 in fact, have Federal rights. And there is no way to
3505 petition those rights because local authority has now
3506 usurped the implementation of the law.

3507 Again, this is broadening what should be Federal
3508 authority to a number of players. And so, you have
3509 different interpretations in Alabama, and Arizona, and
3510 Virginia, New York, maybe California, that really, I
3511 believe, is creating both disarray and insulting what should
3512 be a standard of Federal law.

3513 And I would offer that 102 is, from my perspective,
3514 again a question of really ignoring both Supreme Court law,
3515 and the Constitution, and this issue of the Federal
3516 authority that we adhere to. This is not a 10th Amendment
3517 situation where what is not given to the Federal authority
3518 is left to the States.

3519 And I also look to see that this section grants States
3520 and localities specific congressional authorization to
3521 assist in the enforcement of Federal immigration law. What
3522 a maze of confusion both for those who are impacted by it
3523 and the enforcers. And you also take away the authority of

3524 a local entity to make their own judgment about whether or
3525 not they want to engage in the enforcement of Federal
3526 immigration law.

3527 So I am not sure where this bill is going, but here is
3528 another example of sort of dancing all over the set and
3529 stepping on, I think, the constitutional premise of the
3530 three branches of government and the authority of the
3531 Federal government, and enforcing or pushing local authority
3532 to take on Federal responsibility. I bet most cities and
3533 counties would ask for the money, along with the State as
3534 well.

3535 So I support the gentlelady's amendment, which is to
3536 strike Section 102.

3537 Chairman Goodlatte. The question occurs on the
3538 amendment offered by the gentlewoman from California.

3539 All those in favor, respond by saying aye.

3540 Those opposed, no.

3541 In the opinion of the chair, the noes have it. The
3542 amendment is not agreed to.

3543 Ms. Lofgren. Mr. Chairman, I request a recorded vote.

3544 Chairman Goodlatte. A recorded vote is requested, and

3545 the clerk will call the roll.

3546 The gentleman has asked for a recorded vote, and it will
3547 be on the gentleman's 2 amendments considered en bloc. The
3548 clerk will call the roll.

3549 Ms. Deterding. Mr. Goodlatte?

3550 Chairman Goodlatte. No.

3551 Ms. Deterding. Mr. Goodlatte votes no.

3552 Mr. Sensenbrenner?

3553 [No response.]

3554 Ms. Deterding. Mr. Coble?

3555 [No response.]

3556 Ms. Deterding. Mr. Smith of Texas?

3557 [No response.]

3558 Ms. Deterding. Mr. Chabot?

3559 Mr. Chabot. No.

3560 Ms. Deterding. Mr. Chabot votes no.

3561 Mr. Bachus?

3562 Mr. Bachus. No.

3563 Ms. Deterding. Mr. Bachus votes no.

3564 Mr. Issa?

3565 [No response.]

3566 Ms. Deterding. Mr. Forbes?
3567 Mr. Forbes. No.
3568 Ms. Deterding. Mr. Forbes votes no.
3569 Mr. King?
3570 Mr. King. No.
3571 Ms. Deterding. Mr. King votes no.
3572 Mr. Franks?
3573 Mr. Franks. No.
3574 Ms. Deterding. Mr. Franks votes no.
3575 Mr. Gohmert?
3576 [No response.]
3577 Ms. Deterding. Mr. Jordan?
3578 [No response.]
3579 Ms. Deterding. Mr. Poe?
3580 [No response.]
3581 Ms. Deterding. Mr. Chaffetz?
3582 Mr. Chaffetz. No.
3583 Ms. Deterding. Mr. Chaffetz votes no.
3584 Mr. Marino?
3585 Mr. Marino. No.
3586 Ms. Deterding. Mr. Marino votes no.

3587 Mr. Gowdy?

3588 Mr. Gowdy. No.

3589 Ms. Deterding. Mr. Gowdy votes no.

3590 Mr. Amodei?

3591 [No response.]

3592 Ms. Deterding. Mr. Labrador?

3593 Mr. Labrador. No.

3594 Ms. Deterding. Mr. Labrador votes no.

3595 Mr. Farenthold?

3596 Mr. Farenthold. No.

3597 Ms. Deterding. Mr. Farenthold votes no.

3598 Mr. Holding?

3599 Mr. Holding. No.

3600 Ms. Deterding. Mr. Holding votes no.

3601 Mr. Collins?

3602 Mr. Collins. No.

3603 Ms. Deterding. Mr. Collins votes no.

3604 Mr. DeSantis?

3605 Mr. DeSantis. No.

3606 Ms. Deterding. Mr. DeSantis votes no.

3607 Mr. Smith of Missouri?

3608 Mr. Smith of Missouri. No.

3609 Ms. Deterding. Mr. Smith of Missouri votes no.

3610 Mr. Conyers?

3611 Mr. Conyers. Aye.

3612 [Laughter.]

3613 Ms. Deterding. Mr. Conyers votes aye.

3614 Mr. Nadler?

3615 Mr. Nadler. Aye.

3616 Ms. Deterding. Mr. Nadler votes aye.

3617 Mr. Scott?

3618 Mr. Scott. Aye.

3619 Ms. Deterding. Mr. Scott votes aye.

3620 Mr. Watt?

3621 [No response.]

3622 Ms. Deterding. Ms. Lofgren?

3623 Ms. Lofgren. Aye.

3624 Ms. Deterding. Ms. Lofgren vote aye.

3625 Ms. Jackson Lee?

3626 Ms. Jackson Lee. Yes.

3627 Ms. Deterding. Ms. Jackson Lee votes aye.

3628 Mr. Cohen?

3629 [No response.]

3630 Ms. Deterding. Mr. Johnson?

3631 Mr. Johnson. Aye.

3632 Ms. Deterding. Mr. Johnson votes aye.

3633 Mr. Pierluisi?

3634 Mr. Pierluisi. Aye.

3635 Ms. Deterding. Mr. Pierluisi votes aye.

3636 Ms. Chu?

3637 Ms. Chu. Aye.

3638 Ms. Deterding. Ms. Chu votes aye.

3639 Mr. Deutch?

3640 Mr. Deutch. Aye.

3641 Ms. Deterding. Mr. Deutch votes aye.

3642 Mr. Gutierrez?

3643 [No response.]

3644 Ms. Deterding. Ms. Bass?

3645 Ms. Bass. Aye.

3646 Ms. Deterding. Ms. Bass votes aye.

3647 Mr. Richmond?

3648 [No response.]

3649 Ms. Deterding. Ms. DelBene?

3650 Ms. DelBene. Aye.

3651 Ms. Deterding. Ms. DelBene votes aye.

3652 Mr. Garcia?

3653 Mr. Garcia. Aye.

3654 Ms. Deterding. Mr. Garcia votes aye.

3655 Mr. Jeffries?

3656 Mr. Jeffries. Aye.

3657 Ms. Deterding. Mr. Jeffries votes aye.

3658 Chairman Goodlatte. The gentleman from Wisconsin?

3659 Mr. Sensenbrenner. No.

3660 Ms. Deterding. Mr. Sensenbrenner votes no.

3661 Chairman Goodlatte. The gentleman from North Carolina?

3662 Mr. Coble. No.

3663 Ms. Deterding. Mr. Coble votes no.

3664 Chairman Goodlatte. The gentleman from Ohio?

3665 Mr. Jordan. No.

3666 Ms. Deterding. Mr. Jordan votes no.

3667 Chairman Goodlatte. The gentleman from Texas?

3668 Mr. Poe. No.

3669 Ms. Deterding. Mr. Poe votes no.

3670 Chairman Goodlatte. Are there other members who wish --

3671 the gentleman from Nevada?

3672 Mr. Amodei. No.

3673 Ms. Deterding. Mr. Amodei votes no.

3674 Chairman Goodlatte. Are there members who wish to vote?

3675 [No response.]

3676 Chairman Goodlatte. The clerk will report.

3677 The gentleman from California?

3678 Mr. Issa. No.

3679 Ms. Deterding. Mr. Issa votes no.

3680 Chairman Goodlatte. The clerk will report.

3681 Ms. Deterding. Mr. Chairman, 13 members voted aye, 21

3682 members votes nay.

3683 Chairman Goodlatte. And the amendment is not agreed to.

3684 The gentleman from Iowa, for what purpose do you seek

3685 recognition?

3686 Mr. King. Mr. Chairman, I have an amendment at the

3687 desk.

3688 Chairman Goodlatte. The clerk will report the

3689 amendment.

3690 Mr. King. King 44.

3691 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.

3692 King of Iowa, page 174, after line 21, add the following --

3693 Chairman Goodlatte. Without objection, the amendment

3694 will be considered as read.

3695 [The amendment of Mr. King follows:]

3696

3697 Chairman Goodlatte. And the gentleman is recognized for
3698 5 minutes to explain his amendment.

3699 Mr. King. Thank you, Mr. Chairman. This amendment is
3700 converted to an amendment from a broader bill that I have
3701 sponsored here for a couple of Congresses. And it is
3702 normally known as the Birthright Citizenship Bill, or the
3703 Anchor Baby's Bill, and now in the form of an amendment.

3704 And to take you all back to the 14th amendment in the
3705 Constitution, which, yes, provides equal protection, but
3706 also says that all persons born in the United States and
3707 subject to the jurisdiction thereof are American citizens.
3708 And the scholarship behind that 14th Amendment takes us just
3709 in the aftermath of the Civil War when the drafters of the
3710 amendment, of the 14th Amendment, were seeking to guarantee
3711 that not only would the former slaves, now freed, would be
3712 American citizens, but their children would also be American
3713 citizens. That was the purpose of the language in the 14th
3714 amendment.

3715 And the clause within it, "All persons born in the
3716 United States and subject to the jurisdiction thereof," is
3717 the clause. "Subject to the jurisdiction thereof" was

3718 considered then, and should be considered now, to apply the
3719 way it was defined. And that is they did not expect that
3720 the children of diplomats would be citizens of the United
3721 States, which they are now today, neither did they expect
3722 that there would be tourism. They certainly did not expect
3723 there would be birth tourism where we have people coming to
3724 the United States for the purposes of having a baby, and
3725 getting that birth certificate, and then flying back to
3726 their home country and reentering, or staying here illegally
3727 and living off of the connections that come with that new
3728 little citizen that comes.

3729 We have had hearings in past years before this committee
3730 that show someplace between 340,000 and 750,00 babies are
3731 born in this country in a year that are granted this
3732 automatic citizenship, which is not a constitutional right,
3733 and neither is it is a statutory right. It is a practice
3734 that has evolved from the time it was of small consequence
3735 to the time today where it is of large consequence.

3736 And so what my amendment does is clarifies that babies
3737 born in the United States are citizens, provided that they
3738 are born to at least one parent who is a citizen or

3739 national, or a parent who is an alien lawfully admitted in
3740 LPR status, or if they are in the armed forces. Those are
3741 the three provisions.

3742 And this is, I believe, a well thought out piece of
3743 language, and I believe that the Constitution would be
3744 protected if it is litigated. We know that almost anything
3745 that emerges as an immigration legislation is litigated by
3746 the other side.

3747 And should we hold back and wait until we clarify this
3748 with a constitutional amendment? I do not know how you make
3749 it clearer than the language that is there: "All persons
3750 born in the United States and subject to the jurisdiction
3751 thereof." So I do not know how you would amend the Constitution
3752 in anticipation of a Supreme Court decision. I believe that
3753 we have to, first, legislate with clarity to end that
3754 practice of granting automatic citizenship. And then at
3755 that point when the litigation begins, I have to put my
3756 trust in the Supreme Court, Mr. Chairman.

3757 Mr. Nadler. Would the gentleman yield?

3758 Mr. King. I would yield.

3759 Mr. Nadler. I am just curious. Who born in the United

3760 States are you trying to say would not be subject to the
3761 jurisdiction thereof? Who, in other words, would not get
3762 birthright citizenship under your amendment?

3763 Mr. King. And reclaiming my time, it would be those who
3764 are born to parents who are unlawfully present in the United
3765 States, or those who are born to -- if it is a single
3766 parent, then they would not have automatic citizenship. If
3767 they have a parent that is lawfully present in the United
3768 States, they would get citizenship under this legislation.

3769 Mr. Nadler. Would you further yield?

3770 Mr. King. Yes, I would yield.

3771 Mr. Nadler. So in other words, what you are saying is
3772 that if someone is unlawfully present in the United States,
3773 they are not subject to our jurisdiction?

3774 Mr. King. Under the understanding of the 14th amendment
3775 as it was drafted, which it certainly must be, or it is a
3776 moving Constitution, yes.

3777 Mr. Nadler. Thank you.

3778 Mr. King. And I would point out, and reclaiming my
3779 time, and I thank the gentleman for his question, that a
3780 subpart of that clause, "subject to the jurisdiction

3781 thereof," was also at the request of some Native Americans
3782 who would have lost their membership in the tribe if they
3783 were automatically citizens of the United States.

3784 So there is much to be learned about this. And I think,
3785 too, that this Congress has not had this discussion in some
3786 time. And I am hopeful that we could have that kind of
3787 discussion in the kind of forum that would take us deeper
3788 into the scholarship of this so everybody is aware of the
3789 subject matter.

3790 I think I would yield to the chairman if he might have a
3791 comment.

3792 Chairman Goodlatte. Well, the gentleman, if he would
3793 yield, I would say to the gentleman that this is an issue of
3794 birthright citizenship that should be addressed, but I do
3795 not think this markup is the correct environment in which to
3796 debate and make a decision about this.

3797 And I do think it requires some further legal
3798 exploration. And if the gentleman would withdraw the
3799 amendment, I would commit to making sure that his concerns
3800 are addressed in appropriate manner by people who are
3801 constitutional law experts and can look at his language in

3802 the 14th Amendment that he thinks may point to a way to
3803 solve this problem without a constitutional amendment. And
3804 I would be interested in hearing those same scholars'
3805 opinions on the issue.

3806 Mr. King. Reclaiming my time, thank you, Mr. Chairman.
3807 I would very much look forward to that. I think it is very
3808 important that this committee and this Congress be fully
3809 informed before making a decision on this type of
3810 legislation because it is far reaching, and it does go into
3811 the heart of the topic that we are talking about here. I
3812 believe it is germane to the bill.

3813 But regardless, with these comments and mine, I would
3814 ask unanimous consent to withdraw my amendment.

3815 Chairman Goodlatte. Without objection, the amendment is
3816 withdrawn.

3817 Are there further amendments?

3818 Ms. Lofgren. Mr. Chairman, we are, I think, very soon
3819 going to begin debate on a bill that is under the
3820 jurisdiction of this committee. And although the rules do
3821 not require us to recess until it is actually up, I would
3822 hope we will have enough time to get over to the floor.

3823 Chairman Goodlatte. The gentlewoman is correct. We
3824 believe there is about 20 minutes before the measure will be
3825 on the floor, so we would like to continue onto another
3826 amendment. And we will certainly recess in time for members
3827 to get to the floor for the debate on the bill, which is the
3828 jurisdiction of this committee.

3829 Does anyone have amendment?

3830 Mr. Johnson. I do.

3831 Chairman Goodlatte. We will go to the gentleman from
3832 New York.

3833 Mr. Johnson. I have an amendment at the desk.

3834 Chairman Goodlatte. The chair recognizes the gentleman
3835 from New York.

3836 Mr. Johnson. Oh, okay.

3837 Mr. Nadler. Thank you, Mr. Chairman. I have an
3838 amendment at the desk, the one about Section 301(b).

3839 Chairman Goodlatte. The clerk will report the
3840 amendment.

3841 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
3842 Nadler, beginning on page 51, strike line 12 through page --

3843 Chairman Goodlatte. Without objection, the amendment is

3844 be considered as read.

3845 [The amendment of Mr. Nadler follows:]

3846

3847 Chairman Goodlatte. And the gentleman from New York is
3848 recognized for 5 minutes.

3849 Mr. Nadler. Thank you, Mr. Chairman. This amendment
3850 strikes Section 301(b) of the bill. Section 301(b)
3851 redefines the term "conviction" for the purposes of the
3852 immigration law to include, among other things, convictions
3853 that have been vacated on constitutional grounds.

3854 The 6th Amendment guarantees everyone the right to
3855 competent advice from a criminal lawyer. The Supreme Court
3856 has held that a defense attorney's failure to advise a non-
3857 citizen defendant about immigration consequences of a
3858 conviction violates that 6th Amendment right.

3859 This was the case, for example, of someone named Jose
3860 Padilla, a long-term green card holder, 40 years a green
3861 card holder, and an honorably discharged Vietnam Veteran,
3862 who was subject to automatic deportation under the
3863 immigration law because of a plea bargain he took after
3864 receiving bad advice from his criminal defense lawyer, a
3865 plea bargain he would presumably not have taken if he
3866 realized there was a real consequence to it. A conviction
3867 that was overturned for lack of competent advice from a

3868 criminal defense attorney is constitutionally invalid.

3869 Under Section 301(b), a vacated conviction that no
3870 longer exists because of constitutional infirmities can
3871 still remain the basis for deportation. This violates a
3872 longstanding rule that convictions vacated based on
3873 constitutional or legal error will no longer have an
3874 immigration effect. It violates fundamental standards of
3875 fairness to say that a conviction, which has been set aside
3876 because the procedures were wrong constitutionally, and,
3877 therefore, he cannot be convicted, nonetheless will be the
3878 basis for deleterious action, namely deportation.

3879 Section 301(b) undermines the integrity of the criminal
3880 justice system because it forces an immigration judge to
3881 ignore the law. The cornerstone of our criminal justice
3882 system is that decisions must be constitutional. State and
3883 federal judges may overturn or modify a defendant's
3884 conviction or sentence when there is evidence the
3885 Constitution has been violated. Section 301(b) imposes a
3886 statutory mandate to ignore these decisions, even where
3887 there is a constitutional violation.

3888 It is also fundamentally unfair. If a person could be

3889 deported for a conviction that was unconstitutional, then
3890 that defendant would suffer constitutional harm without a
3891 remedy. Also, the very thing that made the conviction
3892 unconstitutional in this case is that the defendant was not
3893 alerted to the immigration consequences. It would be
3894 perverse to deport a person nevertheless.

3895 There are other reasons, too, but for these reasons, it
3896 is fundamentally unfair. And by striking Section 301(b), we
3897 are not changing the underlying basis. We are not changing
3898 the Constitution. All we are saying is that if a conviction
3899 was gained on the basis of a constitutional violation and
3900 then was set aside, vacated, because of that constitutional
3901 violation, that conviction cannot be the basis of a
3902 deportation order.

3903 Now, it may be that the conviction, having been set
3904 aside, the prosecutor wants to accuse, retry the case and
3905 maybe get another conviction without a constitutional
3906 violation. In that case, the person could be deported. But
3907 as long as there is no conviction other than one that has
3908 been set aside because it was unconstitutional, it would be
3909 volatile of our law and, I suspect, our Constitution to let

3910 there be a serious harm if they move deportation following
3911 that.

3912 So I think 301(b) is just ill-considered and ought to be
3913 removed. And that what my amendment does.

3914 Mr. Bachus. I could either yield or I will take my own
3915 time.

3916 Mr. Nadler. I will yield to the gentleman.

3917 Mr. Bachus. You know, looking at this, I think Mr.
3918 Nadler has a point. This is language on page 51, which
3919 actually says that we would ignore a reversal, or an
3920 expungement, or a modification of a conviction. I am not
3921 sure --

3922 Mr. Nadler. Would the gentleman yield?

3923 Mr. Bachus. -- that this language is constitutional. I
3924 mean --

3925 Chairman Goodlatte. Would the gentleman yield?

3926 Mr. Nadler. Yes.

3927 Chairman Goodlatte. It is addressed in the manager's
3928 amendment that has already been passed by the committee.
3929 And I will address that in my --

3930 Mr. Bachus. And did we strike this language?

3931 Chairman Goodlatte. We did.

3932 Mr. Nadler. So Section 301(b) is completely stricken in
3933 the manager's amendment?

3934 Chairman Goodlatte. No, but the language is changed to
3935 make it comport with *Kentucky v.* --

3936 Mr. Nadler. Well, Mr. Chairman, can I withdraw the
3937 amendment for a few minutes while we take a look at the
3938 manager's amendment, and reserve the right to re --

3939 Chairman Goodlatte. Without objection, the amendment
3940 will be considered as withdrawn.

3941 Mr. Nadler. For a few minutes.

3942 Chairman Goodlatte. And the gentleman will reserve the
3943 right to re-offer his amendment.

3944 Mr. Nadler. Thank you.

3945 Chairman Goodlatte. And we will stand in recess, so you
3946 will have plenty of time to work on your amendment while we
3947 go to the floor to debate the issues in other legislation.

3948 Correct.

3949 We will stand in recess.

3950 The committee will reconvene after the next series of
3951 votes, which will conclude work on the Pain Capable

3952 legislation that is on the floor, immediately after those
3953 votes.

3954 [Whereupon, at 4:22 p.m., the committee recessed, to
3955 reconvene at 7:03 p.m., the same day.]

3956 Chairman Goodlatte. The committee will reconvene for
3957 further consideration of H.R. 2278. And the bill is open
3958 for amendment.

3959 For what purpose does the gentleman from Georgia seek
3960 recognition?

3961 Mr. Johnson. I have an amendment at the desk.

3962 Chairman Goodlatte. The clerk will report the
3963 amendment.

3964 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
3965 Johnson --

3966 Chairman Goodlatte. Without objection, the amendment
3967 will be considered as read.

3968 [The amendment of Mr. Johnson follows:]

3969

3970 Chairman Goodlatte. And the gentleman from Georgia is
3971 recognized for 5 minutes to explain his amendment.

3972 Mr. Johnson. Thank you, Mr. Chairman. Let me start by
3973 noting that I agree with the sentiment that many have
3974 expressed today, and that is that we must to look to the
3975 facts of this bill and not the motives of the members of
3976 this committee in making these proposals. But looking at
3977 the effects of the bill, I ask who exactly does this bill
3978 benefit?

3979 The facts of this bill are plain and simple. The so-
3980 called SAFE Act does one thing. It keeps private detention
3981 centers safe from ever being shut down by criminalization
3982 immigrants under Federal crimes with drastic sentences and
3983 lengthy inhumane detention without oversight or
3984 accountability. This comes at a time when this committee is
3985 undertaking a noble effort to turn the tide on over-
3986 criminalization. This bill would greatly undermine those
3987 efforts.

3988 The SAFE Act, or the Keep Private Prison Industries SAFE
3989 Act, as it should be called, would require billions in
3990 spending. Although it has yet to be scored, it is a bill

3991 that State and local government cannot afford. My amendment
3992 would strike Section 111(b) of the SAFE Act. This section
3993 allows law enforcement officers to arbitrarily and
3994 indefinitely detain undocumented immigrants after the basis
3995 of their arrest has ended.

3996 The power created by Section 111(b) is without precedent
3997 or constitutional support. When has America ever deemed it
3998 wise to grant unbridled discretion to officers to detain
3999 people after the basis of their arrest has ended? The
4000 inevitable result is the callous and cruel separating of
4001 families through the delivery of immigrants into the waiting
4002 arms of an immigration detention system that is rife with
4003 wasteful expenses and abuse, and which is often lacking in
4004 transparency and accountability.

4005 As my colleagues have noted, there are many examples of
4006 how this would have terrible consequences on American
4007 families.

4008 I have longed objected to America's massive immigration
4009 detention system. While strong enforcement has its place in
4010 a balanced approach to comprehensive immigration reform, we
4011 should all be concerned that immigration detention is the

4012 fastest-growing incarceration system in America. It is
4013 growing, Mr. Chairman, even faster than the ever-growing
4014 incarceration rate caused by the feckless war on drugs.
4015 This system already unnecessarily detains thousands daily,
4016 and it pulls families apart, detaining children and parents
4017 alike.

4018 Detention centers also hold asylum seekers, upstanding
4019 members of the community, and many others who pose
4020 absolutely no threat to society. So I ask again, who
4021 exactly does this bill benefit?

4022 As the Associated Press reported last year, the three
4023 major private prison corporations -- CCA, the GO Group, and
4024 the Management and Training Corporation -- have spent
4025 roughly \$45 million over the past decade in an effort to
4026 influence State and Federal policy. The result: last year
4027 CCA earned nearly \$2 billion, hundreds of millions of which
4028 is derived from incarcerating non-citizens under guaranteed
4029 contracts with DHS and the Bureau of Prisons.

4030 Let us connect the dots, ladies and gentlemen. The for-
4031 profit private prison industry has a tremendous stake in the
4032 outcome of immigration reform. It stands to lose hundreds

4033 of millions of dollars if Congress comes together with a
4034 comprehensive solution that does not criminalize immigrants
4035 or authorize indefinite detention. And now, the same
4036 Republican Party that thinks government is the problem, not
4037 the solution, has offered its own solution to immigration
4038 reform through an unfunded mandate to throw immigrants into
4039 private detention facilities.

4040 This is a bill that massively increases government cost
4041 at the expense of American taxpayers, and we need
4042 immigration reform that keeps families together. We need
4043 enforcement that benefits Americans, not just the private
4044 prison industry.

4045 And with that, I yield back.

4046 Chairman Goodlatte. The chair thanks the gentleman and
4047 recognizes himself in opposition to the amendment.

4048 The ability to issue detainers is critical for both ICE
4049 and local law enforcement to be able to identify and
4050 ultimately remove criminal aliens who are currently in
4051 Federal, state, or local custody. An immigration detainer
4052 is a notice that DHS issues to Federal, and local law
4053 enforcement agencies to inform the LEAs, or local

4054 enforcement agencies, that ICE intends to assume custody of
4055 an individual in the LEA's custody and request that the LEA
4056 maintain custody of an alien who would otherwise be
4057 released.

4058 The authority for this request flows from Federal
4059 regulations which arise from the Secretary's power under the
4060 Immigration and Nationality Act to issue regulations
4061 necessary to carry out their authority under the INA and
4062 from ICE's general authority to detain individuals who are
4063 subject to removal. Advocacy groups and jurisdictions
4064 opposed to the enforcement of immigration laws have
4065 questioned the authority of ICE to issue detainers. Some
4066 jurisdictions have even refused to honor ICE detainers.

4067 As a result, on December 21, 2012, the Obama
4068 Administration limited local law enforcement agencies'
4069 ability to issue detainers unless the alien falls under the
4070 Administration's priorities and certain conditions apply.
4071 Hence, local law enforcement is now forced to release
4072 thousands of illegal and criminal aliens they encounter.

4073 Previously ICE had permitted local law enforcement to
4074 issue detainers pursuant to the 287(g) program under the so-

4075 called jail model. This option allows for correctional
4076 officers to screen those arrested or convicted of crimes by
4077 accessing Federal databases to determine a person's
4078 immigration status. When an illegal immigrant is detected,
4079 local officers have the authority to issue an immigration
4080 detainer and notify ICE to arrange transportation to a
4081 Federal detention facility prior to deportation. However,
4082 this option has been shut down by way of Administration
4083 policy. Hence, Section 111(b) of the bill simply allows
4084 local law enforcement officers to do what they are able to
4085 do under current, but barred by the Obama Administration
4086 from doing.

4087 This amendment strikes this important provision, and,
4088 therefore, I must urge my colleagues to rise in opposition
4089 to this amendment.

4090 For what purpose does the gentleman from Alabama seek
4091 recognition?

4092 Mr. Bachus. Thank you. Mr. Chairman, I do notice, and
4093 I would like to maybe ask some people with more experience
4094 in criminal law than I have. But one thing that did catch
4095 my attention is that they are authorized to hold the

4096 individual for a period of up to 14 days after his sentence
4097 is completed.

4098 You know, normally a detainer is lodged weeks or months
4099 before the sentence is complete. And I am not sure that,
4100 you know, whether that is a reasonable period of time. You
4101 are talking about 2 weeks, and there has been no
4102 adjudication that this person is not due bail or
4103 recognizance. It is quite a long period of time. That is
4104 mainly what the gentleman was talking about.

4105 But I will say this. I read a *New Yorker* article about
4106 2 weeks ago that I would invite everyone to take a look at
4107 about the experience of a young man who was bipolar, born
4108 and raised in North Carolina who ended up in the prison in
4109 southwest Georgia for a period of 8 months, and then was
4110 deported to Mexico and Honduras. And in that article it
4111 says --

4112 Chairman Goodlatte. Would the gentleman yield?

4113 Mr. Bachus. Yes.

4114 Chairman Goodlatte. He was born and raised in North
4115 Carolina?

4116 Mr. Bachus. That is right.

4117 Chairman Goodlatte. Well, how could he be deported
4118 then?

4119 Mr. Bachus. Well, you know, that is a good question.
4120 But in this article, and I do not have anything to confirm
4121 it, but it said over 1 percent of the people that are
4122 deported are actually citizens of the United States. Now, I
4123 do know that that is true in one case in Alabama.

4124 Chairman Goodlatte. The only thing I would say to the
4125 gentleman is --

4126 Mr. Bachus. But, no, I guess I am just saying this.
4127 You know, if 1 percent of these people are actually U.S.
4128 citizens, and I threw something else. He mentioned a prison
4129 south of Atlanta where actually you do a video. The judge
4130 is not a Federal judge. He simply is appointed by INS, and
4131 he does this video conference with about 30 prisoners at a
4132 time.

4133 I think there are things that we need to sort of at
4134 least be aware of, I would say, Chair. But let me say this.
4135 This is probably throwing in something, except I will just
4136 say this. Is 14 days too long? I know the practice, I
4137 think, and if somebody -- I know George Holden, and we have

4138 maybe U.S. attorneys. Is 14 days the whole -- after their
4139 term is over because --

4140 Chairman Goodlatte. Would the gentleman yield on that
4141 point? These are people who have been convicted of crimes.
4142 They have served their sentence. They are not lawfully
4143 present in the United States. And obviously if they are
4144 lawfully present in the United States, they need to have
4145 representation to determine that. And the longer they are
4146 detained in a place where they can get --

4147 Mr. Bachus. Bu has there been a determination that --

4148 Chairman Goodlatte. They are being held until the
4149 Immigration Service picks them up so that they then can be
4150 put through deportation proceedings.

4151 Ms. Lofgren. Would the gentleman yield?

4152 Mr. Bachus. No, they pick them up and then determine
4153 whether they are deportable.

4154 Chairman Goodlatte. Correct.

4155 Mr. Bachus. But they hold them 14 days before they even
4156 determine whether or not it is reasonable to even hold them
4157 for 1 day.

4158 Chairman Goodlatte. Well, the individual has been

4159 convicted of a crime already.

4160 Mr. Bachus. It could be a misdemeanor.

4161 Ms. Lofgren. When they serve their sentence.

4162 Mr. Bachus. It could be a speeding case that he could
4163 not pay his ticket. I mean, is that --

4164 Chairman Goodlatte. You need to have a reasonable
4165 period of time for the local government to interact with the
4166 Federal government, which does not always come right in and
4167 pick somebody up.

4168 Mr. Bachus. Chairman, listen, I understand that. What
4169 I am saying, you know, I do know that in State prisons,
4170 there is a detainer waiting on someone, you know. And I
4171 know in Jefferson County, this was 25 years ago, if someone
4172 filed a detainer on a misdemeanor and the person wanted to
4173 pick them up did not show up within 12 hours, they released
4174 them.

4175 I am just saying is 14 days, is that the period of 14
4176 days.

4177 Chairman Goodlatte. I would argue that they are
4178 inadmissible or deportable. The amount of time does not
4179 matter. I would not want them released back onto the

4180 streets if they are convicted criminal.

4181 Mr. Bachus. Mr. Chairman, has there been a
4182 determination that they are deportable, or is -- I do not
4183 think there is. I think they are to be picked up or a
4184 determination.

4185 Chairman Goodlatte. There is a determination, as there
4186 is right now, by the State court judge in the case that the
4187 individual has been convicted of a crime, they are not
4188 lawfully present in the United States, and they are
4189 deportable. So they are holding them until they are turned
4190 over to the Immigration Service for further processing,
4191 which would include a review of their right to be --

4192 Mr. Bachus. All right.

4193 Chairman Goodlatte. -- be determined whether or not
4194 they are deportable. They would certainly still have those
4195 rights preserved once they are under the jurisdiction of
4196 ICE.

4197 Mr. Bachus. Well, you mean a State judge would have
4198 that information?

4199 Chairman Goodlatte. The State, yes, because he has been
4200 convicted of a State court crime.

4201 Mr. Bachus. Yeah. Could that be a misdemeanor? Could
4202 it be a 3-day sentence?

4203 Chairman Goodlatte. It is certainly possible, but if
4204 the individual is deportable, as determined by the officer
4205 reviewing it at that time, I see no problem why they would
4206 hold them until such time as the Immigration Service does
4207 its responsibility, which would include a proceeding before
4208 an immigration court judge, who would determine whether or
4209 not the individual is deportable.

4210 Mr. Bachus. Exactly. Subsequent to them being held for
4211 up to 14 days, there would be a determination as to whether
4212 they are deportable. They could determine that they were
4213 not deportable.

4214 Chairman Goodlatte. They could.

4215 Mr. Bachus. And they would have been held for 14 days.
4216 I mean, and to me, I would not want to be held 14 days,
4217 particularly if the detainer could have been waiting there.
4218 I mean, if they are notified this person is there, why
4219 cannot the detainer be there when they are sentence expires,
4220 unless it was a 3-day sentence or 5-day? But then why would
4221 you hold them 14 days after a 3-day sentence?

4222 Chairman Goodlatte. Only to not let somebody out onto
4223 the streets who has been convicted of crimes.

4224 Mr. Bachus. All right. I think these are some
4225 questions we ought to at least consider.

4226 Chairman Goodlatte. Sure. Who seeks recognition?

4227 Ms. Lofgren. Mr. Chairman?

4228 Chairman Goodlatte. For what purpose does the
4229 gentlewoman from California seek recognition?

4230 Ms. Lofgren. To strike the last word.

4231 Chairman Goodlatte. The gentlewoman is recognized for 5
4232 minutes.

4233 Ms. Lofgren. I just want to, first, ask unanimous
4234 consent to place in the record of the hearing *New Yorker*
4235 article entitled, "The Deportation Machine" that Mr. Bachus
4236 just referenced about the American citizen how was deported.

4237 I would also ask unanimous consent to include in the
4238 record letters of opposition to this bill from the Southern
4239 Baptist Ethics and Religious Liberty Commission, the
4240 National Association of Evangelicals, the U.S. Conference of
4241 Catholic Bishops, and World Relief.

4242 Chairman Goodlatte. Without objection.

4243 [The information follows:]

4244

4245 Ms. Lofgren. Mr. Bachus is exactly right. Under the
4246 bill, if you are convicted of a State offense -- it could be
4247 something relatively minor -- you serve your time. And then
4248 the local officials, they do not know, nor does the State
4249 judge know, whether or not you are an undocumented person.
4250 And you could be an American citizen, as was the individual
4251 who was deported discussed in this *New Yorker* article, Mr.
4252 Little, who was born and raised in North Carolina. And you
4253 would be in jail for 14 days, perhaps even longer, than the
4254 sentence that you served for a misdemeanor offense without a
4255 determination that you were removal.

4256 I think it is a flawed approach. I think that Mr.
4257 Johnson's amendment fixes it, and that we should be able to
4258 come together. I realize that there are differences of
4259 opinion on this committee about various elements, but surely
4260 this is something that we might be able to come to an
4261 agreement on.

4262 You know, the local law enforcement people have the
4263 person. Why would you not require a quicker action so that
4264 someone who has served their sentence and is ready to be
4265 released, if they are an American, would not be held without

4266 cause for an additional two-week period, which, you know,
4267 sounds like a minor thing, but, you know, two weeks in jail
4268 is not a minor matter for people. This is not a pleasant
4269 experience, and if you have served your sentence and you are
4270 an American and not removable, that punishment should not be
4271 inflicted upon you. So I wanted to --

4272 Mr. Chaffetz. Will the gentlewoman yield?

4273 Ms. Lofgren. Sure.

4274 Mr. Chaffetz. How do you read in this portion that we
4275 are talking about that an American -- I mean, it is clearly
4276 a criminal alien.

4277 Ms. Lofgren. No, it is not. Reclaiming my time, the
4278 determination that the person is not a citizen has not been
4279 made. There is a detainer asking for ICE to come and make
4280 that determination, and the State does not have the data to
4281 do that. They do not know. And, in fact, and I have run
4282 into cases myself where American citizens have wrongly -- I
4283 do not think you can say "deported" because you cannot
4284 legally deport an American. I guess what you would say is
4285 "kidnapped" and "ousted" American citizens, people born and
4286 raised in the United States. It happens unfortunately.

4287 Mr. Labrador. Would the gentlelady yield to a question?

4288 Ms. Lofgren. Sure.

4289 Mr. Labrador. The article in the *New Yorker*, did the
4290 person make a claim of citizenship?

4291 Ms. Lofgren. It appears that he was mentally ill, and
4292 he did make a claim of citizenship, but was not believed.

4293 And once he was deported, he went to the embassy in the
4294 country he was deported to, and finally found someone who
4295 would pay attention to him. They determined he was an
4296 American. They gave him a U.S. passport. He returned to
4297 the United States. And because he was in the system from
4298 the prior deportation, they arrested him again, even though
4299 he had a U.S. passport.

4300 And so it is an interesting article. I would recommend
4301 reading it.

4302 Mr. Bachus. But, okay, if I could add, but when the
4303 embassy gave him the report as a he was a citizen, and I
4304 think that is a good question, he was sent back to Atlanta
4305 to go to his brother, who was serving in the military in
4306 Kentucky. And in Atlanta, he was re-arrested and again
4307 incarcerated, and then he did not show up.

4308 But, yes, when they asked him his place of birth, he
4309 said Roland County, North Carolina. When they said his
4310 parents, he gave his parents' names.

4311 Chairman Goodlatte. Would the gentlewoman yield?

4312 Ms. Lofgren. I would yield.

4313 Chairman Goodlatte. Thank you. I think you are mixing
4314 two different issues here. Obviously there is a miscarriage
4315 of justice when a U.S. citizen is deported, but the final
4316 disposition of that is made not by the judge or anybody else
4317 in the local jurisdiction that is detaining him, but rather
4318 by the Immigration Service once they have received him under
4319 the detainer.

4320 So, yes, that is an unfortunate circumstance, but as we
4321 all know, hard cases make bad law, and we should not release
4322 everybody out onto the street --

4323 Ms. Lofgren. Reclaiming my time, the point is --

4324 Chairman Goodlatte. -- just because we had one bad
4325 case.

4326 Ms. Lofgren. -- that bail allows someone who we do not
4327 know whether they are an American or not an American to be
4328 held for 14 days in jail. And that is not the American way.

4329 And I see my time has expired. I yield back.

4330 Chairman Goodlatte. For what purpose does the gentleman
4331 from Louisiana seek recognition?

4332 Mr. Richmond. I would move to strike the last word.

4333 Chairman Goodlatte. The gentleman is recognized for 5
4334 minutes.

4335 Mr. Richmond. Mr. Chairman, I think what you just
4336 brought up is the exact point that the concern is about.

4337 And you are saying that the local officials and the judge
4338 will not make the determination that they are illegal. And
4339 my colleague, Mr. Bachus, said it is 14 days too long.

4340 And I would just venture, for anybody on the panel, just
4341 to ask yourself, is 14 days too long to just be held so
4342 someone can decide whether you are a U.S. citizen or not.

4343 And if we are talking about serious crimes, which I think
4344 the focus is on, when somebody is sentenced, we know a
4345 release date. Why do we have to add 14 days on the back end
4346 when the bureaucrats can just start the process of
4347 identifying and informing ICE 14 days before they are
4348 released? I do not understand why we have to add 14 days on
4349 the back end when the officials can just plan ahead before

4350 the person is released.

4351 It is very easy for us to sit here and play with
4352 people's days, and their lives, and all of those things when
4353 I do not think we should. I think we should have a higher
4354 standard that requires our prison officials or the people
4355 that we are charging with this responsibility to just move
4356 earlier on in the process to get someone picked up by ICE so
4357 that they can make the determinations.

4358 But I think 14 days is far too long. And we talk about
4359 the case where the American citizen was actually deported.
4360 But if we are just very casual about 14 days, just think of
4361 how many people will be kept over 5 and 6 and 10 days. And
4362 let us not automatically look at the person as an
4363 undocumented and criminal. But we still have to worry about
4364 our citizens' rights, and to just allow somebody to hold
4365 someone for an additional 14 days where they could have done
4366 the paperwork earlier with some due diligence, I think it is
4367 just unfair, because they are in jail. Do it while they are
4368 already there. And that would just be my --

4369 So I would just urge that we kind of think about it and
4370 see if we cannot somehow fix this portion because I think we

4371 all have a concern about just holding someone after they
4372 have finished their sentence when we are not sure yet that
4373 they are here illegally.

4374 And with that, I will yield back --

4375 Chairman Goodlatte. Would the gentleman yield?

4376 Mr. Richmond. Oh, absolutely.

4377 Chairman Goodlatte. I thank the gentleman for yielding.

4378 The amendment offered by the gentleman from Georgia would
4379 eliminate the entire section; therefore, there would be no
4380 time. And to expect that Federal bureaucracy and the State
4381 bureaucracy are going to get their acts together perfectly
4382 in sync so the moment that they are eligible to be released
4383 there is somebody there to pick them up is asking too much.
4384 But if the gentleman has another alternative proposed, I am
4385 certainly open to other ideas.

4386 Mr. Johnson. Would the gentleman yield?

4387 Mr. Richmond. Yes, I will yield.

4388 Mr. Johnson. Yeah. We are placing enforcement in the
4389 hands of State and local authorities with this legislation.
4390 And it would seem that an obligation that State or local law
4391 enforcement would have would be to determine as early as is

4392 practical and possible to determine the immigration status
4393 of the person they are holding. And if Federal authorities
4394 choose to then place a detainer or a hold on that person,
4395 they can do so. And once that person completes their
4396 sentence with that State or local authority, then the
4397 Federal government would have whatever amount of time is
4398 practical in accordance with local custom for the law
4399 enforcement to come pick them up.

4400 That is the way that it should be done. And there is no
4401 reason why we have to leave people in here for another 14
4402 days other than to put money in the pockets of the private
4403 prison system, or cost taxpayers undue expense, be it local
4404 or State, or Federal. I do not know who is going to pay for the
4405 keeping of these inmates. I know in my jail in DeKalb
4406 County it is about \$66 a day that the taxpayers spend
4407 holding someone. So I do not know who this expense would go
4408 to, but be it State, local, or Federal, it is unnecessary.

4409 Chairman Goodlatte. Well, if the individual has
4410 committed a crime and the individual is deportable as a
4411 result of that, or they are illegal status to begin with,
4412 then the expense would be necessary to make sure they did

4413 not flee.

4414 On the other hand, I certainly would be willing to
4415 entertain a shorter period of time, as suggested by the
4416 gentleman from Louisiana, to effectuate that detainer. It
4417 is my understanding that ordinarily there is 48 hours
4418 available for the Federal government to do that, and if you
4419 wanted to amend it to change it from 14 days to 48 hours, I
4420 would join you in accepting that.

4421 Mr. Johnson. Well --

4422 Chairman Goodlatte. If you want to insist on no time,
4423 then I would have to oppose your --

4424 Mr. Johnson. I will roll with the 48 hours. I think
4425 that is a vast improvement.

4426 [Laughter.]

4427 Mr. Johnson. And I have to thank the gentleman from
4428 Alabama for his observation on it.

4429 Chairman Goodlatte. We believe that the language will
4430 have to be repaired a little bit.

4431 Mr. Bachus. Right.

4432 Chairman Goodlatte. If the gentleman would withdraw the
4433 amendment that he has pending and work with my staff, we

4434 will work on language and make sure that it is acceptable to
4435 both sides, and bring it back up again in a few minutes.

4436 Mr. Johnson. Thank you. Thank you, Mr. Chairman. I
4437 will withdraw.

4438 Mr. Bachus. Mr. Chairman?

4439 Chairman Goodlatte. Without objection, the gentleman's
4440 amendment is withdrawn.

4441 Are there further amendments?

4442 For what purpose does the gentleman from New York seek
4443 recognition?

4444 Mr. Nadler. I seek recognition to return to the
4445 amendment which I had offered and withdrawn earlier. I
4446 reserved the right --

4447 Chairman Goodlatte. The clerk will report the -- is
4448 this the same amendment or a new amendment?

4449 Mr. Nadler. Same amendment.

4450 Chairman Goodlatte. The clerk will re-report the
4451 amendment of Mr. Nadler.

4452 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
4453 Nadler --

4454 Chairman Goodlatte. Without objection, the amendment

4455 will be considered as read.

4456 [The amendment of Mr. Nadler follows:]

4457

4458 Chairman Goodlatte. And the gentleman is recognized for
4459 5 minutes.

4460 Mr. Nadler. Thank you. I am not going to go through
4461 the whole amendment again, except to say again that
4462 basically the Supreme Court had held that a defense
4463 attorney's failure to advise a non-citizen defendant about
4464 immigration consequences of a conviction violates his 6th
4465 Amendment right. A conviction that was overturned for lack
4466 of competent advice from a criminal defense attorney is
4467 constitutionally invalid.

4468 Under this section of the bill, 301(b), which my
4469 amendment would strike, a vacated conviction that no longer
4470 exists through the constitutional infirmities can remain a
4471 basis for deportation. It violates the longstanding rule
4472 that convictions vacated because they were based on
4473 unconstitutional legal error should not have an immigration
4474 effect.

4475 And that was essentially the argument I made earlier,
4476 and there seemed to be somewhat agreement, including some
4477 people on that side of the aisle. The chairman said that
4478 while this problem was taken care of by the manager's

4479 amendment, I have looked at the manager's amendment, and as
4480 I read it, it does not take care of the problem. It does
4481 not eliminate Section 301(b). All it does it limit its
4482 application to prior to -- I think it is prior to -- a
4483 Supreme Court decision a couple of years ago because that
4484 Supreme Court decision was ruled not to have retroactive
4485 effect.

4486 So what this is really saying now is that for people
4487 whose convictions occurred before that date, which I think
4488 was in 2010, and whose convictions were vacated, because
4489 they did not get proper assistance of counsel or for
4490 whatever reason, you can still use that vacated conviction
4491 as the basis for deportation.

4492 That is just wrong. The fact that it is limited to
4493 before 2010 is nice. I do not know why we bother at that
4494 point since it is obviously a very limited universe of
4495 people, and this would not have any effect going forward.

4496 And I just think it is wrong. It is wrong to have a
4497 vacated conviction vacated because someone did not get his
4498 constitutional rights used as a basis for deportation.

4499 Now, if someone committed a crime, he can always be

4500 recharged and convicted without deprivation of his
4501 constitutional rights. That could form the basis of a
4502 deportation. But in the absence of that, it is just wrong
4503 to do it. It violates our longstanding practice that you do
4504 not base deportation or other immigration actions, or any
4505 other actions for that matter, on a vacated conviction,
4506 which was deemed null and void.

4507 So I would offer the amendment. I would urge the
4508 majority to accept it. The manager's amendment as I read it
4509 narrows the application of this, but only narrows it in
4510 time, which makes it even more interesting as to why not
4511 just eliminate it, because it would be limited to
4512 convictions occurring as I read it before 2010. So
4513 eventually it is not going to have any meaning anyway, so
4514 why do it at this point?

4515 Chairman Goodlatte. The chair thanks the gentleman, and
4516 recognizes himself in opposition to the amendment.

4517 Section 301(b) of the bill makes it clear that we will
4518 not allow any reversal or expungement of an alien's criminal
4519 conviction that was granted specifically to evade the
4520 immigration consequences of the conviction to frustrate the

4521 deportation of the convicted criminal alien.

4522 This language is necessary because convicted criminal
4523 aliens often find themselves in removal proceedings after
4524 they have already served their sentences. Thereafter, they
4525 file for post-conviction relief solely to avoid the
4526 immigration consequences of their unlawful actions. As
4527 expected, liberal judges feel sorry for them and try to
4528 frustrate the enforcement of removal laws by voiding their
4529 sentences simply so they can avoid deportation and remain in
4530 the United States despite their deportable criminal conduct.

4531 These judges are not reversing the convictions because
4532 the aliens are innocent or because the aliens'
4533 constitutional rights were violated. They are simply
4534 reversing the convictions to prevent the U.S. from deporting
4535 aggravated felons and other serious criminal aliens. This
4536 is unacceptable, puts Americans at risk, and creates a
4537 situation where aliens are treated better than U.S. citizens
4538 with regard to their criminal acts.

4539 The manager's amendment handles the issues raised by
4540 *Padilla v. Kentucky*, a 2010 Supreme Court decision holding
4541 that ineffective assistance of counsel claims under the 6th

4542 Amendment can be based on the failure to inform a criminal
4543 defendant of the immigration consequences of a guilty plea.

4544 In February of this year in *Kydez v. United States*,
4545 Justice Kagan, writing for six other justices, held that
4546 *Padilla* does not apply retroactively to guilty pleas entered
4547 into before the date of the decision, March 31, 2010.

4548 Hence, the manager's amendment amends the language in the
4549 bill to address only the issue of ineffective assistance of
4550 counsel claims involving guilty pleas entered into before
4551 the date of the decision in *Padilla*. This bill makes it
4552 more difficult for criminal aliens to circumvent their
4553 deportation through post-conviction relief. This amendment
4554 strikes that important provision, and, therefore, I must
4555 oppose the amendment.

4556 Ms. Lofgren. Mr. Chairman?

4557 Chairman Goodlatte. For what purpose does the
4558 gentlewoman from California seek recognition?

4559 Ms. Lofgren. I think that the --

4560 Chairman Goodlatte. The gentlewoman is recognized for 5
4561 minutes.

4562 Ms. Lofgren. Thank you. The manager's amendment does

4563 not actually fix this. It is true that the Supreme Court
4564 held that the *Padilla* rule was not retroactive, but it does
4565 not fix the problem because States have the right to make
4566 decisions that are different from those of the Federal
4567 courts. That means States can develop retroactivity rules
4568 that are broader than those that apply in Federal post-
4569 conviction proceedings. And, in fact, Maryland has done so.
4570 Massachusetts has left the situation open.

4571 So convictions that took place prior to *Padilla* will
4572 still be vacated as constitutionally invalid, but under the
4573 manager's amendment, those people would still be deported
4574 under this act.

4575 I think it is important to step back and think about why
4576 individuals sometimes plead guilty. And I will give a real
4577 life example of -- I mean, this was aggravated also by our
4578 change in 1996 where very old convictions continued to be
4579 potent for deportation purposes. Two brothers, who came to
4580 the United States when they were 18 and got caught up in and
4581 were charged with a drug offense. They did not have any
4582 money. The public defenders told them they should just
4583 plead guilty because they would get out of jail, you know,

4584 with time served. And so, they did that.

4585 They are now 57 years old. They assert -- I do not if
4586 it is true or not -- that they had nothing to do with the
4587 drug crime. But in any case, whether they did or not, they
4588 pled guilty because they could walk out of jail the day they
4589 pled guilty. And 40 years later, they are middle aged men,
4590 own businesses, have hundreds of employees. One of the
4591 businesses was an import/export business. When one of the
4592 buying partners went outside of the United States to
4593 purchase antiques for sale in the business and he came back
4594 in, because we have got a good computer system now, they
4595 dinged his plea back from when he was 18, and he was put in
4596 jail. There is no way for him to deal with that under
4597 current law other than the capacity to get a pardon, which
4598 this bill tries to prevent.

4599 The *Padilla* case, if he is in the right State, would
4600 provide relief. But if we just think about it, we are
4601 providing a much greater punishment for what could be a
4602 relatively small and also very old and dated offense than
4603 you would get under the criminal law where if someone in
4604 California with its three strike law, if you go out and

4605 steal a six pack and you have two other misdemeanor petty
4606 thefts on your record, that is a felony. And you could have
4607 a problem in California. That was recently amended.

4608 But under this bill, you would actually be separated
4609 from your family for life whereas under the criminal law,
4610 you might spend a very short period of time in jail. I am
4611 not suggesting that committing a minor offense is a good
4612 thing. It certainly is not, but the punishment should fit
4613 the crime.

4614 And the other thing that is important to recall is that
4615 people, if they do not get good legal advice, can plead
4616 guilty to things that they have not done at all, simply
4617 because it is easier, it is quicker, it is cheaper. And to
4618 deport someone, to separate them from their families
4619 permanently is a very severe penalty for such an action, and
4620 certainly not the right thing to do when someone does not
4621 even understand the implications for a guilty plea in such a
4622 case.

4623 So I think the amendment that Mr. Nadler is pursuing is
4624 smart and reasonable, and I think we ought to be able to
4625 come together on something like this, Mr. Chairman.

4626 With that, I would yield back.

4627 Chairman Goodlatte. Who seeks recognition? For what
4628 purpose does the gentleman from South Carolina seek
4629 recognition?

4630 Mr. Gowdy. Just very briefly, Mr. Chairman --

4631 Chairman Goodlatte. The gentleman is recognized for 5
4632 minutes.

4633 Mr. Gowdy. I move to strike the last word. Thank you,
4634 Mr. Chairman. There is always a plea colloquy. And if you
4635 have ever participated in a guilty plea hearing, Mr.
4636 Chairman, they are actually called change your plea hearings
4637 where you have initially pled not guilty, and then you go in
4638 front of a judge. And you are under oath, I hasten to add.
4639 And the prosecutor or the judge lays out the elements of the
4640 offense, and the judge asks a series of questions.

4641 Most guilty pleas take about 30 to 45 minutes because
4642 you do ask all of these questions. And invariably always
4643 there is a factual recitation that the prosecutor goes
4644 through, and then they turn to the defendant and say, do you
4645 agree with the facts as laid by the prosecutor. And if you
4646 do not, then that is the time that you disagree.

4647 You cannot plead guilty by saying that you are innocent.
4648 So you either lie to the court and admit that you have done
4649 something you have not done, or you accept responsibility,
4650 in which case you get a benefit from pleading guilty in the
4651 first instance.

4652 There are legions of people who found out that they lost
4653 their right to have any kind of a firearm because of a
4654 felony conviction, or they lost the right to vote, or there
4655 is some other collateral consequence associated with their
4656 guilty plea that they were not previously aware of. Which
4657 is why, Mr. Chairman, we also have something called a motion
4658 to withdraw a guilty plea, which are filed all the time.

4659 When you realize, look, I did not know that, my lawyer
4660 did not tell me that I was not going to be able to carry a
4661 gun or I was not going to be able to vote. So you can file,
4662 within a reasonable amount of time, a motion to withdraw
4663 your guilty plea.

4664 But, Mr. Chairman, if you have ever sat through a guilty
4665 plea proceeding, sometimes they are longer than the trial.
4666 It would have been quicker to try them because you have got
4667 to go through the factual recitation, each element, what the

4668 maximum is, what the minimum is. And now, you also have to
4669 include certain other collateral consequences that the
4670 defendant may suffer from if he or she pleads guilty.

4671 Ms. Lofgren. Would the gentleman yield?

4672 Mr. Gowdy. I would be happy to.

4673 Ms. Lofgren. Because I think certainly the gentleman
4674 served and had a distinguished career as a U.S. attorney,
4675 and he has described what happens in Federal court. This
4676 provision is not just about Federal court. It is also about
4677 a guilty plea to anything from a marijuana case in State
4678 court. And the procedure you have outlined is not
4679 necessarily the case that you find in all of our State
4680 courts.

4681 And I thank the gentleman for yielding.

4682 Mr. Gowdy. Yes, ma'am. The gentlelady from California
4683 is correct that I have only practiced in one State. But I
4684 was in State court far longer than I was in U.S. District
4685 Court, and the process that I described in the State court
4686 process. There is no difference. There is still a factual
4687 recitation.

4688 I cannot tell you the number of times judges refused to

4689 take the plea because the defendant would not admit to any
4690 criminal conduct.

4691 Mr. Richmond. Would the gentleman yield on that point?

4692 Mr. Gowdy. Yes, I will to the gentleman from Louisiana.

4693 Mr. Richmond. And I did practice a little criminal law

4694 and watched it. In Louisiana, it is far faster than 30

4695 minutes. It is somewhere around 6. But I would also just

4696 assert that sometimes people will plea under *State v.*

4697 *Alfred*, which is, I did not necessarily do the crime, but I

4698 think that a guilty plea is in my best interest because of

4699 X, Y, Z. And judges do accept *Alfred* pleas all the time, it

4700 is called at least in Louisiana. I think it is a North

4701 Carolina case.

4702 But under the circumstance, how do reconcile it? And I

4703 am not professing to know the answer. I am just asking a

4704 question.

4705 Mr. Gowdy. Well, it comes as absolutely no surprise to

4706 anyone -- the gentleman is correct. I think they move

4707 faster in Louisiana because you all speak a little quicker

4708 than we do in South Carolina. But I will say this with

4709 respect to offered please or nolo pleas, you have to concede

4710 that the government could and would prevail. You do not
4711 have to admit that you did it, but you do have to admit that
4712 the government has the evidence to convict you, which is one
4713 reason some of us former prosecutors would not take offer
4714 pleas because the victim was unsatisfied when the defendant
4715 does not admit that they did it, just that you could convict
4716 me.

4717 So the gentleman is right, there are different
4718 categories of police. There is an offer plea. There is a
4719 nolo plea. Where I would disagree politely with the
4720 gentleman is the prosecutor still has to assert and the
4721 defendant has to agree that the prosecutor could produce
4722 sufficient evidence to result in a conviction.

4723 Mr. Johnson. Would the gentleman yield?

4724 Mr. Gowdy. I would be happy to.

4725 Mr. Johnson. At that point, I think the main point that
4726 is being made here is that some people get into a position
4727 where they get loaded down with a bunch of charges, or maybe
4728 there are several separate events that have been allowed to
4729 remain adjudicated. And then it all comes down on a
4730 person once they finally get arrested. And so that person,

4731 thinking that they can get out of jail quicker, will agree
4732 to the factual basis that was established by the prosecutor.
4733 And in so doing, they subject themselves to the harshness of
4734 this legislation.

4735 Mr. Gowdy. Well, that may be true, but it is asking a
4736 lot of judges and prosecutors to be able to glean who really
4737 did it and who is just admitting that they did so they could
4738 get the benefit of a bargain. And I know the gentleman from
4739 Georgia, who did have a distinguished career as a defense
4740 attorney, I know he will agree there are also folks who
4741 plead guilty because they did it, and then wish they had not
4742 pled guilty because they receive some counsel from whatever
4743 penitentiary or institution they are serving in. And they
4744 think that counsel than the counsel from their public
4745 defender or their retained lawyer.

4746 So among my many limitations, I do not know who really
4747 did it and who did not. I just know who stands in front of
4748 a judge under oath and says that they did.

4749 Mr. Johnson. And the gentleman has made a great case
4750 for supporting my principle that judges do not allow folks
4751 to withdraw their guilty pleas very often.

4752 Mr. Gowdy. If I made a good point, it was unwittingly.

4753 But thank you.

4754 [Laughter.]

4755 Mr. Scott. Mr. Chairman?

4756 Chairman Goodlatte. For what purpose does the gentleman
4757 from Virginia seek recognition?

4758 Mr. Scott. Move to strike the last word.

4759 Chairman Goodlatte. The gentleman is recognized for 5
4760 minutes.

4761 Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, I
4762 assume that most of the cases affected by this will be
4763 guilty pleas. As the gentleman from Louisiana indicated,
4764 the offered plea is allowed when it is obvious that you are
4765 going to be convicted. If all you can say is I did not do
4766 it and you look on the other side and people are aligned,
4767 and you know that you are going to be convicted, and you
4768 have been offered a sweet deal, which is substantially
4769 better than what would happen if you went to trial, it is
4770 allowed. You can take the deal.

4771 In fact, most of the cases in Federal court today --
4772 what is it, 96-something percent of the cases in Federal

4773 court are all plea deals because you are coerced into
4774 pleading guilty. If you go to trial, you are always going
4775 to end up a lot worse.

4776 And if part of your willingness to be coerced into a
4777 guilty plea is the fact that you have been given bogus
4778 advice as the consequences, then you ought to be able to get
4779 some relief as you can. You get the relief because of
4780 ineffective assistance, and the case is reversed.

4781 Now, in the end, the final record will reflect, if it is
4782 reversed, no conviction. It seems to me absurd that you
4783 could take a conviction that does not exist and use that as
4784 the basis to deport someone. You do not have a conviction.
4785 That is what reversal means.

4786 I yield to the gentleman from New York.

4787 Mr. Nadler. Thank you. I just want to point out a
4788 couple of things. First of all, what the gentleman from
4789 Virginia says is entirely correct, and we should also live
4790 in reality. The entire system of criminal justice in most
4791 States -- maybe the Federal government, I do not know that
4792 much about it, although I heard what Mr. Scott said -- is
4793 based on the assumption that you cannot try more than a very

4794 small percentage of cases.

4795 Every pressure is brought to bear to coerce a guilty
4796 plea. If you do not plead guilty --

4797 Mr. Gowdy. Can I ask the gentleman why you use the word
4798 "coerce" the guilty plea? I mean, why use the word
4799 "coerce?"

4800 Mr. Nadler. Because that is exactly what it is.

4801 Mr. Gowdy. You do not think "incent" would be another
4802 word, that there is --

4803 Mr. Nadler. No, I think I meant to say "coerce"
4804 because --

4805 Mr. Scott. Reclaiming my time. "Coerce" means you can
4806 get a two-year sentence or you are looking at mandatory 5,
4807 10, 20, 30 years. And if you are looking at 30 years and
4808 you can get away with a 2-year plea, that is coercion
4809 whether you are guilty or not.

4810 I yield to the gentleman from New York.

4811 Mr. Nadler. The entire system, when you have a choice,
4812 on the one hand, of spending hundreds of thousands of
4813 dollars, possibly losing and being sent to jail for life or
4814 for 30 years or whatever, or taking a plea and either

4815 getting a year, or 6 months, or time served, that is very
4816 heavy pressure.

4817 And we should realize that not everybody is innocent who
4818 pleads guilty, and not everybody is guilty who pleads
4819 guilty. Plenty of people who are innocent pleas guilty
4820 because of the heavy pressure to do so, without which the
4821 system would collapse at this point unless we quintupled the
4822 number of judges and greatly increased our budgets.

4823 But beyond that, the chairman said that this amendment
4824 was wrong because it was designed to deal with where a
4825 reversal was for the purpose of ameliorating the
4826 consequences of the conviction or the sentence. Bu the fact
4827 is, let me just read the sentence. It says, "Any reversal
4828 vacated or expungement or modification to a conviction
4829 sentence r conviction record that was granted to ameliorate
4830 the consequences of the conviction sentence or conviction
4831 record," as the chairman said, "or was granted for
4832 rehabilitative purposes, or for failure to advise the alien
4833 of the immigration consequences of a guilty plea or
4834 determination of guilt, shall have no effect."

4835 So in other words, if the vacation, vacate, or vacating

4836 of the conviction was based not on anything to do with his
4837 being deported or the possibility of being deported. It was
4838 based on the fact that he there was ineffective assistance
4839 of counsel, and that consequently, the plea had to be
4840 vacated for constitutional infirmity. Nonetheless, this
4841 provision says he can still be deported on that.

4842 Now, the manager's amendment says, wait a minute, we
4843 have a Supreme Court decision right on point, so we will
4844 narrow the provision to only apply to cases that occurred or
4845 convictions that occurred before the date of the Supreme
4846 Court decision. So it makes less of an important provision.
4847 It does not affect new cases going forward.

4848 But however many cases are left over, and I do not know
4849 how many there are, but however many cases there are left
4850 over of people who are deprived of their constitutional
4851 rights, therefore, the conviction was vacated, are still
4852 going to be subject to deportation, and that is simply
4853 wrong. Once a conviction was vacated because you lost your
4854 constitutional rights or whatever, it should have no effect.

4855 And as I said, if the person really is guilty, try him
4856 again. I mean, but you cannot base a deportation or a

4857 terrible thing happening to him on a conviction that was
4858 vacated as a matter of law. That violates every principle
4859 of our law, and that is why I urge the adoption --

4860 Chairman Goodlatte. Would the gentleman yield?

4861 Mr. Nadler. Sure.

4862 Chairman Goodlatte. You say that, but effectively your
4863 amendment would overturn the Kagan decision, the six-vote
4864 decision.

4865 Mr. Nadler. No. Reclaiming my time, it would not
4866 overturn it. It would simply say that despite the fact that
4867 that decision did not have retroactive effect will apply the
4868 principle of the decision, because the principle is right.
4869 And it hard to see to see how you can argue with the
4870 principle of the decision. And it also hard to see what the
4871 practical point of not applying this retroactively is. How
4872 many people it would affect, I do not know, but not a hell
4873 of a lot. And it is going to be the principle going
4874 forward. So why reserve for the people unlucky enough to
4875 have been convicted improperly, because that is what it was,
4876 an improper conviction, prior to the 2010, the ability to
4877 deport them.

4878 As I said, if they are really guilty of something, try
4879 them again, and this time, do it right.

4880 Chairman Goodlatte. Well, if the gentleman would
4881 yield --

4882 Mr. Nadler. Sure.

4883 Chairman Goodlatte. -- the reason not to is because
4884 that was a case involving a plea entered before 2010, and
4885 the Court said that that was not necessary.

4886 Mr. Nadler. Reclaiming my time, the Court established
4887 the principle or reiterated the principle that we should
4888 observe, that we have always basically observed. And I have
4889 not read the decision, so I do not why they said it was not
4890 retroactive. But the fact that they did not make it
4891 retroactive and forced our hand should not mean that we
4892 should not take the principle, which is that a conviction
4893 vacated for lack of constitutional right should not form the
4894 basis of a disability, even if only for old cases, which is
4895 what we are talking about now in the manager's amendment,
4896 only for old cases.

4897 Chairman Goodlatte. For what purpose does the gentleman
4898 from Idaho seek recognition?

4899 Mr. Labrador. Mr. Chairman, I move to strike the last
4900 word.

4901 Chairman Goodlatte. The gentleman is recognized for 5
4902 minutes.

4903 Mr. Labrador. Mr. Chairman, I actually regretfully have
4904 to join this amendment, even though I wholly object to the
4905 word "coerce." I was a criminal defense lawyer, and I have
4906 a great deal of respect for most prosecutors. And I know,
4907 as I have been dealing with my good friend, Mr. Gowdy, that
4908 he was a very good prosecutor. And I do not know that he or
4909 any prosecutor that I worked with would coerce anybody into
4910 pleading guilty.

4911 But I think we are losing sight of what this this
4912 section of the bill does. We are not talking about whether
4913 somebody is guilty or innocent of a crime. And I think our
4914 side is making the mistake of worrying about guilt or
4915 innocence.

4916 What this section of the bill is doing is defining
4917 conviction for purposes of removal or deportation. That is
4918 the only thing this section is doing. And when you define
4919 the conviction so broadly that the alien has no ability to

4920 fight in a removal proceeding their ability to be removed,
4921 in some cases it leads to unfair results. And I just want
4922 to talk about, we are talking here, for the most part, for
4923 people that are here legally. So we are talking about
4924 people that are here as legal permanent residents or H1Bs,
4925 or whatever other legal status. So let us not confuse this
4926 with, you know, deporting illegal aliens or anything like
4927 that.

4928 And I will give you one example that I happen to have in
4929 my law practice again and again and again. In the State of
4930 Idaho, when you are caught with paraphernalia, usually you
4931 get one of two charges. You either get possession of
4932 paraphernalia or you get possession of marijuana. Usually
4933 most attorneys, most criminal defense attorneys, would ask
4934 the defendant to plead guilty to the possession of
4935 paraphernalia because on their record, it looks better than
4936 possession of marijuana.

4937 Well, guess what happens under immigration law? The
4938 possession of paraphernalia is a deportable offense where
4939 you have no relief from deportation. The possession of
4940 marijuana is not removable if it is your first time

4941 possession. So you would have a young person who has been
4942 in the United States most of their life as a legal permanent
4943 resident. And if their attorney was not smart enough to
4944 know the distinction between those two crimes, one would get
4945 deported, and the other one would not, even though they had
4946 the same crime.

4947 So as a criminal defense attorney, as an immigration
4948 lawyer, I had the opportunity to go before a judge and ask
4949 them to switch the conviction. And we would look for
4950 constitutional defaults in the proceeding. And one of them,
4951 we would argue, was that the person was not advised of his
4952 rights, of the immigration consequences of their
4953 convictions.

4954 It was something that we were able to get a few times.
4955 And I think what you are doing in this section is you are
4956 going too broadly, and you are forgetting that the person
4957 still has to go through a removal proceeding. The person
4958 still will go through deportation. It does not mean that
4959 the person will not be deported. The distinction on whether
4960 it is a conviction or not, for the most part, is whether the
4961 person has the ability to ask for relief before an

4962 immigration judge.

4963 And in most cases, I think we should allow the persons
4964 that are here illegally, I mean, that are here legally, and
4965 I am talking about legal permanent residents now, to have
4966 the ability to argue before a judge whether they should be
4967 removed or not. In most cases, if they commit a very
4968 serious crime, they are going to be deported from the United
4969 States. It was my experience, and I think we need to be
4970 really careful.

4971 In the *Matter of Pickering*, already determines -- it is
4972 a BIA case that was decided a few years ago -- already
4973 determines that a person cannot remove their conviction for
4974 purposes of immigration consequences. The law is already
4975 established on that, and I know there is some disagreement,
4976 whether, you know, further cases have done something with
4977 that. But for that reason, I think I will be supporting it.

4978 Chairman Goodlatte. Would the gentleman yield on that
4979 point?

4980 Mr. Labrador. Absolutely.

4981 Chairman Goodlatte. Is the gentleman saying that there
4982 are certain types of criminal offenses for which an alien is

4983 deportable should not be deportable? And if that is the
4984 case, why not offer an amendment to change those provisions
4985 as opposed to effectively defeat the effort here to defeat
4986 certain types of judges, who apparently will vacate a
4987 judgment not for the purpose that the person was not indeed
4988 guilty, but for the purpose of avoiding the deportation? I
4989 mean, it seems like you are mixing one objective with
4990 another.

4991 Mr. Labrador. Reclaiming my time, I do not know that
4992 there are any crimes for which a person should not be
4993 deportable. But I want them to go before a judge and have
4994 the ability to actually ask for the ability to remain in the
4995 United States.

4996 I think that the removal proceedings are already
4997 difficult for them, and I think they should be. I think if
4998 somebody has the privilege of being in the United States, if
4999 they violated the law, we should have a proceeding where
5000 they are removed from the United States if their crime was
5001 serious enough. But by defining "conviction" so narrowly,
5002 what you are doing is you are disallowing people from having
5003 relief that are here legally as legal permanent residents.

5004 I am not saying that they should receive relief, but
5005 they have an opportunity to argue.

5006 Chairman Goodlatte. I get it, but would the gentleman
5007 yield further?

5008 Mr. Labrador. Absolutely.

5009 Chairman Goodlatte. So again, though, the conviction of
5010 the crime makes the individual automatically deportable. It
5011 is not the discretion of the judge to do that. The
5012 discretion of the judge apparently in certain circumstances
5013 is to come up with a circumstance where, hey, what I thought
5014 was a guilty person is no longer a guilty person. And that
5015 is different than what the gentleman is arguing for here.

5016 Mr. Labrador. Reclaiming my time, but what happens is
5017 that if you have a criminal defense attorney who knows
5018 immigration law, they will ask their client to plead to one
5019 crime versus somebody who does not know immigration law.
5020 And they will ask him to plead to another crime in the same
5021 instances, the same crime will lead to one being removable
5022 without an opportunity to argue before a judge and the other
5023 person having the opportunity to argue before the judge.

5024 That is usually what happens, and I think maybe we need

5025 to figure out now to narrowly construct this as opposed to
5026 as broadly as this has been.

5027 Chairman Goodlatte. Has the gentleman from Louisiana
5028 spoke on this amendment already? Okay. The gentleman is
5029 recognized for 5 minutes.

5030 Mr. Richmond. Mr. Chairman, in an attempt and probably
5031 feeling good since the last time seemed like we made some
5032 progress, I just want to throw out there something that we
5033 have not talked about yet. But there is a growing movement
5034 in this country for deferred adjudication or diversion
5035 programs in State courts -- I will just give you a real life
5036 example -- where, young kid burglarize a home, and the DA
5037 will offer them diversion, which is a strenuous program of
5038 rehabilitation, restitution, and all of those things. And
5039 in exchange for them going through that program, they come
5040 back at the end and dismiss the charges once all those
5041 things happen.

5042 But you go in on the first day and you plead guilty, and
5043 then when you finish the program, they actually vacate the
5044 sentence, actually reverse the conviction. So we would now,
5045 I think, throw a monkey wrench in probably all of the State

5046 diversion programs. And my friend from Carolina, Mr. Gowdy,
5047 may know on the Federal side, but we may really hamper
5048 deferred adjudication in the country if we do this. And I
5049 am not saying that part of this cannot work. But I do not
5050 think we should rush through this section without probably
5051 really analyzing whether we will now kill deferred
5052 adjudication of any legal resident who could face
5053 deportation.

5054 So I would just as a criminal defense attorney, I see it
5055 all the time. And a lot of times, my parents of young kids
5056 will push for deferred adjudication because it is really
5057 like a scared straight program for first time offenders. So
5058 we are talking about first time offenders would meet not
5059 major charges, but they have to plead guilty in the
5060 beginning. And then they come back and they get it reversed
5061 when they complete the program.

5062 And, yes, I will yield.

5063 Chairman Goodlatte. Would the gentleman yield? I thank
5064 the gentleman for yielding. Is the gentleman suggesting
5065 that there should be a distinction made between the
5066 immigration status of the individual if they are a lawful

5067 permanent resident, or have some other legal status, they
5068 should have different treatment for the kind of second
5069 change program that you are talking about there, as opposed
5070 to somebody would be deportable anyway because even if they
5071 had not committed a crime, they are unlawfully present in
5072 the United States?

5073 Mr. Richmond. Well, I think that they should have the
5074 same opportunity, and right now I am speaking of legal. I
5075 think they should have the same opportunity as any legal
5076 residence, and that is to avail them --

5077 Chairman Goodlatte. What about the one who is not a
5078 legal resident?

5079 Mr. Richmond. The one who is not a legal resident, I
5080 think that they will still go through the system as a non-
5081 legal resident. I do not think that we use the deferred
5082 adjudication part of it to kick them out. I think they have
5083 a separate track and they are going a separate way.

5084 But the key is, and I do not want to get bogged down on
5085 the distinguish, but key is for the legal resident now does
5086 not have the same opportunity to go through deferred
5087 adjudication as my son or daughter would because they have

5088 something else that is hanging over their head. And I do
5089 not think that we mean to do that. And if we do mean to do
5090 that, then I certainly do not. But I am not, again,
5091 professing to have all the answers, but I do think that this
5092 is an area that we should give a lot of thought to before
5093 passing it out, because these unintended consequences, I
5094 think, are greater than we realize.

5095 And with that, Mr. Chairman, I would yield back.

5096 Chairman Goodlatte. For what purpose does the gentleman
5097 from Alabama seek recognition?

5098 Mr. Bachus. Let me take a totally different tact. This
5099 is any reversal.

5100 Chairman Goodlatte. The gentleman is recognized for 5
5101 minutes.

5102 Mr. Bachus. Any reversal. All right. Now, what
5103 happens to cause a reversal? Well, a magistrate rules, if
5104 we are talking about Federal court, and then a Federal judge
5105 overrules him and reverses that decision. Or a jury or a
5106 judge makes the decision, and an appellate court reverses
5107 that decision.

5108 Now, I think it is elementary law that when there is a

5109 reversal, the conviction is no longer a conviction. But
5110 what we are saying here, any reversal, and there are too
5111 many "ors" here. I mean, when you do that, only a part of
5112 this says when you do not advise about counsel. It also
5113 says any reversal could be of a conviction record, shall
5114 have no effect on the immigration consequences resulting
5115 from the original conviction.

5116 I mean, due process includes the right to appeal. That
5117 is why we have magistrates in the Federal court, judges who
5118 can overrule them, vacate them. That is why we expunge
5119 things. We find that a mistake --

5120 Chairman Goodlatte. Would the gentleman yield? In
5121 these instances, we are talking about cases where the
5122 individual has been convicted. They have served their time.
5123 a detainer has been placed on them. they wind up in the
5124 immigration court. And at that point in time, they suddenly
5125 realize that they are going back to court to try to get
5126 their conviction overturned.

5127 Mr. Bachus. Mr. Chairman, you are supposing that that
5128 is what we are dealing with, but --

5129 Chairman Goodlatte. That is what the language in the --

5130 Mr. Bachus. What you could be dealing with is the
5131 Supreme Court of Alabama reversing a case for whatever
5132 reason. And then later, 3 years later or 5 years later,
5133 according to the way this drafted, suddenly that reversal of
5134 the conviction we say that that is ignored or that somehow
5135 the defendant has the burden of demonstrating that it was
5136 correct, a reversal. I mean, what do we not understand
5137 about a reversal?

5138 With time factor, after March. I mean, if it was after
5139 March 31st, 2010.

5140 Mr. Gowdy. So if you are sentenced, there would be time
5141 to appeal it.

5142 Mr. Bachus. I am not talking about serving a sentence.
5143 A reversal in many cases, when it is reversed, the
5144 conviction, there is no conviction.

5145 Mr. Gowdy. Unless there is an original sentence.

5146 Mr. Bachus. Well, okay, then why would you consider the
5147 original sentence? I mean, I --

5148 Mr. Nadler. Would the gentleman yield?

5149 Mr. Bachus. Yeah.

5150 Mr. Nadler. Would the gentleman yield? Thank you. I

5151 think the gentleman makes a point that I had not considered,
5152 but this amendment is simply drafted way broader than it is
5153 even intended to be, because he is right. The situation the
5154 chairman described would be covered, but so would a million
5155 other situations.

5156 All you need is a reversal by a higher court for
5157 whatever reason, the conviction is gone. But the person can
5158 still be deported for the no longer existing conviction.
5159 That is a total denial of due process. I am sure it is not
5160 what the drafters intended, but that is what it says in
5161 addition to all the arguments I made even what was intended.

5162 And to get right back to it again, whether it is limited
5163 in time after or before a Supreme Court decision or not, it
5164 still says any reversal that was, you know, basically
5165 vacated, et cetera, et cetera, shall have no effect on the
5166 immigration consequences if it was intended for various
5167 reasons, and you put the burden of proof that it was not
5168 intended for those consequences on the person who was
5169 convicted, but then the conviction was then reversed.

5170 I do not even know you meet such burden of proof. How do
5171 you prove that the reversal was not for one of these

5172 reasons? It seems to me this amendment, even if well
5173 intended, which I am sure it was, just has too many
5174 infirmities, this provision rather. And the amendment to
5175 remove this provision or to be -- go ahead.

5176 Chairman Goodlatte. Would the gentleman from Alabama
5177 yield?

5178 Mr. Bachus. Yes.

5179 Chairman Goodlatte. I would just say to the gentleman
5180 from New York that it goes back to the question I asked
5181 earlier, and that is do you draw a distinction between
5182 somebody who is already deportable anyway and somebody who
5183 may, because of their legal status, not have that set of
5184 circumstances.

5185 Mr. Nadler. I am not sure I understand your question.

5186 Mr. Bachus. And let me take back my time. I think we
5187 are also making the mistake by saying, okay, in this case,
5188 what if this. This can be applied to a million facts
5189 situations We do not know which ones it will be applied to.
5190 It could be applied to a reversal by the Supreme Court of
5191 the United States.

5192 Chairman Goodlatte. For what purpose does the gentleman

5193 seek recognition?

5194 Mr. Gutierrez. Move to strike the last word.

5195 Chairman Goodlatte. The gentleman is recognized for 5
5196 minutes.

5197 Mr. Gutierrez. So we really literally hundreds, if not
5198 thousands, of petitions have come before my office from all
5199 over the country. And I have to tell you, this is a very
5200 rare situation that we are talking about because in the
5201 abundance of cases, it is pretty clear cut. And so, I would
5202 say to the chairman, look, if you are undocumented, if you
5203 are illegally in the United States of America and they
5204 reversed the decision, deportation continues, as well it
5205 should. You are in the country. Now you can abide yourself
5206 of whatever rights you have under the law before the judge,
5207 but it has nothing to do with the underlying crime.

5208 I would think what we would want to do is to distinguish
5209 between those that are permanent residents of the United
5210 States, because, I mean, people come to my office all the
5211 time and I say, what is one reason you should become a
5212 citizen of the United States? I said, so that you would
5213 have all the protections of the Constitution of the United

5214 States. And if you do not go for permanent resident to
5215 citizenship, guess what? The same situation affects you so
5216 much more adversely.

5217 So if you are a permanent resident of the United States
5218 and you go through the court proceeding and has been
5219 reversed, then you should have that opportunity to stop
5220 moving forward on your deportation from the United States of
5221 America, as well it should be. I mean, we are talking about
5222 people who by and large would then have roots in their
5223 communities, have been here, have spouses. In the vast
5224 majority of cases, I cannot think of adult permanent
5225 residents that I have met that do not have American citizen
5226 children, and, of course, grandchildren and extended
5227 families.

5228 But if you are in the country undocumented, illegally in
5229 the United States of America, and you are charged with a
5230 crime, I would hope we would have a seamless process that
5231 tries you, finds you innocent or guilty, and sentences you.
5232 And when you finish your sentence, you are gone. I do not
5233 have any problem with that. You are gone, as well you
5234 should be. You have violated your welcome and your stay in

5235 the United States of America because we invited you as a
5236 guest to the United States, and you should be gone. I do
5237 not have a problem with that.

5238 Certainly I will yield to the gentleman.

5239 Mr. Bachus. Mr. Chairman, I am going to rephrase this
5240 yet again. What we are saying here is that we are going to
5241 consider a conviction or a sentence that is no longer there.
5242 It does not exist. It has been vacated or reversed.

5243 So in determining, and we could say, well, this person
5244 might need to be deported. He may not need to be deported.
5245 Why would we need to consider something that no longer
5246 exists as evidence? Why would we want to consider a
5247 conviction, a judgment, a sentence that no longer in the
5248 eyes of the law exists?

5249 If, as you say, you know, he has done something and he
5250 deserves to be deported, why would we have to depend on
5251 something that does not exist?

5252 Mr. Gutierrez. Yeah, and reclaiming my time, I think
5253 that is the basic point. And I want to stress that
5254 particularly to those that are permanent residents of the
5255 United States -- that is, legally in the United States.

5256 They have families, they have homes, they have other
5257 equities which should be considered as we move forward.

5258 And I do not want this to turn into a conversation with
5259 the other side that somehow you can, I do not know, you can
5260 murder and rape and sell drugs and be a bad person, and
5261 somehow be protected by the immigration court.

5262 No, I think if you are invited, right, and you are a
5263 guess in this country, and you are not a citizen of this
5264 country, there are going to be lesser standards applied to
5265 you.

5266 Ms. Lofgren. Would the gentleman yield? I think the
5267 real question is, you are convicted of murder, and then
5268 because the DNA proves that you did not do it, your
5269 conviction is reversed, but they are going to still use the
5270 conviction to deport you.

5271 Mr. Gutierrez. And that is my point. That should not
5272 happen. The reversal is the reversal. It did not exist.
5273 It did not happen.

5274 Mr. Scott. Would the gentleman yield?

5275 Mr. Gutierrez. Certainly.

5276 Mr. Scott. As I understand it, if the person is in the

5277 immigration court and has clearly has no business being
5278 here, you do not need the conviction. They can go.

5279 If, on the other hand, the basis for the deportation is
5280 the conviction itself, which has been reversed, and,
5281 therefore, it no longer stands.

5282 Mr. Gutierrez. Thank you. I think Mr. Scott put it
5283 perfectly. Mr. Chairman, I am ready to work with the other
5284 side in a seamless process that somebody is convicted, they
5285 do their time in the United States, and a seamless process
5286 in which they are gone from the United States of America,
5287 and in which we say to permanent residents of the United
5288 States, people that we have invited and have violated the
5289 invitation to be in the United States, that they, too, go
5290 through a process. But if it is reversed, it is reversed.

5291 Chairman Goodlatte. The time of the gentleman has
5292 expired.

5293 Mr. Gutierrez. Thank you, Mr. Chairman.

5294 Chairman Goodlatte. For what purpose does the gentleman
5295 from Texas seek recognition?

5296 Mr. Poe. Move to strike the last word.

5297 Chairman Goodlatte. The gentleman is recognized for 5

5298 minutes.

5299 Mr. Poe. Mr. Chairman, it seems to me there are several
5300 issues here. And having dealt in the criminal court house
5301 for 30 years, I spent a good many hours during pleas of
5302 guilty to admonish the offender that is charged, the person
5303 charged, the defendant, about many issues regarding what
5304 their rights are, including advising them under Texas law
5305 that if you are illegally in the United States, that may be
5306 used against you. Your plea of guilty may be used against
5307 you in another proceeding.

5308 And I think we should use that. We should tell folks
5309 that who are in the United States, regardless of their legal
5310 status, whether they are citizens are not, and we do, and I
5311 have.

5312 It seems to me the issue, the key phrase is a final
5313 conviction. A final conviction can be used against a lot of
5314 people for a lot of reasons, and properly so, and including
5315 losing your right to vote if you are a citizen. Your final
5316 conviction and you are a felon, you are not voting.

5317 But if the conviction is not a final conviction,
5318 regardless of whether the person is a citizen or a non-

5319 citizen, I do not think we should be using that against them
5320 for any purpose because it is not a final conviction. If it
5321 was reversed, if it was vacated, if it was dismissed,
5322 whatever. Convictions should be mean to be used in a
5323 courtroom to sanction somebody for something, such as
5324 deportation. It should be a final conviction, which means a
5325 lawfully conviction that has ended all of its appeal
5326 process. And if it is not that way, I think due process and
5327 fundament fairness means we should not use it against that
5328 person.

5329 If it is a lawful conviction and they are a murderer,
5330 send them to the Do Right Hotel. If they are a foreign
5331 citizen, send them home. But if it is not a final
5332 conviction, it cannot be used against him.

5333 If there is other reasons why the system can deport
5334 somebody because they are in the country illegally, that is
5335 a different issue. That should be the issue raised in the
5336 courtroom in immigration court, but not the issue of a
5337 conviction that has been overturned by somebody at some
5338 point.

5339 So I think I support the -- I am going to shock the

5340 gentleman from New York, but I support his amendment because
5341 you probably are shocked you and I agree on this. I support
5342 the gentleman's amendment, and I yield back my time.

5343 Chairman Goodlatte. If the gentleman would yield.

5344 Mr. Poe. I will yield, Mr. Chairman.

5345 Chairman Goodlatte. I have heard enough, too. I am not
5346 satisfied that there is not some language in between here
5347 that would address the circumstances that I am concerned
5348 about, while still not affording that lawful permanent
5349 resident or somebody else with legal status to be able to
5350 continue their case if there is not the kind of final
5351 conviction that the gentleman from Texas refers to.

5352 So I am going to support the amendment as well, and we
5353 will continue on that difference that we might have with
5354 regard to the person who is unlawfully present in the United
5355 States. And if I can come up with additional language that
5356 satisfies that, we will work on that either in this
5357 proceeding or in -- as we move to the floor.

5358 Mr. Nadler. Mr. Chairman?

5359 Chairman Goodlatte. The gentleman from New York.

5360 Mr. Nadler. I appreciate the chairman's wisdom and

5361 discretion.

5362 [Laughter.]

5363 Chairman Goodlatte. The question occurs on the
5364 amendment offered by the gentleman from New York.

5365 All those in favor, respond by saying aye.

5366 All those opposed, no.

5367 In the opinion of the chair, the ayes have it, and the
5368 amendment is agreed to.

5369 Are there further amendments to the bill?

5370 For what purpose does the gentlewoman from California
5371 seek recognition?

5372 Ms. Chu. Mr. Chair, I have Amendment number 10.

5373 Chairman Goodlatte. The clerk will report the
5374 amendment.

5375 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.
5376 Chu, page 6 after line 5, insert the following and
5377 redesignate provisions accordingly. Section 103, racial
5378 profiling, Subsection A, definitions. In this section,
5379 paragraph 1 covered --

5380 Chairman Goodlatte. Without objection, the amendment
5381 will be considered as read.

5382 [The amendment of Ms. Chu follows:]

5383

5384 Chairman Goodlatte. And the gentlewoman from California
5385 is recognized to explain her amendment.

5386 Ms. Chu. Mr. Chair, my amendment would eliminate the
5387 failed 287(g) program and ensure that we prohibit racial and
5388 religious profiling when enforcing our immigration laws.
5389 Instead of ending the problematic 287(g) program, the SAFE
5390 Ac expands its use and ensures that local law enforcement,
5391 not the Federal government, are the ones enforcing our
5392 immigration laws.

5393 Section 112 of this bill would flip on its head
5394 authority over immigration enforcement by requiring the
5395 Federal government to delegate its authority to State and
5396 local jurisdictions at their request. Such a reversal of
5397 authority over immigration enforcement would be
5398 unprecedented.

5399 287(g) wastes tens of millions of dollars annually. It
5400 should be terminated, not expanded. Secretary Napolitano
5401 has testified that a 287(g) taskforce can cost up to 10
5402 times more per arrest than similar programs at DHS. As if
5403 that were not bad enough, The DHS Office of the Inspector
5404 General and Government Accountability office, have

5405 documented significant problems in 287(g) oversight,
5406 including the arrest of non-criminals rather than
5407 individuals who threaten national security or public safety,
5408 in absence of adequate ICE supervision, and insufficient
5409 training of State and local law enforcement officers.

5410 While some claimed that 287(g) helps enforce our
5411 immigration laws, it actually diverts critical law
5412 enforcement resources and makes our communities less safe.
5413 By encouraging police to do the government's job, 287(g)
5414 breeds mistrust in local law enforcement. Immigrants worry
5415 that they will be punished or deported if they talk to the
5416 police. This means victims will choose to suffer in silence.
5417 This manufacturers fewer witnesses that will come forward to
5418 help solve crimes.

5419 And this just is not about undocumented immigrants being
5420 scared to come forward. Citizens and legal residents are
5421 holding back, too. That is because the 287(g) program, it
5422 is a tool that too often relies on racial profiling. Take
5423 the case of Sheriff Apayo in Maricopa County, Arizona. Just
5424 a few weeks ago, a Federal judge ruled that he and his
5425 deputies violated the constitutional rights of Latinos by

5426 targeting them during raids and traffic stops. It is no
5427 wonder that 44 percent of Latinos surveyed across the
5428 country said they were now less likely to contact the police
5429 if they were victims of crimes.

5430 But this bill makes it harder for the Federal government
5431 to protect its citizens from racial profiling from law
5432 enforcement officers, like Sheriff Apayo and the 287(g)
5433 program. It forces the Federal government to let
5434 problematic programs continue to run, terrorizing the
5435 community, even if a Federal judge agrees that the 287(g)
5436 agreement should be terminated.

5437 We need this amendment because it bans racial and
5438 religious profiling by all law enforcement agents enforcing
5439 immigration law. The robust and multi-tiered approach to
5440 ending racial profiling advanced in this amendment is
5441 integral to protecting all communities in America against
5442 racial and religious profiling.

5443 Law enforcement officials from across the country oppose
5444 287(g) because it is getting in the way of their real jobs,
5445 which is stopping crime and keeping people safe. The 287(g)
5446 program takes cops away from going after violent criminals

5447 to focus instead on civil violations.

5448 According to FBI and census data, 61 percent of 287(g)
5449 localities had violent and property crime indices lower than
5450 the national average. That is why the Police Foundation,
5451 the International Association of Chiefs of Police, and the
5452 Major Cities Chiefs Association have expressed concern about
5453 the 287(g) program undermining their core public safety
5454 mission.

5455 I urge you to vote in favor of my amendment to end
5456 287(g) and protect our communities from unconstitutional
5457 racial and religious profiling.

5458 Chairman Goodlatte. The chair thanks the gentlewoman.

5459 For what purpose does the gentleman from South Carolina
5460 seek recognition?

5461 Mr. Gowdy. Move to strike the last word.

5462 Chairman Goodlatte. The gentleman is recognized for 5
5463 minutes.

5464 Mr. Gowdy. Thank you, Mr. Chairman. I oppose this
5465 amendment because it would strike from the bill provisions
5466 protecting the 287(g) program. Section 287(g) of the
5467 Immigration and Nationality Act allows DHS to enter into

5468 cooperative agreements with States and localities to assist
5469 in the enforcement of the immigration laws. The 287(g)
5470 program has been tremendously effective.

5471 According to ICE, since January 2006, the 287(g) program
5472 is credited with identifying more than 185,000 individual
5473 who were suspected of being in the country illegally.
5474 Participating jurisdictions report the 287(g) program
5475 facilitates crime reduction, removal of repeat immigration
5476 offenders, and other public safety benefits. It allows
5477 participants to have direct access to ICE databases, and
5478 they are authorized to prepare a notice to appear in
5479 immigration court and transport aliens to ICE approved
5480 detention facilities.

5481 Unfortunately, this Administration has entered into no
5482 new 287(g) agreements since August 2010. In 2012, ICE
5483 suspended the seven 287(g) agreements it had with the State
5484 of Arizona and its law enforcement agencies. ICE stated
5485 that it did so in light of the Supreme Court's decision to
5486 uphold the Arizona law that requires State law enforcement
5487 officers to make a reasonable attempt to determine the
5488 immigration status of a person during a lawful stop,

5489 detention, or arrest where reasonable suspicion exists that
5490 they are unlawfully present in the United States.

5491 In order to protect the 287(g) program and require DHS
5492 to enter into new 287(g) agreements with those States and
5493 localities that are eager to sign up, this bill requires DHS
5494 to accept applications to enter into 287(g) agreements
5495 absent a compelling reason not to do so. The bill provides
5496 that DHS can impose no limit on the number of agreements.
5497 Any such agreement shall accommodate a requesting State or
5498 locality with respect to the enforcement model of their
5499 choosing. DHS cannot terminate an agreement absent
5500 compelling reasons.

5501 DHS shall provide a State or political subdivision
5502 written notice of intent to terminate, at least 180 days
5503 prior to the day of intended termination, and the notice
5504 shall fully explain the grounds for termination, along with
5505 providing evidence substantiating the Secretary's
5506 allegations. The State or locality shall have the right to
5507 a hearing before an administrative law judge.

5508 This amendment strikes these needed 287(g) protections,
5509 and I would urge my colleagues to oppose it. And in

5510 addition and in conclusion, Mr. Chairman, I would mention
5511 that opposition to the 287(g) programs generally comes from
5512 groups that are just fundamentally opposed to State and
5513 local law enforcement of immigration laws, which is
5514 something that I have spoken to at great length already
5515 today.

5516 The opponents argue the program promotes profiling and
5517 the abuse of power. However, a GAO official testified
5518 during a House Homeland Security hearing, and I quote, "We
5519 didn't see any complaints in the files of any jurisdictions
5520 or in the Office of Professional Responsibility about any
5521 jurisdiction."

5522 So in light of that, I would ask my colleagues to oppose
5523 the amendment, and I would yield back the remainder of my
5524 time.

5525 Chairman Goodlatte. The chair thanks the gentleman.

5526 Ms. Lofgren. Mr. Chairman?

5527 Chairman Goodlatte. For what purpose does the
5528 gentlewoman from California seek recognition?

5529 Ms. Lofgren. To strike the last word.

5530 Chairman Goodlatte. The gentlewoman is recognized for 5

5531 minutes.

5532 Ms. Lofgren. I want to thank Congresswoman Chu for the
5533 amendment. I think that eliminating the 287(g) program from
5534 the bill is warranted, and the program has led to racial
5535 profiling and unconstitutional detention arrests in several
5536 jurisdictions, which we mentioned during the hearing that we
5537 had on the bill.

5538 Earlier today, I asked unanimous consent that put in the
5539 record statements from three law enforcement individuals who
5540 are opposed to this bill. And in contradiction to what
5541 Chairman Gowdy has said, it is the police chiefs and
5542 sheriffs that I am listening to who are opposed to this
5543 bill. And I just want to mention briefly what some of these
5544 law enforcement officials have said,

5545 First, Lake County Sheriff Mark Curran, who yesterday
5546 said that he himself had requested a 287(g) program in his
5547 jurisdiction. Bu he has since decided that the future of
5548 law enforcement is community policing, and that he explained
5549 in large immigrant communities there is, and this is a
5550 quote, "great fear from law enforcement. And where there is
5551 great fear, community policing suffers." And then I quote

5552 again Sheriff Curran, "This bill," he said, "is only going
5553 to add more fear."

5554 The police chief of Riverside, California opposes this
5555 bill. And again, this is a direct quote from the chief in
5556 Riverside. "The most compelling public safety arguments
5557 against the proposed legislation are the following. And we
5558 know from long experience that when law enforcement officers
5559 are perceived to be an arm of immigration, there are people
5560 in the immigrant community who would avoid contact with the
5561 police and anybody else in the criminal justice system.
5562 They do not report crimes. They do not identify criminals.
5563 And they do not give testimony to the police, nor do they do
5564 so in court.

5565 This is an advantage only for criminals. That
5566 reluctance to contact police is not just limited to
5567 undocumented people. Legal immigrants, who, and the
5568 friends, family, neighbors of the people affected, will also
5569 avoid calling for help from the police.

5570 Overall, in every community I believe that local police
5571 involvement in this issue detracts from the perceived
5572 legitimacy of the police. In the longer term, I sincerely

5573 believe that placing police in the role of immigration
5574 enforcements ensures that the children of immigrants, and
5575 many of these children are American citizens who will grow
5576 up fearing and distrusting the police."

5577 The Salt Lake City police chief also came out against
5578 this bill, and explained in a letter to us why. And again,
5579 I quote, "Proposals that would essentially turn police
5580 officers into the long arm of immigration law are so
5581 troubling. These tactics are not just political theater.
5582 They threaten public safety across our Nation by making
5583 members of the immigrant and Latino communities reluctant to
5584 come forward as victims of or witnesses to crime,
5585 additionally placing local law enforcement in the position
5586 of immigration agents inappropriately interjects bias into
5587 daily interactions."

5588 Now, these are three law enforcement officials who are
5589 speaking about why this 287(g) program is contra-indicated
5590 in terms of law enforcement, not me. These are the top law
5591 enforcement officials in their community. Now, you know --

5592 Mr. Chaffetz. But will the gentlewoman --

5593 Ms. Lofgren. Not until I --

5594 Mr. Chaffetz. Will the gentlewoman yield?

5595 Ms. Lofgren. Not until I finish. It is one thing if on
5596 a community by community basis you entered into a 287(g)
5597 program. As it used to be, there were so many problems with
5598 this that the Department has now wisely held off. But the
5599 bill basically brings this nationwide. And so, I think the
5600 voices of these law enforcement officials, and these are not
5601 the only ones. I would mention that the chief of police in
5602 San Jose told me the exact same thing as these police chiefs
5603 have said, that this is contra-indicated in terms of
5604 enforcing the law and getting cooperation from the public
5605 and immigrant communities. And this is going to be shoved
5606 down the throats of everyone in America.

5607 I think it is a terrible mistake, and it is not just,
5608 you know, pro-immigrant people who think so. It is law
5609 enforcement people who think so. And in my view, we ought
5610 to be listening to them.

5611 And I see I am almost out of time. I know the gentleman
5612 can get his own time, so I will yield back.

5613 Chairman Goodlatte. The question occurs on the
5614 amendment offered by the gentleman from --

5615 For what purpose does the gentleman from Utah seek
5616 recognition?

5617 Mr. Chaffetz. I would move to strike the last word.

5618 Chairman Goodlatte. The gentleman is recognized for 5
5619 minutes.

5620 Mr. Chaffetz. I thank the chairman. I just simply want
5621 to reiterate that this is voluntary. It is voluntary. To
5622 suggest that this is going to be shoved down the throats of
5623 every American or however the trail after that sentence is a
5624 total misrepresentation of what this bill does, the spirit
5625 of what it does. To suggest that there are certainly law
5626 enforcement people who think that 287(g) was not effective,
5627 they chose not to use it. But there are other people in the
5628 State of Utah who did choose to do it, who did think it was
5629 effective, that it did save costs.

5630 And so, this, in that same spirit, allows local law
5631 enforcement the option to do that. I think it is very
5632 misleading to suggest that this is going to be shoved down
5633 the throats and that this is something that is universally
5634 law enforcement does not want to have this happen.

5635 Ms. Lofgren. Would the gentleman --

5636 Mr. Chaffetz. No. As a matter of fact, no. You did
5637 not yield time to me, and I am going to continue on because
5638 I think the representation that you made is not a balanced
5639 representation. I am trying to provide some balance to
5640 that. There are lots of us that do believe that local law
5641 enforcement should have this tool available to them. It is
5642 why I am supportive of the bill. And I think some of the
5643 representations go a bit extreme.

5644 With that, I yield back.

5645 Mr. Watt. Mr. Chairman?

5646 Chairman Goodlatte. For what purpose does the gentleman
5647 from North Carolina seek recognition?

5648 Mr. Watt. Move to strike the last word.

5649 Chairman Goodlatte. The gentleman is recognized for 5
5650 minutes.

5651 Mr. Watt. I yield to the gentlelady from California.

5652 Ms. Lofgren. Let me, and I thank the gentleman for
5653 yielding. I think that the gentleman from Utah's criticism
5654 is valid. My comment was imprecise, and I would like to
5655 clarify what I meant and I did not adequately say.

5656 Mr. Chaffetz. Thank you. Appreciate it.

5657 Ms. Lofgren. The concern that has been expressed to me,
5658 for example, by the former chief of police in San Jose was
5659 that word goes out in these communities. And so, if this is
5660 part of the law, really is no longer happening, that word
5661 going out travels like wildfire, and people become
5662 intimidated, and they are afraid to communicate.

5663 You are correct. The bill is at the option or request
5664 of a city, and my imprecise statement was confusing. And I
5665 regret that.

5666 But the point I was trying to make is that having this
5667 available nationwide will have a chilling effect even in
5668 communities that do not participate. That was what I meant
5669 to say. I did not say it very well. I hope that I am more
5670 clear at this point. And I thank Mr. Watt for yielding to
5671 me.

5672 Mr. Watt. I yield back, Mr. Chairman.

5673 Chairman Goodlatte. The question occurs on the
5674 amendment offered by the gentlewoman from California.

5675 All those in favor, respond by saying aye.

5676 Those opposed, no.

5677 In the opinion of the chair, the noes have it.

5678 Ms. Chu. I ask for a recorded vote.

5679 Chairman Goodlatte. A recorded vote is requested, and

5680 the clerk will call the role.

5681 Ms. Deterding. Mr. Goodlatte?

5682 Chairman Goodlatte. No.

5683 Ms. Deterding. Mr. Goodlatte votes no.

5684 Mr. Sensenbrenner?

5685 [No response.]

5686 Ms. Deterding. Mr. Coble?

5687 [No response.]

5688 Ms. Deterding. Mr. Smith of Texas?

5689 Mr. Smith of Texas. No.

5690 Ms. Deterding. Mr. Smith of Texas votes no.

5691 Mr. Chabot?

5692 [No response.]

5693 Ms. Deterding. Mr. Bachus?

5694 [No response.]

5695 Ms. Deterding. Mr. Issa?

5696 [No response.]

5697 Ms. Deterding. Mr. Forbes? Mr. Forbes?

5698 Mr. Forbes. No.

5699 Ms. Deterding. Mr. Forbes votes no.
5700 [Laughter.]
5701 Ms. Deterding. Mr. King?
5702 Mr. King. No.
5703 Ms. Deterding. Mr. King votes no.
5704 Mr. Franks?
5705 [No response.]
5706 Ms. Deterding. Mr. Gohmert?
5707 [No response.]
5708 Ms. Deterding. Mr. Jordan?
5709 Mr. Jordan. No.
5710 Ms. Deterding. Mr. Jordan votes no.
5711 Mr. Poe?
5712 [No response.]
5713 Ms. Deterding. Mr. Chaffetz?
5714 Mr. Chaffetz. No.
5715 Ms. Deterding. Mr. Chaffetz votes no.
5716 Mr. Marino?
5717 Mr. Marino. No.
5718 Ms. Deterding. Mr. Marino votes no.
5719 Mr. Gowdy?

5720 Mr. Gowdy. No.

5721 Ms. Deterding. Mr. Gowdy votes no.

5722 Mr. Amodei?

5723 Mr. Amodei. No.

5724 Ms. Deterding. Mr. Amodei votes no.

5725 Mr. Labrador?

5726 Mr. Labrador. No.

5727 Ms. Deterding. Mr. Labrador votes no.

5728 Mr. Farenthold?

5729 Mr. Farenthold. No.

5730 Ms. Deterding. Mr. Farenthold votes no.

5731 Mr. Holding?

5732 Mr. Holding. No.

5733 Ms. Deterding. Mr. Holding votes no.

5734 Mr. Collins?

5735 Mr. Collins. No.

5736 Ms. Deterding. Mr. Collins votes no.

5737 Mr. DeSantis?

5738 Mr. DeSantis. No.

5739 Ms. Deterding. Mr. DeSantis votes no.

5740 Mr. Smith of Missouri?

5741 Mr. Smith of Missouri. No.

5742 Ms. Deterding. Mr. Smith of Missouri votes no.

5743 Mr. Conyers?

5744 [No response.]

5745 Ms. Deterding. Mr. Nadler?

5746 Mr. Nadler. Aye.

5747 Ms. Deterding. Mr. Nadler votes aye.

5748 Mr. Scott?

5749 Mr. Scott. Aye.

5750 Ms. Deterding. Mr. Scott votes aye.

5751 Mr. Watt?

5752 Mr. Watt. Aye.

5753 Ms. Deterding. Mr. Watt votes aye.

5754 Ms. Lofgren?

5755 Ms. Lofgren. Aye.

5756 Ms. Deterding. Ms. Lofgren vote aye.

5757 Ms. Jackson Lee?

5758 [No response.]

5759 Ms. Deterding. Mr. Cohen?

5760 [No response.]

5761 Ms. Deterding. Mr. Johnson?

5762 Mr. Johnson. Aye.

5763 Ms. Deterding. Mr. Johnson votes aye.

5764 Mr. Pierluisi?

5765 Mr. Pierluisi. Aye.

5766 Ms. Deterding. Mr. Pierluisi votes aye.

5767 Ms. Chu?

5768 Ms. Chu. Aye.

5769 Ms. Deterding. Ms. Chu votes aye.

5770 Mr. Deutch?

5771 Mr. Deutch. Aye.

5772 Ms. Deterding. Mr. Deutch votes aye.

5773 Mr. Gutierrez?

5774 Mr. Gutierrez. Aye.

5775 Ms. Deterding. Mr. Gutierrez votes aye.

5776 Ms. Bass?

5777 Ms. Bass. Aye.

5778 Ms. Deterding. Ms. Bass votes aye.

5779 Mr. Richmond?

5780 Mr. Richmond. Aye.

5781 Ms. Deterding. Mr. Richmond votes aye.

5782 Ms. DelBene?

5783 Ms. DelBene. Aye.

5784 Ms. Deterding. Ms. DelBene votes aye.

5785 Mr. Garcia?

5786 Mr. Garcia. Aye.

5787 Ms. Deterding. Mr. Garcia votes aye.

5788 Mr. Jeffries?

5789 Mr. Jeffries. Aye.

5790 Ms. Deterding. Mr. Jeffries votes aye.

5791 Chairman Goodlatte. The gentleman from Wisconsin?

5792 Mr. Sensenbrenner. No.

5793 Ms. Deterding. Mr. Sensenbrenner votes no.

5794 Chairman Goodlatte. The gentleman from Ohio?

5795 Mr. Chabot. No.

5796 Ms. Deterding. Mr. Chabot votes no.

5797 Chairman Goodlatte. The gentleman from Alabama?

5798 Mr. Bachus. No.

5799 Ms. Deterding. Mr. Bachus votes no.

5800 Chairman Goodlatte. The gentleman from -- anybody else

5801 -- Texas?

5802 Mr. Gohmert. No.

5803 Ms. Deterding. Mr. Gohmert votes no.

5804 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?
5805 Mr. Poe. No.
5806 Ms. Deterding. Mr. Poe votes no.
5807 Chairman Goodlatte. The gentleman from Tennessee?
5808 Mr. Cohen. She.
5809 Chairman Goodlatte. She?
5810 Ms. Deterding. Mr. Cohen votes aye.
5811 Ms. Lofgren. Mr. Chairman?
5812 Chairman Goodlatte. I am glad our clerk is bilingual.
5813 [Laughter.]
5814 Mr. Lofgren. How am I recorded?
5815 Ms. Deterding. Ms. Lofgren votes aye.
5816 Chairman Goodlatte. Are there members who wish to vote
5817 who are not recorded?
5818 [No response.]
5819 Chairman Goodlatte. If not, the clerk will report.
5820 Mr. Johnson. Mr. Chairman?
5821 Chairman Goodlatte. The gentleman from Georgia.
5822 Mr. Johnson. Yes, Mr. Chairman. I was sitting here
5823 reading this article, this *New York Times* article, which is
5824 rather long, which has --

5825 Chairman Goodlatte. Actually I think it is the *New*
5826 *Yorker Magazine*, but I --

5827 [Laughter.]

5828 Mr. Johnson. What did I say?

5829 Chairman Goodlatte. I am just giving you a hard time.

5830 Mr. Johnson. Well, *New Yorker Magazine*, whatever,
5831 whatever it is. But at any rate, I was wondering exactly
5832 how am I recorded on this vote.

5833 Ms. Deterding. Mr. Johnson votes ayes.

5834 Mr. Johnson. Oh, okay. Thank you.

5835 Voice. Can you tell me how I voted, please?

5836 Chairman Goodlatte. The gentleman from Michigan.

5837 Mr. Conyers. Aye.

5838 Ms. Deterding. Mr. Conyers votes aye.

5839 Chairman Goodlatte. The clerk will report.

5840 Ms. Deterding. Mr. Chairman, 16 members voted aye, 20
5841 members voted nay.

5842 Chairman Goodlatte. And the amendment is not agreed to.

5843 Mr. Watt. Mr. Chairman?

5844 Chairman Goodlatte. For what purpose does the gentleman
5845 from North Carolina seek recognition?

5846 Mr. Watt. I have an amendment at the desk. I think it
5847 is under my name. It is number 11 on the list under Mr.
5848 Conyers' name. But is actually my amendment.

5849 Chairman Goodlatte. The clerk will report the
5850 amendment.

5851 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
5852 Watt, beginning on page 21, strike line 10 through page 24,
5853 line 16, and insert the following.

5854 Chairman Goodlatte. Without objection, the amendment is
5855 considered read. And, in fact, the amendment is read.

5856 [The amendment of Mr. Watt follows:]

5857

5858 Chairman Goodlatte. And the gentleman from North
5859 Carolina is recognized for 5 minutes on his amendment.

5860 Mr. Watt. Thank you, Mr. Chairman. This is actually in
5861 follow-up to Ms. Chu's amendment. There are obviously
5862 numerous flaws with the 287(g) program. They have been well
5863 documented. Ms. Chu, Ms. Lofgren have talked about them
5864 extensively.

5865 And I am hoping that my amendment will be considered a
5866 satisfactory alternative to eliminating the program
5867 completely.

5868 My amendment would eliminate the language in the
5869 underlying bill that weakens protections in the 287(g)
5870 program, and replace those provisions with stronger
5871 protections. Under my amendment, jurisdictions looking to
5872 participate in a 287(g) agreement would have to maintain
5873 adequate policies and procedures designed to eliminate
5874 racial profiling by, one, clearly prohibiting racial
5875 profiling, two, mandating law enforcement training on racial
5876 profiling, three, requiring data collection on racial
5877 profiling, and, four, requiring participation in an
5878 appropriate administrative complaint procedure or

5879 independent audit program.

5880 My amendment would amend Section 287(g) so that it would
5881 explicitly prohibit the use of race, ethnicity, national
5882 origin, gender, or religion except where it is appropriate
5883 to use it, for example, where these factors are necessary
5884 for identification or other appropriate law enforcement
5885 purposes.

5886 Finally, my amendment would prohibit a State or a
5887 locality that is under investigation engaged in litigation
5888 or subject to court supervision in connection with a civil
5889 rights violation from entering into a 287(g) agreement to
5890 enforce Federal immigration laws.

5891 The 2187(g) program has proven very problematic, and I
5892 would support -- I actually I obviously just voted for an
5893 outright elimination of it, but short of that I think we
5894 need to make sure that we are dealing with the racial
5895 profiling aspects of it. They are rampant, and I encourage
5896 my colleagues to support the amendment and yield back.

5897 Chairman Goodlatte. The chair thanks the gentleman.

5898 For what purpose does the gentleman from South Carolina
5899 seek recognition?

5900 Mr. Gowdy. I move to strike the last word.

5901 Chairman Goodlatte. The gentleman is recognized for 5
5902 minutes.

5903 Mr. Gowdy. Mr. Chairman, I would say at the outset that
5904 racial profiling is an insidious practice no matter whether
5905 it is in the arena of drug enforcement, traffic violations,
5906 immigration, or any other category of crime. It is
5907 destructive to those of us that believe strongly in the
5908 justice system and the fact that is represented by a woman
5909 who is blindfolded.

5910 Having said that, I think this amendment, while I know
5911 the author well enough to know is well intended, I think it
5912 is overly broad, and, therefore, I will not be able to
5913 support it because it says the State cannot enter into an
5914 agreement with ICE to receive delegated authority for
5915 immigration enforcement within their jurisdiction if the
5916 State is engaged in any litigation regarding a civil rights
5917 matter, or if the State is under court supervision for a
5918 civil rights violation.

5919 So the way I read that is even if a State is being sued
5920 by a prisoner because his or her pillow is not enough, which

5921 happens from time to time, and that would be among of
5922 allegations that I read when I was clerking for a judge.

5923 When it says "any civil rights allegation," Mr.
5924 Chairman, while I am sympathetic, I think, to the underlying
5925 motive of the author, it is just too broad to be able to be
5926 enforced. So for that reason, I would oppose it.

5927 I would also add in hindsight, I think at some level,
5928 and I know the gentleman from North Carolina would agree
5929 with me. At some level, law enforcement and prosecutors and
5930 the judicial system, it boils down to trust. And if you got
5931 bad apples, they ought to be kicked out regardless of what
5932 State, regardless of what entity, regardless of what
5933 jurisdiction.

5934 But, and I have said it before, but I will say again.
5935 We do trust law enforcement to enforce our narcotic
5936 statutes, and there have been allegations of racial
5937 profiling there, and there are allegations of racial
5938 profiling in traffic cases, and yet they enforce those laws.
5939 I think when you draft an amendment that includes all civil
5940 rights litigation, whether you are the defendant or the
5941 plaintiff, it is just too broad. And so, I would ask my

5942 colleagues to oppose it, and I would yield back the balance
5943 of my time.

5944 Chairman Goodlatte. The chair thanks the gentleman.

5945 The question occurs on the amendment offered by the
5946 gentleman from North Carolina.

5947 All those in favor, respond by saying aye?

5948 Those opposed, no?

5949 In the opinion of the chair, the noes have it, and the
5950 amendment is not agreed to.

5951 Mr. Watt. Mr. Chairman, could we have a recorded vote.

5952 Chairman Goodlatte. A recorded vote is requested, and
5953 the clerk will call the roll.

5954 Chairman Goodlatte. A recorded vote is requested, and
5955 the clerk will call the role.

5956 Ms. Deterding. Mr. Goodlatte?

5957 Chairman Goodlatte. No.

5958 Ms. Deterding. Mr. Goodlatte votes no.

5959 Mr. Sensenbrenner?

5960 Mr. Sensenbrenner. No.

5961 Ms. Deterding. Mr. Sensenbrenner votes no.

5962 Mr. Coble?

5963 [No response.]

5964 Ms. Deterding. Mr. Smith of Texas?

5965 Mr. Smith of Texas. No.

5966 Ms. Deterding. Mr. Smith of Texas votes no.

5967 Mr. Chabot?

5968 Mr. Chabot. No.

5969 Ms. Deterding. Mr. Chabot votes no.

5970 Mr. Bachus?

5971 Mr. Bachus. No.

5972 Ms. Deterding. Mr. Bachus votes no.

5973 Mr. Issa?

5974 [No response.]

5975 Ms. Deterding. Mr. Forbes?

5976 Mr. Forbes. No.

5977 Ms. Deterding. Mr. Forbes votes no.

5978 Ms. Deterding. Mr. King?

5979 Mr. King. No.

5980 Ms. Deterding. Mr. King votes no.

5981 Mr. Franks?

5982 [No response.]

5983 Ms. Deterding. Mr. Gohmert?

5984 Mr. Gohmert. No.

5985 Ms. Deterding. Mr. Gohmert votes no.

5986 Mr. Jordan?

5987 Mr. Jordan. No.

5988 Ms. Deterding. Mr. Jordan votes no.

5989 Mr. Poe?

5990 [No response.]

5991 Ms. Deterding. Mr. Chaffetz?

5992 Mr. Chaffetz. No.

5993 Ms. Deterding. Mr. Chaffetz votes no.

5994 Mr. Marino?

5995 Mr. Marino. No.

5996 Ms. Deterding. Mr. Marino votes no.

5997 Mr. Gowdy?

5998 Mr. Gowdy. No.

5999 Ms. Deterding. Mr. Gowdy votes no.

6000 Mr. Aodei?

6001 Mr. Aodei. No.

6002 Ms. Deterding. Mr. Aodei votes no.

6003 Mr. Labrador?

6004 Mr. Labrador. No.

6005 Ms. Deterding. Mr. Labrador votes no.

6006 Mr. Farenthold?

6007 [No response.]

6008 Ms. Deterding. Mr. Holding?

6009 Mr. Holding. No.

6010 Ms. Deterding. Mr. Holding votes no.

6011 Mr. Collins?

6012 Mr. Collins. No.

6013 Ms. Deterding. Mr. Collins votes no.

6014 Mr. DeSantis?

6015 Mr. DeSantis. No.

6016 Ms. Deterding. Mr. DeSantis votes no.

6017 Mr. Smith of Missouri?

6018 Mr. Smith of Missouri. No.

6019 Ms. Deterding. Mr. Smith of Missouri votes no.

6020 Mr. Conyers?

6021 Mr. Conyers. Aye.

6022 Ms. Deterding. Mr. Conyers votes aye.

6023 Mr. Nadler?

6024 [No response.]

6025 Ms. Deterding. Mr. Scott?

6026 Mr. Scott. Aye.

6027 Ms. Deterding. Mr. Scott votes aye.

6028 Mr. Watt?

6029 Mr. Watt. Aye.

6030 Ms. Deterding. Mr. Watt votes aye.

6031 Ms. Lofgren?

6032 Ms. Lofgren. Aye.

6033 Ms. Deterding. Ms. Lofgren vote aye.

6034 Ms. Jackson Lee?

6035 [No response.]

6036 Ms. Deterding. Mr. Cohen?

6037 Mr. Cohen. Aye.

6038 Ms. Deterding. Mr. Cohen votes aye.

6039 Mr. Johnson?

6040 Mr. Johnson. Aye.

6041 Ms. Deterding. Mr. Johnson votes aye.

6042 Mr. Pierluisi?

6043 Mr. Pierluisi. Aye.

6044 Ms. Deterding. Mr. Pierluisi votes aye.

6045 Ms. Chu?

6046 Ms. Chu. Aye.

6047 Ms. Deterding. Ms. Chu votes aye.

6048 Mr. Deutch?

6049 Mr. Deutch. Aye.

6050 Ms. Deterding. Mr. Deutch votes aye.

6051 Mr. Gutierrez?

6052 Mr. Gutierrez. Aye.

6053 Ms. Deterding. Mr. Gutierrez votes aye.

6054 Ms. Bass?

6055 Ms. Bass. Aye.

6056 Ms. Deterding. Ms. Bass votes aye.

6057 Mr. Richmond?

6058 Mr. Richmond. Aye.

6059 Ms. Deterding. Mr. Richmond votes aye.

6060 Ms. DelBene?

6061 Ms. DelBene. Aye.

6062 Ms. Deterding. Ms. DelBene votes aye.

6063 Mr. Garcia?

6064 Mr. Garcia. Aye.

6065 Ms. Deterding. Mr. Garcia votes aye.

6066 Mr. Jeffries?

6067 Mr. Jeffries. Aye.

6068 Ms. Deterding. Mr. Jeffries votes aye.

6069 Chairman Goodlatte. The gentleman from New York?

6070 Mr. Nadler. Aye.

6071 Ms. Deterding. Mr. Nadler votes aye.

6072 Chairman Goodlatte. The gentleman from Texas?

6073 Mr. Poe. No.

6074 Ms. Deterding. Mr. Poe votes no.

6075 Chairman Goodlatte. Are other members seeking to vote
6076 who have not voted?

6077 The clerk will report.

6078 Ms. Deterding. Mr. Chairman, 16 members voted aye, 19
6079 members voted nay.

6080 Chairman Goodlatte. And the amendment is not agreed to.
6081 Are there further amendments to H.R. 2278?

6082 For what purpose does the gentleman from Virginia seek
6083 recognition?

6084 Mr. Scott. Mr. Chairman, I have an amendment at the
6085 desk.

6086 Chairman Goodlatte. The clerk will report the
6087 amendment.

6088 Mr. Scott. It is listed SEF 190.

6089 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
6090 Scott, beginning on page 6, strike line 6 through page 7
6091 through line 25, and redesignate provisions accordingly.

6092 [The amendment of Mr. Scott follows:]

6093

6094 Chairman Goodlatte. The gentleman from Virginia is
6095 recognized for 5 minutes to explain his amendment.

6096 Mr. Scott. Thank you, Mr. Chairman. The purpose of
6097 this amendment is to ensure that the National Crime
6098 Information Center, the NCIC, database is not overloaded
6099 with millions of records that do not pertain to criminal
6100 matters. The objective of NCIC is to provide a computerized
6101 database for ready access by criminal just agencies making
6102 an inquiry and for prompt disclosure of information from the
6103 system about crimes and criminals.

6104 Now, the underlying bill requires all of the immigration
6105 information, civil and criminal, to put in the NCIC. Most
6106 immigration violations are civil, like being in the United
6107 States without permission, a failure to depart after an
6108 expiration of visas, there are some violations related to
6109 stowaways.

6110 Criminal violations include entering the United States
6111 illegally, alien smuggling, and willful disobedience of a
6112 removal order.

6113 Now, the Homeland Security already has immigration
6114 violations that are in the file, like a deported felon

6115 category, absconder categories, or several others. But it
6116 does not include the civil matters.

6117 Now, the NCIC has already come under criticism because
6118 over 40 percent of the NCIC immigration hits and responses
6119 to queries are false positives, 40 percent, where DHS was
6120 unable to confirm whether the individual is an actual
6121 violator or not. And that is because there is no regular
6122 upgrading of the data.

6123 A person could have become a citizen. They could have
6124 fixed their situation. And so you have got a situation
6125 right now where the number of hits is already 40 percent
6126 false positives.

6127 Now, there are other problems with Section 103.
6128 Currently, local police rely on NCIC to determine whether or
6129 not an individual they pulled over and detained has a
6130 warrant or has serious criminal charges by another
6131 jurisdiction. Now, we do not want to open up the floodgates
6132 for new information, which would make it more difficult to
6133 get the information that you actually need.

6134 Now, law enforcement has written us already and said
6135 that they do not like this idea. One agency says that "In

6136 order to effectively prevent crime, police officers must
6137 maintain the trust of the communities we protect. When
6138 police officers are forced to detect and detain immigrants
6139 who are here without authorization, that trust is easily
6140 broken."

6141 It goes on to say that these tactics are
6142 counterproductive because they, and he says, "threaten
6143 public safety across our Nation by making members of the
6144 immigrant and Latino communities reluctant to come forward
6145 as victims or as witnesses of crime. Additionally, it
6146 places law enforcement in a position of immigration agents
6147 inappropriately interjecting bias in their daily reactions.

6148 Adding complicated, unnecessary immigration information
6149 will only hinder an officer's ability to do his job
6150 effectively, and will lead to unconstitutionally extended
6151 detentions of individuals. In addition, the Major Cities'
6152 Chiefs Association says that "Inclusion of civil detainees
6153 in a system continues to create confusion for local police
6154 agencies, subjecting them to possible liability. Federal
6155 agencies should seek criminal warrants for people they have
6156 charged criminally, and submit those warrants to the NCIS

6157 system so that the only thing in the system will be things
6158 that police officers actually need."

6159 I would hope, Mr. Chairman, that we would not overload
6160 the system with unnecessary data and create a
6161 counterproductive situation. So I would hope we would adopt
6162 the amendment.

6163 Chairman Goodlatte. The chair thanks the gentleman and
6164 recognizes himself in opposition to the amendment.

6165 This amendment effectively undermines communication,
6166 coordination, and collaboration between local and Federal
6167 law enforcement in the enforcement of the immigration laws.
6168 Specifically, this amendment seeks to strike provisions in
6169 the SAFE Act that require that the immigration violator's
6170 file, which is already part of the National Criminal
6171 Identification Center Database, include information that
6172 identifies aliens who have been ordered removed and who have
6173 overstayed their visas. This data is currently being added
6174 to the NCIC database

6175 Including this information in NCIC is crucial in
6176 allowing State and local law enforcement officers to assist
6177 in the enforcement of our immigration laws. This

6178 information is crucial to inform local law enforcement that
6179 they have encountered aliens who have violated our
6180 immigration laws. If we want State and local assistance to
6181 be effective, they need this tool, and I urge my colleagues
6182 to oppose the amendment.

6183 Mr. Scott. Mr. Chairman, would the gentleman yield?

6184 Chairman Goodlatte. I would be happy to the gentleman.

6185 Mr. Scott. I would ask unanimous consent that
6186 communication from the Major Cities Chiefs Association and
6187 law enforcement leaders speaking out against House and
6188 Senate anti-immigration proposals, that these documents be
6189 placed in the record.

6190 Chairman Goodlatte. Without objection, they will be
6191 made a part of the record.

6192 [The information follows:]

6193

6194 Mr. Conyers. Mr. Chairman?

6195 Chairman Goodlatte. For what purpose does the gentleman
6196 from Michigan seek recognition?

6197 Mr. Conyers. I support the amendment. The Federal
6198 immigration information is complex, and need to train
6199 officers to interpret it accurately. And I think that law
6200 enforcement officers do not have unfettered access to
6201 Federal databases on immigration records, and for good
6202 reason. And so we think that the Scott amendment deserves
6203 very careful consideration.

6204 And I yield back.

6205 Chairman Goodlatte. The chair thanks the gentleman.
6206 The question occurs on the amendment offered by the
6207 gentleman from Virginia.

6208 All those in favor, respond by saying aye?

6209 Those opposed, no?

6210 In the opinion of the chair, the noes have it. The
6211 amendment is not agreed to.

6212 Are there further amendments?

6213 For what purpose does the gentleman from Illinois seek
6214 recognition?

6215 Mr. Gutierrez. Mr. Chairman, I have an amendment at the
6216 desk, Mr. Chairman.

6217 Chairman Goodlatte. Thank you, and the clerk will
6218 report the amendment of the gentleman from Illinois.

6219 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
6220 Gutierrez, page 105 --

6221 Chairman Goodlatte. Without objection, the amendment
6222 will be considered read.

6223 [The amendment of Mr. Gutierrez follows:]

6224

6225 Chairman Goodlatte. And the gentleman is recognized for
6226 5 minutes to explain his amendment.

6227 Mr. Gutierrez. Thank you so much, Mr. Chairman.

6228 Well, this amendment exempts certain groups of
6229 immigrants with strong ties to the United States and with no
6230 criminal history from the bill's provisions that would turn
6231 them into criminals simply because of their status.

6232 As written, the SAFE Act criminalizes immigrants by
6233 ensuring the prosecution and incarceration of every
6234 undocumented immigration who is unlawfully present, whether
6235 they crossed the border or overstayed a visa. The law would
6236 radically change our country's immigration policy overnight,
6237 causing the arrest and criminal prosecution of mothers,
6238 fathers, husbands, and wives, ripping parents from their
6239 children.

6240 I would like to just establish that there are, Mr.
6241 Chairman, four and a half million American citizen children
6242 who have one or both parents who are undocumented. Four and
6243 a half American citizen children. Do we really want to jail
6244 those moms and dads and leave the children?

6245 We already have 5,000 kids, and this is really a tragedy

6246 in America, 5,000 kids who are already languishing in
6247 foster care as a result of an aggressive deportation
6248 dragnet. Many of the parents are losing and they are being
6249 adopted simply because their parents were deported.

6250 Criminalization was the goal of H.R. 4437, introduced in
6251 2005. And it passed the House mostly along partisan lines,
6252 but then died as the bill sparked the largest non-violent
6253 protest in our Nation's history. You know, more than a
6254 million people took to the streets in my city alone, and
6255 millions across this country. I do not think we need a
6256 repeat of that.

6257 And it turns immigrants into criminals, painting them
6258 all, Mr. Chairman, with the same brush. They are not all
6259 the same. They have different equities. The fact is that
6260 of the 11 million, two-thirds of them have been here more
6261 than 10 years. The other third have been over 15. That is
6262 a lot of years. Millions -- no, let me get it right. Tens
6263 of thousands of them are married to American citizens.

6264 So what we do in this bill is say to all of those that
6265 have an undocumented husband or wife, we are going to turn
6266 them into criminals, we are going to jail them, we are going

6267 to put them in jail. They have equities. They are not all
6268 the same. And we should take into consideration, it is
6269 wonderful. What it says is that Jose Quintero and Nancy
6270 that work in my office, two dreamers, who received deferred
6271 action and they work in my office, and I assure you, if you
6272 would walk in, you could not tell the difference between
6273 Nancy and Jose and any of the other people that work in my
6274 office. Why? Because they are just as American as everyone
6275 else. This is their country.

6276 But it turns a million and half young people into
6277 criminals and says we should jail them. I do not think that
6278 that is exactly what the Congress of the United States wants
6279 to do, should do, nor is it the mandate I believe that we
6280 received from the electorate.

6281 Look, how do I say, we had a national debate and a
6282 national referendum. On the one hand, there were those that
6283 said let us do comprehensive immigration reform, allow
6284 people to come, and heal these families, American families.
6285 Mr. Chairman, I hope you understand that this is so broad
6286 that there are members of the armed services of the United
6287 States fighting for us on the front lines whose spouses are

6288 undocumented, and we would say we send them to jail for 2
6289 years. There are many people, as my friends on the other
6290 side of the aisle understand, have been caught in our broken
6291 immigration system, but that merit attention from the
6292 Congress of the United States, and merit a new view of them
6293 in the United States of America.

6294 This criminalizes them all. It says they are all gang
6295 bangers, they are all drug dealers, they are all rapists,
6296 they are all murderers. That just is not the case, and we
6297 all know it. There are bad people. We should go after
6298 those bad people. We should make sure that we jail them.
6299 We should make sure that after they are jailed, they are
6300 properly deported from the United States of America. And
6301 then there are the vast majority of people with equities --
6302 American citizen children, children that are here.

6303 You know, I want to tell everybody, there are 520,000
6304 young people that have applied for deferred action, 320,000
6305 of them have already gone through a background check. Let
6306 us let young people.

6307 Lastly, I want to say that I think I have tried to do
6308 okay each and every day by myself, to my family, and to my

6309 fellow citizens here in the United States of America. But I
6310 would hope that my children would never be judged by my
6311 actions. They are children. They came here as children.
6312 Their family brought them. Let us not criminalize children
6313 whose only country and who pledges allegiance to this fine
6314 country, the United States of America.

6315 Thank you, Mr. Chairman.

6316 Chairman Goodlatte. The chair thanks the gentleman, and
6317 asks the gentleman from South Carolina, for what purpose he
6318 seeks recognition.

6319 Mr. Gowdy. Move to strike the last word

6320 Chairman Goodlatte. The gentleman is recognized for 5
6321 minutes.

6322 Mr. Gowdy. Thank you, Mr. Chairman. I would just say
6323 at the outset, I would ask my friend, and I use that word
6324 intentionally, from Illinois, Mr. Gutierrez, to keep in mind
6325 what I said what seems like longer than just earlier today.
6326 But it was just earlier today that this s a step in what
6327 will be a longer journey and one that I will look forward to
6328 making that journey frankly with you. And you have always
6329 been an incredibly reasonable person, both publicly and

6330 privately, in my dealings with you.

6331 So as I oppose this amendment, I just ask you -- I am
6332 not going to say "trust me" because I am a lawyer, and I
6333 know you will not. But I am going to at some level say that
6334 this is part of a larger plan and a larger scheme. So it is
6335 going to sound incredibly insensitive for me to oppose
6336 categories of people that would be deserving if we were
6337 doing something in a more global way.

6338 So let me just simply say this. There are reasons that
6339 I could cite, there are reasons that I have written down, to
6340 oppose your amendment. There are some reasons that might be
6341 good in a vacuum. There are some reasons that would only be
6342 good if this were all we were going to do. But it is not,
6343 and so I would ask my colleagues to not support this
6344 amendment. But I would also ask my friend from Illinois to
6345 help, as we go forward, the chairman, me, and anyone else,
6346 who is of like mind to identify those categories of people
6347 who are deserving of special status and special treatment.
6348 Crime victims being one that I have dealt with for 16 years.

6349 You know, as I have shared with my friend from Illinois,
6350 I never once asked a victim of a crime what their status

6351 was. Never asked a witness to a crime. In fact, we would
6352 spend hours and hours in court trying to keep criminal
6353 defense attorneys from letting the jury know that the victim
6354 was not here lawfully. So it would be disingenuous and
6355 antithetical to my nature to change that. That is what I
6356 believe.

6357 By the same token, as I said earlier this morning, we
6358 are a country of laws, and when we go to create exceptions,
6359 I would rather it be part of a global piece of work that we
6360 have cobbled together. So I say that respectfully to my
6361 friend. Yes, I will.

6362 Mr. Gutierrez. Thank you so much. First of all, I want
6363 to say that I do trust you. I have reason to do that. I
6364 hope to cement that trust as we move forward. Let me say
6365 that if I offered the amendment for no other reason than to
6366 hear the gentleman speak about the need and considerations
6367 we should give groups of immigrants that are unlawfully in
6368 the United States an opportunity to correct their situation.
6369 That was the only reason for proposing it. I want to be
6370 instructive in this process.

6371 I said to Chairman Goodlatte, I did not come here to

6372 fight with you. I came here to join you. And I was
6373 obviously delighted, as I have stated once and continue to
6374 say, when you were put in the position of subcommittee
6375 chairman.

6376 I look forward to working with my colleagues. I raise
6377 the issue. Mr. Chairman, I withdraw my amendment.

6378 Chairman Goodlatte. Without objection, the gentleman's
6379 amendment is withdrawn.

6380 Are there further amendments to H.R. 2278?

6381 For what purpose does the gentlewoman from Texas seek
6382 recognition?

6383 Ms. Jackson Lee. I have an amendment at the desk, and
6384 it is Amendment number 23.

6385 Chairman Goodlatte. The clerk will report the
6386 amendment.

6387 Ms. Jackson Lee. On the roster, number 23.

6388 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.
6389 Jackson Lee of Texas, on page 25 --

6390 Chairman Goodlatte. Without objection, the amendment
6391 will be considered as read.

6392 [The amendment of Ms. Jackson Lee follows:]

6393

6394 Chairman Goodlatte. And the gentlewoman is recognized
6395 for 5 minutes to speak for her amendment.

6396 Ms. Jackson Lee. I thank the gentleman. I was very
6397 glad to hear Mr. Gowdy's comments, and I hope that we will
6398 come to a point where there will be some coming together and
6399 recognizing the effective approach of comprehensive
6400 immigration reform is a balance of border security. It is a
6401 balance of access to earned legalization, which is part of
6402 the debate that is going on.

6403 But my Amendment 307 is to strike another part of this
6404 bill that further criminalizes penalties for passport, visa,
6405 and immigration fraud. And it makes it an aggravated
6406 felony.

6407 From the very start of this legislation, it can be named
6408 the Get a Card to Jail legislation. When the other side of
6409 the coin in terms of the framework of what we understand the
6410 bill that is being debated, although I have every respect
6411 that the House have its own mark, it is to lay out a pathway
6412 to prevent the illegal immigration from growing, and to make
6413 sure that we put a pathway for a legal process. When you
6414 further add to the criminalization of things like passports

6415 and visa fraud, and add it as an aggravated felony, you are
6416 criminalization mistakes and missteps.

6417 I believe that ICE has the tools to get the bad guys.
6418 We have existing racketeering, if you will, criminal laws.
6419 They can be utilized. But to take this bill and now enhance
6420 the penalties for an aggravated felony, I frankly believe is
6421 going in the wrong direction.

6422 There are a number of sections that continue to increase
6423 the criminal penalties. There is a racketeering section
6424 that speaks to passports and visas and put it part of the
6425 racketeering laws. But I wanted to ask the question, what
6426 is our intent? Is it to fill up jails where we do not have
6427 the resources to do so, or is to lay out a plan that will
6428 ensure the right kind of enforcement, and the adequate
6429 pathway to citizenship that would make the good people get
6430 where they need to go and the bad people caught in the
6431 criminal laws that already exist.

6432 I think this bill tracks the Arizona approach, which has
6433 been deemed and ruled unconstitutional by the Supreme Court.
6434 And I think the further criminalization will be ineffective.
6435 We will not have the resources, and I do not believe that it

6436 will aid to ICE's serious work, which includes, along with
6437 other aspects of Homeland Security, to strike the heart at
6438 the terrorists that would want to come here and do us harm,
6439 as opposed to mothers and dads, and young people, and others
6440 who may have made mistakes as opposed to fraudulent
6441 activity.

6442 So I ask my colleagues to support the amendment. I
6443 yield back.

6444 Chairman Goodlatte. The chair thanks the gentlelady and
6445 recognizes himself in opposition to the amendment.

6446 Section 307 of the bill is a conforming amendment that
6447 incorporates by reference Chapter 75 of Title 18, which
6448 deals with federal crimes involving misuse of passports,
6449 visas, and trafficking of such documents.

6450 The provision in the bill is a technical fix as these
6451 illegal criminal activities are simply incorporated by
6452 reference into the definition of an aggravated felony. For
6453 that reason, I urge my colleagues to oppose the amendment
6454 and yield back.

6455 Question occurs on the amendment offered by the
6456 gentlewoman from Texas.

6457 All those in favor, respond by saying aye?

6458 Those opposed, no?

6459 In the opinion of the chair, the noes have it, and the
6460 amendment is not agreed to.

6461 Ms. Jackson Lee. Roll call.

6462 Chairman Goodlatte. A recorded vote is requested. The
6463 clerk will call the roll.

6464 Chairman Goodlatte. A recorded vote is requested, and
6465 the clerk will call the role.

6466 Ms. Deterding. Mr. Goodlatte?

6467 Chairman Goodlatte. No.

6468 Ms. Deterding. Mr. Goodlatte votes no.

6469 Mr. Sensenbrenner?

6470 Mr. Sensenbrenner. No.

6471 Ms. Deterding. Mr. Sensenbrenner votes no.

6472 Mr. Coble?

6473 [No response.]

6474 Ms. Deterding. Mr. Smith of Texas?

6475 [No response.]

6476 Ms. Deterding. Mr. Chabot?

6477 [No response.]

6478 Ms. Deterding. Mr. Bachus?
6479 [No response.]
6480 Ms. Deterding. Mr. Issa?
6481 [No response.]
6482 Ms. Deterding. Mr. Forbes?
6483 [No response.]
6484 Ms. Deterding. Ms. Deterding. Mr. King?
6485 Mr. King. No.
6486 Ms. Deterding. Mr. King votes no.
6487 Mr. Franks?
6488 Mr. Franks. No.
6489 Ms. Deterding. Mr. Franks votes no.
6490 Mr. Gohmert?
6491 Mr. Gohmert. No.
6492 Ms. Deterding. Mr. Gohmert votes no.
6493 Mr. Jordan?
6494 Mr. Jordan. No.
6495 Ms. Deterding. Mr. Jordan votes no.
6496 Mr. Poe?
6497 [No response.]
6498 Ms. Deterding. Mr. Chaffetz?

6499 Mr. Chaffetz. No.

6500 Ms. Deterding. Mr. Chaffetz votes no.

6501 Mr. Marino?

6502 Mr. Marino. No.

6503 Ms. Deterding. Mr. Marino votes no.

6504 Mr. Gowdy?

6505 Mr. Gowdy. No.

6506 Ms. Deterding. Mr. Gowdy votes no.

6507 Mr. Amodei?

6508 Mr. Amodei. No.

6509 Ms. Deterding. Mr. Amodei votes no.

6510 Mr. Labrador?

6511 Mr. Labrador. No.

6512 Ms. Deterding. Mr. Labrador votes no.

6513 Mr. Farenthold?

6514 [No response.]

6515 Ms. Deterding. Mr. Holding?

6516 Mr. Holding. No.

6517 Ms. Deterding. Mr. Holding votes no.

6518 Mr. Collins?

6519 Mr. Collins. No.

6520 Ms. Deterding. Mr. Collins votes no.

6521 Mr. DeSantis?

6522 Mr. DeSantis. No.

6523 Ms. Deterding. Mr. DeSantis votes no.

6524 Mr. Smith of Missouri?

6525 Mr. Smith of Missouri. No.

6526 Ms. Deterding. Mr. Smith of Missouri votes no.

6527 Mr. Conyers?

6528 Mr. Conyers. Aye.

6529 Ms. Deterding. Mr. Conyers votes aye.

6530 Mr. Nadler?

6531 Mr. Nadler. Aye.

6532 Ms. Deterding. Mr. Nadler votes aye.

6533 Mr. Scott?

6534 Mr. Scott. Aye.

6535 Ms. Deterding. Mr. Scott votes aye.

6536 Mr. Watt?

6537 [No response.]

6538 Ms. Deterding. Ms. Lofgren?

6539 Ms. Lofgren. Aye.

6540 Ms. Deterding. Ms. Lofgren vote aye.

6541 Ms. Jackson Lee?

6542 Ms. Jackson Lee. Aye.

6543 Ms. Deterding. Ms. Jackson Lee votes aye.

6544 Mr. Cohen?

6545 Mr. Cohen. Aye.

6546 Ms. Deterding. Mr. Cohen votes aye.

6547 Mr. Johnson?

6548 Mr. Johnson. Aye.

6549 Ms. Deterding. Mr. Johnson votes aye.

6550 Mr. Pierluisi?

6551 Mr. Pierluisi. Aye.

6552 Ms. Deterding. Mr. Pierluisi votes aye.

6553 Ms. Chu?

6554 Ms. Chu. Aye.

6555 Ms. Deterding. Ms. Chu votes aye.

6556 Mr. Deutch?

6557 Mr. Deutch. Aye.

6558 Ms. Deterding. Mr. Deutch votes aye.

6559 Mr. Gutierrez?

6560 Mr. Gutierrez. Aye.

6561 Ms. Deterding. Mr. Gutierrez votes aye.

6562 Ms. Bass?

6563 Ms. Bass. Aye.

6564 Ms. Deterding. Ms. Bass votes aye.

6565 Mr. Richmond?

6566 Mr. Richmond. Aye.

6567 Ms. Deterding. Mr. Richmond votes aye.

6568 Ms. DelBene?

6569 Ms. DelBene. Aye.

6570 Ms. Deterding. Ms. DelBene votes aye.

6571 Mr. Garcia?

6572 Mr. Garcia. Aye.

6573 Ms. Deterding. Mr. Garcia votes aye.

6574 Mr. Jeffries?

6575 Mr. Jeffries. Aye.

6576 Ms. Deterding. Mr. Jeffries votes aye.

6577 Mr. Smith of Texas. Mr. Chairman?

6578 Chairman Goodlatte. The gentleman from Texas, Mr.

6579 Smith?

6580 Mr. Smith of Texas. Mr. Chairman, I vote no.

6581 Chairman Goodlatte. The gentleman from Ohio, Mr.

6582 Chabot?

6583 Mr. Chabot. No.

6584 Chairman Goodlatte. The gentleman from Alabama?

6585 Mr. Bachus. No.

6586 Mr. Forbes. Mr. Chairman?

6587 Chairman Goodlatte. The gentleman from Virginia, Mr.

6588 Forbes?

6589 Mr. Forbes. No.

6590 Ms. Deterding. Mr. Forbes votes no.

6591 Chairman Goodlatte. The gentleman Texas, Mr. Poe?

6592 Mr. Poe. No.

6593 Ms. Deterding. Mr. Poe votes no.

6594 Chairman Goodlatte. Are there other members who wish to

6595 vote who have not voted?

6596 [No response.]

6597 Chairman Goodlatte. The clerk will report.

6598 Ms. Deterding. Mr. Chairman, 16 members voted aye, 20

6599 members voted nay.

6600 Chairman Goodlatte. And the amendment is not agreed to.

6601 For what purpose does the gentleman from Louisiana seek

6602 recognition?

6603 Mr. Richmond. Mr. Chairman, I have an amendment at the

6604 desk.

6605 Chairman Goodlatte. The clerk will report the
6606 amendment.

6607 Mr. Sensenbrenner. Mr. Chairman, I reserve a point of
6608 order on the amendment.

6609 Chairman Goodlatte. Point of order is reserved.

6610 The clerk will report the amendment.

6611 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.

6612 Richmond, page --

6613 Chairman Goodlatte. Without objection --

6614 Mr. Richmond. Mr. Chairman, I would ask that we
6615 dispense with the reading of the amendment.

6616 Chairman Goodlatte. Okay. Without objection, the
6617 reading is dispensed with.

6618 [The amendment of Mr. Richmond follows:]

6619

6620 Chairman Goodlatte. The gentleman from Louisiana is
6621 recognized for 5 minutes on his amendment.

6622 Mr. Richmond. Mr. Chairman, I understand what we are
6623 trying to accomplish in this section, and I agree with it.
6624 However, I think that it is cause for concern to me that we
6625 would put family members and neighbors in jeopardy of
6626 probably unknowingly committing a crime, or in the case of a
6627 family member, forcing them to create a crime simply by
6628 helping their family member, whether it is acting as a good
6629 Samaritan, bringing them to church, or the doctor, or
6630 anything of that nature. And I do not think that that is
6631 what we are trying to do. I think that the goal is to look
6632 and try to penalize those people who are smuggling and doing
6633 those things for financial gain.

6634 So I would just ask that we take a good look at it.
6635 This amendment is an attempt to make sure that we are not
6636 criminalizing family members who are all good Samaritans.
6637 So that is my attempt with this amendment.

6638 And also I think we have to be extra careful because
6639 what we do allow in the bill is that we allow States to go
6640 further and enact their own laws based on what we are

6641 saying. And I just do not have a very good comfort level in
6642 allowing States to interpret what we were trying to do in
6643 terms of stopping assistance to smuggling, and at the same
6644 time, not create inherent conflicts within the House, within
6645 the religious community, and for those people who are not
6646 doing it for financial gain.

6647 So I think that there is a very valid way to distinguish
6648 the motives of the person that is doing it and attempt not
6649 to use motive as an element of the crime. But if someone is
6650 doing it for financial gain, I think absolutely we need to
6651 make sure that we stop them, and we need to make sure they
6652 have enhanced penalties. We need to make sure that we get
6653 them out of the country.

6654 But family members, I think family members and clergy,
6655 which I think there is a catch-all for clergy the back, I
6656 would just suggest that we put family members in the same
6657 catch-all with clergy. And I think that would probably be
6658 paragraph 3.

6659 So with that, Mr. Chairman, and I know that we are
6660 attempting to work together at least come to an agreement on
6661 some of the things we can come to an agreement. I hope that

6662 this is one area that we could commit to looking at and
6663 making sure that we do not force family members to become
6664 criminals simply by helping their other family members in a
6665 way that is not an attempt to smuggle in the country.

6666 So with that, Mr. Chairman, I would just ask for
6667 everyone's support, and yield back.

6668 Mr. Sensenbrenner. Mr. Chairman, I withdraw my
6669 reservation.

6670 Chairman Goodlatte. The point of order reservation is
6671 withdrawn.

6672 And for what purpose does the gentleman from South
6673 Carolina seek recognition?

6674 Mr. Gowdy. Mr. Chairman, while I have great respect for
6675 the gentleman from Louisiana, I would encourage my
6676 colleagues to oppose the amendment.

6677 As the GAO recently reported in July 2009, a border
6678 patrol agent was killed while patrolling the border by
6679 aliens illegally crossing the border, the first shooting
6680 death of an agent in more than 10 years. Conflicts are
6681 emerging among rival alien smuggling organizations.

6682 Assaults, kidnappings, and hostage situations attribute to

6683 this conflict. They are increasing, particularly in
6684 Arizona. Communities across the country are at risk since
6685 among these individuals illegally crossing the border are
6686 criminal aliens and gang members who pose public safety
6687 concerns for communities throughout the country.

6688 I realize that that is not what the gentleman's bill
6689 deals with, although it strike me that with so many dangers
6690 at the border, it seems contrary at some level to public
6691 safety and national interest to permit the United States
6692 citizens and legal permanent residents to traffic members of
6693 their families into the United States.

6694 If we were to allow such an exception with all the
6695 criminal elements operating along the border, my fear is
6696 that we would allow U.S. citizens and legal permanent
6697 residents to put their family members at risk. And I am
6698 just concerned about the message that we would send. So
6699 even though I have great respect for the gentleman from
6700 Louisiana and like him very much personally, I would ask my
6701 colleagues to oppose the amendment.

6702 Mr. Gutierrez. Mr. Chairman?

6703 Chairman Goodlatte. For what purpose does the gentleman

6704 from Illinois seek recognition?

6705 Mr. Gutierrez. To strike the last word.

6706 Chairman Goodlatte. The gentleman is recognized for 5
6707 minutes.

6708 Mr. Gutierrez. I want to put the amendment in some
6709 context. So the number one prosecuted crime at the Federal
6710 level is illegal reentry into the United States. That is
6711 people that have been deported coming back across the
6712 border. It is not kidnapping, not drugs, not
6713 counterfeiting. And there is a reason for that. In spite
6714 of the fact that many may not want to give him credit -- I
6715 do not give him credit; I think it has been bad policy.

6716 Some estimates at 1,200 to 1,400 people a day, clearly
6717 400,000 a year are deported from the United States of
6718 America. Now, take into consideration that 65 percent of
6719 the undocumented in the United States, that is adults, have
6720 American citizen children, that they live in families, and
6721 that they have been here for more than 10 years, that many
6722 of them have been here for more than 15 years. If it is the
6723 number one prosecuted crime, I guess I ask myself if it were
6724 my wife that were deported, and I had no legal remedy to get

6725 her back in the Congress of the United States, what would I
6726 do to get her back? What would my wife do to get me back?
6727 What risks would she take to get me back? Not only to get
6728 me back to her and the family here in the United States, but
6729 back to my daughters, who would need their dad to raise
6730 them?

6731 So I think that as we move forward, we should look at
6732 this as one of the crises that have been developed because
6733 our system is broken. We are deporting many people who I
6734 think most of the members of this committee would agree are
6735 not criminals. Yeah, they overstayed their visa, yes, they
6736 came here to work undocumented, but they are not bad people.
6737 They came here to try to get ahead, to strive, and they have
6738 a family.

6739 And so I think it is very important to understand that
6740 people take their kids to the hospital, to the doctor, and
6741 they help them back home. It is only very, very natural.
6742 And I hope that in the end, as we look, because I want to go
6743 after the smugglers. I want to go after the smugglers. But
6744 you know what? Until we fix this system, what we are doing
6745 is we are pushing people into the arms and the hands of

6746 smugglers, into the hands of smugglers who are drug dealers.
6747 And let us realize, America has an insatiable demand for the
6748 drugs that these drug cartels in Mexico have established.
6749 And now they have broadened their expansive criminal network
6750 to the smuggling of human beings. Those are the guys we
6751 should be going after, not the one that simply wants to get
6752 his wife back, or her husband back, or their children back,
6753 and bring their family reunited.

6754 This is a call for comprehensive immigration reform and
6755 a call for us to get this done as quickly as possible. I
6756 thank --

6757 Ms. Jackson Lee. Would the gentleman yield?

6758 Mr. Gutierrez. Yes, I will. Absolutely.

6759 Ms. Jackson Lee. Let me rise to associate myself with
6760 your remarks and Mr. Richmond's amendment, which is the
6761 underlying amendment that we are discussing, and make this
6762 point. Let me call a name from my community, Maria Jimenez,
6763 who will tell you about the people who have died coming
6764 across the Texas border, the numbers of deaths that they are
6765 facing that are women and children. And the religious
6766 community that is in that area trying to provide comfort.

6767 As I read Mr. Richmond's amendment, it is to speak to
6768 religious institutions and others who are simply trying to
6769 be a good Samaritan, which is the basis upon which I have
6770 argued against this bill, as others have, is the
6771 criminalization of everything. Given a glass of water is
6772 going to be criminalizing.

6773 And, frankly, that does not comport with America's
6774 spirit, with America's values. We would be much better off
6775 if we regularized this system, and, therefore, the bad guys
6776 and those who intend to human traffic, who smuggle, who put
6777 people in trucks with no air, and cause death and bodily
6778 harm, and as well those who smuggle them across the border
6779 and cause death and bodily harm, we will get those guys when
6780 we will regularize our system of immigration.

6781 But to be able to criminalize our priests, and our
6782 ministers, and our good Samaritan charitable groups is not
6783 American. It is not the American way. And I, frankly, hope
6784 our colleagues will support this amendment because we have
6785 always encouraged people to be charitable, to be giving, and
6786 to be sacrificial.

6787 I support the gentleman's amendment.

6788 Mr. Gutierrez. Very quickly, I reclaim my time just to
6789 say I thank the gentleman from Louisiana. I think this an
6790 important amendment, and it adds a very important dimension
6791 to our debate and discussion. And I thank him for offering
6792 it.

6793 Chairman Goodlatte. For what purpose does the gentleman
6794 from Iowa seek recognition?

6795 Mr. King. Move to strike the last word, Mr. Chairman.

6796 Chairman Goodlatte. The gentleman is recognized for 5
6797 minutes.

6798 Mr. King. Thank you, Mr. Chairman. I rise in
6799 opposition to this amendment. As the GAO recently reported,
6800 alien smuggling along the southwest border is an increasing
6801 threat to the security of the United States and Mexico as
6802 well and as to the safety of both law enforcement and
6803 smuggling aliens.

6804 One major reason for this increased threat is the
6805 involvement of drug trafficking organizations in alien
6806 smuggling. According to the National Drug Intelligence
6807 Center -- that is the NDIC -- a 2008 national drug threat
6808 assessment, the southwest border region is the principal

6809 entry point for smuggled aliens from Mexico, Central
6810 America, and South America.

6811 To make matters worse, aliens from countries of interest
6812 -- these would be persons of interest from countries of
6813 interest, such as they come to the United States through
6814 there, such as Afghanistan, Iran, Iraq, and Pakistan. Also
6815 they illegally enter the United States through this region.
6816 And there are more.

6817 According to the NDIC assessment, Mexican drug
6818 trafficking organizations have become increasingly involved
6819 in alien smuggling. These organizations collect fees from
6820 alien smuggling organizations for the use of specific
6821 smuggling routes. And available reporting indicates that
6822 some Mexican drug trafficking organizations specialize in
6823 smuggling special interest aliens into the United States.
6824 And as a result, these organizations now have alien
6825 smuggling as an additional source of funding to counter U.S.
6826 and Mexican government law enforcement efforts against them.

6827 Violence associated with alien smuggling has also
6828 increased in recent years, particularly in Arizona. This
6829 has also become the kidnapping center, at least for probably

6830 the Americas.

6831 According to the NDIC assessment, expanding border
6832 security initiatives and additional U.S. border patrol
6833 resources are likely obstructing regularly used smuggling
6834 routes and fueling this increase in violence at the cost of
6835 perhaps 58,000 lives south of the border or more, reported
6836 up to as many as 70,000, but particularly, violence directed
6837 at law enforcement officers, as we know.

6838 Alien smugglers and guides are more likely than in past
6839 years to use violence against U.S. law enforcement officers
6840 in order to smuggle groups of aliens across the southwest
6841 border. Undoubtedly, as this information demonstrates,
6842 smuggling, harboring, and transporting illegal immigrants
6843 into the United States is a serious and dangerous offense
6844 that puts the lives of everyone, including the lives of a
6845 family member, at risk. This amendment provides pardons for
6846 entire classes of immigrants and United States citizens for
6847 illegally and criminally bringing relatives to the United
6848 States in violation of the law. In fact, it would
6849 incentivize such conduct as the penalties and deterrence do
6850 not apply to Americans.

6851 Furthermore, this amendment rolls back current law as no
6852 such exception for United States exists today. Current law
6853 penalizes "any person" who harbors and smuggles illegal
6854 aliens into the United States. However, like current law,
6855 this provision contains lower penalties where smuggling was
6856 done for financial gain.

6857 And for these reasons, I oppose this amendment. And I
6858 would point out that I made multiple trips down to the
6859 border. I have been there and unloaded illegal drugs out
6860 from underneath the false floor of a pickup that was
6861 interdicted by our law enforcement officers down by the
6862 border. We have seen the violence on both sides of the
6863 border increase. We have seen, as some of the penalties for
6864 even marijuana smuggling, have been as high as an exemption
6865 for us to 500 pounds of marijuana because they do not have
6866 the prosecutorial ability to take that on.

6867 This is not just innocent people trying to get together
6868 with innocent people. The smuggling across the border is
6869 massive, and when you contribute to that, it undermines the
6870 security in both nations. And I think that --

6871 Mr. Richmond. Would the gentleman yield?

6872 Mr. King. I would yield.

6873 Mr. Richmond. Most of the things that you described,
6874 and I tried to listen attentively. Most of the things that
6875 you described would still fall under the provision because
6876 even those non-profits you said that are masking in order to
6877 gain funding are still looking for a profit motive. So they
6878 would still be barred from doing this.

6879 And in terms of the violence, of course we know that
6880 that is covered, and drugs are covered under a different
6881 statute.

6882 Mr. King. Well, watching the clock and reclaiming my
6883 time, I would point out that I stepped up to border port of
6884 entry at Sasabe, Arizona, a surprise visit there one night
6885 And I talked to the supervisor there named Mike Cring. And
6886 I asked him about the crossing there, and he said the two
6887 busiest crossings down on this border is the crossing east
6888 of me and the crossing west of me.

6889 There is a tremendous amount of legal and illegal
6890 trafficking that goes across the border. This increases the
6891 stream, and I urge opposition to the amendment. And I would
6892 yield back the balance of my time.

6893 Ms. Lofgren. Mr. Chairman?

6894 Chairman Goodlatte. For what purpose does the
6895 gentlewoman from California seek recognition?

6896 Ms. Lofgren. To strike the last word.

6897 Chairman Goodlatte. The gentlewoman is recognized for 5
6898 minutes.

6899 Ms. Lofgren. I want to commend Mr. Richmond for this
6900 amendment. I think it is correct and important, and
6901 especially since under the bill, States and localities are
6902 permitted to pass their own immigration laws. And as I
6903 mentioned earlier in the proceedings, how harboring is
6904 defined could be dramatically different depending on what
6905 city, county, or State you were in.

6906 And I think it is important that ordinary family
6907 interactions are not made to be the felony of harboring.
6908 None of us are for the drug dealers or the human traffickers
6909 that have been described here. And I would note they are
6910 all doing it. They are not doing it for fun. They are
6911 doing it for pay, and they would not be protected under this
6912 amendment.

6913 Now, I think it is dangerous, but I am going to do it

6914 anyhow, to ever talk about whatever happened in a particular
6915 State where there is a member, a citizen of that State on
6916 this committee because we all love the States we are from.

6917 So with that caveat, I would like to give an example
6918 that actually is from the State of Georgia, without being
6919 negative about our colleague, Mr. Collins, who I think is a
6920 decent and good member.

6921 In the court proceedings relative to the case
6922 challenging the Georgia law, there was this exchange, and it
6923 was on June 20th, 2011. The court in that case was Judge
6924 Thomas Thrash, Jr., asked the Attorney General of Georgia
6925 what is going to happen on July 1st as far as what happens
6926 in the State of Georgia with respect to people who are
6927 associated with illegal aliens, say a wife who is driving
6928 her husband to church, to school, or a child who is driving
6929 a mother or a father who is in the country illegally to the
6930 grocery store. What happens to those people? Are they
6931 going to be prosecuted by local law enforcement starting
6932 July 1st? If you have an 18-year-old kids who is lawful
6933 citizen of the United States who is driving his mother, who
6934 is illegally here, to the grocery store and is stopped for

6935 speeding, is that person prosecuted?

6936 And the Attorney General of Georgia said, it may be
6937 unfair, it may be unkind, but that does not make it
6938 unconstitutional. So, yes, Your Honor, that child, that 18-
6939 year-old could go to jail.

6940 Well, I do not think that is something that we want to
6941 have happen where American kids driving their mom to church
6942 are charged with the felony of harboring. That is not what
6943 harboring is. And I think it is important to delineate that
6944 we are not going to permit that. We are going to permit
6945 vigorous prosecution for the human traffickers and others
6946 who are causing so much problems to society.

6947 So I thank Mr. Richmond for this amendment. I think it
6948 is not only important. I fear it will be necessary based on
6949 what has happened to date in the country.

6950 And I yield back.

6951 Chairman Goodlatte. Question occurs on the amendment
6952 offered by the gentleman from Louisiana.

6953 All those in favor, respond by saying aye?

6954 Those opposed, no?

6955 In the opinion of the chair, the noes have it, and the

6956 amendment is not agreed to.

6957 Mr. Richmond. I would request a roll call vote.

6958 Chairman Goodlatte. The gentleman requests a recorded
6959 vote, and the clerk will call the roll.

6960 Chairman Goodlatte. A recorded vote is requested, and
6961 the clerk will call the role.

6962 Ms. Deterding. Mr. Goodlatte?

6963 Chairman Goodlatte. No.

6964 Ms. Deterding. Mr. Goodlatte votes no.

6965 Mr. Sensenbrenner?

6966 Mr. Sensenbrenner. No.

6967 Ms. Deterding. Mr. Sensenbrenner votes no.

6968 Mr. Coble?

6969 [No response.]

6970 Ms. Deterding. Mr. Smith of Texas?

6971 [No response.]

6972 Ms. Deterding. Mr. Chabot?

6973 [No response.]

6974 Ms. Deterding. Mr. Bachus?

6975 Mr. Bachus. No.

6976 Ms. Deterding. Mr. Bachus votes no.

6977 Mr. Issa?

6978 [No response.]

6979 Ms. Deterding. Mr. Forbes?

6980 [No response.]

6981 Ms. Deterding. Ms. Deterding. Mr. King?

6982 Mr. King. No.

6983 Ms. Deterding. Mr. King votes no.

6984 Mr. Franks?

6985 Mr. Franks. No.

6986 Ms. Deterding. Mr. Franks votes no.

6987 Mr. Gohmert?

6988 Mr. Gohmert. No.

6989 Ms. Deterding. Mr. Gohmert votes no.

6990 Mr. Jordan?

6991 Mr. Jordan. No.

6992 Ms. Deterding. Mr. Jordan votes no.

6993 Mr. Poe?

6994 [No response.]

6995 Ms. Deterding. Mr. Chaffetz?

6996 Mr. Chaffetz. No.

6997 Ms. Deterding. Mr. Chaffetz votes no.

6998 Mr. Marino?

6999 Mr. Marino. No.

7000 Ms. Deterding. Mr. Marino votes no.

7001 Mr. Gowdy? Mr. Gowdy?

7002 Mr. Gowdy. No.

7003 Ms. Deterding. Mr. Gowdy votes no.

7004 Mr. Amodei?

7005 Mr. Amodei. No.

7006 Ms. Deterding. Mr. Amodei votes no.

7007 Mr. Labrador?

7008 Mr. Labrador. No.

7009 Ms. Deterding. Mr. Labrador votes no.

7010 Mr. Farenthold?

7011 [No response.]

7012 Ms. Deterding. Mr. Holding?

7013 Mr. Holding. No.

7014 Ms. Deterding. Mr. Holding votes no.

7015 Mr. Collins?

7016 Mr. Collins. No.

7017 Ms. Deterding. Mr. Collins votes no.

7018 Mr. DeSantis?

7019 Mr. DeSantis. No.

7020 Ms. Deterding. Mr. DeSantis votes no.

7021 Mr. Smith of Missouri?

7022 Mr. Smith of Missouri. No.

7023 Ms. Deterding. Mr. Smith of Missouri votes no.

7024 Mr. Conyers?

7025 Mr. Conyers. Aye.

7026 Ms. Deterding. Mr. Conyers votes aye.

7027 Mr. Nadler?

7028 Mr. Nadler. Aye.

7029 Ms. Deterding. Mr. Nadler votes aye.

7030 Mr. Scott?

7031 Mr. Scott. Aye.

7032 Ms. Deterding. Mr. Scott votes aye.

7033 Mr. Watt?

7034 [No response.]

7035 Ms. Deterding. Ms. Lofgren?

7036 Ms. Lofgren. Aye.

7037 Ms. Deterding. Ms. Lofgren vote aye.

7038 Ms. Jackson Lee?

7039 [No response.]

7040 Ms. Deterding. Mr. Cohen?

7041 Mr. Cohen. Aye.

7042 Ms. Deterding. Mr. Cohen votes aye.

7043 Mr. Johnson?

7044 Mr. Johnson. Aye.

7045 Ms. Deterding. Mr. Johnson votes aye.

7046 Mr. Pierluisi?

7047 Mr. Pierluisi. Aye.

7048 Ms. Deterding. Mr. Pierluisi votes aye.

7049 Ms. Chu?

7050 Ms. Chu. Aye.

7051 Ms. Deterding. Ms. Chu votes aye.

7052 Mr. Deutch?

7053 Mr. Deutch. Aye.

7054 Ms. Deterding. Mr. Deutch votes aye.

7055 Mr. Gutierrez?

7056 [No response.]

7057 Ms. Deterding. Ms. Bass?

7058 Ms. Bass. Aye.

7059 Ms. Deterding. Ms. Bass votes aye.

7060 Mr. Richmond?

7061 Mr. Richmond. Aye.

7062 Ms. Deterding. Mr. Richmond votes aye.

7063 Ms. DelBene?

7064 Ms. DelBene. Aye.

7065 Ms. Deterding. Ms. DelBene votes aye.

7066 Mr. Garcia?

7067 Mr. Garcia. Aye.

7068 Ms. Deterding. Mr. Garcia votes aye.

7069 Mr. Jeffries?

7070 Mr. Jeffries. Aye.

7071 Ms. Deterding. Mr. Jeffries votes aye.

7072 Mr. Chabot. Mr. Chairman?

7073 Chairman Goodlatte. The gentleman from Ohio?

7074 Mr. Chabot. No.

7075 Ms. Deterding. Mr. Chabot votes no.

7076 Chairman Goodlatte. The gentleman from Texas, Mr.

7077 Smith?

7078 Mr. Smith of Texas. No.

7079 Ms. Deterding. Mr. Smith from Texas votes no.

7080 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

7081 Mr. Poe. No.

7082 Ms. Deterding. Mr. Poe votes no.

7083 Chairman Goodlatte. The gentleman from Virginia.

7084 Mr. Forbes. No.

7085 Ms. Deterding. Mr. Forbes votes no.

7086 Chairman Goodlatte. Are there additional members who
7087 have not voted who wish to vote?

7088 [No response.]

7089 Chairman Goodlatte. If not, the clerk will report.

7090 The gentleman from Illinois.

7091 Mr. Gutierrez. Yes.

7092 Ms. Deterding. Mr. Gutierrez votes aye.

7093 Chairman Goodlatte. The clerk will report.

7094 Ms. Deterding. Mr. Chairman, 16 members voted aye, 20
7095 members voted nay.

7096 Chairman Goodlatte. And the amendment is not agreed to.

7097 For what purpose does the gentlewoman from Texas seek
7098 recognition?

7099 Ms. Jackson Lee. I have an amendment at the desk,
7100 Amendment number 29.

7101 Chairman Goodlatte. The clerk will report the
7102 amendment.

7103 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.

7104 Jackson Lee of Texas, on page 153 --

7105 Chairman Goodlatte. Without objection, the amendment

7106 will be considered as read.

7107 [The amendment of Ms. Jackson Lee follows:]

7108

7109 Chairman Goodlatte. And the gentlewoman is recognized
7110 for 5 minutes to explain her amendment.

7111 Ms. Jackson Lee. Two points that I wish to make about
7112 this amendment, which is labeled encouraging deportation,
7113 which can be considered or called in the nomenclature of the
7114 presidential election of 2012, self-deportation.

7115 What I think the points that my colleagues need to
7116 adhere to is to listen that in this provision, one, less
7117 time to complete the departure will occur, which will be
7118 disruptive to individuals who have agreed to a voluntary
7119 departure, but need to get their business in order. They
7120 may be leaving family members, children behind, requires
7121 them to get a bond, which may not be available for people of
7122 minimal means.

7123 And then it restricts the ability of the alien to reopen
7124 their case or receive a future immigration benefit if the
7125 alien, because of some family concern, some medical concern,
7126 some appropriate human factor, cannot depart timely.

7127 Again, criminalizing individuals who came to this
7128 country for work by and large, who do not fall into the
7129 category of terrorists, and putting them in what I would

7130 call a trap of self-deportation, but yet shortening the time
7131 for doing so, putting a financial burden on top of it, and
7132 as well eliminating their opportunity to petition.

7133 I do want to put into the record that a CBO and JCT
7134 report that has just come out on the Senate bill indicated
7135 that it would decrease Federal budget deficits by \$197
7136 billion over a 2014-2023 period and would continue to have a
7137 number of savings. That is the first savings noted.

7138 But I believe that, again, we have gone excessively in
7139 the direction of penalizing people who are trying to comply
7140 with the law in the self-deportation or, in essence,
7141 departing voluntarily. You are now undermining that effort
7142 by onerous burdens on them.

7143 I ask my colleagues to support the elimination of this
7144 provision.

7145 Mr. Smith of Texas. [Presiding] Thank you, Ms. Jackson
7146 Lee.

7147 The gentleman from Iowa, Mr. King, is recognized.

7148 Mr. King. Move to strike the last word, Mr. Chairman.

7149 Mr. Smith of Texas. The gentleman is recognized for 5
7150 minutes.

7151 Mr. King. Thank you, Mr. Chairman.

7152 I rise in opposition to the Jackson Lee amendment. And
7153 voluntary departure orders allow removable aliens who are
7154 generally in removal proceedings to leave the United States
7155 without being subject to removal orders. Now that means
7156 that they benefit the alien involved and permit them to more
7157 easily reenter the United States after voluntary removal.

7158 Unfortunately, aliens frequently fail to depart within
7159 the timeframe that they agreed to or even to depart at all.
7160 If I remember, we had Attorney General John Ashcroft before
7161 this committee who testified that 84 percent just simply
7162 abscond. As a result, voluntary departure is being
7163 routinely abused with few, if any, consequences.

7164 The bill provides needed reforms to the voluntary
7165 departure process. It sets timeframes for departure,
7166 ranging from 45 to 120 days. That is fairly forgiving, I
7167 would say, and it is on the circumstances and requires that
7168 aliens be informed of the legal consequences of violating
7169 the agreement.

7170 If the alien then fails to comply with the agreement,
7171 which they entered into knowingly and willingly, the bill

7172 provides they can be subject to a civil penalty of up to
7173 \$3,000. They are ineligible for many immigration benefits
7174 for 10 years and are limited in filing motions to reopen.

7175 By providing consequences for abusing the system, this
7176 provision ensures that voluntary departure orders are
7177 effective and work in the manner intended, that the alien,
7178 in fact, depart from the country as agreed to.

7179 I urge my colleagues to rise in opposition to this
7180 amendment. It undermines an important provision of the
7181 underlying bill, and I would point out also that we are
7182 dealing with the philosophy that is being pushed and driven
7183 some -- much of it in the Senate, some in the House, that
7184 considers legislation that would exempt people from
7185 enforcement of immigration law.

7186 It is amazing to me that we can be sitting here in 2013
7187 so far away from the consensus we seemed to have in 2012 and
7188 hear people on the other side of the Rotunda and some people
7189 in this House and within this Judiciary Committee that would
7190 believe that we should just exempt people from violating
7191 immigration law, that we should exempt the people that are
7192 in the United States today, that we should exempt those who

7193 came into the United States perhaps before December 31,
7194 2011, that we should send an invitation to the people who
7195 have been deported from the United States and tell them we
7196 really didn't mean it. If you haven't committed a felony,
7197 if you haven't committed these three mysterious
7198 misdemeanors, y'all come back now, you hear?

7199 That is what is in that bill that is coming at us from
7200 the Senate side. And also the prospects of enforcement for
7201 those who violate the proposed legislation from the Senate
7202 side, those who came in after December 31, 2011, those
7203 prospects for deportation are nil and would fall within the
7204 categories of if you committed a felony, if you committed
7205 the three serious -- or mysterious misdemeanors.

7206 I suppose, otherwise, if you might have offended the
7207 President of the United States, you might be sent home
7208 again. Otherwise, it is he always is, always was, and
7209 always will be perpetual and retroactive amnesty, and that
7210 is what is before us.

7211 So I oppose this amendment because it is a component of
7212 the perpetual and retroactive amnesty. I urge its
7213 opposition from my colleagues, and I would yield back the

7214 balance of my time.

7215 Mr. Smith of Texas. Thank you, Mr. King.

7216 Are there any other Members who wish to be heard on the
7217 amendment? The gentleman from Georgia is recognized.

7218 Mr. Johnson. Move to strike the last word.

7219 Mr. Smith of Texas. The gentleman is recognized for 5
7220 minutes.

7221 Mr. Johnson. I would yield my time to my colleague from
7222 Texas.

7223 Ms. Jackson Lee. Answer the gentleman from Iowa. First
7224 of all, this provision is unduly harsh and punitive for no
7225 good reason, and it is a carryover of the election of 2012.

7226 I guess the reason why one would argue against the term
7227 self-deportation, even though it is labeled voluntary
7228 deportation, is because we didn't start out by criminalizing
7229 individuals who happen to be in this country, who wanted to
7230 work, who either came undocumented but wanted to do good.
7231 Wanted to build businesses and raise their children.

7232 We have not received in America's history the idea of
7233 immigration as being something that is criminal. We have
7234 viewed it as the building blocks of our society. We built

7235 upon the waves of immigrants who have come, and many came
7236 undocumented. They happened to have come from Europe.

7237 There are those who are here today that are here from
7238 Ireland. They might be considered overstays. And all of
7239 those provisions are being added to the present construct of
7240 the Senate legislation. I don't find any comfort in
7241 overstays and suggest that that should not be a reviewed or
7242 a process that should be in check.

7243 But this whole idea of shortening the timeframe, not
7244 giving any opportunity for petition, not considering whether
7245 there is a health emergency or any reason why the person
7246 could not comply and self-deport again puts this in the
7247 realms of criminal activity.

7248 I think that that is not the approach that is going to
7249 be effective, and many know that when we engaged in the
7250 enforcement construct in immigration reform of two or three
7251 decades ago, it did not work. It simply did not work. And
7252 individuals who had never been to any other country but this
7253 since they were a child were deported. Families were broken
7254 up, and we still had the same system that we have today.

7255 If we do not find a system to regularize individuals who

7256 want to stay in this country to do good, then I can assure
7257 you we are going to be right back where we were before.
7258 Immigrants are an economic engine, and there must be a
7259 better way.

7260 I ask my colleagues to support the amendment. I yield
7261 back.

7262 Mr. Smith of Texas. Thank you, Ms. Jackson Lee.

7263 The question is on the Jackson Lee amendment.

7264 All in favor, say aye.

7265 Opposed, nay.

7266 In the opinion of the chair, the nays have it, and the
7267 amendment is not agreed to.

7268 Ms. Jackson Lee. Roll call.

7269 Mr. Smith of Texas. A roll call vote has been
7270 requested, and the clerk will call the roll.

7271 Ms. Deterding. Mr. Goodlatte?

7272 [No response.]

7273 Ms. Deterding. Mr. Sensenbrenner?

7274 Mr. Sensenbrenner. No.

7275 Ms. Deterding. Mr. Sensenbrenner votes no.

7276 Mr. Coble?

7277 [No response.]

7278 Ms. Deterding. Mr. Smith of Texas?

7279 Mr. Smith of Texas. No.

7280 Ms. Deterding. Mr. Smith of Texas votes no.

7281 Mr. Chabot?

7282 Mr. Chabot. No.

7283 Ms. Deterding. Mr. Chabot votes no.

7284 Mr. Bachus?

7285 Mr. Bachus. No.

7286 Ms. Deterding. Mr. Bachus votes no.

7287 Mr. Issa?

7288 [No response.]

7289 Ms. Deterding. Mr. Forbes?

7290 [No response.]

7291 Ms. Deterding. Mr. King?

7292 Mr. King. No.

7293 Ms. Deterding. Mr. King votes no.

7294 Mr. Franks?

7295 [No response.]

7296 Ms. Deterding. Mr. Gohmert?

7297 Mr. Gohmert. No.

7298 Ms. Deterding. Mr. Gohmert votes no.
7299 Mr. Jordan?
7300 Mr. Jordan. No.
7301 Ms. Deterding. Mr. Jordan votes no.
7302 Mr. Poe?
7303 [No response.]
7304 Ms. Deterding. Mr. Chaffetz?
7305 Mr. Chaffetz. No.
7306 Ms. Deterding. Mr. Chaffetz votes no.
7307 Mr. Marino?
7308 Mr. Marino. No.
7309 Ms. Deterding. Mr. Marino votes no.
7310 Mr. Gowdy?
7311 Mr. Gowdy. No.
7312 Ms. Deterding. Mr. Gowdy votes no.
7313 Mr. Amodei?
7314 Mr. Amodei. No.
7315 Ms. Deterding. Mr. Amodei votes no.
7316 Mr. Labrador?
7317 Mr. Labrador. No.
7318 Ms. Deterding. Mr. Labrador votes no.

7319 Mr. Farenthold?

7320 [No response.]

7321 Ms. Deterding. Mr. Holding?

7322 Mr. Holding. No.

7323 Ms. Deterding. Mr. Holding votes no.

7324 Mr. Collins?

7325 Mr. Collins. No.

7326 Ms. Deterding. Mr. Collins votes no.

7327 Mr. DeSantis?

7328 Mr. DeSantis. No.

7329 Ms. Deterding. Mr. DeSantis votes no.

7330 Mr. Smith of Missouri?

7331 Mr. Smith of Missouri. No.

7332 Ms. Deterding. Mr. Smith of Missouri votes no.

7333 Mr. Conyers?

7334 Mr. Conyers. Aye.

7335 Ms. Deterding. Mr. Conyers votes aye.

7336 Mr. Nadler?

7337 Mr. Nadler. Aye.

7338 Ms. Deterding. Mr. Nadler votes aye.

7339 Mr. Scott?

7340 Mr. Scott. Aye.

7341 Ms. Deterding. Mr. Scott votes aye.

7342 Mr. Watt?

7343 [No response.]

7344 Ms. Deterding. Ms. Lofgren?

7345 Ms. Lofgren. Aye.

7346 Ms. Deterding. Ms. Lofgren votes aye.

7347 Ms. Jackson Lee?

7348 Ms. Jackson Lee. Aye.

7349 Ms. Deterding. Ms. Jackson Lee votes aye.

7350 Mr. Cohen?

7351 Mr. Cohen. Aye.

7352 Ms. Deterding. Mr. Cohen votes aye.

7353 Mr. Johnson?

7354 Mr. Johnson. Aye.

7355 Ms. Deterding. Mr. Johnson votes aye.

7356 Mr. Pierluisi?

7357 Mr. Pierluisi. Aye.

7358 Ms. Deterding. Mr. Pierluisi votes aye.

7359 Ms. Chu?

7360 Ms. Chu. Aye.

7361 Ms. Deterding. Ms. Chu votes aye.

7362 Mr. Deutch?

7363 Mr. Deutch. Aye.

7364 Ms. Deterding. Mr. Deutch votes aye.

7365 Mr. Gutierrez?

7366 Mr. Gutierrez. Aye.

7367 Ms. Deterding. Mr. Gutierrez votes aye.

7368 Ms. Bass?

7369 Ms. Bass. Aye.

7370 Ms. Deterding. Ms. Bass votes aye.

7371 Mr. Richmond?

7372 [No response.]

7373 Ms. Deterding. Ms. DelBene?

7374 Ms. DelBene. Aye.

7375 Ms. Deterding. Ms. DelBene votes aye.

7376 Mr. Garcia?

7377 Mr. Garcia. Aye.

7378 Ms. Deterding. Mr. Garcia votes aye.

7379 Mr. Jeffries?

7380 Mr. Jeffries. Aye.

7381 Ms. Deterding. Mr. Jeffries votes aye.

7382 Mr. Smith of Texas. -- to vote or change their vote.

7383 And the gentleman from Virginia, the chairman of the
7384 committee?

7385 Chairman Goodlatte. I vote no.

7386 Ms. Deterding. Mr. Goodlatte votes no.

7387 Mr. Smith of Texas. The gentleman from Virginia, Mr.
7388 Forbes?

7389 Mr. Forbes. No.

7390 Ms. Deterding. Mr. Forbes votes no.

7391 Mr. Smith of Texas. The gentleman from Arizona?

7392 Mr. Franks. No.

7393 Ms. Deterding. Mr. Franks votes no.

7394 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

7395 Ms. Deterding. Ms. Jackson Lee votes aye.

7396 Mr. Smith of Texas. And the clerk will call the roll.

7397 Ms. Deterding. Mr. Chairman, 15 Members voted aye; 19
7398 Members voted nay.

7399 Mr. Smith of Texas. The amendment is not agreed to.

7400 Are there any other Members who wish to offer an
7401 amendment? The gentleman from the Florida Keys, Mr. Garcia,
7402 is recognized.

7403 Mr. Garcia. I have an amendment at the desk.

7404 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.

7405 Garcia. Page 29, after line 3, insert the following --

7406 Mr. Garcia. We can dispense with the reading, Mr.

7407 Chairman.

7408 Mr. Gowdy. [Presiding] Without objection, we will

7409 dispense with the reading.

7410 [The amendment of Mr. Garcia follows:]

7411

7412 Mr. Gowdy. The gentleman from Florida is recognized for
7413 5 minutes.

7414 Mr. Garcia. Very good. Mr. Chairman, yesterday, I was
7415 pleased to read that this committee's chairman said to USA
7416 Today that, "This bill is not intended to criminalize 11
7417 million unauthorized immigrants already living in the
7418 country. It contemplates that there is going to be a legal
7419 status for them."

7420 My amendment would simply ensure that this is the case.
7421 By criminalizing immigrants and turning local police into
7422 immigration agents, this bill will not make this nation
7423 safer or fix our immigration system. Our cash-strapped law
7424 enforcement agencies should not be wasting their time and
7425 resources going after the father who is trying to provide
7426 for his family or children who are brought to this country
7427 through no choice of their own.

7428 By ensuring that there is earned legalization program in
7429 place before these enforcement provisions take effect, my
7430 amendment will demonstrate the committee's commitment to
7431 passing comprehensive immigration reform and ensure that the
7432 law enforcement can focus on those who are a danger to our

7433 communities.

7434 I would simply note that this takes some of what Mr.
7435 Bachus from Alabama mentioned earlier. We are not talking
7436 about the people that are in the pipeline. I know that the
7437 -- that my friend from South Carolina also wants to go
7438 forward with the comprehensive. This would give assurance
7439 to those 11 million.

7440 I would ask my colleagues to support my amendment, and I
7441 yield back the balance of my time.

7442 Mr. Gowdy. The chair thanks the gentleman from Florida
7443 and will recognize himself in opposition to the amendment,
7444 but in appreciation for Mr. Garcia and his work on the
7445 subcommittee and the collegial way with which he has always
7446 interacted with me on a host of issues.

7447 The present administration has proven itself, in my
7448 judgment, hostile to State and local law enforcement
7449 assistance in the enforcement of our immigration laws. DHS
7450 is trying to shut down the 287(g) program, which facilitates
7451 State and local cooperation.

7452 When the Supreme Court overturned much of the Arizona
7453 immigration law, President Obama stated, "I am pleased the

7454 Supreme Court has struck down key provisions of Arizona's
7455 immigration law. A patchwork of State laws is not a
7456 solution to our broken immigration system. It is part of
7457 the problem. I remained concerned about the practical
7458 impact of the remaining provisions of the Arizona law that
7459 require local law enforcement officials to check the
7460 immigration status of anyone they suspect to be here
7461 illegally."

7462 This bill, in my judgment, provides a solid statutory
7463 framework for the assistance of State and local law
7464 enforcement in the enforcement of our immigration laws. I
7465 am concerned this amendment provides the Obama
7466 administration -- although I in no way question the motives
7467 of the author of this amendment, I do worry that this may
7468 provide the Obama administration with the excuse it needs to
7469 stall the implementation of needed reforms.

7470 And I would add what I may find to be a sufficient path
7471 for adjustment of status for undocumented immigrants and
7472 what Secretary Napolitano might find to be sufficient are
7473 likely to be very different things.

7474 So what if the House were to pass a legalization bill,

7475 but with border security triggers attached to give the
7476 American people some assurance that the borders will be
7477 secured first? What if the administration does not want to
7478 or is not capable of implementing these triggers, what would
7479 give the administration the excuse to find that a sufficient
7480 path does not exist?

7481 So, again, while I appreciate the gentleman and am 100
7482 percent convinced in the sincerity of his motives, I do not
7483 trust the administration as much as I do the gentleman from
7484 Florida. So for that reason, I will oppose this amendment.

7485 Who else seeks to be recognized?

7486 Ms. Lofgren. Mr. Chairman?

7487 Mr. Gowdy. The gentlelady from California?

7488 Ms. Lofgren. I move to strike the last word.

7489 Mr. Gowdy. The gentlelady is recognized for 5 minutes.

7490 Ms. Lofgren. I support the gentleman's amendment, and I
7491 understand the technical issue that you are raising about
7492 definitions. But I want to raise a broader issue. Several
7493 times today, Members on the other side of the aisle have
7494 mentioned, well, this is just one part. This isn't the
7495 whole piece.

7496 And Mr. Garcia mentioned an article, I think, in USA
7497 Today. I have an article here in today's Christian Science
7498 Monitor making the same point that Members on the other side
7499 of the aisle have done that, you know, there is going to be
7500 other provisions and legalization provisions. And yet we
7501 have not been contacted about that.

7502 And it seems to me, I would like to know from the
7503 chairman what is the plan? I mean, we will do our best
7504 work, I believe, if we work together. And we have worked
7505 successfully in the subcommittee, you and I, as chair and
7506 ranking member. But I have not been engaged by the majority
7507 on this committee to work together on the legalization
7508 issues or other matters.

7509 So I would like to inquire of the chairman what is the
7510 plan for the other provisions of the bill? And how are we
7511 going to proceed? And I would be happy to yield if you are
7512 in a position to answer.

7513 Mr. Gowdy. Well, one thing I have promised Chairman
7514 Goodlatte is that I will never speak for him. But I will
7515 say this. Some of us are, in all candor, expectantly and
7516 anxiously and excitingly awaiting the product that the

7517 gentlelady from California has worked extremely hard for a
7518 number of years on, as has Mr. Gutierrez and others on our
7519 side.

7520 Some of the bills we have marked up -- not marked up,
7521 but have had hearings on in subcommittee, E-Verify and the
7522 bill that we are going to mark up tomorrow. And candidly,
7523 some are still works in progress, and that is why I was so
7524 grateful to what Mr. Gutierrez said. At some level, you
7525 have to trust what people tell you.

7526 So the fact that there is not -- I mean, I have never,
7527 for one moment, doubted that you were going to produce a
7528 global peace. I haven't seen it. But I never once thought
7529 you were just saying it to buy time. So I would ask you to
7530 just accept that there are some, not all, but some Members
7531 that are working on the very things that the gentlelady
7532 cited.

7533 Ms. Lofgren. Reclaiming my time, I thank the gentleman
7534 for that answer, and I would note that the danger, I think,
7535 of a piecemeal approach is that -- and the gentleman is
7536 correct. We have worked very hard over a number of years to
7537 try and come up with a bipartisan compromise bill.

7538 It is completely drafted, and our colleagues, most
7539 particularly on the other side of the aisle, are going
7540 through line by line because the agreement always is that
7541 nothing is agreed to until everything is agreed to and read.
7542 And I respect that completely.

7543 But I will say that there are provisions that are
7544 different than some of the piecemeal provisions. Most
7545 particularly, the provision that we will be marking up
7546 tomorrow is very much out of step with what I think is the
7547 broad agreement in the country among farmers on what to do.

7548 So I appreciate the gentleman's answer. It gives me
7549 even greater motive to continue to work hard with my
7550 colleagues in the bipartisan working group or what my
7551 colleague Mr. Gutierrez has named "the Magnificent Seven."
7552 But I also have some anxiety that we may be out of step
7553 already on that measure.

7554 And I yield back at this point. Thank you very much.

7555 Mr. Gowdy. Thank the gentlelady from California.

7556 Anyone else seek recognition? The gentlelady from Texas
7557 is recognized for 5 minutes.

7558 Ms. Jackson Lee. Thank you, Chairman.

7559 I want to speak to the gentleman, Mr. Garcia's
7560 amendment. Because as I read it, what he is asking for is
7561 simple fairness, which is as we surge toward establishing a
7562 framework for response to illegal status, he is asking for a
7563 pause and a moment for individuals to be statused before
7564 this enforcement bill takes place and further criminalizes
7565 their actions.

7566 Again, this is a theme that all of us have been trying
7567 to raise to our colleagues is that we are not against, as I
7568 have heard Mr. Gutierrez say eloquently, aspects of
7569 enforcement. Whether it is making sure we have trained ICE
7570 officers, whether it is to have the funding that is
7571 necessary, whether it is to have detention centers that will
7572 be adequate, but humane.

7573 But we also want a system that regularizes, and we want
7574 a system that if we are going to move to this level of
7575 getting a construct again, getting a framework that moves us
7576 away from the kind of immigration laws that we have had.
7577 One moment cold, one moment hot. One moment high
7578 enforcement, one moment -- others would argue -- no
7579 enforcement, which does not add to regular order.

7580 I think Mr. Garcia is simply asking, and I would be
7581 happy to yield to the gentleman, is to give a pause so that
7582 we don't entrap people again and criminalize them who are on
7583 the verge of being able to be statused. I hope we can
7584 support his amendment.

7585 I yield to the gentleman.

7586 Mr. Garcia. Thank you. I thank the gentlelady for
7587 yielding.

7588 And Mr. Chairman, I, of course, have listened with great
7589 anticipation to your words, and I have no doubt of your
7590 interest of moving forward on a comprehensive solution here.
7591 I have no doubt reading Chairman Goodlatte's words.

7592 But let us think about and give pause. We are willing
7593 to look at enforcement provisions, as the gentlelady from
7594 California stated. We are willing to be tough, but where is
7595 the other side to this?

7596 And if we go forward with this bill without giving those
7597 guarantees, are we not simply taking one road without taking
7598 the other? I hope that the work of the Gang of Eight, now
7599 the Magnificent Seven, will come quickly, and we will be
7600 able to look at all that.

7601 But I listen to my friend from Alabama trying to take
7602 pause and trying to be considerate on this, and all that
7603 this tries to do is basically say let us take this group out
7604 of the way. Let us not focus in on this group because if we
7605 do that, then we are now criminalizing these 11 million.
7606 And I don't think that does the great work that this
7607 committee intends to do any great service.

7608 But again, I thank the chairman, and I thank the lady
7609 for yielding.

7610 Mr. Gowdy. Thank the gentleman from Florida.

7611 Does anyone else seek recognition?

7612 Ms. Jackson Lee. I yield back my time.

7613 Mr. Gowdy. The question is on the amendment.

7614 Ms. Jackson Lee. I am yielding back my time.

7615 Mr. Gowdy. I thank the gentlelady from Texas.

7616 The question is on the amendment.

7617 Those in favor, say aye.

7618 Those opposed, say no.

7619 In the opinion of the chair, the noes have it. The
7620 amendment is not agreed to.

7621 Are there other amendments? The gentleman from

7622 Virginia, Mr. Scott?

7623 Mr. Scott. Mr. Chairman, I have an amendment at the
7624 desk, Scott 014.

7625 Mr. Gowdy. The clerk will designate.

7626 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
7627 Scott of Virginia. Page 89, strike lines 8 through 17 and
7628 redesignate provisions accordingly.

7629 Mr. Scott. Mr. Chairman, I accept that it be considered
7630 as read.

7631 Mr. Gowdy. No objection.

7632 [The amendment of Mr. Scott follows:]

7633

7634 Mr. Gowdy. The gentleman from Virginia is recognized
7635 for 5 minutes for his amendment.

7636 Mr. Scott. Mr. Chairman, this amendment removes the
7637 mandatory minimums and death penalty from the bill. I count
7638 at least 11 different mandatory minimums added to this bill.

7639 We need to stop passing new mandatory minimums. The
7640 first rule of holes is that if you find yourself in a hole,
7641 stop digging. Just last week, we had a hearing of the new
7642 bipartisan Over-Criminalization Task Force, and while there
7643 was some disagreement amongst the witnesses as to whether
7644 mandatory minimum sentences are always bad policy, there was
7645 complete agreement from the witnesses that we have too many
7646 mandatory minimums already.

7647 And here we are, the very next week contemplating
7648 passing almost a dozen new mandatory minimum sentences into
7649 law. We need to stop digging.

7650 Mandatory minimums have been studied extensively and
7651 been found to disrupt the rational sentencing patterns and
7652 found to discriminate against minorities and waste the
7653 taxpayers' money when compared to traditional sentencing
7654 where individual roles and culpabilities can be taken into

7655 account.

7656 And often, mandatory minimums require judges to impose
7657 sentences that simply violate common sense. Mandatory
7658 minimum sentencing does nothing to those who deserve
7659 sentences to be longer, but unfairly penalizes those who
7660 deserve lesser sentences. The Judicial Conference has
7661 written Congress repeatedly complaining about the
7662 counterproductive implications of mandatory minimum
7663 sentencing.

7664 Mr. Chairman, the purpose of the bill is to strengthen
7665 enforcement of immigration laws and enhance border security.
7666 It is hard to see how placing new mandatory minimum
7667 sentences will do anything more than just clog up our
7668 overcrowded prisons with people whose crime may be nothing
7669 worse than trying to unite with their families.

7670 The impact and cost of this bill could be enormous. The
7671 Sentencing -- U.S. Sentencing Commission indicates that
7672 almost 20,000 offenders are convicted of illegal entry, and
7673 almost 15,000 of them had prior convictions that would
7674 qualify them for 2-, 4- or 10-year mandatory minimum
7675 sentence under Section 316 of this bill. The costs could

7676 easily get into the billions.

7677 Mr. Chairman, this amendment would do nothing to
7678 eliminate punishment, but it would provide that the
7679 punishment can be consistent with common sense.

7680 So I urge my colleagues to support the amendment.

7681 Mr. Sensenbrenner. Mr. Chairman?

7682 Mr. Gowdy. I thank the gentleman from Virginia.

7683 The chair will now recognize the gentleman from
7684 Wisconsin, the former chairman of the full committee, Mr.
7685 Sensenbrenner.

7686 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition
7687 to the amendment.

7688 Mr. Gowdy. The gentleman is recognized for 5 minutes.

7689 Mr. Sensenbrenner. Mr. Chairman, I am going to be very
7690 brief. Mandatory minimums were passed a long time ago to
7691 prevent judge shopping by both prosecutors and defense
7692 counsel. There are some judges that had reputations of
7693 being real tough sentencers and some that had reputations of
7694 being very lenient sentencers.

7695 And there was no reason, in the view of the Congress at
7696 the time, that someone who is convicted of the same crime

7697 should have a widely varying and disparate sentence
7698 depending upon which judge pronounced that sentence.

7699 I agree with the gentleman from Virginia. There are too
7700 many mandatory minimums, but I am here to support continued
7701 mandatory minimums until the opponents of mandatory
7702 minimums, led by my friend from Virginia, come up with
7703 another way to prevent the type of judge shopping that
7704 caused the mandatory minimums to be passed to begin with.

7705 So I would urge opposition of the amendment, and I would
7706 urge my friend from Virginia to come up with something that
7707 stops the judge shopping and does not involve a mandatory
7708 minimum sentence and yield back the balance of my time.

7709 Mr. Gowdy. The chair thanks the gentleman from
7710 Wisconsin and recognizes the gentleman from New York.

7711 Mr. Nadler. Thank you, Mr. Chairman.

7712 I rise in support of the amendment by the gentleman from
7713 Virginia. I congratulate him for his long and consistent
7714 leadership in the fight against the mandatory minimums,
7715 which have really distorted our criminal justice system in
7716 many ways.

7717 And as he said, if we can't do anything to solve the

7718 problem with them, at least don't add to them. Every single
7719 time we have a bill on anything, we add a few more mandatory
7720 minimums here, a few there. The law is clogged with them,
7721 and we have too many. It doesn't help. It distorts our
7722 criminal justice system, and it harms it in many ways.

7723 And I would like to yield to the gentleman from Virginia
7724 at this point.

7725 Mr. Scott. Thank you.

7726 Mr. Chairman, this mandatory minimums do not eliminate
7727 judge shopping. They just have the different punishments
7728 for the same crime going on in the U.S. attorney's office
7729 rather than the open court.

7730 This amendment would provide that whatever sentence is
7731 given at least comply with common sense and allow the judges
7732 to be judges and not impose sentences which are
7733 inappropriate for the charge.

7734 Mr. Chairman, I ask unanimous consent that a statement
7735 from Julie Stewart, president of Families Against Mandatory
7736 Minimums, be entered into the record.

7737 Mr. Gowdy. Without objection.

7738 [The information follows:]

7739

7740 Mr. Scott. Yield back.

7741 Mr. Nadler. And I yield back.

7742 Mr. Gowdy. The gentleman from New York and the
7743 gentleman from Virginia yield back.

7744 The question is on the amendment.

7745 Those in favor, say aye.

7746 Those opposed, no.

7747 In the opinion of the chair, the noes have it. The
7748 amendment is not agreed to.

7749 Mr. Scott. Mr. Chairman?

7750 Mr. Gowdy. The gentleman from Virginia?

7751 Mr. Scott. Mr. Chairman, I have an amendment at the
7752 desk.

7753 Mr. Gowdy. The gentleman is recognized.

7754 Mr. Scott. Scott 015.

7755 Mr. Gowdy. The clerk will designate.

7756 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
7757 Scott of Virginia. Page 174, after line 21, add the
7758 following --

7759 Mr. Scott. I ask unanimous consent that the amendment
7760 be considered as read.

7761 Mr. Gowdy. Without objection.

7762 [The amendment of Mr. Scott follows:]

7763

7764 Mr. Gowdy. The gentleman is recognized.

7765 Mr. Scott. Thank you, Mr. Chairman.

7766 Mr. Chairman, this amendment would require the GAO to
7767 investigate and report on the issue of deaths of detainees
7768 in the custody of the Department of Homeland Security.

7769 The country detains well over 400,000 immigrants
7770 annually, and regardless of their status, they are morally
7771 entitled to basic health and safety. For this reason, my
7772 amendment would require the GAO to investigate and report on
7773 the issue of deaths in custody.

7774 Over the years, we have heard some horror stories, and
7775 people have allegedly died because of lack of healthcare.
7776 There were -- we have counted about 131 deaths over a 10-
7777 year period. That is about one a month.

7778 This amendment is similar to the one that was accepted
7779 in 2005, and hopefully, it would be accepted again.

7780 Yield back.

7781 Mr. Gowdy. The chair thanks the gentleman from Virginia
7782 and recognizes himself and would ask that people stand on
7783 either side of the gentleman from Virginia in case he
7784 faints, as I support his amendment and appreciate his

7785 willingness to work with us to make a minor modification to
7786 the GAO report required by the amendment.

7787 The Department of Justice collects and disseminates data
7788 on deaths that occur in local jails, State prisons, and
7789 during the process of arrest by State and local law
7790 enforcement agencies through its Deaths in Custody Reporting
7791 Program. While the Death in Custody Reporting Act expired
7792 in 2006, BJS has continued to collect these data, and they
7793 represent a unique national resource for understanding
7794 mortality in the criminal justice system.

7795 BJS has published both in-depth analytical reports and
7796 analyzed statistical tables from these various DCRP
7797 collections.

7798 So the question is on the amendment.

7799 Those in favor, say aye.

7800 Those opposed, no.

7801 In the opinion of the chair, the ayes have it, and the
7802 amendment is agreed to.

7803 Mr. Gutierrez. Mr. Chairman?

7804 Mr. Gowdy. The gentleman from Illinois is recognized.

7805 Mr. Gutierrez. Yes, Mr. Chairman. I have amendment

7806 2278 -- I am sorry. Amendment to 2278, number 21 and number
7807 20.

7808 I want to say I am not going to offer these amendments
7809 because I believe that, given the conversations that you and
7810 I have had here today, that just it is unnecessary. I think
7811 we are going to continue to work on this issue together, and
7812 why raise issues that we have already talked about.

7813 Thank you so much.

7814 Mr. Gowdy. Well, I thank the gentleman for his
7815 continuing collegiality, and I will make sure that I am a
7816 good steward of the trust that you have put in me.

7817 Does anyone else seek -- gentleman from New York?

7818 Mr. Nadler. I have an amendment at the desk.

7819 Mr. Gowdy. The clerk will designate.

7820 Ms. Deterding. Amendment to H.R. 2278, offered by Mr.
7821 Nadler. Beginning on page 123, strike line 23 through page
7822 124, line 2 and redesignate provisions accordingly.

7823 [The amendment of Mr. Nadler follows:]

7824

7825 Mr. Gowdy. The gentleman is recognized for 5 minutes
7826 for his amendment.

7827 Mr. Nadler. Thank you, Mr. Chairman.

7828 I won't take 5 minutes. Mr. Chairman, it is a
7829 fundamental principle of our law that when the President of
7830 the United States or the Governor of a State issues a pardon
7831 for a crime of which someone has previously been convicted,
7832 that pardon operates to expunge the crime. It is as if in
7833 law the crime had never existed.

7834 People whose crimes have been pardoned are entitled to
7835 answer "no" to the question "Have you ever been convicted of
7836 a crime?"

7837 There is an anomaly in the immigration law where instead
7838 of the normal law, which is a crime that has been pardoned
7839 has no impact on anything else, the immigration law has a
7840 list of crimes for which if you are pardoned, it wipes out
7841 the crime and a different list of crimes which if you are
7842 pardoned, it doesn't wipe out the crime. It is not even
7843 logical. There are very serious crimes that are wiped out
7844 and not so serious crimes that aren't wiped out.

7845 The bill before us has a very intelligent provision that

7846 says that in the case of an alien who has been convicted of
7847 a crime and is subject to removal due to that conviction, if
7848 the alien, subsequent to receiving the criminal conviction,
7849 is granted a pardon, the alien should not be deported, but
7850 by reason of that criminal conviction.

7851 That is in the bill. It is a very good provision, and
7852 it brings the immigration law into line with every other law
7853 that we have.

7854 Unfortunately, there is a second paragraph to that
7855 provision which says that this provision shall not apply if
7856 the pardon was granted in whole or in part to eliminate that
7857 alien's condition of deportability. Now that is
7858 unfortunate.

7859 It also means it has no impact on the future. That is,
7860 that provision has no impact on the future. If we should
7861 pass this, no Governor or President issuing a pardon is ever
7862 going to say, by the way, one of the reasons I am doing this
7863 is so this person cannot be deported.

7864 So this can only have an impact on people who may have
7865 been pardoned in the past for long-gone crimes. There are
7866 very few people that that affects. I know of about 17 in

7867 New York who were pardoned I think 6 or 7 years ago by
7868 former Governor Paterson, and he said in some of those cases
7869 that among the reasons or among the factors is that they
7870 shouldn't be deported because they are fine, upstanding
7871 citizens for many years.

7872 So my amendment simply deletes that second paragraph,
7873 leaves the first paragraph. And this bill then would bring
7874 the immigration law into conformity with all our other law
7875 and say a pardon, if the President or the Governor of a
7876 State pardons someone, then that is it for the immigration
7877 law as well as for all other laws.

7878 And I urge the adoption of the amendment.

7879 Mr. Gowdy. The chair thanks the gentleman from New
7880 York.

7881 As the gentleman from Idaho and I were discussing
7882 earlier, a pardon is a pardon. So I agree with your
7883 amendment.

7884 Anyone else seek --

7885 Mr. Nadler. So do you -- oh, I am sorry. Go ahead.

7886 Mr. Gowdy. Do you want me to change my mind?

7887 [Laughter.]

7888 Mr. Gowdy. Does anyone else seek recognition?

7889 The question is on the amendment.

7890 Those in favor, say aye.

7891 Those opposed, say no.

7892 In the opinion of the chair, the ayes have it, and the
7893 amendment is agreed to.

7894 Mr. Nadler. Mr. Chairman, may I once again congratulate
7895 the chairman on his wisdom and discretion.

7896 Mr. Gowdy. That doesn't happen a ton. So, yes, you
7897 may.

7898 Anyone else seek recognition?

7899 Ms. Jackson Lee. Mr. Chairman?

7900 Mr. Gowdy. Ms. Jackson Lee from Texas?

7901 Ms. Jackson Lee. Mr. Chairman, I would like to offer en
7902 bloc amendments on the roster Number 31 Jackson Lee and
7903 Number 32 Jackson Lee.

7904 Mr. Gowdy. The clerk will designate.

7905 [Pause.]

7906 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.
7907 Jackson Lee of Texas. Page 153, line 9, after "the year
7908 2013," insert the following: "The Secretary will determine

7909 the rate at which the additional officers will be added with
7910 due regard to filling the positions as expeditiously as
7911 possible without making any compromises in the selection or
7912 the training of additional officers."

7913 Amendment to H.R. 2278, offered by Ms. Jackson Lee of
7914 Texas. Page 174, after line 21, add the following.

7915 [The amendments of Ms. Jackson Lee follow:]

7916

7917 Mr. Gowdy. The gentlelady is recognized for 5 minutes
7918 on both of her amendments.

7919 Ms. Jackson Lee. I assume number 32, we are considering
7920 it as read because it didn't -- okay.

7921 My amendments are quite simple, Mr. Chairman, and I hope
7922 for the collegiality that has been seemingly preceding. One
7923 is to ensure that any additional officers that come under
7924 this particular bill have the Secretary of DHS looking to
7925 fill the positions expeditiously, but also do so without
7926 compromise in training and skills of these additional
7927 officers in order to ensure for the officers themselves the
7928 best quality and the ability to have the best training and
7929 to be able to absorb the number of officers that might be
7930 hired under this legislation.

7931 That is amendment number 1. Amendment number 2 is to
7932 ensure that the Secretary of Homeland Security shall submit
7933 to the appropriate congressional committees a plan for
7934 developing and deploying mobile rapid response teams, which
7935 I think answers the question of high areas and low areas
7936 where it may be suggested that there is an intensity of
7937 crossings that we have the ability to respond in the

7938 appropriate manner.

7939 With that, I ask my colleagues to support these
7940 amendments.

7941 Mr. Gowdy. The gentlelady yields back, and I support
7942 both of the amendments.

7943 So the question is on the amendment.

7944 Those in favor, say aye.

7945 Ms. Jackson Lee. I thank the chairman for his wisdom.

7946 Mr. Gowdy. Those opposed, no.

7947 In the opinion of the chair, the ayes have it, and the
7948 amendment is agreed to.

7949 Are there any other amendments? The gentlelady from
7950 Texas?

7951 Ms. Jackson Lee. I would like to offer amendment number
7952 34.

7953 Mr. Gowdy. The clerk will designate.

7954 Ms. Deterding. Amendment to H.R. 2278, offered by Ms.
7955 Jackson Lee of Texas. Page 174, after line --

7956 Mr. Gowdy. Without objection, the amendment is
7957 considered as read.

7958 [The amendment of Ms. Jackson Lee follows:]

7959

7960 Mr. Gowdy. The gentlelady from Texas is recognized for
7961 5 minutes.

7962 Ms. Jackson Lee. I thank the --

7963 Mr. Gowdy. Microphone, please.

7964 Ms. Jackson Lee. The amendment is being given out, so
7965 let me start again and read specifically what the amendment
7966 states.

7967 My amendment would provide guidelines and authority for
7968 a program of secure alternatives to detention that would
7969 implement this provision. It would provide for a range of
7970 humane and cost-effective alternatives to the prison
7971 facilities that will still ensure the appearance of the
7972 alien before immigration officials during the course of
7973 their potential removal proceedings.

7974 But it would address the potential of nonpenal
7975 facilities for members of vulnerable populations needing
7976 specialized care, such as families; children; individuals
7977 with serious medical or mental health needs; those with
7978 mental health needs, as I indicated, that have a mental
7979 health issue or autistic; elderly, over the age of 65; those
7980 victims of trafficking; or others who have been rescued by

7981 the government.

7982 A sense of humanity is more than appropriate for the
7983 numbers that we will be facing on any account. And because
7984 many of these facilities are private facilities, guidelines
7985 and alternatives are necessary, in terms of providing that
7986 instruction for those populations. If you have gone and
7987 seen families, as I have, at detention centers, who are
7988 obviously in conditions that are not conducive, because they
7989 are not criminals. For whatever reason that they are in the
7990 system, they are not criminals.

7991 They are in the country. They are on status. They want
7992 to be in the country, but they are to be removed or are in
7993 removal proceedings.

7994 Some of them may be successful in their proceedings, in
7995 terms of overturning those removal proceedings. And so they
7996 are not convicted persons. And I think that this is a
7997 sympathetic structure that needs to be added to the
7998 underlying legislation.

7999 I ask my colleagues to support it.

8000 Mr. Gowdy. The gentlelady from Texas yields back.

8001 The chair would now recognize the gentleman from Idaho,

8002 Mr. Labrador.

8003 Mr. Labrador. Thank you, Mr. Chairman.

8004 I oppose this amendment. By the mid-1990s, tens of
8005 thousands of aliens were arriving at U.S. international
8006 airports each year without valid documents, often making
8007 meritless asylum claims, knowing that they would be released
8008 into the community pending their hearings before immigration
8009 judges, because of a lack of detention space.

8010 Few were ever heard from again. In response to this,
8011 Congress, in 1996, created the mechanism of expedited
8012 removal. Under expedited removal, a Department of Homeland
8013 Security officer at an airport can immediately return an
8014 alien lacking proper documents to his or her country of
8015 origin, unless the alien can establish a credible fear of
8016 persecution.

8017 If arriving aliens aren't found to have a credible fear,
8018 they are subject to mandatory detention and removal. If
8019 credible fear is shown, then the alien will be able to make
8020 their case before an immigration judge.

8021 By 2000, the INS was making over 85,000 expedited
8022 removals per year, and our airports were no longer being

8023 inundated with so many arriving aliens. Expedited removal
8024 has been a huge success, and I urge my colleagues to oppose
8025 this amendment.

8026 Mr. Gowdy. The gentleman from Idaho yields back.

8027 The gentleman from Utah is recognized for 5 minutes, Mr.
8028 Chaffetz.

8029 Mr. Chaffetz. I thank the chairman.

8030 And I want to ask if the gentlewoman would yield to a
8031 question. I don't know if she would be amenable to that.

8032 Ms. Jackson Lee. Yes, Mr. Chaffetz. I am amenable to a
8033 question.

8034 Mr. Chaffetz. Thank you.

8035 Starting on line 15, can you help me? I'm not as
8036 familiar with the secure alternatives program as perhaps I
8037 should be, so could you further explain that for me, what
8038 you are trying to do there, particularly in the program
8039 operation?

8040 Ms. Jackson Lee. Thank you very much. It is a little
8041 distinctive from Mr. Labrador's response.

8042 The secure alternatives is for individuals in detention
8043 who have the conditions that I mentioned, have a mental

8044 illness, families. They have a diagnosed issue, in that
8045 they may need to be in a more humane setting than what they
8046 might necessarily be in detention facilities.

8047 I think Mr. Labrador suggested that I stopped them at
8048 the airport, and they will use that excuse to not be
8049 deported. In this instance, we are speaking about the
8050 conditions that one would find oneself that would warrant
8051 more humane conditions -- families with infants, young
8052 children.

8053 And as I indicated, I have visited these centers and
8054 seen individuals previously not having the accommodations
8055 that I would hope that they would need.

8056 Mr. Chaffetz. Reclaiming my time, going to line 18,
8057 "and costly detention of vulnerable aliens in harsh or
8058 substandard prison conditions."

8059 "Substandard prison conditions," what does the
8060 gentlewoman mean by that? What example is there of that?

8061 Ms. Jackson Lee. What line are you on? I'm sorry.

8062 Mr. Chaffetz. Eighteen.

8063 Ms. Jackson Lee. What I mean by that is that over the
8064 course of the life of immigration reform, '80s, '90s, and

8065 beyond, there have been conditions that have been enormously
8066 harsh for these special populations.

8067 This pertains to special populations, and the ones that
8068 I have listed. And the conditions have been particularly
8069 harsh when they have these particular conditions -- i.e.,
8070 elderly, and I mentioned a long list of those.

8071 Mr. Chaffetz. So the gentlewoman's suggesting, for
8072 instance, that substandard prison conditions is not a
8073 general condition of the prisons, but maybe for somebody who
8074 has a particular illness, they couldn't necessarily be in a
8075 regular type of detention center. Is that what the
8076 gentlewoman --

8077 Ms. Jackson Lee. You are correct. That is correct.
8078 Special needs, that is correct.

8079 Mr. Chaffetz. Okay. I thank the gentlewoman for that.
8080 And with that, Mr. Chairman, I will yield that.

8081 Mr. Gowdy. I thank the gentleman from Utah.

8082 The chair will now recognize the gentlelady from
8083 California, Ms. Lofgren.

8084 Ms. Lofgren. Mr. Chairman, I think the concept behind
8085 this has some merit. I wanted to address the issue raised

8086 by Mr. Labrador, because he is correct as to the problem
8087 that existed in the early '90s relative to asylum claims.

8088 In fact, individuals were coming over claiming asylum,
8089 in many cases without adequate grounds. They were not
8090 placed in detention, and then they disappeared. And it was
8091 a scam, and it was a problem.

8092 However, before the '96 act was adopted, that problem
8093 had basically been corrected administratively.

8094 One of the big administrative remedies, when you applied
8095 for asylum, you were given employment authorization. So you
8096 had somebody make some bogus claim at the airport. They
8097 were released on their own recognizance. They were given
8098 employment authorization, and you never saw them again.

8099 They decoupled the employment authorization from the
8100 asylum application. There was a 180-day wait. There were
8101 some other things that happened.

8102 So basically, the '96 act was correcting a problem that
8103 had already been resolved.

8104 I don't think that the provisions being proposed by Ms.
8105 Jackson Lee would reopen that problem, because, as I said,
8106 we had already closed the door on that problem.

8107 I don't know that the secure alternatives program is
8108 necessarily the perfect vehicle.

8109 I would hope that we don't have substandard prison
8110 conditions, but I do think there are occasions, especially
8111 for vulnerable populations, where it doesn't make sense to
8112 put that person in a jail environment, especially when it
8113 comes to children, when it comes to very elderly people,
8114 people who are suffering from disease, people who are
8115 mentally ill, and the like.

8116 I think that not only are there more appropriate ways to
8117 make sure that individuals in those categories show up for
8118 their hearings, but there are also less costly ways to make
8119 sure that individuals show up for their hearings.

8120 I am aware that there are provisions in existing law
8121 that allow for some alternatives to detention, and I think
8122 it is a big mistake to foreclose those.

8123 Mr. Bachus has spoken during some of our hearings about
8124 the large numbers of people who are incarcerated. And I
8125 think if we can't use sensible alternatives, the costs just
8126 go through the roof.

8127 As I said before, I was on the board of supervisors in

8128 my county for 14 years before I became a Member of Congress.
8129 And our board of supervisors had responsibility for running
8130 the county jail. We frequently used alternatives to
8131 incarceration.

8132 For example, in low-risk cases, ankle bracelets, and the
8133 inmates themselves would pay for the ankle bracelets so that
8134 we didn't have to spend \$150 a day on incarceration. And we
8135 monitored very closely, so that the failure-to-appear rate
8136 didn't rise.

8137 So I think there is much merit in what is being
8138 proposed, the concept that Ms. Jackson Lee has proposed
8139 here. Whether or not we like the exact word for word in
8140 every piece of the amendment, I would hope that the majority
8141 would not turn their back on the motives or the concepts
8142 that are being proposed here.

8143 And with that, I would yield to the gentlelady.

8144 Ms. Jackson Lee. I thank the gentlelady.

8145 I would just like to read specifically out of the
8146 legislation, because I think this series of sentences would
8147 be very helpful: The secure alternatives program would be
8148 made available to a host of vulnerable classes, including

8149 parents with their children, aliens with serious medical or
8150 mental health needs, mentally retarded or autistic
8151 individuals, pregnant women, the elderly, and victims of
8152 trafficking or criminal operations, who have been determined
8153 by the department not to be a flight risk or a danger to the
8154 community.

8155 And so there is a litmus test, and a framework on which
8156 to decide whether any of these individuals would even be
8157 eligible to be able to partake of the program. And,
8158 clearly, the issue of flight risk would go to any concern of
8159 any member, as it relates to whether this person would be
8160 able to be detained or not in these alternative conditions.

8161 So I would ask my colleagues to support the amendment.
8162 And again, the program would be designed in accordance with
8163 tested methods. I ask my colleagues to support the
8164 amendment.

8165 Mr. Gowdy. The gentlelady yields back.

8166 The gentleman from Georgia, Mr. Collins, is recognized.

8167 Mr. Collins. Move to strike the last word, Mr.

8168 Chairman.

8169 Mr. Gowdy. The gentleman is recognized.

8170 Mr. Collins. Would the gentlelady from Texas be open to
8171 a couple more questions on this?

8172 Ms. Jackson Lee. Yes.

8173 Mr. Collins. I appreciate what was just said, and I
8174 appreciate the spirit in which this is brought. But I do
8175 have a few questions, just in general.

8176 In line 13, it says to be run by nongovernmental
8177 organizations. Do you have in mind who those might be?

8178 Ms. Jackson Lee. I would leave that to the discretion,
8179 determination of the Department of Homeland Security.

8180 Mr. Collins. But it would not be limited to -- would
8181 you be opening it up to a private probation service?
8182 Because I know there has been a lot of discussion today
8183 about private prisons. Would we be opening up here to a
8184 private probation?

8185 Ms. Jackson Lee. That would not be my intent. I would
8186 be happy to yield -- she wants to answer. That would not be
8187 my intent.

8188 Ms. Lofgren. Could I?

8189 Mr. Collins. I would be happy -- I am asking questions.
8190 I am not sure I can support it, but I --

8191 Ms. Jackson Lee. Let me yield to the gentlelady from
8192 California.

8193 Ms. Lofgren. If the gentleman would yield?

8194 Mr. Collins. Definitely.

8195 Ms. Lofgren. One of the things that we did in --
8196 actually, it was the child trafficking act a few years back,
8197 was to provide that unaccompanied minor children could be
8198 held under the auspices of the Department of Health and
8199 Human Services, rather than Homeland Security, and that they
8200 could contract out with nonprofit providers of group care,
8201 so that you wouldn't have like a little 8-year-old in some
8202 kind of prison setting.

8203 And many of the religious organizations have provided
8204 kind of group settings for small, vulnerable children. That
8205 is one example that has actually worked reasonably well.

8206 Mr. Collins. I appreciate that, reclaiming my time. I
8207 think the question was not children, but some of the others
8208 here, which would be adults. There would be other
8209 situations needed.

8210 And you just read this out of the bill. It says the
8211 secure alternatives program would be made available to a

8212 host of vulnerable classes, including, and then you list
8213 out. I think there is a silent "but not limited to" here.

8214 So my question would be here, who would make the
8215 determination here that it would to a host of vulnerable
8216 classes, and then you list some, but I think there is a
8217 silent "but not limited to" here. Who would make that
8218 determination? Because that, to me, seems like a very wide
8219 hole here, to where you could in some ways get around some
8220 of the other parts of this bill.

8221 So I am just curious as to the motivation there.

8222 Ms. Jackson Lee. If the gentleman would yield, let me
8223 just say that I joined Congresswoman Lofgren on that earlier
8224 construct with the Health and Human Services.

8225 In this instance, I have left it to the Department of
8226 Homeland Security, but with the idea of listing for you the
8227 types of populations. They couldn't go far beyond the list
8228 that indicates a health need, a family need, a child's need,
8229 an elderly need, or someone suffering from mental illness.

8230 As so the listing gives you the parameters under which
8231 you could operate. That is my interpretation.

8232 Mr. Collins. I understand. And reclaiming the time, I

8233 understand. And I was just reading it, when it says a host
8234 of vulnerable classes including, and there is a limited, I
8235 think there's a silent "but not limited to" that I would be
8236 concerned about.

8237 I appreciate the gentlelady's concern on this.

8238 Ms. Jackson Lee. If the gentleman wants to offer a
8239 friendly amendment to remove the word "host," the proponent
8240 might welcome such an amendment.

8241 Mr. Collins. I appreciate that offer. At this late
8242 hour, I am not sure I could come up with proper wording for
8243 that.

8244 But I yield back at this time.

8245 Ms. Jackson Lee. I thank the gentleman.

8246 Chairman Goodlatte. [Presiding] The question occurs on
8247 the amendment offered by the gentlewoman from Texas.

8248 All those in favor, respond by saying aye.

8249 Those opposed, no.

8250 In the opinion of the chair, the noes have it. The
8251 amendment is not agreed to.

8252 A reporting quorum being present, the question is on the

8253 --

8254 Ms. Jackson Lee. Mr. Chairman?

8255 Chairman Goodlatte. The gentlewoman from Texas?

8256 Ms. Jackson Lee. Mr. Chairman, I had other amendments
8257 that I will not at this time offer. I thank the chairman
8258 and your staff for their courtesies.

8259 I do note that there was an earlier moment, Mr.
8260 Chairman, when you offered to ask the gentleman to withdraw
8261 a particular amendment, and we welcome that.

8262 But let me just conclude my remarks very briefly to say
8263 that I was struck by the amendment dealing with the question
8264 of citizenship. And I know that that amendment is no longer
8265 in place. However, the chairman did indicate that he looked
8266 forward to working with the gentleman on that amendment.

8267 It strikes a very difficult cord for many of us to
8268 suggest that a constitutional provision that indicates that
8269 a citizen is someone born here and/or naturalized would now
8270 be a cause for debate in an immigration bill.

8271 It is sensitive because, as the gentleman who was
8272 proposing this amendment tried to distinguish, the reasoning
8273 for it was the issue of slavery.

8274 And I truly believe that the Constitution is a living

8275 document, Mr. Chairman. And maybe that is why you asked
8276 that you look at it and work on it further. But it is a
8277 living document.

8278 And that means that it lives from the time that slaves
8279 were perceived to be citizens, naturalized under the 14th
8280 Amendment. And to now try to undo a constitutional
8281 amendment that allowed people to be determined as citizens,
8282 to be born here or to be naturalized, I find it, Mr.
8283 Chairman, enormously offensive and hurting, if I might say
8284 so.

8285 So before the record closed, I wanted to place on the
8286 record my position on that, and would hope that in the
8287 course of trying to work through this, and work with someone
8288 about amendments such as this, that there would be pause and
8289 caution, because the Constitution is very clear. And it
8290 does say, whether you use the historical perspective of
8291 slavery, it does say that if you are born here or
8292 naturalized, that you are, in fact, a citizen.

8293 And I would hope that we would not try to undo the
8294 Constitution because of the vast diversity of those who fall
8295 in the immediacy of comprehensive immigration reform today,

8296 because it could have been used -- in fact, the 14th
8297 Amendment could have not been written, and a whole vast
8298 array of individuals who came to this country as slaves
8299 could have been treated differently.

8300 I know that is not the intent of this committee nor the
8301 intent of colleagues. And I raise the issue for thought,
8302 Mr. Chairman, and for contemplation, and hopefully for
8303 collaboration to do the right thing by this committee and by
8304 the Constitution.

8305 I yield back.

8306 Chairman Goodlatte. The gentlewoman's comments are
8307 appreciated.

8308 And the question now occurs, a reporting quorum being
8309 present, the question is on the motion to report the bill
8310 H.R. 2278, as amended, favorably to the House.

8311 Those in favor will say aye.

8312 Those opposed, no.

8313 The ayes have it, and the bill, as amended, is ordered
8314 reported favorably.

8315 Mr. Nadler. Mr. Chairman?

8316 Chairman Goodlatte. The gentleman from New York?

8317 Mr. Nadler. Do you want a roll call on that?

8318 Chairman Goodlatte. The clerk will call the roll.

8319 Ms. Deterding. Mr. Goodlatte?

8320 Chairman Goodlatte. Aye.

8321 Ms. Deterding. Mr. Goodlatte votes aye.

8322 Mr. Sensenbrenner?

8323 Mr. Sensenbrenner. Aye.

8324 Ms. Deterding. Mr. Sensenbrenner votes aye.

8325 Mr. Coble?

8326 [No response.]

8327 Ms. Deterding. Mr. Smith of Texas?

8328 [No response.]

8329 Ms. Deterding. Mr. Chabot?

8330 Mr. Chabot. Aye.

8331 Ms. Deterding. Mr. Chabot votes aye.

8332 Mr. Bachus?

8333 Mr. Bachus. Aye.

8334 Ms. Deterding. Mr. Bachus votes aye.

8335 Mr. Issa?

8336 [No response.]

8337 Ms. Deterding. Mr. Forbes?

8338 Mr. Forbes. Aye.

8339 Ms. Deterding. Mr. Forbes votes aye.

8340 Mr. King?

8341 Mr. King. Aye.

8342 Ms. Deterding. Mr. King votes aye.

8343 Mr. Franks?

8344 Mr. Franks. Aye.

8345 Ms. Deterding. Mr. Franks votes aye.

8346 Mr. Gohmert?

8347 [No response.]

8348 Ms. Deterding. Mr. Jordan?

8349 Mr. Jordan. Yes.

8350 Ms. Deterding. Mr. Jordan votes aye.

8351 Mr. Poe?

8352 Mr. Poe. Aye.

8353 Ms. Deterding. Mr. Poe votes aye.

8354 Mr. Chaffetz?

8355 Mr. Chaffetz. Aye.

8356 Ms. Deterding. Mr. Chaffetz votes aye.

8357 Mr. Marino?

8358 Mr. Marino. Yes.

8359 Ms. Deterding. Mr. Marino votes aye.
8360 Mr. Gowdy?
8361 Mr. Gowdy. Yes.
8362 Ms. Deterding. Mr. Gowdy votes aye.
8363 Mr. Amodei?
8364 Mr. Amodei. Yes.
8365 Ms. Deterding. Mr. Amodei votes aye.
8366 Mr. Labrador?
8367 Mr. Labrador. Yes.
8368 Ms. Deterding. Mr. Labrador votes aye.
8369 Mr. Farenthold?
8370 Mr. Farenthold. Aye.
8371 Ms. Deterding. Mr. Farenthold votes aye.
8372 Mr. Holding?
8373 Mr. Holding. Aye.
8374 Ms. Deterding. Mr. Holding votes aye.
8375 Mr. Collins?
8376 Mr. Collins. Aye.
8377 Ms. Deterding. Mr. Collins votes aye.
8378 Mr. DeSantis?
8379 Mr. DeSantis. Aye.

8380 Ms. Deterding. Mr. DeSantis votes aye.

8381 Mr. Smith of Missouri?

8382 Mr. Smith of Missouri. Aye.

8383 Ms. Deterding. Mr. Smith of Missouri votes aye.

8384 Mr. Conyers?

8385 Mr. Conyers. No.

8386 Ms. Deterding. Mr. Conyers votes no.

8387 Mr. Nadler?

8388 Mr. Nadler. No.

8389 Ms. Deterding. Mr. Nadler votes no.

8390 Mr. Scott?

8391 Mr. Scott. No.

8392 Ms. Deterding. Mr. Scott votes no.

8393 Mr. Watt?

8394 [No response.]

8395 Ms. Deterding. Ms. Lofgren?

8396 Ms. Lofgren. No.

8397 Ms. Deterding. Ms. Lofgren votes no.

8398 Ms. Jackson Lee?

8399 Ms. Jackson Lee. No.

8400 Ms. Deterding. Ms. Jackson Lee votes no.

8401 Mr. Cohen?

8402 Mr. Cohen. No.

8403 Ms. Deterding. Mr. Cohen votes no.

8404 Mr. Johnson?

8405 Mr. Johnson. No.

8406 Ms. Deterding. Mr. Johnson votes no.

8407 Mr. Pierluisi?

8408 Mr. Pierluisi. No.

8409 Ms. Deterding. Mr. Pierluisi votes no.

8410 Ms. Chu?

8411 Ms. Chu. No.

8412 Ms. Deterding. Ms. Chu votes no.

8413 Mr. Deutch?

8414 Mr. Deutch. No.

8415 Ms. Deterding. Mr. Deutch votes no.

8416 Mr. Gutierrez?

8417 Mr. Gutierrez. No.

8418 Ms. Deterding. Mr. Gutierrez votes no.

8419 Ms. Bass?

8420 Ms. Bass. No.

8421 Ms. Deterding. Ms. Bass votes no.

8422 Mr. Richmond?

8423 [No response.]

8424 Ms. Deterding. Ms. DelBene?

8425 Ms. DelBene. No.

8426 Ms. Deterding. Ms. DelBene votes no.

8427 Mr. Garcia?

8428 Mr. Garcia. No.

8429 Ms. Deterding. Mr. Garcia votes no.

8430 Mr. Jeffries?

8431 Mr. Jefferies. No.

8432 Ms. Deterding. Mr. Jefferies votes no.

8433 Chairman Goodlatte. The gentleman from Texas, Mr.

8434 Smith?

8435 Mr. Smith of Texas. Aye.

8436 Ms. Deterding. Mr. Smith of Texas votes aye.

8437 Chairman Goodlatte. Are there any other members who

8438 have not voted who wish to vote?

8439 The clerk will report.

8440 Ms. Deterding. Mr. Chairman, 20 members voted aye; 15

8441 members voted nay.

8442 Chairman Goodlatte. The ayes have it. And the bill, as

8443 amended, is ordered reported favorably.

8444 Members will have 2 days to submit views.

8445 [The information follows:]

8446

8447 Chairman Goodlatte. Without objection, the bill will be
8448 reported as a single amendment in the nature of a
8449 substitute, incorporating all adopted amendments. And staff
8450 is authorized to make technical and conforming changes.

8451 I thank all the members for their diligence for more
8452 than a dozen hours here today.

8453 We will start again tomorrow at 10 a.m., and this markup
8454 is adjourned.

8455 [Whereupon, at 10:45 p.m., the committee was adjourned.]