

1 ALDERSON REPORTING COMPANY  
2 STEVEN MOSKEY  
3 HJU174000

4 FULL COMMITTEE MARKUP OF COMMITTEE ACTIVITIES REPORT;  
5 H.R. 1741, THE SECURE VISAS ACT; H.R. 966, THE LAWSUIT  
6 ABUSE REDUCTION ACT OF 2011; H.R. 1933, TO AMEND THE  
7 IMMIGRATION AND NATIONALITY ACT TO MODIFY THE  
8 REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN  
9 HEALTH PROFESSION SHORTAGE AREAS; AND H.R. 1932, THE  
10 KEEP OUR COMMUNITIES SAFE ACT OF 2011  
11 Thursday, June 23, 2011  
12 House of Representatives  
13 Committee on the Judiciary  
14 Washington, D.C.

15 The committee met, pursuant to call, at 10:05  
16 a.m., in Room 2141, Rayburn House Office Building,  
17 Hon. Lamar Smith [chairman of the committee]  
18 presiding.

19 Present: Representatives Smith, Sensenbrenner,  
20 Coble, Gallegly, Goodlatte, Chabot, Issa, Forbes,

21 King, Franks, Gohmert, Jordan, Poe, Griffin, Marino,  
22 Gowdy, Ross, Adams, Quayle, Conyers, Nadler, Scott,  
23 Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson,  
24 Pierluisi, Quigley, Chu, and Deutch.

25           Staff Present: Sean McLaughlin, Majority Chief  
26 of Staff; Allison Halatei, Majority Deputy Chief of  
27 Staff/Parliamentarian; Sarah Kish, Clerk; Dimple Shah,  
28 Majority Counsel; George Fishman, Majority Counsel;  
29 Perry Apelbaum, Minority Staff Director; and David  
30 Shahoulian, Minority Counsel.

31

32 Chairman Smith. [Presiding] The Judiciary  
33 Committee will come to order.

34 Without objection, the chair is authorized to  
35 declare recesses of the committee at any time, and the  
36 clerk will call the roll to establish a quorum.

37 Ms. Kish. Mr. Smith?

38 Chairman Smith. Present.

39 Ms. Kish. Mr. Sensenbrenner?

40 Mr. Coble?

41 Mr. Gallegly?

42 Mr. Goodlatte?

43 Mr. Goodlatte. Present.

44 Ms. Kish. Mr. Lundgren?

45 Mr. Chabot?

46 Mr. Issa?

47 Mr. Pence?

48 Mr. Forbes?

49 Mr. King?

50 Mr. Franks?

51 Mr. Gohmert?

52 Mr. Jordan?

53 Mr. Jordan. Here.

54 Ms. Kish. Mr. Poe?

55 Mr. Chaffetz?

56 Mr. Griffin?

57 Mr. Marino?  
58 Mr. Marino. Here.  
59 Ms. Kish. Mr. Gowdy?  
60 Mr. Gowdy. Present.  
61 Ms. Kish. Mr. Ross?  
62 Mrs. Adams?  
63 Mrs. Adams. Here.  
64 Ms. Kish. Mr. Quayle?  
65 Mr. Conyers?  
66 Mr. Conyers. Present.  
67 Ms. Kish. Mr. Berman?  
68 Mr. Nadler?  
69 Mr. Scott?  
70 Mr. Scott. Present.  
71 Ms. Kish. Mr. Watt?  
72 Ms. Lofgren?  
73 Ms. Lofgren. Present.  
74 Ms. Kish. Ms. Jackson Lee?  
75 Ms. Waters?  
76 Mr. Cohen?  
77 Mr. Johnson?  
78 Mr. Pierluisi?  
79 Mr. Quigley?  
80 Mr. Quigley. Here.  
81 Ms. Kish. Ms. Chu?

82 Mr. Deutch?

83 Ms. Sanchez?

84 Mr. Coble?

85 Mr. Coble. Here.

86 Ms. Kish. Mr. Franks?

87 Mr. Franks. Here.

88 Ms. Kish. Mr. Gohmert?

89 Mr. Gohmert. Here.

90 [Pause.]

91 Chairman Smith. The clerk will report.

92 Ms. Kish. Mr. Chairman, 13 Members responded  
93 present.

94 Chairman Smith. Okay. Working quorum is  
95 present. So we will proceed, and we will take up  
96 first the committee activities report.

97 Pursuant to notice, I now call up the committee  
98 activities report, and the clerk will report the  
99 report.

100 Ms. Kish. Summary of Activities of the  
101 Committee on the Judiciary. The committee and its  
102 subcommittees held a number of specific agency --

103 Chairman Smith. Without objection, the report  
104 will be considered as read.

105 [The information follows:]

106

107 Chairman Smith. And I will recognize myself and  
108 then the ranking member for an opening statement.

109 The House rules require each committee to file  
110 an activity report semi-annually. This report  
111 provides Congress and the public with detailed  
112 information about the hearings, legislative issues,  
113 and oversight conducted by this committee.

114 From January to May 31st of the 112th Congress,  
115 the Judiciary Committee held 52 hearings and reported  
116 12 bills. This committee activity report shows that  
117 the Judiciary Committee truly is a workhorse committee  
118 of Congress. I look forward to continuing this  
119 productive pace in the months ahead.

120 And I now recognize the distinguished gentleman  
121 from Michigan, the ranking member, Mr. Conyers, for  
122 his remarks as well.

123 Mr. Conyers. Thank you, Chairman Smith and  
124 members of the committee.

125 This is, as I look over what we have  
126 accomplished so far, I just asked the staff to bring  
127 up our report of the same period, and I am sure it is  
128 going to be pretty embarrassing to me in terms of the  
129 volume of what we did when I was sitting in this  
130 chair.

131 But we certainly are one of the busiest

132 committees in the House, having received referrals on  
133 421 bills so far. We have had more than 60 hearings  
134 and presided over 2 extensions of the expiring  
135 provisions of the PATRIOT Act.

136 I hope that the committee will continue the good  
137 work, and there are some issues that I would bring to  
138 the committee's attention that I would like some  
139 emphasis put on. The first is the foreclosure crisis  
140 left by the banks.

141 Millions of people are losing their homes in  
142 this country, and this committee has jurisdiction over  
143 rewriting the bankruptcy laws to allow judges for  
144 cram-down. And I hope that we can put this on our  
145 schedule for the summer before the August recess.

146 Also, the second thing that I would like to add  
147 to our list of considerations is the effort going on  
148 referencing voter requirements in many States. Some  
149 seem to be quite onerous, and some may be  
150 unconstitutional and some may be okay. But I think we  
151 would like to go into a more detailed examination of  
152 that.

153 And so, I thank you, Chairman Smith, for the  
154 open and bipartisan manner in which our work has moved  
155 forward, and I hope the committee will adopt this  
156 report.

157 Thank you.

158 Chairman Smith. Thank you, Mr. Conyers.

159 Are there any amendments to the committee  
160 activities report?

161 [No response.]

162 Chairman Smith. If not, a reporting quorum  
163 being present, the question is on approving the  
164 activities report favorably to the House. Those in  
165 favor, say aye.

166 [A chorus of ayes.]

167 Chairman Smith. Those opposed, no.

168 [No response.]

169 Chairman Smith. The ayes have it, and the  
170 report is approved.

171 Without objection, the activities report will be  
172 reported, and the staff is authorized to make  
173 technical and conforming changes. Members will have 2  
174 days to submit views.

175 Let me announce to the Members what I expect our  
176 schedule to be today, and it is subject to change. We  
177 are going to start off with the Secure Visas Act. And  
178 after that, we will probably go to H.R. 1933, the  
179 nurses bill, and we may or may not proceed after that.

180 We do have time constraints today. We have  
181 votes coming up between 12:30 p.m. and 1:00 p.m. We

182 might be on the floor this afternoon with the patent  
183 reform bill. And so, I don't know that we can get  
184 into the other items on the agenda today. We may well  
185 have to come back after the break and continue the  
186 agenda.

187 But I do want to at least get through the two  
188 bills that I have just mentioned, the Secure Visas Act  
189 and the nurses bill.

190 We will start with H.R. 1741, the Secure Visas  
191 Act. And pursuant to notice, I now call up 1741 for  
192 purposes of markup, and the clerk will report the  
193 bill.

194 Ms. Kish. H.R. 1741. To authorize the  
195 Secretary of Homeland Security and the Secretary of  
196 State --

197 Chairman Smith. Without objection, the bill  
198 will be considered as read.

199 [The information follows:]

200

201 Chairman Smith. I will recognize myself for an  
202 opening statement and then recognize the ranking  
203 member.

204 In light of Osama bin Laden's death, some  
205 believe the war on terror has ended and that the  
206 threat posed by al-Qaeda and other terrorist groups  
207 has diminished. But in the words of bin Laden  
208 himself, "I can be eliminated, but not my mission."

209 The events of the past decade underscore the  
210 need to strengthen and improve visa security. We know  
211 terrorists use loopholes in our immigration system to  
212 enter the United States.

213 The 19 hijackers involved in the September 11,  
214 2001, terrorist attacks applied for 23 visas and  
215 obtained 22. These terrorists began the process of  
216 obtaining visas almost 2 1/2 years before the attack.  
217 At the time, consular officers were unaware of the  
218 potential security threat posed by these hijackers.

219 On Christmas Day 2009, Omar Farouk Abdulmutallab  
220 attempted to blow up a plane on its way to Detroit  
221 after receiving a B-2 tourist visa. His attempt was  
222 thwarted, and hundreds of innocent lives were spared.

223 Although he failed in his attempt to murder  
224 innocent people, Abdulmutallab never should have been  
225 allowed to board the plane to Detroit. Despite

226 warnings from his father about his son's possible  
227 Muslim radicalization, the U.S. visa issued to him in  
228 2008 was neither identified nor revoked.

229         The Homeland Security Act of 2002 authorized the  
230 placement of Department of Homeland Security Visa  
231 Security Units at highest-risk U.S. consular posts.  
232 This was an effort to address lapses in the current  
233 system, increase scrutiny of visa issuance, and  
234 prevent terrorists from gaining access to the United  
235 States. Visa Security Units ensure that thorough  
236 background checks are conducted on all visa  
237 applicants, not just a select few.

238         Unfortunately, since 2002, neither the State  
239 Department nor the Department of Homeland Security has  
240 put a high enough priority on the establishment of  
241 Visa Security Units. Visa Security Units exist only  
242 in 19 consulates, located in 14 countries. Meanwhile,  
243 there are close to 50 countries that have been  
244 designated as highest risk.

245         Just as cautious landlords perform background  
246 checks on new renters, we should have Visa Security  
247 Units at all high-risk consular offices. H.R. 1741,  
248 the Secure Visas Act, makes the visa process more  
249 secure. The bill requires placement of Visa Security  
250 Units at all U.S. consular posts in highest-risk

251 countries, such as Algeria, Lebanon, and Syria.

252           The Secure Visas Act also allows U.S. officials  
253 to more easily remove terrorists and others already in  
254 the U.S. after their temporary visas have been  
255 revoked.

256           Under current law, foreign terrorists in the  
257 U.S. whose temporary visa has been revoked can remain  
258 to fight deportation in Federal court. A terrorist  
259 can even force the Government to release classified  
260 information and jeopardize intelligence sources and  
261 methods. The Secure Visas Act closes this loophole.

262           Just as a decision to issue or not issue a  
263 temporary visa is a purely discretionary, non-  
264 appealable decision, so, too, should the decision be  
265 to revoke a visa wrongly granted. Many national  
266 security officials warn of future attacks. We don't  
267 need national security officials to simply predict  
268 attacks. We need them to prevent attacks. That means  
269 we must prevent terrorists from entering this country  
270 before they act. This legislation allows us to do  
271 just that.

272           Visa security is critical to national security.  
273 Terrorists will continue to enter the U.S. legally if  
274 we do not improve and secure our visa process. The  
275 war on terror continues, and radical jihadists are as

276 committed as ever to killing Americans. America must  
277 be equally committed to stopping them.

278 I urge my colleagues to support H.R. 1741, and I  
279 will be offering a clarifying amendment suggested by  
280 Mr. Berman to improve the bill.

281 But we now go to the ranking member, Mr.  
282 Conyers, for his comments on this bill.

283 Mr. Conyers. Thank you, Chairman Smith. And I  
284 commend you for your attention to the issue of visa  
285 security. It is very important.

286 And H.R. 1741 makes admirable efforts to improve  
287 visa security, but it is not perfect. Matter of fact,  
288 it is far from being perfect. And that is where I  
289 come in. I want to help. I am here to help you.

290 [Laughter.]

291 Mr. Conyers. Now here is the gist of how I  
292 would like to correct it. Because this bill, H.R.  
293 1741, raises serious constitutional concerns for this  
294 reason. It eliminates judicial review for people who  
295 are being deported solely because their visas have  
296 been revoked. This bill raises a constitutional  
297 question by eliminating judicial review for people who  
298 are being solely deported because their visas have  
299 been revoked.

300 Currently under the law, if a person is placed

301 in removal proceedings only because the Government has  
302 revoked his or her visa, that person is entitled to  
303 judicial review of that decision. And I would like to  
304 keep it that way.

305 Congress included this important check on  
306 Government authority going back to 2004 -- and we were  
307 involved in it -- as part of the Intelligence Reform  
308 and Terrorism Prevention Act. And we did it because  
309 we recognized the need to protect against arbitrary or  
310 erroneous decisions that could have devastating  
311 impacts on families throughout this Nation.

312 And the part of this bill I am drawing your  
313 attention to seeks to eliminate those protections by  
314 suspending the right of habeas corpus. That is  
315 unconstitutional.

316 The Supreme Court has spoken on this very  
317 subject that I am talking about. In *Immigration and  
318 Naturalization Service v. St. Cyr*, the Supreme Court  
319 held, "Some judicial intervention in deportation cases  
320 is unquestionably required by the Constitution."

321 And so, the measure before us, my friends,  
322 ignore that clear holding and entirely eliminates  
323 review for people who are being deported solely based  
324 on the revocation of their visa. They have now, if  
325 this bill goes through, will have -- that is it,

326 period -- no court review whatsoever.

327           The provisions granting Department of Homeland  
328 Security new authority to refuse a visa is, some would  
329 say, a solution in search of a problem. We don't need  
330 to do this. There are ample protections already, and  
331 there have been no instances of the grave threat that  
332 is supposedly going to happen if we don't do what this  
333 bill wants us to do today.

334           And so, when Homeland Security was created in  
335 2002 -- may I continue my statement, Mr. Chairman, if  
336 my time runs out?

337           Chairman Smith. Without objection, the  
338 gentleman is recognized --

339           Mr. Conyers. Thank you.

340           Homeland Security was created in 2002, and we in  
341 the Congress intentionally left the authority to  
342 refuse or revoke visas in the hands of consular  
343 officers because these officers receive targeted  
344 training that makes them perfectly well suited to  
345 handle the day-to-day business of adjudicating visa  
346 applications and revoking visas.

347           The measure before us changes that balance and  
348 gives Homeland Security new authority to refuse or  
349 revoke visas. And so, if there was a good reason to  
350 make the change, I could support it. But according to

351 ICE's testimony at our hearing on this bill, there  
352 hasn't been a single visa issued by the State  
353 Department over the objection of ICE in the fiscal  
354 year 2010. That is the recent testimony.

355         There isn't any problem. There is nothing to  
356 correct.

357         And finally, I am concerned that the benefits of  
358 this bill aren't going to justify the cost. It  
359 requires the Secretary of Homeland Security to send  
360 Immigration and Customs Enforcement -- ICE -- agents  
361 to every embassy and consulate around the world to  
362 review all visa applications and supporting documents.  
363 That is what they are already doing.

364         And so, I want to point out that setting up each  
365 new Visa Security Unit would cost roughly \$2.2  
366 million. This is a couple of dozen embassies and  
367 consulates around the world, each \$2.2 million, and  
368 the additional measures, which would cost even more.

369         Now if we are going to spend millions of dollars  
370 in the name of security, we have got to make sure we  
371 are getting our money's worth. And the Government  
372 Accountability Office, GAO, found that even ICE cannot  
373 accurately assess the effectiveness of the program.

374         The GAO found that because ICE doesn't provide  
375 language or country-specific training to overseas

376 agents, the agents can't easily conduct interviews or  
377 interact with officials in the foreign country. In  
378 other words, they wouldn't even know what they are  
379 looking for. And this bill would expand the program  
380 without considering its effectiveness.

381 And so, I close and note that I am not opposed  
382 to looking at how we make our visa system more secure.  
383 I am open to discussing what procedures we have in  
384 place to perform law enforcement and intelligence  
385 checks on visa applicants.

386 I am not at this time willing to consider  
387 closing the Federal courtroom doors to prevent Federal  
388 court review or to expend more resources for a problem  
389 that may not exist.

390 I thank the chairman for the additional time  
391 that was granted me.

392 Chairman Smith. Thank you, Mr. Conyers.

393 The gentleman from California, Mr. Gallegly, the  
394 chairman of Immigration Subcommittee, is recognized.

395 Mr. Gallegly. Thank you, Mr. Chairman.

396 I want to indicate my very strong support for  
397 this legislation.

398 The Subcommittee on Immigration Policy and  
399 Enforcement held a hearing on the Secure Visas Act on  
400 May 11th. The testimony at the hearing clearly made

401 the case as to why this legislation is absolutely in  
402 our national security interest.

403 Congress established the Visa Security Program  
404 as part of the Homeland Security Act in 2002.  
405 Unfortunately, the program has not expanded nearly as  
406 quickly as expected to high-risk consular posts. Visa  
407 Security Units are critical to the screening out of  
408 terrorists who seek to enter this country and our air  
409 space.

410 At VSU-staffed posts, 100 percent of visa  
411 applicants receive additional screening. At non-VSU  
412 posts, fewer than 2 percent of applications get extra  
413 screening.

414 Chairman Smith's legislation mandates the  
415 expansion of the Visa Security Program that provides  
416 necessary additional tools for law enforcement to  
417 combat terrorism. The Secure Visas Act requires DHS  
418 to maintain Visa Security Units at the 19 consular  
419 posts that already have them and expand these units to  
420 the posts that ICE has designated as highest risk.  
421 Some of these highest-risk countries include Yemen,  
422 Saudi Arabia, Syria, Morocco, Lebanon, Algeria, and so  
423 on.

424 H.R. 1741 will enhance our first line of defense  
425 against those who seek to come to America for the

426 purpose of doing us great harm. I urge my colleagues  
427 to support this important legislation.

428 I yield back.

429 Chairman Smith. Thank you, Mr. Gallegly.

430 The gentlewoman from California, Ms. Lofgren,  
431 ranking member of the Immigration Subcommittee, is  
432 recognized.

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

434 The hearing held in the Immigration Subcommittee  
435 was, indeed, helpful. We received testimony from both  
436 DHS and the State Department, as well as two experts.

437 And when the Congress created the Department of  
438 Homeland Security back in 2004, we also created this  
439 Visa Security Program, which places ICE agents in  
440 embassies abroad. That was a delicate negotiation,  
441 and the State Department and the Department of  
442 Homeland Security negotiated the sharing of authority  
443 quite carefully. And I understand that was done at  
444 the Secretary level. It was so important to each  
445 department.

446 And as we got the testimony, it appears that  
447 this shared responsibility has actually worked as  
448 intended. The State Department employees are  
449 principally responsible for visa issuance and  
450 revocation decisions, but the Department of Homeland

451 Security serves as the final backstop.

452           And it is worth knowing that in fiscal year  
453 2010, the State Department followed every single  
454 recommendation made by ICE to refuse visa  
455 applications. This happened 100 percent of the time  
456 in more than 1,300 cases.

457           The State Department has also followed ICE  
458 recommendations when it came to visa revocation. So  
459 this is not a fight that we need to go in and mediate.  
460 These are two agencies that are collaborating  
461 successfully.

462           Now that is not to say that there weren't some  
463 issues that were identified at the hearing, and the  
464 chairman of the subcommittee, Mr. Gallegly, has just  
465 identified one of them. We are not running the  
466 applications of all visa applicants through the  
467 Department of Homeland Security database.

468           But I will say this, you don't need an ICE agent  
469 sitting in an embassy in order to do that. The CLASS  
470 system, which was the immigration database, is used,  
471 but the DHS database is not used for visa issuance,  
472 except if there is an ICE agent there or it can be  
473 used at the point of entry. But obviously, you want  
474 the most information possible at the earliest possible  
475 date.

476           So one simple thing -- and I would add not  
477 expensive thing -- would be simply to authorize the  
478 Department of State to have access to the database in  
479 DHS and to further their collaboration. That would  
480 not cost \$1.2 million per embassy.

481           There is another issue about physically placing  
482 officers in these agencies. I asked at the hearing,  
483 based on a report by the GAO, about the suitability of  
484 the ICE agents to serve successfully in some of these  
485 countries.

486           The GAO indicated that ICE employees stationed  
487 at these posts generally have received no language  
488 training and no country-specific training. So if you  
489 have got an ICE agent in a country where they don't  
490 speak the language, they are not going to be  
491 successful in interviewing applicants nor doing  
492 research.

493           And I would point out further that placing ICE  
494 agents in an embassy may also displace someone who is  
495 doing important work -- for example, someone in an  
496 intelligence agency or another important agency --  
497 that is housed at the embassy. And that is one of the  
498 constraints on physically placing ICE agents abroad.

499           Finally, as Mr. Conyers has noted, there is a  
500 significant problem relating to judicial review and

501 revocation of a person's visa. And if you can think  
502 about it is one thing there is no judicial review in  
503 terms of issuance of a visa, but people, many people  
504 are here in the United States and can have visas  
505 revoked for a whole variety of reasons.

506         You can believe that -- I had a case once where  
507 a student studying physics was here on a B-1 visa  
508 while he was writing his thesis, thinking that that  
509 was okay, when actually he should have had an F-1  
510 visa. And that got him a lot of trouble, even though  
511 it was an innocent and inadvertent error.

512         If that visa was revoked, that individual would  
513 be put in custody and would have no access to judicial  
514 review. These cases can include people who have lived  
515 in the United States for many years on a legal basis,  
516 who have husbands and wives who are American citizens,  
517 who own businesses. And to say that we could take  
518 extreme action against someone in that status at the  
519 whim of the Government without any judicial review is  
520 not going to stand up to constitutional muster.

521         So that needs to be removed. If it isn't  
522 removed, the bill will fail. And it is really a  
523 disappointment that it remains a part of the bill. I  
524 would hope that the smart and cheap thing we could do,  
525 which is to run all the visa applicants through the

526 database, will be a product of this process.

527 And I yield back, Mr. Chairman.

528 Chairman Smith. Thank you, Ms. Lofgren.

529 I am aware of five amendments to this bill. The  
530 first amendment is my amendment. It is a clarifying  
531 amendment, and it is at the desk, and I ask the clerk  
532 to report the amendment.

533 Ms. Kish. Amendment to H.R. 1741 offered by Mr.  
534 Smith of Texas --

535 Chairman Smith. Without objection, the  
536 amendment will be considered as read.

537 [The information follows:]

538

539 Chairman Smith. And I will recognize myself for  
540 the purpose of explaining the amendment.

541 This is a clarifying amendment. The bill does  
542 not seek to modify the Secretary of State's existing  
543 authorities to refuse or revoke visas. Rather, the  
544 bill seeks simply to clarify the Secretary of Homeland  
545 Security's authority to refuse or revoke an alien's  
546 visa, pursuant to Section 428 of the Homeland Security  
547 Act.

548 Under current law, the DHS Secretary has the  
549 power to refuse a visa and, pursuant to agency  
550 agreement, to request that the State Department revoke  
551 a visa. The bill ensures that the immigration-related  
552 function is vested in DHS, the agency with primary  
553 authority over immigration matters and the  
554 institutional and operational expertise when it comes  
555 to immigration security.

556 However, the bill is not intended to restrict  
557 the Secretary of State's authority to refuse or revoke  
558 visas, pursuant to Section 221 of the Immigration and  
559 Nationality Act. This amendment makes clear that both  
560 the Secretary of State, pursuant to Section 221 of the  
561 INA, and the Secretary of Homeland Security, pursuant  
562 to Section 428 of the Homeland Security Act, have  
563 clear authority to refuse and revoke visas.

564           The Secretary of State's powers are not limited  
565 to actions taken in the foreign policy interests of  
566 the U.S. And I urge my colleagues to support the  
567 amendment.

568           I recognize the ranking member, Mr. Conyers, for  
569 his comments.

570           Mr. Conyers. Chairman Smith, on our side, we  
571 are in complete agreement with this amendment, and we  
572 recommend a supporting vote for it.

573           Ms. Lofgren. Would the gentleman yield?

574           Mr. Conyers. Absolutely.

575           Ms. Lofgren. I just wanted to concur with this  
576 and note that the bill as written actually reduces the  
577 authority of the Secretary of State to revoke visas so  
578 that whereas now she can revoke visas in her  
579 discretion for a variety of reasons, under Mr. Smith's  
580 bill, she would only be able to revoke visas for  
581 foreign policy reasons. And the amendment reverts the  
582 situation to current law.

583           And I agree with that and yield back.

584           Chairman Smith. Okay. Thank you, Mr. Conyers.

585           Are there any other Members who wish to comment  
586 on the amendment?

587           [No response.]

588           Chairman Smith. If not, the question is on the

589 amendment. All those in favor, say aye.

590 [A chorus of ayes.]

591 Chairman Smith. All those opposed, no.

592 [No response.]

593 Chairman Smith. In the opinion of the chair,  
594 the ayes have it, and the amendment is agreed to.

595 Okay. The next amendment would be offered by  
596 Mr. Berman if he were here. We will come back to  
597 that.

598 And I think we will, therefore, go to Ms.

599 Jackson Lee, the gentlewoman from Texas, for her  
600 amendment.

601 Ms. Jackson Lee. Chairman, I have an amendment  
602 at the desk.

603 Chairman Smith. The clerk will report the  
604 amendment.

605 Ms. Kish. Amendment to H.R. 1741 offered by Ms.  
606 Jackson Lee of Texas. Beginning on page 5 --

607 Chairman Smith. Without objection, the  
608 amendment will be considered as read.

609 [The information follows:]

610

611 Chairman Smith. And the gentlewoman from Texas  
612 is recognized to explain her amendment.

613 Ms. Jackson Lee. This amendment, I think,  
614 comports with the representations that we all have  
615 made regarding our concern about spending, Government  
616 expenditures, raising the costs of Government, and  
617 without the valid information necessary to ensure that  
618 is correct.

619 I do want to join my colleague Congresswoman  
620 Lofgren on some of the aspects of the Visa Security  
621 Units, but to simply raise the question about the use  
622 of these units and the potential of supplementing  
623 embassies with ICE agents who may, in fact, actually  
624 be needed in the United States.

625 1741 calls for an expansion of the Department of  
626 Homeland Security Visa Security Program, which would  
627 require DHS to set up fully operational VSU units in  
628 two dozen embassies and consulates abroad. Such VSUs  
629 would be required to review all visa applications and  
630 documentation.

631 VSUs are DHS offices with about two to three  
632 employees set up at State Department consulate posts  
633 overseas that conduct additional screening of all visa  
634 applicants submitted through DHS databases and conduct  
635 targeted reviews of applicants considered high risk.

636 Currently, VSUs are located at consulate posts in 19  
637 countries considered high risk. For all other  
638 countries with visa applicants, the same functions  
639 performed at these VSUs take place domestically.

640         According to the Immigration and Customs  
641 Enforcement, each VSU costs about \$2.2 million to  
642 open, which is a considerable investment. There are  
643 no studies or empirical evidence showing that these  
644 VSUs are any more effective than the visa applicant  
645 review that takes place here in the United States.

646         Given the considerable financial outlay and our  
647 commitment to streamline expenditures necessary to  
648 expand the VSP program and the current debt situation  
649 of our country, it is imperative that we spend  
650 carefully and ensure that any additional costs that we  
651 incur are justified by necessary added benefit. This  
652 amendment ensures that taxpayer dollars are used  
653 efficiently to promote national or homeland security  
654 in the right way.

655         It calls for a GAO study to be conducted on the  
656 cost effectiveness of the proposal to add additional  
657 VSUs. Upon completion of the study, based on its  
658 findings, the Secretary of State, Secretary of  
659 Homeland Security will be responsible for determining  
660 whether to proceed and how to handle such programs.

661           At the legislative hearing, we learned that a  
662 major purpose of VSU is to run visa applicants through  
663 a DHS database before a visa is issued. But we also  
664 learned that before a person boards a plane headed for  
665 the U.S., and certainly before a person is permitted  
666 to enter the U.S., DHS already checks that person  
667 against its databases. It makes sense that we would  
668 check people against DHS databases prior to visa  
669 issuance, but that does not mean we must send people  
670 overseas to perform these duties.

671           At our hearing, we learned that the State  
672 Department and DHS already are working on a  
673 modernization system that would allow all visa  
674 applicants to be checked prior to issuance so that  
675 there may be a more efficient way of spending our  
676 resources. Devoting our resources to modernizing our  
677 security checks and to make us safer is an important  
678 aspect of DHS's work.

679           And devoting those resources because we would  
680 check all visa applicants against our database, not  
681 just applicants from a small set of countries, is an  
682 important act. The expansion of VSUs may be  
683 appropriate. Maybe this bill orders DHS to set up  
684 VSUs in precisely the right locations. But we should  
685 have a review, and a study is important.

686           If the argument is that VSUs perform other  
687 tasks, such as interviewing visa applicants or  
688 performing investigations, VSUs do not interview the  
689 vast majority of visa applicants. And according to  
690 the GAO, ICE does not provide language or country-  
691 specific training to ICE agents who are posted at  
692 these VSUs, a point made by my colleague. So it is  
693 worth questioning whether these agents have the basic  
694 skills that they would need to perform interviews and  
695 investigations.

696           Chairman and to my colleagues, good tools and  
697 best practices should be the mode of operation of  
698 Members of Congress as we develop policy. And  
699 frankly, I believe this is an important aspect to this  
700 legislation because these would be an expanded  
701 utilization of ICE agents, which, as we know, have  
702 been directed to address the internal immigration  
703 actions of the United States.

704           I would also add that I would hope that as we  
705 begin this process, we are also looking to have an  
706 economy of scales that would lead us to comprehensive  
707 immigration reform, which may, in fact, put our ICE  
708 agents in the position that they should be utilized  
709 for and put our Border and Customs Protection where  
710 they should be utilized for.

711 With that, I ask my colleagues to support this  
712 amendment.

713 Chairman Smith. Thank you, Ms. Jackson Lee.

714 I will recognize myself in opposition to the  
715 amendment.

716 This amendment is simply death by GAO report.  
717 According to the amendment, the bill will not go into  
718 effect until the GAO completes a study on Visa  
719 Security Units. Even then, both the Secretary of  
720 State and the Secretary of Homeland Security must  
721 agree that the bill go into effect. This would allow  
722 the executive branch to decide whether this bill is  
723 ever implemented.

724 It has been almost a decade since the Homeland  
725 Security Act of 2002 authorized Visa Security Units.  
726 And to date, DHS has established VSP posts at only 19  
727 locations in 15 countries. However, there is a list  
728 of over 50 designated high-risk posts.

729 Visa Security Units are desperately needed now  
730 to protect this Nation. That is the whole point of  
731 the bill. We don't need GAO to tell us what we  
732 already know. This amendment will frustrate the  
733 heightened visa screening of terrorists at high-risk  
734 posts. It undermines our ability to keep America  
735 safe.

736           So I encourage my colleagues to oppose the  
737 amendment.

738           Are there other Members who wish to be heard on  
739 this amendment?

740           Ms. Lofgren. Mr. Chairman, I move to strike the  
741 last word. And I would yield to Ms. Jackson Lee.

742           Chairman Smith. The gentlewoman from  
743 California, Ms. Lofgren, is recognized.

744           Ms. Jackson Lee. Mr. Chairman, I think you have  
745 given a perfect argument for this legislation. The  
746 reason why you have done so is because you have  
747 emphasized that there are 50 high risks that may not  
748 have posts. I believe it is important for there to be  
749 a critical analysis to assist DHS and the State  
750 Department on how we utilize already shortened, low  
751 population, if you will, ICE agents.

752           Frankly, there is no large "explosion" of the  
753 hiring of ICE agents. We are in a difficult race to  
754 save not only ourselves as it relates to the  
755 expenditures that we have, but to be fiscally  
756 responsible as to how we spend, keeping in mind our  
757 responsibilities for security.

758           You are now rejecting a more thoughtful analysis  
759 of how these VSU units can be utilized and whether or  
760 not it is an effective use of ICE agents. We have

761 already determined that most ICE agents may not be  
762 language trained. Certainly I would expect that could  
763 be a possibility. But now you are putting non-  
764 language trained individual units, expanding it to  
765 what -- 10, 20, 30, 40, 50 -- without any knowledge of  
766 its effectiveness. It is also redundant because we  
767 know that we have ICE agents that are already checking  
768 databases.

769         And so, is this the best and most effective use  
770 of these important personnel that contribute to the  
771 safety of America? I believe that most individuals  
772 attempt to come into this country for good reasons --  
773 relatives, business, students -- without the intent  
774 to do us harm. The normal course of visa operations,  
775 along with the modernization that the State Department  
776 is intending and the collaboration that we have  
777 insisted upon by DHS, is the right direction to go.

778         We will be far better -- our time will be far  
779 better spent if we were concentrating on a  
780 comprehensive approach to how we address individuals  
781 who are in this country, how we address the question  
782 of visa overstays, how we address the question of  
783 really ascertaining the good and the bad who are  
784 coming into this country than we would be on  
785 establishing units with no basis of whether these

786 units would be valuable or not.

787 I ask my colleagues to consider our duty and our  
788 responsibility to secure the homeland, but as well to  
789 understand that we are spending money that we do not  
790 have. And I can't imagine where we are getting the  
791 funding for such. And I believe the GAO study would  
792 be constructive and instructive.

793 I ask my colleagues to support this amendment.  
794 I yield back.

795 Chairman Smith. Thank you, Ms. Lofgren.

796 Ms. Jackson Lee, you owe me some time.

797 Ms. Jackson Lee. Oh, I am sorry. I yield back

798 --

799 Mr. Gallegly. Mr. Chairman?

800 Chairman Smith. The gentleman from California,  
801 Mr. Gallegly, is recognized.

802 Mr. Gallegly. Thank you, Mr. Chairman.

803 I would yield to the chairman.

804 Chairman Smith. Thank you, Mr. Gallegly.

805 I just want to respond to some of the points  
806 that the gentlewoman has made. First of all, if what  
807 she says is true, the logical outcome is not to have  
808 any Visa Security Units whatsoever. But the problem  
809 with relying upon databases only is that you do not  
810 conduct in-person interviews. And that is why we have

811 Visa Security Units and why they are so helpful.

812           As far as her concern about being language  
813 trained, it is hard to imagine ICE assigning  
814 individuals to an embassy who are not fluent in the  
815 necessary language.

816           And then, finally, it is heartwarming to hear  
817 all the concern expressed today about spending \$2  
818 million to establish additional Visa Security Units.  
819 I have always felt that saving American lives was  
820 always worth a lot more than that, but I appreciate  
821 the gentlewoman's concern about the expense.

822           With that, I will yield back my time to the  
823 gentleman from California, and --

824           Mr. Gallegly. Thank you, Mr. Chairman. I yield  
825 back.

826           Chairman Smith. Thank you, Mr. Gallegly.

827           Are there any other Members who wish to be heard  
828 on this bill -- or on this amendment. Excuse me.

829           [No response.]

830           Chairman Smith. If not, we will vote on the  
831 amendment. All those in favor, say aye.

832           [A chorus of ayes.]

833           Chairman Smith. All those opposed, say no.

834           [A chorus of nays.]

835           Chairman Smith. In the opinion of the chair,

836 the nays have it. The amendment is not agreed to.

837 Ms. Jackson Lee. I would like a recorded vote.

838 Chairman Smith. A roll call has been requested

839 and happy to do so, and the clerk will call the roll.

840 Ms. Kish. Mr. Smith?

841 Chairman Smith. No.

842 Ms. Kish. Mr. Smith votes no.

843 Mr. Sensenbrenner?

844 [No response.]

845 Ms. Kish. Mr. Coble?

846 Mr. Coble. No.

847 Ms. Kish. Mr. Coble votes no.

848 Mr. Gallegly?

849 Mr. Gallegly. No.

850 Ms. Kish. Mr. Gallegly votes no.

851 Mr. Goodlatte?

852 Mr. Goodlatte. No.

853 Ms. Kish. Mr. Goodlatte votes no.

854 Mr. Lundgren?

855 [No response.]

856 Ms. Kish. Mr. Chabot?

857 Mr. Chabot. No.

858 Ms. Kish. Mr. Chabot votes no.

859 Mr. Issa?

860 [No response.]

861 Ms. Kish. Mr. Pence?  
862 [No response.]  
863 Ms. Kish. Mr. Forbes?  
864 [No response.]  
865 Ms. Kish. Mr. King?  
866 Mr. King. No.  
867 Ms. Kish. Mr. King votes no.  
868 Mr. Franks?  
869 Mr. Franks. No.  
870 Ms. Kish. Mr. Franks votes no.  
871 Mr. Gohmert?  
872 [No response.]  
873 Ms. Kish. Mr. Jordan?  
874 Mr. Jordan. No.  
875 Ms. Kish. Mr. Jordan votes no.  
876 Mr. Poe?  
877 [No response.]  
878 Ms. Kish. Mr. Chaffetz?  
879 [No response.]  
880 Ms. Kish. Mr. Griffin?  
881 Mr. Griffin. No.  
882 Ms. Kish. Mr. Griffin votes no.  
883 Mr. Marino?  
884 Mr. Marino. No.  
885 Ms. Kish. Mr. Marino votes no.

886 Mr. Gowdy?  
887 Mr. Gowdy. No.  
888 Ms. Kish. Mr. Gowdy votes no.  
889 Mr. Ross?  
890 Mr. Ross. No.  
891 Ms. Kish. Mr. Ross votes no.  
892 Mrs. Adams?  
893 Mrs. Adams. No.  
894 Ms. Kish. Mrs. Adams votes no.  
895 Mr. Quayle?  
896 Mr. Quayle. No.  
897 Ms. Kish. Mr. Quayle votes no.  
898 Mr. Conyers?  
899 Mr. Conyers. Aye.  
900 Ms. Kish. Mr. Conyers votes aye.  
901 Mr. Berman?  
902 [No response.]  
903 Ms. Kish. Mr. Nadler?  
904 Mr. Nadler. Aye.  
905 Ms. Kish. Mr. Nadler votes aye.  
906 Mr. Scott?  
907 Mr. Scott. Aye.  
908 Ms. Kish. Mr. Scott votes aye.  
909 Mr. Watt?  
910 Mr. Watt. Aye.

911 Ms. Kish. Mr. Watt votes aye.  
912 Ms. Lofgren?  
913 Ms. Lofgren. Aye.  
914 Ms. Kish. Ms. Lofgren votes aye.  
915 Ms. Jackson Lee?  
916 Ms. Jackson Lee. Aye.  
917 Ms. Kish. Ms. Jackson Lee votes aye.  
918 Ms. Waters?  
919 Ms. Waters. Aye.  
920 Ms. Kish. Ms. Waters votes aye.  
921 Mr. Cohen?  
922 Mr. Cohen. Aye.  
923 Ms. Kish. Mr. Cohen votes aye.  
924 Mr. Johnson?  
925 Mr. Johnson. Aye.  
926 Ms. Kish. Mr. Johnson votes aye.  
927 Mr. Pierluisi?  
928 [No response.]  
929 Ms. Kish. Mr. Quigley?  
930 Mr. Quigley. Aye.  
931 Ms. Kish. Mr. Quigley votes aye.  
932 Ms. Chu?  
933 [No response.]  
934 Ms. Kish. Mr. Deutch?  
935 Mr. Deutch. Aye.

936 Ms. Kish. Mr. Deutch votes aye.  
937 Ms. Sanchez?  
938 [No response.]  
939 Ms. Kish. Mr. Sensenbrenner?  
940 Mr. Sensenbrenner. No.  
941 Ms. Kish. Mr. Sensenbrenner votes no.  
942 Mr. Issa?  
943 Mr. Issa. No.  
944 Ms. Kish. Mr. Issa votes no.  
945 Mr. Poe?  
946 Mr. Poe. No.  
947 Ms. Kish. Mr. Poe votes no.  
948 Chairman Smith. Are there other Members who  
949 wish to be recorded? And if not, the clerk will  
950 report.  
951 [Pause.]  
952 Ms. Kish. Mr. Chairman, 11 Members voted aye;  
953 17 Members voted nay.  
954 Chairman Smith. Okay. The majority having  
955 voted against the amendment, the amendment is not  
956 agreed to.  
957 The gentleman from Florida, Mr. Deutch, I  
958 understand has his own amendment and may be offering  
959 Mr. Berman's amendments for him?  
960 Mr. Deutch. That is correct. I would start

961 with the Deutch-Waters Amendment Number 23, Mr.  
962 Chairman.  
963 Chairman Smith. Okay. The clerk will report.  
964 Ms. Kish. Amendment to H.R. 1741 offered by Mr.  
965 Deutch of Florida and Ms. Waters of California. Page  
966 3, strike lines 11 through 19 --  
967 Chairman Smith. Without objection, the  
968 amendment will be considered as read.  
969 [The information follows:]  
970

971 Chairman Smith. And the gentleman from Florida,  
972 Mr. Deutch, is recognized to explain the amendment.

973 Mr. Deutch. Thank you, Mr. Chairman.

974 The Deutch-Waters Amendment would strike Section  
975 2(b)(3) of the Secure Visas Act. This section of the  
976 act provides that no court shall have jurisdiction to  
977 review a decision by the Secretary of Homeland  
978 Security to refuse or revoke a visa, and no court  
979 shall have jurisdiction to hear any claim arising from  
980 or challenges such revocation.

981 This provision of the bill is unconstitutional.  
982 It will eliminate fundamental due process rights that  
983 protect individuals living inside the United States  
984 from overreaching Government action, and it violates  
985 our Nation's treaty obligations.

986 The foundation of our Nation's Government is the  
987 basic principle of separation of powers in which each  
988 branch -- the legislative, executive, and judiciary --  
989 provide a check on the others' power. Section 2(b)(3)  
990 of the Secure Visas Act is a blatant attack on this  
991 most basic principle of our Nation's Government.

992 By eliminating judicial review, this bill would  
993 give greatly expanded authority to the Department of  
994 Homeland Security, an agency of the executive branch,  
995 to revoke visas of people living in the United States

996 without review by a co-equal branch of our Government.  
997 And this section of the bill is very clear. There are  
998 no exceptions in which an independent court can review  
999 the actions, the intent, or even possible mistakes by  
1000 the Department of Homeland Security in revoking a  
1001 person's visa.

1002 Under this provision, the department would have  
1003 exclusive authority to revoke a visa of a person  
1004 inside the United States. This person could have been  
1005 admitted as a permanent resident. He or she could  
1006 have been living in the United States for many years.  
1007 They may have family, a spouse, children who are U.S.  
1008 citizens residing in the United States.

1009 He or she may have a business in this country or  
1010 may own a residence and other property. A person  
1011 could also have received a visa because of their trade  
1012 or expertise as a doctor, an investor, or another set  
1013 of skills that make them valuable assets to our  
1014 communities. Yet Section 2(b)(3) could suddenly  
1015 remove their visa and subject them to permanent  
1016 separation from their families and their livelihood  
1017 and cause them to lose their property.

1018 Under this bill, such an upending of a person's  
1019 life could be caused by a mistaken belief by the  
1020 agency that the person worked for another employer or

1021 violated the terms of their visa or as the result even  
1022 of a clerical error or other misinformation. Yet  
1023 astonishingly, the bill allows such errors that would  
1024 destroy a person's family to go unchecked.

1025         It is unconscionable that this bill would remove  
1026 the review of an agency's actions by an independent  
1027 judge, which, for a person living in the United States  
1028 having their visa revoked, judicial review could be  
1029 the last protector to ensure that a person's liberty  
1030 and property are not trampled upon.

1031         In addition, this section violates our treaty  
1032 obligations under the International Covenant on Civil  
1033 and Political Rights, which provides that anyone who  
1034 is detained shall be entitled to take proceedings  
1035 before a court so that the court can determine the  
1036 lawfulness of detention.

1037         This section of the Secure Visas Act is an  
1038 astonishing attack on Article III of the Constitution,  
1039 sets a dangerous precedent of eliminating judicial  
1040 review of executive branch actions. Treading on this  
1041 basic separation of powers doctrine should not be done  
1042 in the interest of expediting the revocation of visas.

1043         However, not only does this section of the bill  
1044 tread on the separation of powers in our Constitution,  
1045 but it risks breaking families apart and violates

1046 obligations we have under international treaty. For  
1047 these reasons, I urge support of our amendment to  
1048 strike this Section 2(b)(3) from the underlying bill.

1049 And I would like to thank Congresswoman Waters  
1050 for all of her work on this amendment.

1051 Thank you, Mr. Chairman. And I yield back the  
1052 balance of my time.

1053 Chairman Smith. Mr. Deutch, I think Ms. Waters  
1054 would like for you to yield to her.

1055 Mr. Deutch. I will yield to Ms. Waters first.

1056 Ms. Waters. Thank you very much.

1057 Mr. Chairman, I want to thank Congressman Deutch  
1058 for cosponsoring this amendment to strike certain  
1059 portions of H.R. 1741 that would eliminate the last  
1060 remnant of judicial review on visa revocations. H.R.  
1061 1741 vests an inordinate amount of power in the  
1062 executive branch and poses serious constitutional  
1063 questions.

1064 As previously stated, judicial review of visa  
1065 revocations are already severely restricted. This  
1066 bill, however, would eliminate the only area of  
1067 limited judicial review of visa revocations for  
1068 individuals who are in the U.S. and placed in removal  
1069 proceedings. This may mean that people who have  
1070 resided lawfully in the United States for years and

1071 who have U.S. citizen spouses and children now face  
1072 the prospect of being permanently separated from their  
1073 loved ones without the opportunity for any judicial  
1074 review.

1075         Mr. Chairman, as a member on the Immigration  
1076 Subcommittee, I remain concerned about the message and  
1077 example we are setting for the rest of the country  
1078 through various proposals that focus solely on  
1079 aggressive enforcement and deportation actions.

1080         Essentially, through the various bills that have  
1081 been introduced and hearings that have been held, we  
1082 are sending the message that all immigrants are either  
1083 rising terrorists, drug lords, gun smugglers, violent  
1084 criminals, or here illegally for the purpose of  
1085 stealing American jobs or undermining the American  
1086 economy.

1087         And now, with H.R. 1741, there are those who  
1088 want to strike the last remaining laws that preserves  
1089 individuals' rights to contest visa revocations. It  
1090 appears the majority's message to immigrants is  
1091 simple. Just get out.

1092         Today, I continue to support a comprehensive  
1093 framework that includes sensible reforms to our  
1094 deportation and detention policies, as well as border  
1095 security. Reform must also include a fair path to

1096 citizenship and, of course, some penalty for those who  
1097 have been in the U.S. illegally.

1098         Individuals who have lived in the United States  
1099 for many years while raising their families, paying  
1100 taxes, and paying into Social Security should have the  
1101 opportunity to become legal citizens in a fair and  
1102 efficient process. We must also hold employers  
1103 accountable by assessing increased penalties for those  
1104 who exploit undocumented immigrant labor.

1105         Mr. Chairman, comprehensive reform is the only  
1106 way that we will be able to create an immigration  
1107 system that is fair, feasible, and protects American  
1108 workers. A fragmented reform policy that focuses on  
1109 only detention and deportation will yield unintended  
1110 consequences that will negatively impact American  
1111 workers.

1112         With regard to visa revocations, it is vitally  
1113 important to allow court review of removal proceedings  
1114 because a person's ability to remain in the U.S. is at  
1115 stake. The immigration authorities, as occasionally  
1116 happens, may have made a mistaken in the person's  
1117 case, or the person may have compelling circumstances  
1118 that warrant consideration by a judge.

1119         H.R. 1741 would eliminate that last remaining  
1120 remnant of judicial review, impeding judges'

1121 discretion to consider the circumstances if a case  
1122 infringes on basic American due process rights and  
1123 does not solve the problem of undocumented  
1124 immigration.

1125         Eliminating judicial review for all visa  
1126 revocations is unnecessary and unduly expands the  
1127 already broad discretionary authority of the executive  
1128 branch to make life-altering decisions. Therefore,  
1129 Mr. Chairman, I urge my colleagues to support the  
1130 Deutch-Waters Amendment so that we can protect civil  
1131 liberties and preserve constitutional principles of  
1132 due process.

1133         Well, I thank you, Mr. Chairman, and I yield  
1134 back the balance of my time.

1135         Chairman Smith. Thank you, Mr. Deutch.

1136         Thank you, Ms. Waters. I should have yielded  
1137 you your own time. Next time, I will do so.

1138         I will recognize myself in opposition to the  
1139 amendment.

1140         Just as the decision to issue or not issue a  
1141 temporary visa is a purely discretionary, non-  
1142 appealable decision, so, too, should the decision be  
1143 to revoke a visa wrongly granted. A prohibition on  
1144 judicial review of all visa revocations is necessary  
1145 for national security reasons.

1146 Under current law, an alien terrorist in the  
1147 U.S. whose visa has been revoked can remain in the  
1148 U.S. to fight their deportation in Federal court and  
1149 force the Government to release classified  
1150 information. Giving litigation rights to terrorists  
1151 makes no sense.

1152 The Secure Visas Act closes this loophole and  
1153 allows the terrorist to be removed from America  
1154 without the forced disclosure of intelligence sources  
1155 and methods. This amendment will ensure that  
1156 terrorists like the Christmas Day bomber can have  
1157 their visa revoked even if they make it to the U.S.  
1158 His visa should have been but was not revoked by the  
1159 State Department.

1160 The Constitution does not require judicial  
1161 review of visa revocations. Circuit courts, such as  
1162 the 7th, 3rd, and 5th, have concluded that visa  
1163 revocations are, in fact, a discretionary power held by  
1164 the Secretary of DHS and, therefore, not subject to  
1165 judicial review under 8 U.S.C. 1252. So there is no  
1166 constitutional requirement of judicial review.

1167 In addition, there is no constitutionally  
1168 protected property interest in a visa. A visa issued  
1169 by the Government is not an inherent property right of  
1170 visa holders, protected by the due process clause.

1171           So I urge my colleagues to oppose this  
1172 amendment.

1173           Are there other Members who wish to be heard?  
1174 The gentlewoman from California, Ms. Lofgren?

1175           Ms. Lofgren. Thank you, Mr. Chairman.

1176           I move to strike the last word.

1177           Chairman Smith. The gentlewoman is recognized  
1178 for 5 minutes.

1179           Ms. Lofgren. It is true, and no one seeks to  
1180 change this, that the revocation of visas for  
1181 individuals who are outside the United States is not  
1182 subject to judicial review. And I think I agree with  
1183 that. You agree with -- there is no argument about  
1184 that in the committee and, I don't think, in the  
1185 country.

1186           The question becomes what happens when you have  
1187 someone who is residing in the United States, what  
1188 kind of due process do they have? And the due process  
1189 clause relates everybody who is here. Everybody who  
1190 is in the U.S. is protected by the due process clause.

1191           I think it is important to note that although  
1192 the motivation cited for this elimination of judicial  
1193 review is national security, the bill actually has  
1194 nothing to do with national security. It is much  
1195 broader. It would include revocation, all visa

1196 revocations, even visa revocations that have nothing  
1197 to do with national security.

1198         And I think it is worth pointing out that you  
1199 can have people who are here, and they are here at our  
1200 invitation, welcomed by us, for an extended period of  
1201 time in a legal status. For example, I recall well an  
1202 individual, who I tried to talk out of leaving, who  
1203 had spent his undergraduate years at MIT and had  
1204 obtained his Ph.D. at Stanford and had been on an H-1B  
1205 visa for 6 years and was waiting for his green card.

1206         This guy was a super hotshot, and he was being  
1207 recruited by places all over the world. And I said,  
1208 well, just hold on. We are going to fix the law so  
1209 you can stay here. But that person had been here  
1210 from, really, the age of 18. He was almost 40 years  
1211 old. And he had a wife, and he had kids.

1212         What we would be saying is you can have a  
1213 mistake. It is easy to make a mistake in immigration  
1214 law. You can work for the wrong employer. You can  
1215 have a salary that exceeds what you are supposed to  
1216 have under the rules, and you can end up with a visa  
1217 revocation on that basis.

1218         And you could have a person who has a business,  
1219 who has family, who owns a house, that would not have  
1220 judicial -- be in jail and have no judicial review.

1221 And that cannot be constitutional. That is not due  
1222 process.

1223 And there is a mistake here. The Supreme Court  
1224 has said that some judicial intervention in  
1225 deportation cases is unquestionably required by the  
1226 Constitution.

1227 Now I suspect there are some circuits that have  
1228 strayed from that very clear statement that the court  
1229 has made, and perhaps the majority is hoping to get a  
1230 case before the court and to eviscerate the due  
1231 process clause. But I will say this, that when you  
1232 destroy the Constitution because it is about someone  
1233 else, ultimately you are destroying the Constitution  
1234 for yourself as well.

1235 And we started this Congress by reading the  
1236 Constitution. I would recommend that maybe we might  
1237 want to read it again and take a look at the due  
1238 process clause and understand that habeas and due  
1239 process relates to everybody who is here.

1240 This is a very seriously mistaken provision of  
1241 this bill. Judicial review is a check on mistakes and  
1242 overzealous Government behavior. That is something  
1243 that I thought the minority was interested in, and  
1244 approving this bill would be moving us in the exact  
1245 opposite direction.

1246 I would be happy to yield to Mr. Deutch.

1247 Mr. Deutch. And I thank the gentlelady.

1248 I wonder since some of the points that have just  
1249 been raised can somehow be addressed. I wonder if  
1250 there is some way that the chair would consider  
1251 whether it is possible to address the valid national  
1252 security concerns while upholding due process rights  
1253 of the overwhelming majority of legal residents whose  
1254 lives could be turned upside down, in fact, by a  
1255 clerical error made in connection with a revocation.

1256 Chairman Smith. If the gentleman would yield?  
1257 And if that question is directed toward me, I will  
1258 respond.

1259 Mr. Deutch. Yes.

1260 Chairman Smith. The answer is I would be  
1261 interested in discussing further with you and Ms.  
1262 Lofgren and others if there was a way to narrowly draw  
1263 or write or craft a provision that would be based on  
1264 the national interest and try to narrow the  
1265 application of judicial review. And we can pursue  
1266 that conversation after today's markup if you would  
1267 like to?

1268 Mr. Deutch. I yield back --

1269 Mr. Conyers. Would the gentlelady --

1270 Ms. Lofgren. My time is expired, Mr. Chairman.

1271 Chairman Smith. The gentleman from Michigan is  
1272 recognized.

1273 Mr. Conyers. I would like to follow up on the  
1274 suggestion made by Mr. Deutch. Here is what I would  
1275 like to propose that goes a little on the same lines.

1276 If the chairman and the Members on the other  
1277 side would reflect on this suggestion -- and if you  
1278 need some time on it, I think this would expedite our  
1279 activities for today because we are under time  
1280 constraints. I propose that we eliminate the  
1281 provision in H.R. 1741 that relate to this judicial  
1282 review --

1283 Chairman Smith. Would the gentleman yield?

1284 Mr. Conyers. Yes.

1285 Chairman Smith. In the interest of saving time,  
1286 as you suggested, let me say I am not prepared to do  
1287 that at this point. My suggestion was that we discuss  
1288 this after the markup is over and give it a good faith  
1289 effort to try to come up with something that might be  
1290 more workable between now and the floor.

1291 Mr. Conyers. But I haven't proposed anything  
1292 yet.

1293 Chairman Smith. I thought you were proposing  
1294 removing language from the bill.

1295 Mr. Conyers. I am, but I haven't got to it yet.

1296 [Laughter.]

1297 Chairman Smith. Okay. The gentleman continues  
1298 to be recognized.

1299 Mr. Conyers. And I appreciate your prescient  
1300 ability to read into what I am going to say, which, in  
1301 some ways, is a good sign.

1302 You see, the only -- what our committee, our  
1303 side would be willing to do, and we have discussed  
1304 this with every single Member here, is this whole  
1305 problem of revoking the visa of someone inside the  
1306 United States without any opportunity of court review.  
1307 If we could agree to remove that part of this measure  
1308 1741, we would -- without conceding that the rest of  
1309 the bill is perfect, but that would get rid of the  
1310 large problem, and we could get to a vote on the bill.  
1311 We would concur with you, and we could get to the rest  
1312 of this agenda.

1313 And I would be willing to even recommend, if  
1314 that is needed, that you have a few minutes to discuss  
1315 it. We have discussed it with everybody on our side,  
1316 and I would like to invite you, Mr. Chairman, to  
1317 discuss it with your colleagues and see if we can  
1318 reach an agreement because we could then get a vote on  
1319 the bill and move on to the rest of the agenda.

1320 Chairman Smith. Would the gentleman yield?

1321 Mr. Conyers. Of course.

1322 Chairman Smith. Mr. Conyers, I am going to be  
1323 very leery in the future of opening the door even a  
1324 crack, Mr. Conyers, after the opening that you took.  
1325 However, let me go back to what I said a while ago. I  
1326 am prepared to discuss this, but after the markup  
1327 today, not during the markup.

1328 Mr. Conyers. Well, what good is it to discuss  
1329 it after the markup? I mean, I don't get it.

1330 Chairman Smith. It depends on whether you want  
1331 to try to get -- we are not going to resolve it right  
1332 --

1333 Mr. Conyers. Why don't you discuss it before  
1334 the markup?

1335 Chairman Smith. We are not going to resolve  
1336 anything right now, in my judgment. And I am prepared  
1337 to move forward.

1338 If the gentleman from Florida wants to withdraw  
1339 the amendment or have a vote on the amendment, we will  
1340 proceed as he wishes.

1341 Mr. Conyers. Well, could I get some additional  
1342 time? I made a suggestion in good faith, but you are  
1343 prepared not to entertain it. So I would like to  
1344 proceed with my discussion in support of the  
1345 amendment. I mean, if we are going to go forward, may

1346 I have additional time, Chairman?

1347 Chairman Smith. Without objection, the  
1348 gentleman from Michigan is recognized for an  
1349 additional 2 minutes.

1350 Mr. Conyers. Well, I will need more than 2  
1351 minutes. I want to rise in support of the Deutch-  
1352 Waters Amendment. I need 5 minutes, or I will ask for  
1353 additional time after you finish.

1354 Look, I was trying to save you time, and now you  
1355 are going to give me 2 minutes.

1356 Chairman Smith. We will be happy to recognize  
1357 Mr. Scott from Virginia, who I think will yield you  
1358 his full time?

1359 Mr. Scott. Yes.

1360 Chairman Smith. And the gentleman from Michigan  
1361 is recognized for 5 minutes.

1362 Mr. Conyers. Thank you.

1363 Well, look, this is kind of fundamental  
1364 constitutional law, and I would like to yield to  
1365 anybody on this committee who wants to explain to me  
1366 why the Supreme Court in two different cases, in 1953  
1367 and in 2001, all said the same thing, that the  
1368 Constitution provides that the privileges of the writ  
1369 of habeas corpus shall not be suspended unless when in  
1370 the cases of rebellion or invasion the public safety

1371 may require it.

1372           And because of that clause, some judicial  
1373 intervention and deportation cases is unquestionably  
1374 required by the Constitution. Now may I yield to  
1375 anybody on this committee to explain what is so  
1376 complicated about that?

1377           [No response.]

1378           Mr. Conyers. And so, the Deutch-Waters  
1379 Amendment, when it comes to the question of revoking  
1380 the visa of someone inside the United States who had a  
1381 valid visa and was welcomed to this country originally  
1382 and now would be subject to a revocation and  
1383 inevitably detention and prolonged proceedings and a  
1384 removal order and at no time would be able to utilize  
1385 the Federal courts of the United States, I mean, good  
1386 night.

1387           If I am dealing with colleagues that either  
1388 don't understand this or don't hear me or don't care  
1389 whether it is correct or not, I think this is  
1390 reflecting very poorly on the one committee in the  
1391 Congress that is created to enforce the Constitution  
1392 of the United States.

1393           I mean, this is a signal moment in the 112th  
1394 Congress where nobody on the Judiciary questions the  
1395 quotations I made of a Supreme Court case that applies

1396 precisely to the bill before us, and yet nobody has  
1397 any comment about it.

1398 Mr. Franks. Would the gentleman yield?

1399 Mr. Conyers. Of course. That is what I have  
1400 been trying to get someone to say for the last 5  
1401 minutes.

1402 Mr. Franks. And all due respect, I actually  
1403 hear the minority's point here. I guess the question  
1404 I would have would be this.

1405 The chairman has, in his response, pointed out  
1406 several circuit court rulings that seem to vitiate the  
1407 argument that you are making. But secondly and  
1408 perhaps more importantly, if someone is applying for a  
1409 visa to come into this country -- say, someone from  
1410 Russia -- and they are denied that visa, they don't  
1411 have judicial review at that moment to say, well, we  
1412 are going to appeal to the courts for entry into the  
1413 country.

1414 And so, if that is the case, if the Constitution  
1415 doesn't afford them the opportunity to have an appeal  
1416 at that point, then if the visa is, indeed, offered by  
1417 an administrator, per se, or someone in the State  
1418 Department, then does it not at least seem somewhat  
1419 logical that the State Department would have the right  
1420 to revoke that without the judicial review?

1421 I just offer it for your consideration and yield  
1422 back.

1423 Mr. Conyers. Well, I thank the gentleman, and  
1424 he is absolutely correct. This case that we are  
1425 discussing now is someone who has been allowed in the  
1426 court, allowed into the country, not someone that is  
1427 trying to get in. I agree with you, but now do you  
1428 agree with me?

1429 Mr. Franks. Well, Mr. Chairman, I guess my  
1430 point was that they would not be allowed -- when they  
1431 were trying to appeal to get into the country, when  
1432 they are making application to get into the country,  
1433 if the State Department or whatever the relevant  
1434 authorities are in immigration decline that, then the  
1435 applicant has no judicial review or judicial appeal.

1436 Ms. Lofgren. Would the gentleman yield?

1437 Mr. Franks. I would. But has no judicial  
1438 appeal. So if that same mechanism then revokes it,  
1439 why is judicial review created? And that is my  
1440 question, and I yield.

1441 Ms. Lofgren. Because the due process clause  
1442 covers everybody who is in the United States. It  
1443 doesn't cover somebody in Russia or some other  
1444 country. It covers the people who are here in the  
1445 United States. And if you take a look at, for

1446 example, the deprivation clause, if you are here on an  
1447 H-1B visa, could the Federal Government come and take  
1448 your house, and you would have no right to challenge  
1449 that? That is a due process issue.

1450 The status of -- your temporary visa status does  
1451 not vitiate the due process clause in the  
1452 Constitution, and that is really what is being  
1453 suggested in this bill.

1454 And I thank the gentleman for yielding.

1455 Chairman Smith. The gentleman's time, I  
1456 believe, has expired. Our clock stopped, but we are  
1457 estimating that 5 minutes is up.

1458 Are there any other Members who wish to be heard  
1459 on the amendment?

1460 The gentlewoman from Texas, Ms. Jackson Lee?

1461 Ms. Jackson Lee. Mr. Chairman, I join with the  
1462 ranking member. I was hoping that we could negotiate  
1463 or work out a resolve. I do appreciate the chairman  
1464 offering for further discussions post this markup. It  
1465 would be great to have had this in the bill as we move  
1466 forward.

1467 Judicial review is so much a part of the justice  
1468 part of our justice system, and it is not a giveaway.  
1469 It is not without its constraints and its guidelines.  
1470 Judicial review is not a runaway process. It is

1471 simply adding restraints and constitutional  
1472 infrastructure to a system that will deny someone  
1473 their rights.

1474 I would like to cite an example that is not  
1475 equal to the present discussion. But I received a  
1476 call, Mr. Chairman, from one of our major evangelical  
1477 churches, the pastor you would know. And they  
1478 indicated that one of their major leaders who came in  
1479 from Great Britain -- and again, this is not an equal  
1480 situation. But one of their great leaders that came  
1481 in from Great Britain and his spouse, who had just  
1482 finished speaking to throngs or had spoken to throngs  
1483 around the world and was coming into the United  
1484 States, was roughed up, detained, visa taken away or,  
1485 I shouldn't say visa taken away, deported immediately.  
1486 And there was no basis for it.

1487 The detaining was rough. The treatment was  
1488 rough. And of course, a Member of Congress's office  
1489 has now been called to try to review and determine why  
1490 our officials treated that individual in that manner,  
1491 a person who had come over time after time after time.

1492 I can't say the factual base is the same as what  
1493 we are discussing here. But what we are trying to do  
1494 is to avoid those kinds of glaring, seemingly glaring  
1495 disregard of the rights of individuals who travel in

1496 and out of this country and intend to do us no harm.  
1497 Maybe some of you will get those kinds of calls. It  
1498 happens all the time, and the goodness of America is  
1499 that we have a system that can provide protection.

1500 And there is no reason why this kind of  
1501 structure that you put in place, besides the idea of  
1502 expenditures, cannot have a judicial infrastructure  
1503 that equates to a decent and fair review of a denial.  
1504 And I would offer my support for the amendment and  
1505 suggest that there are going to be many horror stories  
1506 that deserve review judicially.

1507 I yield back.

1508 Mr. Conyers. Would the gentlelady yield?

1509 Ms. Jackson Lee. I would be happy to yield.

1510 Mr. Conyers. I thank the gentlelady supporting  
1511 the Deutch-Waters Amendment.

1512 And I wanted to return to Mr. Franks, who was  
1513 able to respond to my question. And I will wait to  
1514 get his attention. Mr. Franks, I was thanking you for  
1515 raising some discussion about the question.

1516 And I just wanted to ask you through the person  
1517 that has the -- Ms. Jackson Lee. Did you say that  
1518 there were a couple of circuit court opinions that  
1519 bore on this question that we were discussing?

1520 Mr. Franks. If the gentleman would yield, I

1521 would encourage the --

1522 Ms. Jackson Lee. I will yield to the gentleman.

1523 Mr. Franks. Thank you.

1524 Yes, I had heard the chairman mention I think  
1525 the 7th Circuit was one of them. And my suggestion  
1526 here is that we take the generous offer of the  
1527 chairman, and I am prepared fully to accept his offer  
1528 to discuss it after the markup.

1529 Mr. Conyers. Well, could you -- before we  
1530 discuss it after the markup, could you let us know  
1531 what those citations --

1532 Chairman Smith. If the gentleman would yield?  
1533 The circuit courts were the 7th, 3rd, and 5th, and  
1534 they all concluded that visa revocations are, in fact,  
1535 a discretionary power held by the Secretary of DHS and  
1536 not subject to judicial review.

1537 Mr. Conyers. Well --

1538 Chairman Smith. And I thank the gentleman from  
1539 Arizona for --

1540 Ms. Lofgren. Would the chairman give us the  
1541 citations on those cases?

1542 Ms. Jackson Lee. I am yielding to her. She  
1543 would like the citations on those cases, please.

1544 Chairman Smith. We will be happy to get them  
1545 for you.

1546 Mr. Conyers. Well, could I ask --

1547 Ms. Jackson Lee. Continue to yield.

1548 Mr. Conyers. -- the lady to yield again?

1549 Now is there a suggestion in this discussion of  
1550 circuit court cases that they trump the Supreme Court  
1551 of the United States? I hate to get this fundamental  
1552 about constitutional law, but I have never heard of a  
1553 circuit court decision that prevailed over the United  
1554 States Supreme Court. Have you?

1555 Mr. Franks. If I am being asked, I would just  
1556 suggest two things. Number one, I think that the  
1557 cases that the chairman cites have not been  
1558 specifically reviewed by the Supreme Court. Number  
1559 two, as far as judicial --

1560 Ms. Jackson Lee. I am continuing to yield.

1561 Chairman Smith. The gentlewoman's time has  
1562 expired. Are there other Members who seek to be  
1563 recognized?

1564 The gentleman from North Carolina, Mr. Watt?

1565 Mr. Watt. Thank you, Mr. Chairman.

1566 I move to strike the last word. I will continue  
1567 to yield to the gentleman if he --

1568 Mr. Franks. Just briefly, the last word. The  
1569 due process that is being discussed here is not  
1570 restricted out of the Article I courts, the

1571 administrative courts. There is still a due process  
1572 there, but it is the Article III courts. And I think  
1573 that the cite that the chairman mentioned deals pretty  
1574 effectively with that.

1575 And with that, I yield back.

1576 Mr. Watt. Well, and it is my time. So you  
1577 can't yield. You will yield it back to me.

1578 Mr. Franks. That is correct.

1579 Mr. Watt. I am not yielding back yet because I  
1580 want to make this point. This is the full Judiciary  
1581 Committee, and this is the place to resolve these  
1582 issues, not after the bill has gone out of committee  
1583 and is on its way to the floor. And I say that,  
1584 having been the most recent victim of agreements that  
1585 we would deal with issues between the full committee  
1586 and the floor and having seen those issues dealt with  
1587 in ways that were not only less than satisfactory, but  
1588 totally unsatisfactory.

1589 So I am not much inclined to support something  
1590 that is going to be -- that has the possibility of  
1591 being worked out between this committee and the floor,  
1592 given my most recent experience. And I won't  
1593 elaborate on that. I am sure the chairman knows  
1594 whereof I speak. So --

1595 Mr. Conyers. Would the gentleman yield?

1596 Mr. Watt. Yes, I am happy to yield to the  
1597 ranking member.

1598 Mr. Conyers. I just wanted to -- now I have  
1599 never taught constitutional law, as some people in the  
1600 Government have. But I can't fathom how when a member  
1601 of the full Judiciary Committee cites a Supreme Court  
1602 decision that another member cites a circuit court  
1603 decision that is supposed to explain away the Supreme  
1604 Court decision.

1605 Now could I yield to anybody -- there may have  
1606 been some instance in American judicial history in  
1607 which this has occurred, but I don't recall any. And  
1608 if anybody does --

1609 Mr. Watt. Would the gentleman yield?

1610 Mr. Conyers. Of course.

1611 Mr. Watt. Just reclaiming my time, I would say  
1612 that every case has a factual context. So you have to  
1613 look at every case. It may be distinguishable in some  
1614 way from the Supreme Court's decision. That is  
1615 possible.

1616 But resolving that kind of difference between  
1617 here and the floor I don't think is the appropriate  
1618 place to resolve it. I mean, we need to go and look  
1619 at the cases, look at the factual context, and  
1620 evaluate whether it is the Supreme Court decision that

1621 really applies or it is circuit court decision that  
1622 might create some exception.

1623           But that is what this committee, the Judiciary  
1624 Committee, that is our responsibility. We can't just  
1625 take that and dump it on the floor to people who --  
1626 you know, the people on the floor are either going to  
1627 have to vote it up or vote it down. It is our  
1628 responsibility to look at it here in this committee,  
1629 and that is the point I am trying to make.

1630           I don't think we are -- if there is  
1631 constitutional issues and there is difference of  
1632 opinion about what the law is, we need to resolve that  
1633 in the Judiciary Committee and not punt it to some  
1634 discussion between here and the floor and, you know,  
1635 even if requires delaying this markup so we can go  
1636 look at the cases.

1637           That is the point I am making. Did the  
1638 gentleman want me to yield to him?

1639           Mr. Gowdy. Yes, sir. If the gentleman would be  
1640 so gracious, I am not going read from a Supreme Court  
1641 case or even a court of appeals case. I am going to  
1642 actually read from the Constitution. "The Supreme  
1643 Court shall have appellate jurisdiction both as to law  
1644 and fact with such exceptions and under such  
1645 regulations as Congress shall make."

1646           Few things are as clear that Congress actually  
1647 can set the jurisdictional boundaries for all of the  
1648 Federal courts and have done so in myriad cases.

1649           Mr. Watt. Well, let me reclaim my time. We  
1650 have debated that proposition on a number of occasions  
1651 in this committee, the extent to which we have  
1652 authority versus the Supreme Court. We have authority  
1653 over this or that.

1654           But the point I am making is that it is our  
1655 responsibility to resolve that here. Let us do it  
1656 with all the Members, give us the opportunity to read  
1657 the cases.

1658           Chairman Smith. The gentleman's time has  
1659 expired.

1660           Mr. Watt. All right. I yield back.

1661           Chairman Smith. The vote is on the amendment.  
1662 All those in favor of the Deutch Amendment, say aye.

1663           [A chorus of ayes.]

1664           Chairman Smith. All those opposed, say no.

1665           [A chorus of nays.]

1666           Chairman Smith. In the opinion of the chair,  
1667 the nays have it. The amendment is not agreed to.

1668           Mr. Deutch. Mr. Chairman? Mr. Chairman,  
1669 following this fruitful discussion, I ask for a  
1670 recorded vote.

1671 Chairman Smith. And a recorded vote has been  
1672 requested, and the clerk will call the roll.

1673 Ms. Kish. Mr. Smith?

1674 Chairman Smith. No.

1675 Ms. Kish. Mr. Smith votes no.

1676 Mr. Sensenbrenner?

1677 [No response.]

1678 Ms. Kish. Mr. Coble?

1679 Mr. Coble. No.

1680 Ms. Kish. Mr. Coble votes no.

1681 Mr. Gallegly?

1682 Mr. Gallegly. No.

1683 Ms. Kish. Mr. Gallegly votes no.

1684 Mr. Goodlatte?

1685 Mr. Goodlatte. No.

1686 Ms. Kish. Mr. Goodlatte votes no.

1687 Mr. Lundgren?

1688 [No response.]

1689 Ms. Kish. Mr. Chabot?

1690 [No response.]

1691 Ms. Kish. Mr. Issa?

1692 [No response.]

1693 Ms. Kish. Mr. Pence?

1694 [No response.]

1695 Ms. Kish. Mr. Forbes?

1696 Mr. Forbes. No.  
1697 Ms. Kish. Mr. Forbes votes no.  
1698 Mr. King?  
1699 Mr. King. No.  
1700 Ms. Kish. Mr. King votes no.  
1701 Mr. Franks?  
1702 Mr. Franks. No.  
1703 Ms. Kish. Mr. Franks votes no.  
1704 Mr. Gohmert?  
1705 [No response.]  
1706 Ms. Kish. Mr. Jordan?  
1707 Mr. Jordan. No.  
1708 Ms. Kish. Mr. Jordan votes no.  
1709 Mr. Poe?  
1710 [No response.]  
1711 Ms. Kish. Mr. Chaffetz?  
1712 [No response.]  
1713 Ms. Kish. Mr. Griffin?  
1714 [No response.]  
1715 Ms. Kish. Mr. Marino?  
1716 Mr. Marino. No.  
1717 Ms. Kish. Mr. Marino votes no.  
1718 Mr. Gowdy?  
1719 Mr. Gowdy. No.  
1720 Ms. Kish. Mr. Gowdy votes no.

1721 Mr. Ross?  
1722 Mr. Ross. No.  
1723 Ms. Kish. Mr. Ross votes no.  
1724 Mrs. Adams?  
1725 Mrs. Adams. No.  
1726 Ms. Kish. Mrs. Adams votes no.  
1727 Mr. Quayle?  
1728 Mr. Quayle. No.  
1729 Ms. Kish. Mr. Quayle votes no.  
1730 Mr. Conyers?  
1731 Mr. Conyers. Aye.  
1732 Ms. Kish. Mr. Conyers votes aye.  
1733 Mr. Berman?  
1734 [No response.]  
1735 Ms. Kish. Mr. Nadler?  
1736 [No response.]  
1737 Ms. Kish. Mr. Scott?  
1738 Mr. Scott. Aye.  
1739 Ms. Kish. Mr. Scott votes aye.  
1740 Mr. Watt?  
1741 Mr. Watt. Aye.  
1742 Ms. Kish. Mr. Watt votes aye.  
1743 Ms. Lofgren?  
1744 Ms. Lofgren. Aye.  
1745 Ms. Kish. Ms. Lofgren votes aye.

1746 Ms. Jackson Lee?  
1747 Ms. Jackson Lee. Aye.  
1748 Ms. Kish. Ms. Jackson Lee votes aye.  
1749 Ms. Waters?  
1750 Ms. Waters. Aye.  
1751 Ms. Kish. Ms. Waters votes aye.  
1752 Mr. Cohen?  
1753 Mr. Cohen. Aye.  
1754 Ms. Kish. Mr. Cohen votes aye.  
1755 Mr. Johnson?  
1756 [No response.]  
1757 Mr. Pierluisi?  
1758 Mr. Pierluisi. Aye.  
1759 Ms. Kish. Mr. Pierluisi votes aye.  
1760 Mr. Quigley?  
1761 Mr. Quigley. Aye.  
1762 Ms. Kish. Mr. Quigley votes aye.  
1763 Ms. Chu?  
1764 [No response.]  
1765 Ms. Kish. Mr. Deutch?  
1766 Mr. Deutch. Aye.  
1767 Ms. Kish. Mr. Deutch votes aye.  
1768 Ms. Sanchez?  
1769 [No response.]  
1770 Mr. Sensenbrenner. No.

1771 Ms. Kish. Mr. Sensenbrenner votes no.

1772 Chairman Smith. Are there other Members who  
1773 wish to record their votes? If not, the clerk will  
1774 report.

1775 [Pause.]

1776 Chairman Smith. Oh, before the clerk reports,  
1777 the gentleman from Arkansas votes no.

1778 Ms. Kish. Mr. Griffin votes no.

1779 Chairman Smith. The clerk will report now.

1780 Ms. Kish. Mr. Chairman, 10 Members voted aye;  
1781 14 Members voted nay.

1782 Chairman Smith. Okay. The majority having  
1783 voted against the amendment, the amendment is not  
1784 agreed to.

1785 Mr. Deutch, do you have another amendment?

1786 Mr. Deutch. I do, Mr. Chairman. Another  
1787 opportunity for the committee members to work  
1788 together. This is Berman Amendment Number 25.

1789 Chairman Smith. The clerk will report the  
1790 amendment.

1791 Ms. Kish. Amendment to H.R. 1741 offered by Mr.  
1792 Deutch of Florida. Page 4, line 19, after "law"  
1793 insert --

1794 Chairman Smith. Without objection, the  
1795 amendment will be considered as read.

1796 [The information follows:]

1797

1798 Chairman Smith. And the gentleman is recognized  
1799 to explain the amendment.

1800 Mr. Deutch. Thank you, Mr. Chairman.

1801 Mr. Chairman, this Amendment Number 25, I offer  
1802 along with my colleague Howard Berman, who is not able  
1803 to be here at this markup. As a member of the House  
1804 Foreign Affairs Committee, where Mr. Berman is the  
1805 ranking member, we feel this amendment is very  
1806 important and encourage our colleagues to support it.

1807 This amendment ensures that placement of new ICE  
1808 Visa Security Units is done pursuant to the  
1809 established process for all overseas placements at  
1810 diplomatic posts, known as the National Security  
1811 Decision Directive 38, which was issued nearly 20  
1812 years ago. This is critical to furthering the overall  
1813 security goals of our country and maximizing the  
1814 effectiveness of our posts to facilitate legitimate  
1815 travel and tourism.

1816 The directive outlines the responsibility and  
1817 authority of the chief of mission to control the size,  
1818 composition, and mandate of overseas full-time mission  
1819 staffing for all U.S. Government agencies.

1820 Consolidating control over how a mission is staffed is  
1821 essential for avoiding confusion and disagreement that  
1822 can deadlock critical staffing decisions, which lead

1823 to disastrous personnel oversight or conflicts to the  
1824 operations of an embassy.

1825         The chief of mission holds the unique position  
1826 of maintaining a constant awareness of the myriad  
1827 aspects of the U.S. relationship with its foreign  
1828 partners. The chief of mission is in the best  
1829 position to balance all of the competing concerns when  
1830 making staffing decisions, and we should not undermine  
1831 his or her ability to utilize that knowledge.

1832         The directive requires that the Secretary of  
1833 State consult with relevant agencies, including DHS,  
1834 on all staffing issues. This directive is used by the  
1835 FBI, the CIA, DHS, ATF, and the Drug Enforcement  
1836 Agency, when they want to send agents to work in  
1837 diplomatic posts.

1838         If this bill orders DHS to send ICE agents to  
1839 work at embassies without working through this  
1840 process, it could mean that CIA agents working on  
1841 counterterrorism investigations would have to come  
1842 home, FBI agents working on transnational criminal  
1843 investigations would have to come home, and ATF and  
1844 DEA agents working on international trafficking of  
1845 guns and narcotics would have to come home.

1846         It would simply ensure that staffing decisions  
1847 at our overseas missions continues to support our

1848 national security in the most effective way possible.

1849 And I ask my colleagues to support this amendment.

1850 And I yield back.

1851 Chairman Smith. And will the gentleman yield?

1852 Mr. Deutch. I do.

1853 Chairman Smith. I support this amendment. The

1854 amendment merely ensures that the current process in

1855 place to create Visa Security Units overseas is

1856 maintained. The Department of Homeland Security and

1857 the Department of State have an agreed-upon process

1858 that includes memorandums of understanding and other

1859 agreements to establish Visa Security Units. This

1860 process seems to work well, and both agencies are

1861 satisfied with it.

1862 So I support the gentleman's amendment and yield

1863 back to the gentleman.

1864 Mr. Deutch. I yield back my time.

1865 Chairman Smith. The gentleman yields back his

1866 time. Are there any other Members who wish to speak

1867 on this amendment?

1868 [No response.]

1869 Chairman Smith. If not, all in favor, say aye.

1870 [A chorus of ayes.]

1871 Chairman Smith. And opposed, nay.

1872 [No response.]

1873 Chairman Smith. The ayes have it, and the  
1874 amendment is agreed to.

1875 Are there any other amendments?

1876 [No response.]

1877 Chairman Smith. If not, a reporting quorum  
1878 being present, the question is on reporting the bill  
1879 favorably to the House as amended. Those in favor,  
1880 say aye.

1881 [A chorus of ayes.]

1882 Chairman Smith. Opposed, no.

1883 [A chorus of nays.]

1884 Chairman Smith. The ayes have it, and the bill  
1885 is ordered reported favorably.

1886 Mr. Conyers. A recorded vote?

1887 Chairman Smith. A recorded vote has been  
1888 requested, and the clerk will call the roll.

1889 Ms. Kish. Mr. Smith?

1890 Chairman Smith. Aye.

1891 Ms. Kish. Mr. Smith votes aye.

1892 Mr. Sensenbrenner?

1893 [No response.]

1894 Ms. Kish. Mr. Coble?

1895 Mr. Coble. Aye.

1896 Ms. Kish. Mr. Coble votes aye.

1897 Mr. Gallegly?

1898 Mr. Gallegly. Aye.  
1899 Ms. Kish. Mr. Gallegly votes aye.  
1900 Mr. Goodlatte?  
1901 Mr. Goodlatte. Aye.  
1902 Ms. Kish. Mr. Goodlatte votes aye.  
1903 Mr. Lundgren?  
1904 [No response.]  
1905 Ms. Kish. Mr. Chabot?  
1906 [No response.]  
1907 Ms. Kish. Mr. Issa?  
1908 [No response.]  
1909 Ms. Kish. Mr. Pence?  
1910 [No response.]  
1911 Ms. Kish. Mr. Forbes?  
1912 Mr. Forbes. Aye.  
1913 Ms. Kish. Mr. Forbes votes aye.  
1914 Mr. King?  
1915 Mr. King. Aye.  
1916 Ms. Kish. Mr. King votes aye.  
1917 Mr. Franks?  
1918 Mr. Franks. Aye.  
1919 Ms. Kish. Mr. Franks votes aye.  
1920 Mr. Gohmert?  
1921 [No response.]  
1922 Ms. Kish. Mr. Jordan?

1923 Mr. Jordan. Yes.

1924 Ms. Kish. Mr. Jordan votes aye.

1925 Mr. Poe?

1926 [No response.]

1927 Ms. Kish. Mr. Chaffetz?

1928 [No response.]

1929 Ms. Kish. Mr. Griffin?

1930 Mr. Griffin. Aye.

1931 Ms. Kish. Mr. Griffin votes aye.

1932 Mr. Marino?

1933 Mr. Marino. Aye.

1934 Ms. Kish. Mr. Marino votes aye.

1935 Mr. Gowdy?

1936 Mr. Gowdy. Aye.

1937 Ms. Kish. Mr. Gowdy votes aye.

1938 Mr. Ross?

1939 Mr. Ross. Aye.

1940 Ms. Kish. Mr. Ross votes aye.

1941 Mrs. Adams?

1942 Mrs. Adams. Aye.

1943 Ms. Kish. Mrs. Adams votes Aye.

1944 Mr. Quayle?

1945 Mr. Quayle. Aye.

1946 Ms. Kish. Mr. Quayle votes aye.

1947 Mr. Conyers?

1948 Mr. Conyers. No.  
1949 Ms. Kish. Mr. Conyers votes no.  
1950 Mr. Berman?  
1951 [No response.]  
1952 Ms. Kish. Mr. Nadler?  
1953 [No response.]  
1954 Ms. Kish. Mr. Scott?  
1955 Mr. Scott. Aye.  
1956 Ms. Kish. Mr. Scott votes aye.  
1957 Mr. Watt?  
1958 Mr. Watt. Pass.  
1959 Ms. Kish. Mr. Watt votes to pass.  
1960 Ms. Lofgren?  
1961 Ms. Lofgren. No.  
1962 Ms. Kish. Ms. Lofgren votes no.  
1963 Ms. Jackson Lee?  
1964 Ms. Jackson Lee. No.  
1965 Ms. Kish. Ms. Jackson Lee votes no.  
1966 Ms. Waters?  
1967 Ms. Waters. No.  
1968 Ms. Kish. Ms. Waters votes no.  
1969 Mr. Cohen?  
1970 Mr. Cohen. Aye.  
1971 Ms. Kish. Mr. Cohen votes aye.  
1972 Mr. Johnson?

1973 [No response.]  
1974 Mr. Pierluisi?  
1975 Mr. Pierluisi. No.  
1976 Ms. Kish. Mr. Pierluisi votes no.  
1977 Mr. Quigley?  
1978 Mr. Quigley. No.  
1979 Ms. Kish. Mr. Quigley votes no.  
1980 Ms. Chu?  
1981 Ms. Chu. No.  
1982 Ms. Kish. Ms. Chu votes no.  
1983 Mr. Deutch?  
1984 Mr. Deutch. No.  
1985 Ms. Kish. Mr. Deutch votes no.  
1986 Ms. Sanchez?  
1987 [No response.]  
1988 Chairman Smith. The gentleman from Wisconsin?  
1989 Mr. Sensenbrenner. Aye.  
1990 Ms. Kish. Mr. Sensenbrenner votes aye.  
1991 Chairman Smith. The gentleman from Texas, Mr.  
1992 Poe?  
1993 Mr. Poe. Aye.  
1994 Ms. Kish. Mr. Poe votes aye.  
1995 Chairman Smith. The gentleman from Ohio, Mr.  
1996 Chabot?  
1997 Mr. Chabot. Aye.

1998 Ms. Kish. Mr. Chabot votes aye.

1999 Mr. Cohen. Mr. Chairman?

2000 Chairman Smith. The gentleman from Tennessee,  
2001 Mr. Cohen?

2002 Mr. Cohen. I would like to correct my vote from  
2003 yes to no. I thought we were voting on the Honorable  
2004 Howard Berman's proposal from Beverly Hills.

2005 Ms. Kish. Mr. Cohen votes no.

2006 Chairman Smith. The record will be corrected.

2007 Are there other Members who wish to be recorded?

2008 Mr. Scott. Mr. Chairman?

2009 Chairman Smith. The gentleman from Virginia?

2010 Mr. Scott. Mr. Chairman, I, too, want to change  
2011 my vote from yes to no.

2012 Chairman Smith. Mr. Watt?

2013 Mr. Watt. And I want off of pass to no.

2014 Ms. Kish. Mr. Watt votes no.

2015 Chairman Smith. I like the earlier votes  
2016 better.

2017 [Laughter.]

2018 Chairman Smith. Are there any other Members who  
2019 wish to be recorded?

2020 [No response.]

2021 Chairman Smith. The clerk will report.

2022 [Pause.]

2023 Ms. Kish. Mr. Chairman, 17 Members voted aye;  
2024 11 Members voted nay.

2025 Chairman Smith. And the ayes have it, and the  
2026 bill as amended is ordered reported favorably.

2027 Without objection, the bill will be reported as  
2028 an amendment in the nature of a substitute,  
2029 incorporating amendments adopted. The staff is  
2030 authorized to make technical and conforming changes.  
2031 Members will have 2 days to submit views.

2032 I will now go to what I believe will be our last  
2033 bill of the day. It is H.R. 1933, the nurses bill.

2034 Pursuant to notice, I now call up H.R. 1933.  
2035 The clerk will report the bill.

2036 Ms. Kish. H.R. 1933. To amend the Immigration  
2037 and Nationality Act to modify the requirements for  
2038 admission of nonimmigrant nurses in the health  
2039 professional shortage --

2040 Chairman Smith. Without objection, the bill  
2041 will be considered as read.

2042 [The information follows:]

2043

2044 Chairman Smith. I will recognize myself and  
2045 then the ranking member for statements on the bill.

2046 A number of American hospitals have great  
2047 difficulty attracting nurses. These include hospitals  
2048 that serve mostly poor patients in inner-city  
2049 neighborhoods and some hospitals in rural areas.

2050 For example, St. Bernard Hospital in Chicago is  
2051 the only remaining hospital in an area of over 100,000  
2052 people, and almost all of its patients live in  
2053 poverty. St. Bernard almost closed its doors in 1992,  
2054 primarily because of its inability to attract  
2055 registered nurses.

2056 Congress passed the Nursing Relief for  
2057 Disadvantaged Areas Act in 1999 to help hospitals like  
2058 St. Bernard. Our colleague Bobby Rush introduced this  
2059 legislation, and Judiciary Committee chairman Henry  
2060 Hyde championed it. It created a new H-1C temporary  
2061 registered nurse visa program, with 500 visas  
2062 available each year that allowed nurses to stay for 3  
2063 years.

2064 To be able to petition for a foreign nurse, an  
2065 employer had to meet four conditions. First, the  
2066 employer had to be located in a health professional  
2067 shortage area. Second, the employer had to have at  
2068 least 190 acute care beds. Third, a certain

2069 percentage of the employer's patients had to be  
2070 Medicare patients, and fourth, a certain percentage of  
2071 patients had to be Medicaid patients.

2072           The H-1C program adopted the protections for  
2073 American nurses contained in the expired H-1A nursing  
2074 visa program. For instance, a hospital had to agree  
2075 to take timely and significant steps to recruit  
2076 American nurses. Also, hospitals had to pay the  
2077 prevailing wage.

2078           The H-1C program contained new protections, such  
2079 as requirements that foreign nurses could not comprise  
2080 more than one third of a hospital's registered nurses.  
2081 The H-1C program was extended in 2006 under then-  
2082 chairman Jim Sensenbrenner. The program expired in  
2083 December 2009, though many nurses still remain on 3-  
2084 year visas issued before that date.

2085           Sister Elizabeth Van Straten, president of St.  
2086 Bernard Hospital, wrote to me in December that,  
2087 "Because of the sunset, in combination with the  
2088 extended approval period for green cards, nurses are  
2089 now forced to leave our institution, and the rate of  
2090 loss continues to increase. This loss cannot be  
2091 sustained. As the only hospital serving one of the  
2092 difficult sections of Chicago and perhaps the entire  
2093 country, we need the extension of the visa program to

2094 survive."

2095 I introduced H.R. 1933 to help St. Bernard and  
2096 other similarly situated hospitals. The bill  
2097 reauthorizes the H-1C program for an additional 3  
2098 years. The number of visas that may be issued in each  
2099 fiscal year cannot exceed 300. An alien may be  
2100 admitted for 3 years, and this stay may be extended  
2101 once for an additional 3 years.

2102 Ms. Lofgren will offer an amendment that I  
2103 support to allow an H-1C nurse to switch employment  
2104 between any of the 14 H-1C eligible hospitals. Just  
2105 as nurses ensure care for the sick, the H-1C program  
2106 ensures continued care for patients in inner-city and  
2107 rural communities.

2108 I urge my colleagues to support the legislation  
2109 and yield to the ranking member, the gentleman from  
2110 Michigan, for his comments on the bill.

2111 Mr. Conyers. Thank you, Chairman Smith.

2112 I yield to Zoe Lofgren to make the statement on  
2113 behalf of our side.

2114 Ms. Lofgren. Thank you, Mr. Chairman.

2115 And thank you, Mr. Conyers.

2116 As has been mentioned, this bill is a bipartisan  
2117 one introduced by Chairman Smith, along with  
2118 Representatives Henry Cuellar and Peter Roskam, and

2119 reauthorizes the H-1C temporary nurse visa program  
2120 that expired in 2009.

2121         The program was created actually to address  
2122 nursing shortages in certain hospitals. The program  
2123 provided only 500 visas per year and allowed only 14  
2124 hospitals to file for such visas. These hospitals had  
2125 to meet several conditions, including they were in a  
2126 health professional shortage area as designated by the  
2127 Department of Health and Human Services, and it was  
2128 enacted as a 4-year program.

2129         It expired in 2005, was reauthorized in 2006 for  
2130 an additional 3 years. The program expired again in  
2131 December 2009 and has not been renewed since that  
2132 date. And as the chairman has referenced, since these  
2133 are 3-year visas, this is becoming a very serious  
2134 problem for these underserved medical areas as the  
2135 visas expire.

2136         This bill would reauthorize the program for an  
2137 additional 3 years. It would also reduce the annual  
2138 number of visas from 500 to 300 and, finally, would  
2139 extend the maximum stay of an H-1C nurse from 3 years  
2140 to 6 years.

2141         I have an amendment, which I will offer as soon  
2142 as this statement is done, that provides for  
2143 portability for the H-1C nurses. As the chairman has

2144 mentioned, he is willing to accept this amendment, and  
2145 the purpose really is to allow these nurses to make  
2146 sure that they have an ability to vote with their feet  
2147 if there is an abusive situation or they are  
2148 mistreated in any way.

2149         A temporary employee is totally dependent on  
2150 their employer for their visa status. And if there is  
2151 no ability to have portability, there is no bargaining  
2152 power between the employee and the employer.

2153         The portability would be limited to the 14  
2154 hospitals that are actually permitted to apply for the  
2155 visas, and I am glad that the chairman is willing to  
2156 accept the amendment. I would note for the record  
2157 none of these hospitals are in the 16th Congressional  
2158 District of California, but 5 of the 14 are in Texas.

2159         And I would yield back the balance of my time.

2160         Chairman Smith. Thank you, Ms. Lofgren.

2161         The gentleman from California, Mr. Gallegly,  
2162 chairman of the Immigration Subcommittee, is  
2163 recognized for an opening statement.

2164         Mr. Gallegly. Thank you very much, Mr.  
2165 Chairman.

2166         I don't have a formal opening statement. But I  
2167 would just like to say that while I wholeheartedly  
2168 support this bill and I understand the great need that

2169 we have for caregivers, particularly nurses -- in  
2170 fact, we have a nursing program that we have started  
2171 in our local State college, State university in my  
2172 district, and it is doing very well because of the  
2173 tremendous unmet need that we have.

2174 But I do have a problem that I think that we  
2175 need to recognize, and we are not going to solve it on  
2176 this bill. But I think we again need to revisit the  
2177 issue of when we bring folks into this country on a  
2178 program, and the program that sunsetted I think it was  
2179 2009, is that correct?

2180 Chairman Smith. That is correct.

2181 Mr. Gallegly. And at that time, it was 500 a  
2182 year that we were bringing in?

2183 Chairman Smith. That is correct.

2184 Mr. Gallegly. Now what happens to the folks  
2185 when they come here? What kind of safety valve do we  
2186 have when they come in to be nurses, and somewhere  
2187 along the line they decide, well, you know, maybe I  
2188 think I will go down the road. And of course, legally  
2189 they can't do it because it may put them out of  
2190 status.

2191 But how do we track this? Can the chairman or  
2192 someone let me know if we have method of tracking  
2193 folks that come in under this special program and then

2194 don't stay in the program, and I assume that they  
2195 would be out of status. But how do we track that?  
2196 How do we know where they are, if they went home or if  
2197 they just went down the road?

2198 Chairman Smith. If the gentleman would yield, I  
2199 will try to respond. There is no guarantee that the  
2200 individuals will stay in the occupation for which they  
2201 were approved. Now there is always the threat of  
2202 deportation, which hangs over them.

2203 But I might add also that as far as making sure  
2204 these individuals return to their home country when  
2205 that time occurs, we have no way of even assuring that  
2206 because we don't have an entry-exit system in this  
2207 country of the sort that you and I supported in 1996  
2208 and which has still not been implemented.

2209 So we still need to take a number of steps to  
2210 make sure that the immigration laws are enforced.

2211 Mr. Gallegly. Mr. Chairman, would this also  
2212 have an impact on H-1Bs as well? The same situation,  
2213 when we have a same situation with people who are here  
2214 on an H-1B for a specific job, and then they decide,  
2215 well, maybe I --

2216 Chairman Smith. If the gentleman will yield?  
2217 The same situation and the same problems arise with  
2218 other visas as well. If you don't have an entry-exit

2219 system, you don't know who should have left the  
2220 country when they should have left it, and therefore,  
2221 problems are created.

2222 Mr. Gallegly. Mr. Chairman, I am going to  
2223 support this bill. It is a good bill. But it just  
2224 further makes a little red light comes up that we have  
2225 an ongoing problem with folks when we are trying to  
2226 solve problems and we create these programs. And  
2227 sometimes their intended use and the intended purpose  
2228 of them coming here we lose because they go off for  
2229 something else that is unintended, which just  
2230 exacerbates our whole immigration problem.

2231 Mr. Conyers. Would the subcommittee chairman  
2232 yield?

2233 Mr. Gallegly. I would be pleased to yield to  
2234 the ranking member.

2235 Mr. Conyers. Why don't you hold some hearings  
2236 on this subject?

2237 Mr. Gallegly. Mr. Conyers, I fully intend to do  
2238 that, and I would yield back, Mr. Chairman.

2239 Chairman Smith. Are there other Members who  
2240 wish to be heard on this? Is the gentlewoman prepared  
2241 to offer an amendment?

2242 Ms. Lofgren. I am prepared to offer the  
2243 amendment, if I --

2244 Chairman Smith. Okay. The gentlewoman --

2245 Mr. King. Mr. Chairman?

2246 Chairman Smith. The gentlewoman is recognized  
2247 to offer her amendment.

2248 Ms. Lofgren. Mr. Chairman, I have an amendment  
2249 at the desk.

2250 Chairman Smith. If the gentlewoman will suspend  
2251 for a minute, I failed to recognize the gentleman from  
2252 Iowa, and I intended to do that.

2253 Ms. Lofgren. All right.

2254 Chairman Smith. The gentleman from Iowa, Mr.  
2255 King, is recognized.

2256 Ms. Lofgren. Ms. Waters also wishes to be  
2257 heard.

2258 Mr. King. Thank you, Mr. Chairman.

2259 I appreciate being recognized, and at some point  
2260 in this discussion, I have some points I would like to  
2261 make. And so, I rise in opposition to this piece of  
2262 legislation, and I would be very interested in the  
2263 hearings that we could develop this thought a little  
2264 further.

2265 But I just scratched down about 10 points that I  
2266 think that we should contemplate if we are a body that  
2267 is looking for the long-term interests through  
2268 immigration policy and the best interests of the

2269 United States. So I just ask a series of questions  
2270 that I think we should answer.

2271         The first one is if we are going to bring in  
2272 nurses from foreign countries into the United States,  
2273 we should ask the question what country needs those  
2274 nurses, those trained nurses less than we do in the  
2275 United States of America?

2276         And as I look around the world, I see everybody  
2277 needs healthcare services, and almost everybody I can  
2278 think of needs them more than we need them. And so,  
2279 there is a moral question of whether we should go to  
2280 countries that need nurses and get their nurses and  
2281 bring them here because we have a more favorable  
2282 climate, economic climate for them to move into.

2283         Next one is what nation has too many nurses? Is  
2284 there anybody out there that has got more nurses than  
2285 they know what to do with, and are they suggesting  
2286 that we send them here? And if that is the case,  
2287 wouldn't we recommend to them that probably there are  
2288 a lot of countries that could use those nurses more  
2289 than we can use them?

2290         And so, those are two moral questions that I  
2291 believe the committee should answer before we would  
2292 move forward with extending the nurse visa.

2293         And then I would ask a third question, and that

2294 would be what nation is more capable of filling the  
2295 training gap for nurses than the United States of  
2296 America? Can't we do this out of our 306 million  
2297 people? And can't we do that with the institutions  
2298 that we have today? Can't we fill this training gap  
2299 without borrowing from countries that probably need  
2300 them more and keeping them from going to countries  
2301 that probably need them more than we need them in the  
2302 United States?

2303 I say we can solve this problem here in the  
2304 United States. We can fill the training gap.

2305 Mr. Conyers. Would the gentleman yield?

2306 Mr. King. At the conclusion, I would be happy  
2307 to do that. We can fill the training gap. We are  
2308 doing that now.

2309 And in the two institutions in just the 5th  
2310 District of Iowa, they have ramped up the nurse  
2311 training, and I have the data from one where they have  
2312 gone from 108 LPNs to 184 and 74 RNs to 152. That is  
2313 an 85 percent increase. That is 154 more nursing  
2314 students in a 3-year period of time, which is half of  
2315 what this bill actually does, just out of my little  
2316 old district, 1/435th of America.

2317 So I am saying we can solve this problem in  
2318 America. And if the nurses don't want to go to the 14

2319 cities, I wonder why when I travel to the worst places  
2320 in the world, I see Americans that go volunteer to go  
2321 there. American nurses, American doctors, people who  
2322 go volunteer for nothing in order to help out  
2323 humanity. I think we can fill that in those places  
2324 where they need it.

2325         So we can fill the education gap. We are doing  
2326 half of it just in my district. And then, another  
2327 point that I would make is that of the legal  
2328 immigration we have in this country, somewhere between  
2329 1 and 1.3 million annual legal immigrants, they have  
2330 for more than a decade been consuming all of the jobs  
2331 created by this economy. And that is before we have  
2332 had a downward spiral.

2333         So I would suggest that we would take a look at  
2334 perhaps suspending part or all of the nonmerit legal  
2335 immigration until the economy catches up with the  
2336 legal immigration that we have and not look to solve  
2337 our problems by increasing the problem of too many  
2338 legal immigrants taking American jobs.

2339         We can solve this. We already are on the way of  
2340 solving it, and I think this solution is unnecessary  
2341 at this point because of the changes that we have made  
2342 and because of our economy.

2343         And now I would be happy to yield to the ranking

2344 member.

2345 Mr. Conyers. Thank you so much.

2346 I wanted to commend you on the two moral  
2347 questions that you raised. I think they are very  
2348 important. I hope there is a way that our committee  
2349 can gain sufficient jurisdiction to hold hearings on  
2350 those questions.

2351 Mr. King. I reclaim my time and yield to the  
2352 chairman of the Immigration Committee.

2353 Mr. Gallegly. Thank you very much for yielding.

2354 I associate myself with your comments about  
2355 trying to maintain American jobs for American legal  
2356 residents and citizens. In my district, we have the  
2357 University of California Channel Islands, State  
2358 university. We have a very aggressive nurse training  
2359 program, education program. We have 10 to 20 times  
2360 the number of applicants for the program than we have  
2361 slots for them.

2362 There is certainly enough people in this country  
2363 that want to be nurses. But there is an education gap  
2364 there. I am going to support this bill, but I would  
2365 certainly hope that my colleagues would join me in  
2366 trying to support programs that are going to bring  
2367 education and training to American citizens that can  
2368 fill those jobs before we have to go to the

2369 Philippines or other places.

2370 I yield back.

2371 Mr. King. I reclaim my time. You know, I am  
2372 under the understanding that we would get about 80  
2373 percent of the nurses from the Philippines, and I am  
2374 also aware that there are some that come from Haiti.  
2375 And I would suggest that they need nurses in Haiti  
2376 more than we need nurses in the United States.

2377 And I am suggesting an American solution for  
2378 American jobs. And when we are looking at an  
2379 unemployment rate that is a rate of -- let's see, we  
2380 have a 9.1 percent unemployment rate, 13.9 million  
2381 Americans that are registered as unemployed, probably  
2382 another 6 to 7 million that are under employed. If we  
2383 can't find the nurses, and we can ramp up this  
2384 educational facility, the gentleman from California,  
2385 we have done so in the institutions that I represent.  
2386 We have doubled the infrastructure, and in doing so,  
2387 we are doubling the turnout.

2388 And so, I think we are filling the gap, and we  
2389 are probably not aware that we are filling the gap.  
2390 And I will be opposing this legislation, but I  
2391 appreciate the spirit with which it comes.

2392 And I would yield back the balance of my time.

2393 Chairman Smith. The gentleman's time is

2394 expired.

2395           The gentlewoman from California, Ms. Waters, is  
2396 recognized.

2397           Ms. Waters. Thank you very much, Mr. Chairman.

2398           I know you are anxious to move forward and get  
2399 Ms. Lofgren's amendment. But this is an opportunity  
2400 that I take to share my concern about the lack of  
2401 support for training nurses in this country. Both of  
2402 the gentlemen on the opposite side of the aisle have  
2403 talked about their tremendous programs, and I would  
2404 like to be made more aware of those programs.

2405           But the fact of the matter is we need nurses in  
2406 this country. We need to train them, and we need to  
2407 scholarship them. We need to pay the tuition to train  
2408 thousands of nurses so that we can fill this gap. I  
2409 do not like continuing H-1C or even H-1B programs as  
2410 long as we are not doing what we should to provide  
2411 training.

2412           And to the gentleman on the opposite side of the  
2413 aisle, it costs money. It costs money to do what we  
2414 all would like to do, and that is train registered  
2415 nurses so that we can fill the need in these  
2416 hospitals. In Los Angeles, we need at least 1,000  
2417 nurses every day that we don't have. And so,  
2418 unfortunately, we are stuck with the need to have

2419 programs where we can bring in nurses so that they can  
2420 provide the very basic services.

2421 I was just at two hospitals last week visiting  
2422 friends who are in hospitals, and most of the nurses  
2423 there were nurses that were there from other countries  
2424 because we don't have the nurses that we need.

2425 So even though we don't have the jurisdiction, I  
2426 would be happy to join with others to talk about how  
2427 we support a comprehensive program for recruiting,  
2428 training, and paying for training for nurses so that  
2429 we can create these careers and have the nurses that  
2430 we need and stop having to resort to importing these  
2431 nurses.

2432 Now I know that there are some who will disagree  
2433 with the fact that we need to spend money. But you  
2434 know, I don't want to say this over and over again.  
2435 But if we can spend money on the wars that we are  
2436 spending money on and other kinds of things, we can  
2437 invest in the human potential of this country, and we  
2438 are not doing that.

2439 So I will join with others on the opposite side  
2440 of the aisle -- maybe everybody except Mr. King -- and  
2441 see what we can do to create some real support in a  
2442 bipartisan fashion. And maybe even with Mr. King.

2443 Ms. Lofgren. Would the gentlelady yield? Would

2444 the gentlelady yield?

2445 Ms. Waters. Yes, I yield.

2446 Ms. Lofgren. I think her comments are very well  
2447 taken, and I wanted to commend a measure that was  
2448 crafted by our colleague from California, a nurse,  
2449 Congresswoman Lois Capps over in the Energy and  
2450 Commerce. Part of the problem here, we have plenty of  
2451 Americans who would like to become nurses. And so, I  
2452 am going to support this bill, and I am glad we have  
2453 the portability provision. But this is something we  
2454 could do if we could get the resources into the  
2455 training programs.

2456 I remember when I was in local government, we  
2457 raised the pay of nurses constantly because it was  
2458 very competitive. And actually, that was good.  
2459 Because when I started in local government, they were  
2460 underpaid. But at the end of the day, we were paying  
2461 the nurses in our hospital more than the nursing  
2462 professors were getting.

2463 And so, there is a mismatch, and there needs to  
2464 be more money put into schools of nursing so that we  
2465 can accommodate the tremendous need, and there are  
2466 lots of Americans who want to become nurses. So we  
2467 need to do that. Until we do, I can support this  
2468 because I think of the sick people at St. Bernard

2469 Hospital in Chicago, they need a nurse today.

2470           And the fact that we have not done our job by  
2471 putting the money, as you have said, where it needs to  
2472 be, you know, we have to take care of those people.  
2473 But I do think we should say this is the last time  
2474 until we see some real money put down on that program.  
2475 I really think you are right.

2476           And I thank the gentlelady for yielding.

2477           Mr. Watt. Would the gentlelady yield? And I  
2478 will be brief.

2479           The problem I have had with this over the years  
2480 is that every time we extend it, we say this should be  
2481 the last time, and then we don't devote the training  
2482 funds or we don't increase salaries to attract people  
2483 into the profession or put the money into training  
2484 programs that allow teachers to train the people who  
2485 are out there willing to take the jobs.

2486           So this becomes a cycle that is kind of self-  
2487 fulfilling, in and of itself. So I appreciate the  
2488 gentlelady yielding, and I associate myself with her  
2489 remarks.

2490           Chairman Smith. The gentleman's time has  
2491 expired.

2492           The gentlewoman from California, Ms. Lofgren, is  
2493 recognized to offer an amendment.

2494 Ms. Lofgren. Mr. Chairman, I have an amendment  
2495 at the desk.

2496 Chairman Smith. The clerk will report the  
2497 amendment.

2498 Ms. Kish. Amendment to H.R. 1933 offered by Ms.  
2499 Zoe Lofgren of California --

2500 Chairman Smith. Without objection, the  
2501 amendment will be considered as read.

2502 [The information follows:]

2503

2504 Chairman Smith. The gentlewoman is recognized  
2505 to explain the amendment.

2506 Ms. Lofgren. I won't take the full 5 minutes.  
2507 I know that time is of the essence.

2508 This is a small number of nurses who are  
2509 permitted to be petitioned for after there is a search  
2510 for American nurses at these 14 hospital institutions.  
2511 Because temporary visa holders are totally dependent  
2512 on their employer, there is an opportunity for the  
2513 market to be skewed.

2514 And so, what this would provide is portability  
2515 for the nurse to move to any of the 14 hospitals if  
2516 one of the 14 petitioned during the term of their  
2517 original visa.

2518 I am glad that the chairman agrees with it. I  
2519 think we should have -- I won't ask for a recorded  
2520 vote.

2521 Chairman Smith. And will the gentlewoman yield,  
2522 please?

2523 Ms. Lofgren. Certainly.

2524 Chairman Smith. Let me say that I agree with  
2525 the reasons given by the gentlewoman from California,  
2526 and I support her amendment and the underlying bill.

2527 Are there any other Members who wish to be heard  
2528 on the amendment?

2529 [No response.]

2530 Chairman Smith. If not, the vote is on the  
2531 amendment. All those in favor, say aye.

2532 [A chorus of ayes.]

2533 Chairman Smith. All opposed, no.

2534 [No response.]

2535 Chairman Smith. The ayes have it, and the  
2536 amendment is agreed to.

2537 A reporting quorum being present, the question  
2538 is on reporting the bill as amended favorably to the  
2539 House. Those in favor, say aye.

2540 [A chorus of ayes.]

2541 Chairman Smith. Opposed, no.

2542 [A chorus of nays.]

2543 Chairman Smith. The ayes have it, and the bill  
2544 as amended is ordered reported favorably.

2545 Without objection, the bill will be reported as  
2546 a single amendment in the nature of a substitute, and  
2547 the staff is authorized to make technical and  
2548 conforming changes. Members will have 2 days to  
2549 submit views.

2550 And a roll call has been requested, and the  
2551 clerk will call the roll.

2552 Ms. Kish. Mr. Smith?

2553 Chairman Smith. Oh, I am sorry. Did I

2554 understand the gentlewoman? Okay. No one has  
2555 requested that a vote be recorded.

2556           That concludes our business. I thank everyone  
2557 for their presence, and we stand adjourned.

2558           [Whereupon, at 12:05 p.m., the committee was  
2559 adjourned.]