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4 FULL COMMITTEE MARKUP OF H.R. 704, THE SECURITY AND FAIRNESS
5 ENHANCEMENT FOR AMERICA ACT OF 2011; H.R. 1550, THE FEDERAL
6 LAW ENFORCEMENT RECRUITMENT AND RETENTION ACT OF 2011; H.R.
7 2076, THE INVESTIGATIVE ASSISTANCE FOR VIOLENT CRIMES ACT OF
8 2011; H.R. 963, THE SEE SOMETHING, SAY SOMETHING ACT OF
9 2011; H.R. 1059, TO PROTECT THE SAFETY OF JUDGES BY
10 EXTENDING THE AUTHORITY OF THE JUDICIAL CONFERENCE TO REDACT
11 SENSITIVE INFORMATION CONTAINED IN THEIR FINANCIAL
12 DISCLOSURE REPORTS, AND FOR OTHER PURPOSES; H.R. 2552, THE
13 IDENTITY THEFT IMPROVEMENT ACT OF 2011; AND H.R. 1981, THE
14 PROTECTING CHILDREN FROM INTERNET PORNOGRAPHERS ACT OF 2011
15 Wednesday, July 20, 2011
16 House of Representatives
17 Committee on the Judiciary
18 Washington, D.C.

19 The committee met, pursuant to call, at 10:17 a.m., in
20 Room 2141, Rayburn House Office Building, Hon. Lamar Smith

21 [chairman of the committee] presiding.

22 Present: Representatives Smith, Sensenbrenner, Coble,
23 Gallegly, Goodlatte, Lungren, Chabot, Issa, Pence, Forbes,
24 King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin,
25 Marino, Gowdy, Ross, Adams, Quayle, Conyers, Nadler, Scott,
26 Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson,
27 Pierluisi, Quigley, Chu, Deutch, and Sanchez.

28 Staff Present: Sean McLaughlin, Majority Chief of
29 Staff; Allison Halatei, Majority Deputy Chief of
30 Staff/Parliamentarian; Sarah Kish, Clerk; Sarah Allen,
31 Majority Counsel; Sam Ramer, Majority Counsel; Andrea
32 Loving, Majority Counsel; Holt Lackey, Majority Counsel;
33 Perry Apelbaum, Minority Staff Director; Keenan Keller,
34 Minority Counsel; David Shahoulian, Minority Counsel; and
35 Ron LeGrand, Minority Counsel.

36

37 Chairman Smith. [Presiding] The Judiciary Committee
38 will come to order.

39 Without objection, the chair is authorized to declare
40 recesses of the committee at any time. And the clerk will
41 call the roll to establish a quorum.

42 Ms. Kish. Mr. Smith?

43 Chairman Smith. Present.

44 Ms. Kish. Mr. Sensenbrenner?

45 Mr. Coble?

46 Mr. Gallegly?

47 Mr. Goodlatte?

48 Mr. Lungren?

49 Mr. Lungren. Here.

50 Ms. Kish. Mr. Chabot?

51 Mr. Issa?

52 Mr. Pence?

53 Mr. Forbes?

54 Mr. King?

55 Mr. Franks?

56 Mr. Franks. Here.

57 Ms. Kish. Mr. Gohmert?

58 Mr. Jordan?

59 Mr. Poe?

60 Mr. Chaffetz?

61 Mr. Chaffetz. Present.

62 Ms. Kish. Mr. Griffin?
63 Mr. Marino?
64 Mr. Marino. Here.
65 Ms. Kish. Mr. Gowdy?
66 Mr. Ross?
67 Mrs. Adams?
68 Mrs. Adams. Present.
69 Ms. Kish. Mr. Quayle?
70 Mr. Conyers?
71 Mr. Conyers. Present.
72 Ms. Kish. Mr. Berman?
73 Mr. Nadler?
74 Mr. Scott?
75 Mr. Scott. Present.
76 Ms. Kish. Mr. Watt?
77 Ms. Lofgren?
78 Ms. Lofgren. Here.
79 Ms. Kish. Ms. Jackson Lee?
80 Ms. Jackson Lee. Present.
81 Ms. Kish. Ms. Waters?
82 Mr. Cohen?
83 Mr. Johnson?
84 Mr. Pierluisi?
85 Mr. Quigley?
86 Mr. Quigley. Here.

87 Ms. Kish. Ms. Chu?
88 Ms. Chu. Here.
89 Ms. Kish. Mr. Deutch?
90 Ms. Sanchez?
91 Mr. Gallegly?
92 Mr. Gallegly. Here.
93 Ms. Kish. Mr. Gohmert?
94 Mr. Gohmert. Here.
95 Ms. Kish. Mr. Goodlatte?
96 Mr. Goodlatte. Here.
97 Ms. Kish. Mr. Jordan?
98 Mr. Jordan. Here.
99 Ms. Kish. Mr. Coble?
100 Chairman Smith. The gentleman from North Carolina,
101 Mr. Coble?
102 Mr. Coble. Here.
103 Chairman Smith. Present.
104 The gentleman from Arkansas, Mr. Griffin? Present.
105 Ms. Kish. Mr. Watt?
106 Chairman Smith. The gentleman from North Carolina,
107 Mr. Watt, is present.
108 [Laughter.]
109 Chairman Smith. The clerk will report.
110 Ms. Kish. Mr. Chairman, 20 Members responded present.
111 Chairman Smith. A working quorum is present. So we

112 will proceed with our markup.

113 We will start off with H.R. 704, the Security and
114 Fairness Enhancement for America Act of 2011. Pursuant to
115 notice, I now call up H.R. 704 for purposes of markup, and
116 the clerk will report the bill.

117 Ms. Kish. H.R. 704. To amend the Immigration and
118 Nationality Act to eliminate the Diversity Immigrant
119 Program. A bill to amend the Immigration and --

120 Chairman Smith. Without objection, the bill will be
121 considered as read.

122 [The information follows:]

123

124 Chairman Smith. I will begin by recognizing myself
125 for an opening statement, and then the ranking member, the
126 gentleman from Michigan, for an opening statement.

127 H.R. 704, the Security and Fairness Enhancement for
128 America, or SAFE for America, Act was introduced by our
129 colleague, the gentleman from Virginia, Mr. Goodlatte. The
130 bill eliminates the Diversity Visa Program, which provides
131 up to 55,000 green card visas per year and has been flawed
132 from the outset.

133 This program is better known as the "visa lottery,"
134 since thousands of immigrants are selected at random to
135 receive green cards. Basing our immigration system on the
136 luck of the draw is not smart immigration policy. It is an
137 open invitation for fraud and a jackpot for terrorists.

138 The visa lottery program was created in 1990 to
139 increase diversity in the U.S. immigration population.
140 Since they were first issued in 1995, over 785,000 diversity
141 visas have been issued. Individuals who receive a diversity
142 visa are free to petition for green card visas for their
143 family members. So the goal of the program has been met.

144 But even if that goal wasn't met, there are
145 significant reasons to eliminate the Diversity Visa Program.
146 First, the program is plagued by fraud. At an April 5,
147 2011, hearing on the SAFE for America Act, the former Deputy
148 Assistant Secretary of State for Visa Security, Tony Edson,

149 testified about the many types of fraud he and his
150 colleagues saw in the program.

151 He stated that visa lottery fraud "includes multiple
152 entries, fraudulent claims to education and work experience,
153 pop-up spouses or family members, relatives added after the
154 application is submitted, and false claims for employment or
155 financial support in the United States."

156 And he noted that unscrupulous third-party agents
157 often enroll individuals in the visa lottery without the
158 individual's knowledge. If the person is selected for the
159 lottery, the agent then sells the winning visa lottery slot
160 to the highest bidder. In fact, one such agent actually
161 entered every name in the Bangladesh phone book into the
162 lottery in order to extort money from those who were
163 selected and to sell the winning slots.

164 Marriage fraud is also a problem. Some lottery
165 winners marry so that their spouse and the spouse's family
166 will get to come to the United States. And many legitimate
167 winners accept payment in return for marrying a spouse and
168 taking on a family.

169 Document fraud is also rampant in the visa lottery
170 program. When a person purchases a winning slot from an
171 agent, that person must have the identity documents that
172 match the name on the winning application. And the required
173 documents proving that the person meets the requirement of

174 the equivalent of a U.S. high school education or 2 years of
175 work experience are often forged.

176 In 2003, the State Department's Inspector General
177 issued a report outlining the fraud in the program. And in
178 2007, GAO issued a similar report. Potential terrorism is
179 also a problem in the Diversity Visa Program. The 2007 GAO
180 report noted that "difficulty in verifying identities has
181 security-based implications because State Department
182 security checks rely heavily on name-based databases."

183 And each year, diversity visas are issued to
184 individuals from countries listed as state sponsors of
185 terrorism. For the 2011 program, 1,800 Iranians, over 550
186 Sudanese, and 32 Syrians were issued diversity visas.
187 Unscrupulous agents who sell winning lottery slots can just
188 as easily sell them to a terrorist as to someone who is not
189 a terrorist.

190 While a small number of people who play the lottery
191 actually win the prize, most people lose. With the visa
192 lottery, the American people lose since U.S. immigration
193 policy and national security are compromised.

194 I urge my colleagues to support the SAFE for America
195 Act and recognize the gentleman from Michigan, the ranking
196 member of the committee, Mr. Conyers.

197 Mr. Conyers. Thank you, Chairman Smith, members of
198 the committee.

199 The bill before us is a little bit sensitive to me
200 because this is a program, unfortunately, that is dealing
201 with the issues of many people from the sub-Saharan part of
202 the African continent coming over here. And for this
203 program of all to be selected, it is a bit of a surprise.

204 First of all, many of the criticisms that have been
205 found about the program by the State Department have already
206 been corrected.

207 Secondly, if there are problems still with the
208 program, I would like to plead with the members of this
209 committee to let's make improvements and corrections rather
210 than to decide to eliminate the program in its entirety.
211 And so, I am making an appeal to my good friend from
212 Virginia, Mr. Goodlatte, to consider either corrections or
213 withdrawing the amendment until we have time to deal with
214 it.

215 Now we have a proposal to eliminate the Diversity Visa
216 Program. And so, I am looking for ways to make our
217 immigration system work for people that desire and meet the
218 qualifications to come in. We are in the process in this
219 bill attacking a very important legal pathway for
220 immigration to this country.

221 And remember, Bob that immigration for people of color
222 has always historically been on a discriminatory basis,
223 unfortunately. It has been remedied to some extent now.

224 But for us now to throw it out in its entirety because we
225 found one instance in which anything connected with
226 terrorism has ever occurred in all the years that it has
227 existed.

228 So I begin the consideration of this bill with the
229 understanding that the diversity program has always been an
230 important part of our immigration system, and I am looking
231 for ways to improve it rather than to throw this program out
232 whole hog. It provides a legal avenue for diverse
233 populations of qualified individuals to immigrate to this
234 country.

235 Without this program, our immigration system would
236 look very different and not in a good way. African
237 immigrants make up roughly one third of the Diversity Visa
238 Program, but only 3 percent of the family and employment-
239 based immigrants. The truth is that eliminating the
240 diversity program, quite frankly -- and I say this in all
241 fairness -- would basically eliminate African immigration to
242 this country and would be interpreted as a discriminatory
243 move on the part of the committee and those who are
244 supporting its total elimination.

245 It also plays -- the program also plays an important
246 foreign policy role for the United States, a very important
247 one. In some countries around the world, the diversity
248 program represents the only realistic opportunity for people

249 who want to play by the rules in immigration to get here.
250 It sustains the idea of the American dream because
251 applicants from around the world know that if you get here,
252 anything is possible. There has been so many success
253 stories of immigrants who have come here.

254 And the critics point to this one diversity recipient
255 who did get in trouble and do something wrong. But
256 remember, 800,000 immigrants have entered the United States
257 through the Diversity Visa Program. Let's not end it now.

258 And I thank you for the additional time, Mr. Chairman.
259 Chairman Smith. Thank you, Mr. Conyers.

260 The gentleman from California, Mr. Gallegly, the
261 chairman of the Immigration Subcommittee, is recognized.

262 Mr. Gallegly. Thank you, Mr. Chairman.

263 Mr. Chairman, I wholeheartedly support H.R. 704, which
264 would eliminate the visa lottery program under which 55,000
265 individuals are chosen completely at random each year to
266 receive these immigrant visas.

267 The visa lottery, which was first implemented in 1995,
268 has long been filled with fraud. The State Department's
269 Inspector General testified in 2003, 2004, and 2005 about
270 fraud and abuse in the program, and that is still the case
271 in 2011, when the Immigration Subcommittee heard in our
272 April hearing from witnesses who testified that the program
273 is subject to fraud by applicants themselves, as well as

274 third-party brokers who abuse both the visa system and those
275 applicants.

276 And why is fraud such a concern? Well, because
277 terrorists have already used the visa lottery as a means of
278 entering this country. The Egyptian terrorists who murdered
279 two Americans at L.A. International Airport, 2002, was a
280 diversity visa recipient when his wife was selected for the
281 lottery.

282 And a Pakistani national, who received a diversity
283 visa when his parents were selected for the lottery, pleaded
284 guilty in 2002 to conspiring to wage jihad by plotting to
285 destroy electrical power plants, the Israeli consulate, and
286 other south Florida targets. He had reportedly told his
287 friends that he wanted to wage war against the United
288 States.

289 But terrorists are not the only people who abuse the
290 visa lottery. At the subcommittee's April hearing, we heard
291 testimony detailing how foreign organized crime groups
292 utilized the visa lottery program to bring people here into
293 the United States. A lottery is, by its very nature, a
294 gamble. And in this case, it is a gamble that our national
295 security can't afford.

296 I urge my colleagues to support H.R. 704, and I yield
297 back my time.

298 Chairman Smith. Thank you, Mr. Gallegly.

299 The gentlewoman from California, Ms. Lofgren, the
300 ranking member of the Immigration Subcommittee, is
301 recognized.

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

303 Our colleagues on the other side of the aisle are fond
304 of saying that while they are opposed to illegal
305 immigration, they are very much in favor of legal
306 immigration. But I can't see how anything in this bill is
307 anything other than an attack on legal immigration and legal
308 immigrants.

309 Those on the other side say the problem with the
310 Diversity Visa Program is that it is rife with fraud and
311 abuse. Well, if that is the concern, then let's find ways
312 to fix the program.

313 We can add protections to eliminate fraud. We can
314 require application fees to prevent third-party filings and
315 other ways to game the system. We can strengthen security
316 provisions if there is a problem with those, but I would
317 note that the Congressional Research Service told us in its
318 April report, and I quote, "We found no documented evidence
319 that diversity visa immigrants posed a terrorist or other
320 threat."

321 But this bill does not seek ways to fix the program.
322 It simply wants to do away with it. And what is worse, the
323 bill would throw all those immigrant visas away, even though

324 the country's other legal immigration programs are starved
325 for visas and are suffering from decade-long backlogs.

326 If the majority actually thought that the Diversity
327 Visa Program was so broken that it needed to be eliminated
328 but also truly supported legal immigration, they would have
329 made those visas available to family and employment-based
330 immigrants. But again, that is not what the bill does. It
331 simply tosses those visas in the trash, even while U.S.
332 citizens and legal permanent residents are kept apart from
333 their family members and American businesses are denied the
334 employees they need to move our economy forward.

335 At a recent hearing on this bill in the Immigration
336 Subcommittee, the author of the bill lamented that the visa
337 lottery program is unfair to immigrants who comply with U.S.
338 immigration laws, noting that most family and employer-
339 sponsored immigrants currently face a wait of many, many
340 years to legally enter the U.S.

341 Well, if we were actually concerned with those family
342 and employer-sponsored immigrants who comply with our laws
343 but are forced to wait many, many years, wouldn't we use
344 these diversity visas to help those immigrants? The truth
345 is this bill merely seeks to reduce available legal avenues
346 for people seeking to immigrate to this country legally.

347 There are people, as some like to say, who are trying
348 to come to this country "the right way," but apparently,

349 there is no right way good enough for the 55,000 immigrant
350 visas this bill destroys.

351 I am a fan of the Diversity Visa Program. As I noted
352 at the legislative hearing on the bill before the
353 subcommittee, the program has been largely successful at
354 increasing the diversity of legal immigrants to the United
355 States, which has greatly enriched and strengthened our
356 Nation.

357 And we know the diversity visa winners help strengthen
358 this country in other ways. The State Department has
359 described the typical diversity visa recipient as a
360 professional, age 26 to 30, holding a university degree.
361 The CRS, Congressional Research Service, in their report
362 found that diversity immigrants were two and a half times
363 more likely to report managerial or professional occupations
364 than other permanent residents.

365 Further, diversity visa winners must undergo
366 background and security checks that are more rigorous than
367 those required for persons entering the country through
368 other legal means, including the Visa Waiver Program. There
369 is no evidence that a terrorist is more likely to enter the
370 U.S. under this program than any other immigration category.
371 In fact, given that tens of millions of people apply for
372 only 50,000 diversity visas every year, the program is an
373 incredibly inefficient means of entry for a person who seeks

374 to do us harm.

375 And finally, the State Department has made significant
376 efforts to reduce the risk of fraud and abuse in the program
377 in recent years, including by converting to an electronic
378 application process, requiring the submission of digital
379 photographs, and ending the practice of notifying winners by
380 mail and increasing outreach and education to applicants.

381 This is a successful program that makes our country
382 stronger, and we should keep it. If problems exist, let's
383 focus on ways to improve the program.

384 But if the majority pushes forward with its efforts to
385 eliminate this program, we must not eliminate the visas
386 authorized by it. If we care at all about legal immigrants
387 or about the U.S. citizens and American companies that are
388 seeking to bring those immigrants to our shores, we must at
389 least give these visas to those who desperately need them.

390 And I yield back the balance of my time.

391 Chairman Smith. Thank you, Ms. Lofgren.

392 [Pause.]

393 Mr. Goodlatte. Mr. Chairman?

394 Chairman Smith. The gentleman from Virginia, Mr.
395 Goodlatte, is recognized.

396 Mr. Goodlatte. Thank you, Mr. Chairman.

397 I apologize for the delay in the process. The ranking
398 member wanted to talk to me about what he brought up in his

399 remarks. And while I told him that I always willing to meet
400 with him and discuss the merits of any legislation, I
401 believe that this legislation is very good legislation. It
402 is very well founded, and it has strong bipartisan support
403 and, therefore, should move forward.

404 In fact, this legislation has passed the House of
405 Representatives on a previous occasion under a Republican
406 Congress. And under a Democratic Congress, it passed in
407 terms of cutting off the program as a part of an
408 appropriations measure. So, again, it has that kind of
409 bipartisan support that I think indicates that it should be
410 halted.

411 I would also ask to make a part of the record the
412 claims I have listened to about how this program have been
413 fixed. Just this morning, just today, the USCIS sent out an
414 email that says, "Have you or someone you know recently
415 received an email claiming you won the green card lottery
416 and asking you send or wire money? Don't fall for it. The
417 sender is trying to steal your money." And that links to an
418 email sent out on March 2nd of 2011 that talks about the
419 extent of this problem.

420 That is a problem with people who prey on these
421 millions of people who seek to change their lives by the 1
422 in 300 chance they have of having their particular name
423 drawn out of a visa lottery. Not a good way to plan your

424 future. Not something that I think is great in terms of the
425 United States, but certainly a scam.

426 Then there is the problem of the ongoing reports of
427 individuals who change one letter in the spelling of their
428 name or do other things to have multiple entries and commit
429 fraud in attempting to apply for the program.

430 And then there is the claim that people who come here
431 are people with special skills. Well, in point of fact, the
432 law requires barely more than a high school education and no
433 particular job skills.

434 And I would also ask to put into the record a Wall
435 Street Journal article dated just a month ago, June 25,
436 2011, entitled, "I am not sure I am lucky," about a Turkish
437 immigrant who won the visa lottery, came to the United
438 States expecting that he would get a great engineering job
439 because that is what his qualifications are, and he is
440 driving a cab in Los Angeles.

441 [The information follows:]

442

443 Mr. Goodlatte. The fact of the matter is this program
444 is wrought with problems for the Immigration Service.
445 During the hearing, we had a former consular officer testify
446 that if you ask consular officers around the world what the
447 number-one problem that they have to deal with in their
448 consular offices, they would overwhelmingly name the visa
449 lottery as that program.

450 The problems have not been fixed, and we haven't even
451 begun to talk about the national security problems or what I
452 think is the real problem, and that is that this doesn't
453 address the fact that here in the United States, immigration
454 -- legal immigration, which we are probably the most
455 generous nation in the world for legal immigration -- must
456 be a two-way street.

457 It should recognize that there are millions of people
458 around the world who want to come to the United States to
459 better their lives, for a greater opportunity. But it
460 should also recognize that the people we admit to the United
461 States should fulfill those needs. And the primary way we
462 have done that historically has been through family
463 reunification, people with job skills that are needed in the
464 United States, or people who are fleeing some kind of
465 persecution or turmoil in their countries through our
466 political asylum and refugee programs. This program is not
467 needed.

468 When I was practicing immigration law prior to my
469 election to Congress, I represented people from more than 70
470 countries who were seeking to legally immigrate in the
471 United States back in the 1980s and early 1990s. And many
472 of those people, I would say to the gentleman from Michigan,
473 were from African nations.

474 We should not have an immigration policy that
475 discriminates. I certainly agree with that. But the fact
476 of the matter is, this policy discriminates in what I think
477 is a much more concerning way than simply what happens as a
478 result of the luck of the draw. And here is how that
479 happens.

480 There are about -- it varies from year to year, but
481 there are about 15 countries where each year you cannot
482 participate in the visa lottery because not based upon
483 ethnicity, not based upon anything other than the country
484 you are from, you are not allowed to participate. And among
485 those countries over the years are Mexico, Canada, the
486 Philippines, India, China, the United Kingdom, Nigeria,
487 Egypt. Different years different countries are on that
488 list.

489 And on that list are people who are waiting to come to
490 the United States, who have long waiting lists. And so,
491 they are bypassed. They are simply bypassed by somebody who
492 not based upon having a job skill that is needed in the

493 country or even a job, not based upon having family
494 reunification. But simply based upon pure luck, they get to
495 get a visa and come to the United States.

496 What for? Why? Well, certainly, from their
497 perspective we understand why. But here in the United
498 States, where we have a 9.2 unemployment rate and 14 million
499 Americans looking for work, why are we adding people who are
500 not -- and I know my time is expired. But why are we adding
501 people who are not needed in terms of family reunification
502 or particular job skills.

503 So I yield back, Mr. Chairman, and I hope my
504 colleagues will join me in ending this very bad program.

505 Chairman Smith. Thank you, Mr. Goodlatte.

506 Ms. Lofgren. Would the --

507 Chairman Smith. The gentlewoman from California?

508 Ms. Lofgren. I would like to be recognized for a
509 unanimous consent request.

510 Chairman Smith. Okay. Without objection.

511 Ms. Lofgren. I would like to add into the record of
512 this meeting the report that we received from the
513 Congressional Research Service, titled "Diversity Immigrant
514 Visa Lottery Issues," on April 1, 2011, indicating that half
515 of the diversity visas go to individuals from Africa and a
516 quarter of those individuals are professional and managerial
517 individuals.

518 Chairman Smith. Okay. Without objection, the report
519 will be made a part of the record.
520 [The information follows:]
521

522 Chairman Smith. Does the gentlewoman from Texas, Ms.
523 Jackson Lee, have an amendment?

524 Ms. Jackson Lee. I have an amendment, Mr. Chairman.

525 Chairman Smith. The clerk will report the amendment.

526 Ms. Kish. Amendment to H.R. 704 offered by Ms.

527 Jackson Lee. Strike Section 2 and insert the following.

528 Section 2, recommendations for elimination of potential for

529 fraud and other security risks in diversity immigrant

530 program.

531 Chairman Smith. Without objection, the amendment will
532 be considered as read.

533 [The information follows:]

534

535 Chairman Smith. And the gentlewoman from Texas is
536 recognized to explain her amendment.

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

538 I enjoyed the discourse and debate of the ranking
539 members and the sponsor of the bill. And I start by
540 indicating that my amendment really reinforces the question,
541 "If not legal immigration, then what?" The diversity visa
542 amendment process rather was found in 2007 by the GAO that
543 no evidence shows that diversity visa immigrants pose a
544 terrorist or other kind of threat.

545 My amendment requires the Department of Homeland
546 Security and Department of State to do what I believe
547 Republicans have spoken about in the past, which is in
548 support of legal immigration. Let's make it better, and
549 let's ensure that there is a legal immigration structure so
550 that no mercy need to be given to those who are here
551 undocumented.

552 And my amendment would reinforce the Diversity Visa
553 Program, eliminate the elimination that is in the underlying
554 bill, and ask the Department of Homeland Security,
555 Department of State to make recommendations on the
556 elimination of fraud in the Diversity Visa Program.

557 This amendment would strike Section 2 of H.R. 704 and
558 replace it with a requirement that the Secretary of DHS, in
559 consultation with the Secretary of DOS, report back to the

560 Committee on the Judiciary of the House and Senate within
561 180 days of the date of enactment their recommendation for
562 the elimination of fraud in Diversity Visa Program.

563 There are only 55,000 visa opportunities under the
564 Diversity Visa Program every year. Nearly 800,000
565 immigrants have entered the U.S. through the Diversity Visa
566 Program and have been very much a part of the contributions
567 to this country.

568 We cannot label the Diversity Visa Program as a
569 terrorist opportunity program. The truth is the diversity
570 visa winners must pass a variety of criminal and security
571 checks. In fact, they are scrutinized more than many other
572 people who come to the United States, including every person
573 who comes through the Visa Waiver Program.

574 It is important to diversify America's opportunity to
575 come to this country, and the State Department has
576 vigorously suggested that this is an important foreign
577 policy tool. One of the largest opportunities for
578 friendship, collaboration, trade is on the continent of
579 Africa and the opportunity for those talented individuals to
580 come and contribute to the United States of America. Two
581 days ago --

582 Mr. Conyers. Would the gentlelady yield?

583 Ms. Jackson Lee. I would be happy to yield to the
584 gentleman.

585 Mr. Conyers. I want to thank you for this amendment.

586 Is the thrust of your amendment one that would ask
587 Homeland Security and the Department of State to make
588 recommendations as to how to eliminate some of the
589 criticisms in this program and then bring it back to the
590 committee?

591 Ms. Jackson Lee. Absolutely, Mr. Conyers. You are
592 correct.

593 I believe this bill is putting, in Texas language, the
594 cart before the horse. We have no documented information
595 that the 800,000 that have come over a period of time and
596 the 55,000 that are able to come every year have posed a
597 sufficient threat or have created a problem or, as the
598 sponsor of the bill has said, it is not needed. We have no
599 proof that it is not needed.

600 We do have at least the understanding that the largest
601 opportunity for Africans to come to the United States is
602 through the diversity visa, where that is not the case in
603 many other locations around the world. So this amendment
604 indicates let us do our homework. Yes, there was a hearing,
605 but the hearing presented different information. The
606 ranking member, Congresswoman Lofgren just submitted a CRS
607 report, I believe, that gives us a countering position.

608 So let me suggest to you that this is not a willy-
609 nilly program. For example, the submission of fingerprints,

610 the digital photographs now helps to identify duplicates and
611 fraudulent applications. The shift to online application
612 helps prevent unscrupulous persons from extorting money from
613 applicants. And finally, the State Department posts are now
614 providing an education to the community about the rules of
615 the program.

616 We can do more. Let's fix it. Don't end it. And in
617 the backdrop of commemorating President Mandela's birthday
618 on Monday, a very shining example of a strong relationship
619 between an African country and the United States, a valuable
620 relationship, this visa program would eliminate
621 opportunities for South Africans, Ghanaians, and others who
622 have been of help to the United States and many other
623 countries that have been of help to the United States --
624 Ethiopians and others. I don't want to call a long list,
625 the continent of Africa, many of whom who fought alongside
626 of our troops in Iraq, many of whom who have helped in
627 conflicts in Africa alongside of United Nations troops, to
628 eliminate the opportunity for them to come.

629 And as we face in Africa one of the largest horrific
630 droughts and devastation of loss of life, of individuals who
631 are now fleeing to Kenya because of terrible drought, we
632 know that there are great needs on that continent. The visa
633 program is not a program that may help those suffering from
634 this drought, but we do know that the opportunities for

635 Africans and others to come to the United States can build
636 the relationship, can help us with issues of conflict and
637 devastation on the continent by those who are here in the
638 United States.

639 And frankly, I believe that this amendment is a
640 thoughtful amendment that would give us the tools and the
641 structure to fix the program. I ask my colleagues to
642 support this amendment.

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

644 The gentleman from Virginia, Mr. Goodlatte, is
645 recognized.

646 Mr. Goodlatte. Thank you, Mr. Chairman.

647 Mr. Chairman, I speak in strong opposition to this
648 amendment. The amendment would gut the bill and replace it
649 with a study. And if you have listened to the opening
650 statements that have taken place thus far, you know that
651 this issue has been studied extensively already. In fact,
652 we have had studies from the State Department. We have had
653 studies from the Immigration Service. We have had studies
654 from CRS.

655 The fact of the matter is that when the party of the
656 gentlewoman from California was in the majority and she was
657 chairman of this subcommittee, in spite of all of these
658 studies being available to her outlining all of the problems
659 that we have described, nothing, not a thing was done to fix

660 those here in the Congress with the legislative solutions
661 that she talks about.

662 The visa lottery program is a national security
663 threat, and it should be shut down sooner rather than later.
664 We simply cannot afford to allow hostile foreign
665 intelligence officers and terrorists to continue to enter
666 the country through this program.

667 Also we know that this program is on its face
668 discriminatory. The Immigration Subcommittee has already
669 conducted hearings on this very issue. In a previous
670 Congress, we heard from an expert witness that the program
671 discriminates against many foreign nationals based on race
672 and nationality. The program currently excludes citizens
673 from Mexico, Haiti, El Salvador, China, India, Vietnam, and
674 many others.

675 In addition, there are many ways in which immigrants
676 from all countries can enter the U.S. legally. These race
677 and nationality neutral methods are available to bring
678 foreign nationals into the U.S. who have connections with
679 family members lawfully residing in the United States or
680 with U.S. employers.

681 These types of relationships also help ensure that
682 immigrants entering our country have a stake in continuing
683 America's success and have needed skills to contribute to
684 our Nation's economy. Instead, the visa lottery program

685 selects who may enter the U.S. totally at random, except for
686 the fact that it specifically excludes those of certain
687 nationalities.

688 The visa lottery program represents what is wrong with
689 our immigration system. This amendment merely perpetuates
690 the problems with the visa lottery program, and I urge my
691 colleagues to oppose it.

692 Chairman Smith. Thank you, Mr. Goodlatte.

693 The gentlewoman from California, Ms. Lofgren, is
694 recognized.

695 Ms. Lofgren. Thank you, Mr. Chairman. I move to
696 strike the last word, and I --

697 Chairman Smith. The gentlewoman is recognized for 5
698 minutes.

699 Ms. Lofgren. I support the gentlelady's amendment. I
700 think it would be worthwhile to know what we are doing
701 before we do it, and I think that would be the impact of her
702 amendment.

703 I would note also -- I think it is clear, but I am not
704 sure, and so that is why I am raising it. We have 55,000
705 diversity visas a year, but 5,000 of those go to relief for
706 Nicaraguans. As the committee, at least those members who
707 have been on the committee for a long time, will doubtless
708 recall, there was a refugee crisis with Nicaraguans, many of
709 whom ended in the United States.

710 And rather than support those Nicaraguans in a way
711 that was expansive, as we did and as I think we should have
712 with other disadvantaged migrations -- for example, from
713 Cuba or from Vietnam -- we have sort of doled out in a
714 rather limited fashion visas to the Nicaraguans.

715 Now 5,000 of the visas are supposed to be deducted
716 from the Diversity Visa Program. And I assume that somehow
717 an additional 5,000 visas are going to magically appear so
718 that the Nicaraguans will not be disadvantaged. This was
719 something that was bipartisan. Mr. Berman was a leader in
720 this, along with both of the Diaz-Balart Members of
721 Congress.

722 And I would hope that we might clarify that, and I
723 wanted to say a further thing about the whole point of the
724 Diversity Visa Program. I was not in Congress when it was
725 enacted, but it was originally -- the concern was expressed
726 when we went to a per-country system in 1965 that we would
727 end up narrowing the pool of immigrants because our system
728 was primarily based on family relationships. And
729 interestingly enough, at the time, the motivation was
730 concern by then-chairman Peter Rodino and then on the Senate
731 side, then-chairman Ted Kennedy that, ultimately, there
732 would be no immigrants from Italy or Ireland and that there
733 ought to be some way to make sure that that flow could
734 continue and that we would have a diverse immigration

735 system.

736 Over time, who hasn't had the family ties to support
737 immigration has been African immigrants, which is why I
738 think many Members are very uncomfortable that this really
739 is an anti-African immigration bill. I am not saying it was
740 intended as such, but that certainly will be the impact.

741 So I think we ought to study these issues, and I would
742 hope that we could get clarification on the impact on
743 Nicaraguans, which, if it isn't as I am guessing that the
744 Nicaraguans will still get their 10,000 visas a year, this
745 could have a very severe adverse --

746 Mr. Cohen. Would the lady yield for a question?

747 Ms. Lofgren. I would be happy to yield for an answer
748 to that.

749 Mr. Cohen. Let me ask you this, Ms. Lofgren. This
750 originally was Ted Kennedy's bill, dear friend to the
751 chairman, and it was for Italians and Irish?

752 Ms. Lofgren. Yes. It was Rodino and Kennedy, right.

753 Mr. Cohen. So this is something the Italian and Irish
754 should be very concerned about?

755 Ms. Lofgren. Could be in the future. Right now, it
756 is Africans.

757 Mr. Conyers. Not anymore. Would the gentlelady
758 yield?

759 Ms. Lofgren. I would certainly yield to the

760 gentleman.

761 Mr. Conyers. First of all, her recollection is
762 correct about the origins of this measure. But I think at
763 the heart of this, and I wish I could remember about the
764 Nicaraguan slots and why they should not be reallocated
765 among the larger number.

766 But the question really before the committee is do we
767 just vote to abolish this this morning, or do we adopt the
768 sentiments of the gentlelady from Texas and say let's give
769 it to Homeland Security -- who has never weighed in on this,
770 by the way -- and to the Department of State and ask them to
771 tell us?

772 They may come back and tell Mr. Goodlatte that he is
773 absolutely correct. There is no hope for this program, and
774 it ought to be abolished. I would be willing to abide by
775 that.

776 Ms. Lofgren. Reclaiming my time, I thank you, Mr.
777 Chairman. I hope that we can get a clarification on the
778 impact on NACARA and the Nicaraguans.

779 And I would also note my colleague from New York, Mr.
780 Nadler, has mentioned the useful role played by the former
781 chairman Bruce Morrison. I certainly do not want to neglect
782 his incredible service. But I remember the chairmen of the
783 full committees as being very committed to this issue.

784 And I yield back.

785 Chairman Smith. Thank you, Ms. Lofgren.
786 The gentleman from Iowa, Mr. King, is recognized.
787 Mr. Conyers. Don't turn on the mike.
788 [Laughter.]
789 [Pause.]
790 Mr. Conyers. Don't turn on the mike.
791 Chairman Smith. Now, now, Mr. Conyers. Is that one
792 working? I am not sure that mike is working.
793 Mr. Conyers. That is okay. That is very good.
794 [Laughter.]
795 Mr. King. There. I have got something.
796 Chairman Smith. There you go.
797 Mr. King. Double push, the red light comes on.
798 Okay. Thank you, Mr. Chairman.
799 I appreciate you bringing this bill before the
800 committee. I would like to issue a challenge to my
801 colleagues on the other side, and that is let's see if we
802 can go through this entire markup today without profiling.
803 I think that would be a worthy challenge.
804 Right now, I hear the gentleman from Tennessee profile
805 Italians and Irish as if they might have a standard position
806 because of their race or ethnicity. I think we are all
807 human beings, with individual opinions and judgment.
808 I have heard the gentlady from California and the
809 gentlady from Texas essentially profile Africa. There is

810 a lot of diversity in Africa. There are people of all
811 races, ethnicities, and religions there, and I don't think
812 we should think about them as a single unit. I think we
813 should think about them as individuals.

814 And then the language that gets a little less specific
815 in here that is designed to cause us to maybe go a little
816 soft is we should take care that we carve out the 5,000 or
817 10,000, whatever that number might be, for Nicaraguans, "so
818 that Nicaraguans won't be disadvantaged." How is it a
819 disadvantage when you no longer have a special category,
820 when you are back into the line with the other 50 million
821 people in the world that have lined up in a legal way to
822 respect America's immigration laws and come into the United
823 States in the appropriate way?

824 You know, the argument that there is no proof that
825 this bill is not needed, in reference to Mr. Goodlatte's
826 statement about the numbers of unemployed that we have.
827 Fourteen plus million unemployed in America, another 6
828 million, 7 million, or 8 million people that are
829 underemployed in America. We have 80 million plus people in
830 America who are of working age that are simply not in the
831 workforce and a recession of proportions that eclipses
832 everything except the Great Depression. And we don't have
833 proof that the visa lottery is not needed? I think it is
834 very clear.

835 And the argument about diversity. I am a little worn
836 out with looking around, trying to identify somebody's
837 characteristics physically and calling that diversity. I
838 think if we are interested in diversity, let's look at
839 thought and expression, ability to contribute to society.
840 Let's look at the things that cause people to contribute to
841 our culture. It is not skin color. It is not national
842 origin. It is the values that we have within us.

843 And if we really want to address diversity, let's go
844 to the universities across America and take a look at the
845 professors and the curriculum and see about the lack of
846 diversity in the thought process in our educational
847 institutions in America.

848 This is all a facade about diversity. Real diversity
849 is being able to engage in thought and debate and understand
850 fundamental principles, the principles of Western
851 civilization because that is what we are. And carry those
852 values forward into America so we can be a better country.

853 UN troops, I don't think I want to go into that. But
854 the family relationships also. We know from sitting in this
855 committee and testimony before this committee just a few
856 years ago that only 7 to 11 percent of the legal immigration
857 in America is based on merit, 7 to 11 percent. The rest of
858 it is out of control of the Congress itself.

859 This is only 50,000 that would be eliminated from that

860 list of no merit required, as Mr. Goodlatte said. There is
861 another nearly 1 million people, as I say, around 900,000
862 people that come into America every year. They are never
863 measured on what they can do to contribute to society.

864 Our immigration policy should be designed to enhance
865 the economic, the social, and the cultural well-being of the
866 United States. Any nation should set an immigration policy
867 that is designed to improve them. That is why I make this
868 point.

869 Now that is 89 percent to 93 percent that come in here
870 legally aren't based on merit. I would ask the chairman if
871 he would be interested in, and if the subcommittee chairman
872 also were interested in, advancing this thought that we
873 should set up a filter here in our legal immigration so that
874 we can identify real merit and real diversity, people that
875 can contribute to our society, as a lot of the rest of the
876 world has done, including Canada, United Kingdom, and
877 Australia.

878 Those, I think, set some models for us. We have had
879 hearings on that subject matter, and I would ask the
880 chairman what he might think of such a proposal?

881 Chairman Smith. If the gentleman would yield?

882 I certainly think we ought to admit individuals who
883 will contribute to America.

884 Mr. Nadler. Mr. Chairman?

885 Mr. King. Reclaiming my time and thanking the
886 chairman, I would yield it back to him.

887 Thank you very much.

888 Mr. Nadler. Mr. Chairman?

889 Chairman Smith. Thank you, Mr. King.

890 The gentleman from New York, Mr. Nadler, is
891 recognized.

892 Mr. Nadler. Thank you, Mr. Chairman.

893 I rise in support of the gentlelady's amendment, and I
894 simply want to say certainly we ought to look at people who
895 can contribute to society. But when I hear all this talk
896 about merit, I wonder about how many of our grandparents and
897 great-grandparents would have passed the merit test? How
898 many of us would be here if that had been applied uniformly
899 100 years ago?

900 I now would be happy to yield to the gentlelady from
901 California.

902 Ms. Lofgren. Thank you, Mr. Nadler.

903 I just want to make a clarifying point that the
904 Nicaraguans in question that I mentioned earlier were
905 legally admitted to the United States. They are not here in
906 any kind of untoward fashion. They were admitted to the
907 United States, unlike people who have fled from certain
908 other parts of the world. For example, Cubans, they were
909 not permitted to gain permanent status. And over the years,

910 visas have dribbled out to those individuals. And they are
911 not going away because they are here in lawful status.

912 But the gentleman's concern, I think he was not
913 probably on the committee when this was enacted into law,
914 but it was a misstatement as to the issue. And I would just
915 say on the issue of merit, you know, I think when you think
916 about the American citizens who are trying to reunify with
917 their unmarried sons and daughters, they have to wait 7 to
918 18 years to do that. Is there merit in having American
919 citizens be able to be with their sons and daughters? I
920 think so.

921 When I think of the merit of my grandfather, who got
922 off the boat, and he didn't have anything. But because he
923 had the courage to get on that boat and the desire to live
924 in a free country, I get to be in the Congress today.

925 Our country was created and made great by people who
926 were brave enough and inspired enough to want to come to
927 America and become Americans. And if we turn our back on
928 that, we cut off our future.

929 And I would yield back to the gentleman from New York
930 and thank him for allowing me that time.

931 Mr. Nadler. Thank you. I yield to the gentlelady
932 from Texas.

933 Ms. Jackson Lee. I thank the gentleman from New York.

934 I want to emphasize that this program is heavily used

935 by individuals from Africa and from Europe, to some of my
936 colleagues' comments that took me a little bit by surprise
937 because it seemed to suggest that immigrants who come from a
938 particular place, such as Africa, have no values, have no
939 ability to contribute. I don't think the diversity waiver
940 program is mutually exclusive of individuals with values and
941 who can come with talents to be of great contribution.

942 It is well noted that many of the physicians in the
943 United States are African based or African natives who have
944 come and are physicians in many places around America. So
945 the idea that the diversity visa has no value is one that is
946 questionable at best.

947 I think the other point is that I want to reemphasize
948 is that this is a legal pathway for immigration to this
949 country. This is then a hypocritical approach.

950 First, your statement is that we need to legalize or
951 structure immigration here in the United States. We condemn
952 the existence of those who are undocumented. Many of us
953 have tried to put forward a comprehensive approach to
954 immigration reform, which could -- in its writing could
955 enhance all kinds of security checks, all kinds of
956 provisions to eliminate fraud.

957 And I might just take issue. We have been waiting on
958 a jobs bill for now 7 months. I don't think the gentleman
959 from Iowa would suggest that this approach is a jobs bill

960 that is going to employ the American people. There is also
961 data that says that immigrants help create jobs.

962 And so, we have a difference of opinion. Don't equate
963 the 55,000 visas to a massive jobs bill. Americans would
964 much prefer working alongside of an immigrant and be working
965 as well. That is the Congress's responsibility to talk
966 about jobs, and the majority in this Congress to put forward
967 their jobs bill. But this is certainly not a jobs bill.

968 So I ask my colleagues to consider the fact that we
969 have literally put the cart before the horse and have no
970 basis in fact for totally eliminating a legitimate legal
971 immigration procedure. And I ask my colleagues to support
972 this amendment.

973 Chairman Smith. The gentleman from New York's time
974 has expired.

975 The question is on the amendment. All in favor, say
976 aye.

977 [A chorus of ayes.]

978 Chairman Smith. All opposed, nay.

979 [A chorus of nays.]

980 Chairman Smith. In the opinion of the chair, the nays
981 have it, and the amendment is not agreed to.

982 Ms. Jackson Lee. Roll call?

983 Chairman Smith. A roll call vote has been requested,
984 and the clerk will call the roll.

985 Ms. Kish. Mr. Smith?
986 Chairman Smith. No.
987 Ms. Kish. Mr. Smith votes no.
988 Mr. Sensenbrenner?
989 [No response.]
990 Ms. Kish. Mr. Coble?
991 Mr. Coble. No.
992 Ms. Kish. Mr. Coble votes no.
993 Mr. Gallegly?
994 [No response.]
995 Ms. Kish. Mr. Goodlatte?
996 Mr. Goodlatte. No.
997 Ms. Kish. Mr. Goodlatte votes no.
998 Mr. Lungren?
999 [No response.]
1000 Ms. Kish. Mr. Chabot?
1001 [No response.]
1002 Ms. Kish. Mr. Issa?
1003 [No response.]
1004 Ms. Kish. Mr. Pence?
1005 [No response.]
1006 Ms. Kish. Mr. Forbes?
1007 [No response.]
1008 Ms. Kish. Mr. King?
1009 Mr. King. No.

1010 Ms. Kish. Mr. King votes no.
1011 Mr. Franks?
1012 Mr. Franks. No.
1013 Ms. Kish. Mr. Franks votes no.
1014 Mr. Gohmert?
1015 [No response.]
1016 Ms. Kish. Mr. Jordan?
1017 [No response.]
1018 Ms. Kish. Mr. Poe?
1019 [No response.]
1020 Ms. Kish. Mr. Chaffetz?
1021 Mr. Chaffetz. No.
1022 Ms. Kish. Mr. Chaffetz votes no.
1023 Mr. Griffin?
1024 [No response.]
1025 Ms. Kish. Mr. Marino?
1026 [No response.]
1027 Ms. Kish. Mr. Gowdy?
1028 Mr. Gowdy. No.
1029 Ms. Kish. Mr. Gowdy votes no.
1030 Mr. Ross?
1031 [No response.]
1032 Ms. Kish. Mrs. Adams?
1033 Mrs. Adams. No.
1034 Ms. Kish. Mrs. Adams votes no.

1035 Mr. Quayle?
1036 Mr. Quayle. No.
1037 Ms. Kish. Mr. Quayle votes no.
1038 Mr. Conyers?
1039 Mr. Conyers. Aye.
1040 Ms. Kish. Mr. Conyers votes aye.
1041 Mr. Berman?
1042 [No response.]
1043 Ms. Kish. Mr. Nadler?
1044 Mr. Nadler. Aye.
1045 Ms. Kish. Mr. Nadler votes aye.
1046 Mr. Scott?
1047 Mr. Scott. Aye.
1048 Ms. Kish. Mr. Scott votes aye.
1049 Mr. Watt?
1050 Mr. Watt. Aye.
1051 Ms. Kish. Mr. Watt votes aye.
1052 Ms. Lofgren?
1053 Ms. Lofgren. Aye.
1054 Ms. Kish. Ms. Lofgren votes aye.
1055 Ms. Jackson Lee?
1056 Ms. Jackson Lee. Aye.
1057 Ms. Kish. Ms. Jackson Lee votes aye.
1058 Ms. Waters?
1059 [No response.]

1060 Ms. Kish. Mr. Cohen?
1061 Mr. Cohen. Aye.
1062 Ms. Kish. Mr. Cohen votes aye.
1063 Mr. Johnson?
1064 Mr. Johnson. Aye.
1065 Ms. Kish. Mr. Johnson votes aye.
1066 Mr. Pierluisi?
1067 Mr. Pierluisi. Aye.
1068 Ms. Kish. Mr. Pierluisi votes aye.
1069 Mr. Quigley?
1070 Mr. Quigley. Aye.
1071 Ms. Kish. Mr. Quigley votes aye.
1072 Ms. Chu?
1073 [No response.]
1074 Ms. Kish. Mr. Deutch?
1075 Mr. Deutch. Yes.
1076 Ms. Kish. Mr. Deutch votes yes.
1077 Ms. Sanchez?
1078 [No response.]
1079 Chairman Smith. The gentleman from Virginia, Mr.
1080 Forbes?
1081 Mr. Forbes. No.
1082 Ms. Kish. Mr. Forbes votes no.
1083 Chairman Smith. The gentleman from Wisconsin?
1084 Mr. Sensenbrenner. No.

1085 Ms. Kish. Mr. Sensenbrenner votes no.
1086 Chairman Smith. The gentleman from Indiana?
1087 Mr. Pence. No.
1088 Ms. Kish. Mr. Pence votes no.
1089 Chairman Smith. The gentleman from Texas, Mr.
1090 Gohmert?
1091 Mr. Gohmert. No.
1092 Ms. Kish. Mr. Gohmert votes no.
1093 Chairman Smith. Are there other Members who wish to
1094 be recorded? The gentleman from Pennsylvania, Mr. Marino?
1095 Mr. Marino. No.
1096 Ms. Kish. Mr. Marino votes no.
1097 Chairman Smith. The gentlewoman from California, Ms.
1098 Waters?
1099 Ms. Waters. Aye.
1100 Ms. Kish. Ms. Waters votes aye.
1101 Chairman Smith. The clerk will report.
1102 Ms. Kish. Mr. Chairman, 12 Members voted aye; 14
1103 Members voted nay.
1104 Chairman Smith. A majority having voted against the
1105 amendment, the amendment is not agreed to.
1106 Are there other amendments? The gentlewoman from
1107 California, Ms. Lofgren, is recognized.
1108 Ms. Lofgren. Mr. Chairman, I have an amendment at the
1109 desk. It is Lofgren-Berman 110.

1110 Chairman Smith. The clerk will report the amendment.

1111 Ms. Kish. Amendment to H.R. 704 offered by Ms.

1112 Lofgren and Mr. Berman. Strike Section 2 and insert the

1113 following --

1114 Ms. Lofgren. I would ask unanimous consent that the

1115 amendment be considered as read.

1116 Chairman Smith. Without objection, the amendment will

1117 be considered as read.

1118 [The information follows:]

1119

1120 Chairman Smith. And the gentlewoman is recognized to
1121 explain her amendment.

1122 Ms. Lofgren. Thank you.

1123 Mr. Berman is at a Foreign Affairs Committee hearing
1124 all morning, a markup, I believe. And so, I am offering
1125 this amendment on behalf of us both.

1126 The amendment replaces Section 2, which eliminates the
1127 diversity visas, with a section that would limit such visas
1128 to immigrants with approved family-based petitions,
1129 essentially changing the visa into a family diversity visa.
1130 The amendment would specifically make these visas available
1131 to persons who have an approved family-based immigration
1132 petition, are waiting for a visa due to backlogs in the
1133 family preference category, and are from an underrepresented
1134 country.

1135 Whether a country is underrepresented would be
1136 determined using the same formula currently used by the
1137 Diversity Visa Program, and visas would be made available to
1138 such persons based on the priority date of their approved
1139 petition, in other words, first come, first served.

1140 Now this bill eliminates the only visa program that
1141 uses diversity-based criteria, but it just throws the visas
1142 away, even though other legal immigration programs are way
1143 backlogged and starved for visas. So this would save these
1144 visas and put them in the family-based program.

1145 At the Immigration Subcommittee hearing in April on
1146 this bill, the bill's author, Congressman Goodlatte,
1147 testified as to the unfairness of having visas go to persons
1148 without ties to the United States, while those with such
1149 ties are stuck in long wait logs.

1150 Specifically, Mr. Goodlatte testified, and I quote,
1151 "Usually immigrant visas are issued to foreign nationals
1152 that have existing connections with family members lawfully
1153 residing in the United States or with U.S. employers. These
1154 types of relationships help ensure that immigrants entering
1155 our country have a stake in continuing America's success and
1156 have needed skills to contribute to our Nation's economy.
1157 However, under the visa lottery program, green cards are
1158 awarded to immigrants at random without meeting such
1159 criteria."

1160 As noted, I don't agree with Mr. Goodlatte on the
1161 latter sentence, but he did note in his testimony that most
1162 family and employer-sponsored immigrants face a wait of
1163 many, many years to legally enter the U.S. Well, this
1164 amendment addresses all of those concerns. It ensures that
1165 visas are issued only to persons with existing connections
1166 to family members in the United States. It helps move the
1167 backlog so that U.S. citizens and permanent residents who
1168 want to reunify with their family members can do it a little
1169 bit sooner.

1170 Current family-based immigration categories are
1171 backlogged for many decades because of the lack of available
1172 visas. Currently, United States citizens seeking to reunify
1173 with their unmarried children face a wait of 7 to 18 years.
1174 There is a wait of 10 to 20 years for married sons and
1175 daughters and a wait of 11 to 24 years for siblings. And
1176 permanent residents seeking to reunify with their husbands
1177 and wives and minor children face a backlog of over 3 years
1178 and 8 to 20 years for unmarried sons and daughters over 21
1179 years of age.

1180 Eliminating the diversity program without applying its
1181 visas to the family preference system, which is virtually
1182 nonfunctional for millions of American citizens and
1183 permanent residents, is wrong. This amendment would
1184 essentially limit the 55,000 diversity visas to persons
1185 waiting in the family backlogs, reducing those backlogs.

1186 And remember, when the majority keeps telling us that
1187 they are for legal immigration, they are just against
1188 illegal immigration, this amendment would promote legal
1189 immigration. It would allow people who are playing by the
1190 rules to actually have a reward for playing by the rules.
1191 And I think this would also help preserve the diversity of
1192 our lawful immigration system in the absence of a Diversity
1193 Visa Program by making sure that the diversity is the key on
1194 the allocation of family visas.

1195 To vote against this amendment is really to vote
1196 against families, against diversity, and against legal
1197 immigrants. I think it would be an affront to U.S. citizens
1198 and permanent residents seeking benefits eligible for family
1199 members.

1200 And I urge the committee to support the measure, and I
1201 yield back the balance of my time.

1202 Chairman Smith. Thank you, Ms. Lofgren.

1203 The gentleman from Virginia, Mr. Goodlatte, is
1204 recognized.

1205 Mr. Goodlatte. Thank you, Mr. Chairman.

1206 Mr. Chairman, I oppose this amendment because it takes
1207 unfairness to new heights. Now what we have with this
1208 proposed amendment is those people who are on those waiting
1209 lists who also try for the visa lottery and happen to be 1
1210 out of 300 -- that is basically the odds you have -- pulled
1211 out, they go to the head of the line, ahead of everybody
1212 else on those lists.

1213 The amendment pushes up to 50,000 family-sponsored
1214 immigrants who happen to be from underrepresented countries
1215 ahead of the line to the detriment of family-sponsored
1216 immigrants who have been waiting for years in other
1217 countries which are not eligible for the visa lottery. This
1218 would put immigrants who have been waiting longer behind
1219 newer applicants simply because their country does not

1220 appear on a fluctuating list.

1221 Furthermore, this amendment gives the same expedited
1222 priority to sisters and brothers as it does to closer family
1223 members, like spouses and children. Many Members have
1224 concerns about chain immigration and believe we should give
1225 priority to spouses and closer relatives than brothers and
1226 sisters. This amendment does not address these issues.

1227 Many Members have many different opinions about how
1228 best to utilize the green cards that would be available once
1229 the visa lottery is eliminated. Congressman Issa, for
1230 example, has a bill to allocate those green cards to highly
1231 skilled workers so that American businesses can have access
1232 to and retain the best and brightest employees in the world.

1233 I am open to discussions about how best to reallocate
1234 those visas. However, I believe that should be a separate
1235 and full debate we conduct when and if the visa lottery is
1236 eliminated. This amendment is at best premature and at
1237 worst very, very unfair to many people who are on those
1238 waiting lists, and I urge Members to oppose it.

1239 Ms. Lofgren. Would the gentleman yield --

1240 Mr. Goodlatte. I would yield.

1241 Ms. Lofgren. -- for a question? I don't agree with
1242 you, but I have an amendment. Mr. Berman and I have an
1243 amendment that would address the issue you have raised,
1244 which would allocate these visas, divide them between

1245 family-based and employment-based using the existing
1246 immigration preference system. Will you help and make sure
1247 that that amendment is considered germane here today?

1248 Mr. Goodlatte. No, I can't do that because I can't
1249 change the parliamentary rules of the House. But I also
1250 believe --

1251 Ms. Lofgren. You have to assert it.

1252 Mr. Goodlatte. But I also believe, I also believe
1253 that there is an appropriate time and place to consider
1254 that, and that is not in passage of this legislation, which
1255 is very straightforward, and it simply ends what I think is
1256 a very bad program.

1257 But I would in the future be happy to continue the
1258 discussions with the gentlewoman, as I have had with other
1259 Members on both sides of the aisle, about what might be done
1260 in the future if these visas were to be reprogrammed for
1261 another purpose.

1262 Chairman Smith. The gentleman yields back his time.
1263 Are there other Members who wish to be heard?

1264 [No response.]

1265 Chairman Smith. If not, the question is on the
1266 amendment. All in favor, say aye.

1267 [A chorus of ayes.]

1268 Chairman Smith. Opposed, no.

1269 [A chorus of nays.]

1270 Chairman Smith. In the opinion of the chair, the nays
1271 have it, and the amendment is not agreed to.

1272 Ms. Lofgren. Mr. Chairman, I would like a recorded
1273 vote on this.

1274 Chairman Smith. A roll call vote has been requested,
1275 and the clerk will call the roll.

1276 Ms. Kish. Mr. Smith?

1277 Chairman Smith. No.

1278 Ms. Kish. Mr. Smith votes no.

1279 Mr. Sensenbrenner?

1280 [No response.]

1281 Ms. Kish. Mr. Coble?

1282 [No response.]

1283 Ms. Kish. Mr. Gallegly?

1284 [No response.]

1285 Ms. Kish. Mr. Goodlatte?

1286 Mr. Goodlatte. No.

1287 Ms. Kish. Mr. Goodlatte votes no.

1288 Mr. Lungren?

1289 [No response.]

1290 Ms. Kish. Mr. Chabot?

1291 [No response.]

1292 Ms. Kish. Mr. Issa?

1293 [No response.]

1294 Ms. Kish. Mr. Pence?

1295 [No response.]
1296 Ms. Kish. Mr. Forbes?
1297 [No response.]
1298 Ms. Kish. Mr. King?
1299 [No response.]
1300 Mr. King?
1301 Mr. King. No.
1302 Ms. Kish. Mr. King votes no.
1303 Mr. Franks?
1304 Mr. Franks. No.
1305 Ms. Kish. Mr. Franks votes no.
1306 Mr. Gohmert?
1307 [No response.]
1308 Ms. Kish. Mr. Jordan?
1309 [No response.]
1310 Ms. Kish. Mr. Poe?
1311 [No response.]
1312 Ms. Kish. Mr. Chaffetz?
1313 Mr. Chaffetz. No.
1314 Ms. Kish. Mr. Chaffetz votes no.
1315 Mr. Griffin?
1316 [No response.]
1317 Ms. Kish. Mr. Marino?
1318 [No response.]
1319 Ms. Kish. Mr. Gowdy?

1320 Mr. Gowdy. No.

1321 Ms. Kish. Mr. Gowdy votes no.

1322 Mr. Ross?

1323 [No response.]

1324 Ms. Kish. Mrs. Adams?

1325 Mrs. Adams. No.

1326 Ms. Kish. Mrs. Adams votes no.

1327 Mr. Quayle?

1328 Mr. Quayle. No.

1329 Ms. Kish. Mr. Quayle votes no.

1330 Mr. Conyers?

1331 Mr. Conyers. Aye.

1332 Ms. Kish. Mr. Conyers votes aye.

1333 Mr. Berman?

1334 [No response.]

1335 Ms. Kish. Mr. Nadler?

1336 Mr. Nadler. Aye.

1337 Ms. Kish. Mr. Nadler votes aye.

1338 Mr. Scott?

1339 Mr. Scott. Aye.

1340 Ms. Kish. Mr. Scott votes aye.

1341 Mr. Watt?

1342 Mr. Watt. Aye.

1343 Ms. Kish. Mr. Watt votes aye.

1344 Ms. Lofgren?

1345 Ms. Lofgren. Aye.
1346 Ms. Kish. Ms. Lofgren votes aye.
1347 Ms. Jackson Lee?
1348 [No response.]
1349 Ms. Kish. Ms. Waters?
1350 Ms. Waters. Aye.
1351 Ms. Kish. Ms. Waters votes aye.
1352 Mr. Cohen?
1353 Mr. Cohen. Aye.
1354 Ms. Kish. Mr. Cohen votes aye.
1355 Mr. Johnson?
1356 Mr. Johnson. Aye.
1357 Ms. Kish. Mr. Johnson votes aye.
1358 Mr. Pierluisi?
1359 Mr. Pierluisi. Aye.
1360 Ms. Kish. Mr. Pierluisi votes aye.
1361 Mr. Quigley?
1362 Mr. Quigley. Aye.
1363 Ms. Kish. Mr. Quigley votes aye.
1364 Ms. Chu?
1365 [No response.]
1366 Ms. Kish. Mr. Deutch?
1367 Mr. Deutch. Aye.
1368 Ms. Kish. Mr. Deutch votes aye.
1369 Ms. Sanchez?

1370 [No response.]

1371 Chairman Smith. The gentleman from Pennsylvania, Mr.

1372 Marino?

1373 Mr. Marino. No.

1374 Ms. Kish. Mr. Marino votes no.

1375 Chairman Smith. The gentleman from Virginia, Mr.

1376 Forbes?

1377 Mr. Forbes. No.

1378 Ms. Kish. Mr. Forbes votes no.

1379 Chairman Smith. The gentleman from Wisconsin, Mr.

1380 Sensenbrenner?

1381 Mr. Sensenbrenner. No.

1382 Ms. Kish. Mr. Sensenbrenner votes no.

1383 Chairman Smith. The gentleman from Texas, Mr.

1384 Gohmert?

1385 Mr. Gohmert. No.

1386 Ms. Kish. Mr. Gohmert votes no.

1387 Chairman Smith. The gentleman from California, Mr.

1388 Issa?

1389 Mr. Issa. No.

1390 Ms. Kish. Mr. Issa votes no.

1391 Chairman Smith. The other gentleman from California,

1392 Mr. Gallegly?

1393 Mr. Gallegly. No.

1394 Ms. Kish. Mr. Gallegly votes no.

1395 Chairman Smith. The gentleman from North Carolina,
1396 Mr. Coble?
1397 Mr. Coble. No.
1398 Ms. Kish. Mr. Griffin votes no.
1399 Chairman Smith. The gentleman from Arkansas, Mr.
1400 Griffin, votes no.
1401 Ms. Kish. Mr. Coble votes no.
1402 Chairman Smith. Okay. The gentleman from Arkansas,
1403 Mr. Griffin?
1404 Mr. Griffin. No.
1405 Ms. Kish. Mr. Griffin votes no.
1406 Chairman Smith. The gentleman from Indiana, Mr.
1407 Pence?
1408 Mr. Pence. No.
1409 Ms. Kish. Mr. Pence votes no.
1410 Chairman Smith. The gentleman from Texas, Mr. Poe?
1411 Mr. Poe. No.
1412 Ms. Kish. Mr. Poe votes no.
1413 Chairman Smith. The gentleman from Ohio, Mr. Chabot,
1414 votes no.
1415 Ms. Kish. Mr. Chabot votes no.
1416 Chairman Smith. Are there other Members who wish to
1417 be recorded? If not, the clerk will report.
1418 Ms. Kish. Mr. Chairman, 11 Members voted aye; 19
1419 Members voted nay.

1420 Chairman Smith. The majority having voted against the
1421 amendment, the amendment is not agreed to.

1422 Are there any other amendments? The gentlewoman from
1423 California, Ms. Lofgren, is recognized.

1424 Ms. Lofgren. Mr. Chairman, I have an amendment at the
1425 desk. It is Lofgren-Berman 111.

1426 Chairman Smith. The clerk will report the amendment.

1427 Mr. Goodlatte. Mr. Chairman? I reserve a point of
1428 order.

1429 Chairman Smith. And a point of order has been
1430 reserved against the amendment.

1431 Ms. Kish. Amendment to H.R. 704 offered by Ms.
1432 Lofgren and Mr. Berman. At the end of the bill, add the
1433 following. Section 3, use of visa numbers for family-
1434 sponsored and employment-based --

1435 Chairman Smith. Without objection, the amendment will
1436 be considered as read.

1437 [The information follows:]

1438

1439 Chairman Smith. And the gentlewoman offering the
1440 amendment is recognized to explain the amendment.

1441 Ms. Lofgren. Mr. Chairman, this amendment adds the
1442 55,000 visas eliminated by the bill to the remaining
1443 immigrant visa program, providing half to the family-based
1444 system and half to the employment-based system.

1445 Now if you say you support legal immigration, I think
1446 you should support the amendment. The bill before us not
1447 only eliminates the Diversity Visa Program, it also just
1448 eliminates the visas while there is a shortage of visas in
1449 other immigrant categories, which forces U.S. citizens and
1450 permanent residents to wait for decades to reunify with
1451 family members and also prevents companies from attracting
1452 and retaining the talent they need to keep America
1453 competitive. This amendment simply moves those visas into
1454 the remaining immigrant visa program.

1455 As I noted before -- and I will not repeat the quotes
1456 -- my colleagues on the other side of the aisle who have
1457 supported eliminating the diversity visas say that they are
1458 for the legal immigration system. Well, if that is the
1459 case, let's allow the legal immigration system to work.

1460 We have immigrants from Mexico who are legally here,
1461 who are married and have minor children, and they are
1462 waiting years to be reunited with husbands and wives and
1463 minor children. That is not right.

1464 We have on the employment side a huge backlog of
1465 Indian and Chinese engineers. In some cases, Indian Ph.D.s
1466 are going to wait a decade or more because of a lack of
1467 visas. And this is when the Department of Labor has already
1468 proven through the system that there is nobody available to
1469 take the job that they have been offered. So this would use
1470 these visas half to solve that problem.

1471 I think if we don't take these visas and allocate them
1472 to this system, we are really saying to those Mexicans who
1473 have waited so long, played by the rules, you know, you are
1474 just going to wait a lot longer.

1475 And to those talented Ph.D. recipients who are
1476 building Silicon Valley -- half the startups in Silicon
1477 Valley were founded by somebody born in another country.
1478 Well, we are just going to cripple our economy by throwing
1479 these visas away.

1480 I think that it would be smart of us, if we are going
1481 to eliminate this Diversity Visa Program, to utilize the
1482 visas in a way that will strengthen our country, that will
1483 strengthen families by allowing husbands and wives to be
1484 reunified, by allowing American citizens to be reunited with
1485 their sons and daughters, to allow American companies to
1486 prosper.

1487 And I would urge the adoption of this amendment, and I
1488 yield back the balance of my time.

1489 Chairman Smith. Thank you, Ms. Lofgren.

1490 Does the gentleman from Virginia insist on his point
1491 of order?

1492 Mr. Goodlatte. Yes, Mr. Chairman. I do insist on my
1493 point of order because the bill we are considering today
1494 only makes changes to the visa diversity program. The rules
1495 of the House require that amendments be on the same subject
1496 of the bill under consideration, and this amendment is on a
1497 different subject because it addresses family-based
1498 immigration, which is a completely different category of
1499 immigration.

1500 Chairman Smith. Thank you, Mr. Goodlatte.

1501 Does the gentlewoman from California wish to speak on
1502 the point of order?

1503 Ms. Lofgren. I will just say this. The
1504 parliamentarian is a nonpartisan office that makes rulings
1505 without regard to the minority or the majority. I don't
1506 dispute their impartiality.

1507 I would just say I question the judgment of the
1508 majority in failing to accept this amendment, which they
1509 could do. And with that, I would yield back.

1510 Chairman Smith. Thank you, Ms. Lofgren.

1511 The chair is prepared to rule on the point of order.
1512 In the opinion of the chair, the amendment is not germane.

1513 Are there other amendments?

1514 [No response.]

1515 Chairman Smith. If not, a reporting quorum being
1516 present, the question is on reporting the bill favorably to
1517 the House. Those in favor, say aye.

1518 [A chorus of ayes.]

1519 Chairman Smith. Opposed, no.

1520 [A chorus of nays.]

1521 Chairman Smith. In the opinion of the chair, the ayes
1522 have it, and the bill is ordered reported favorably.

1523 Ms. Lofgren. I would ask for a recorded vote, Mr.

1524 Chairman.

1525 Chairman Smith. A recorded vote has been requested,
1526 and the clerk will call the roll.

1527 Ms. Kish. Mr. Smith?

1528 Chairman Smith. Aye.

1529 Ms. Kish. Mr. Smith votes aye.

1530 Mr. Sensenbrenner?

1531 [No response.]

1532 Ms. Kish. Mr. Coble?

1533 [No response.]

1534 Ms. Kish. Mr. Gallegly?

1535 [No response.]

1536 Ms. Kish. Mr. Goodlatte?

1537 Mr. Goodlatte. Aye.

1538 Ms. Kish. Mr. Goodlatte votes aye.

1539 Mr. Lungren?
1540 [No response.]
1541 Ms. Kish. Mr. Chabot?
1542 [No response.]
1543 Ms. Kish. Mr. Issa?
1544 Mr. Issa. Aye.
1545 Ms. Kish. Mr. Issa votes aye.
1546 Mr. Pence?
1547 [No response.]
1548 Ms. Kish. Mr. Forbes?
1549 [No response.]
1550 Ms. Kish. Mr. King?
1551 Mr. King. Aye.
1552 Ms. Kish. Mr. King votes aye.
1553 Mr. Franks?
1554 Mr. Franks. Aye.
1555 Ms. Kish. Mr. Franks votes aye.
1556 Mr. Gohmert?
1557 [No response.]
1558 Ms. Kish. Mr. Jordan?
1559 [No response.]
1560 Ms. Kish. Mr. Poe?
1561 [No response.]
1562 Ms. Kish. Mr. Chaffetz?
1563 Mr. Chaffetz. Aye.

1564 Ms. Kish. Mr. Chaffetz votes aye.
1565 Mr. Griffin?
1566 [No response.]
1567 Ms. Kish. Mr. Marino?
1568 [No response.]
1569 Ms. Kish. Mr. Gowdy?
1570 Mr. Gowdy. Aye.
1571 Ms. Kish. Mr. Gowdy votes aye.
1572 Mr. Ross?
1573 Mr. Ross. Aye.
1574 Ms. Kish. Mr. Ross votes aye.
1575 Mrs. Adams?
1576 Mrs. Adams. Aye.
1577 Ms. Kish. Mrs. Adams votes aye.
1578 Mr. Quayle?
1579 Mr. Quayle. Aye.
1580 Ms. Kish. Mr. Quayle votes aye.
1581 Mr. Conyers?
1582 Mr. Conyers. No.
1583 Ms. Kish. Mr. Conyers votes no.
1584 Mr. Berman?
1585 [No response.]
1586 Ms. Kish. Mr. Nadler?
1587 Mr. Nadler. No.
1588 Ms. Kish. Mr. Nadler votes no.

1589 Mr. Scott?
1590 Mr. Scott. No.
1591 Ms. Kish. Mr. Scott votes no.
1592 Mr. Watt?
1593 Mr. Watt. No.
1594 Ms. Kish. Mr. Watt votes no.
1595 Ms. Lofgren?
1596 Ms. Lofgren. No.
1597 Ms. Kish. Ms. Lofgren votes no.
1598 Ms. Jackson Lee?
1599 [No response.]
1600 Ms. Kish. Ms. Waters?
1601 Ms. Waters. No.
1602 Ms. Kish. Ms. Waters votes no.
1603 Mr. Cohen?
1604 Mr. Cohen. No.
1605 Ms. Kish. Mr. Cohen votes no.
1606 Mr. Johnson?
1607 Mr. Johnson. No.
1608 Ms. Kish. Mr. Johnson votes no.
1609 Mr. Pierluisi?
1610 Mr. Pierluisi. No.
1611 Ms. Kish. Mr. Pierluisi votes no.
1612 Mr. Quigley?
1613 Mr. Quigley. No.

1614 Ms. Kish. Mr. Quigley votes no.
1615 Ms. Chu?
1616 [No response.]
1617 Ms. Kish. Mr. Deutch?
1618 [No response.]
1619 Ms. Kish. Ms. Sanchez?
1620 [No response.]
1621 Chairman Smith. The gentleman from Pennsylvania, Mr.
1622 Marino?
1623 Mr. Marino. Yes.
1624 Ms. Kish. Mr. Marino votes yes.
1625 Chairman Smith. The gentleman from Virginia, Mr.
1626 Forbes?
1627 Mr. Forbes. Yes.
1628 Ms. Kish. Mr. Forbes votes yes.
1629 Chairman Smith. The gentleman from Texas, Mr. Poe?
1630 Mr. Poe. Yes.
1631 Chairman Smith. The gentleman from Wisconsin, Mr.
1632 Sensenbrenner?
1633 Mr. Sensenbrenner. Aye.
1634 Ms. Kish. Mr. Sensenbrenner votes aye.
1635 Chairman Smith. The gentleman from Ohio, Mr. Chabot.
1636 Mr. Chabot. Aye.
1637 Chairman Smith. The gentleman from Iowa? No.
1638 The gentleman from Indiana, Mr. Pence?

1639 Mr. Pence. Aye.

1640 Ms. Kish. Mr. Pence votes aye.

1641 Chairman Smith. The gentleman from North Carolina,
1642 Mr. Coble?

1643 Mr. Coble. Aye.

1644 Ms. Kish. Mr. Coble votes aye.

1645 Chairman Smith. The gentleman from Arkansas, Mr.
1646 Griffin?

1647 Mr. Griffin. Aye.

1648 Ms. Kish. Mr. Griffin votes aye.

1649 Chairman Smith. The gentleman from Texas, Mr.
1650 Gohmert?

1651 Mr. Gohmert. Aye.

1652 Ms. Kish. Mr. Gohmert votes aye.

1653 Ms. Chu?

1654 Ms. Chu. No.

1655 Chairman Smith. The gentlewoman from California, Ms.
1656 Chu, votes no.

1657 Are there other Members who wish to be recorded? The
1658 gentleman from California, Mr. Issa, is recognized.

1659 Mr. Issa. Thank you, Mr. Chairman.

1660 This is an appropriate time before the vote is cast.
1661 We are not going to be offering an amendment that would
1662 appear to be similar to Ms. Lofgren's for a reason.
1663 I believe very strongly that these 55,000 slots should

1664 be used for permanent, highly qualified Ph.D.s and the like
1665 and have a piece of legislation that would do that. I
1666 realize this is not the right time to do it. I think with
1667 the gentlelady, my colleague from California, if you want to
1668 accomplish that highly qualified Ph.D. and the like that we
1669 do have, and I will work with my colleagues on the other
1670 side of the aisle to bring that legislation in so that we
1671 can target specifically the tens of thousands of people --

1672 Ms. Lofgren. Are we reopening debate on the bill, Mr.
1673 Chairman? Because my colleague Mr. Watt wanted to speak.

1674 Chairman Smith. Oh, okay.

1675 Mr. Issa. With that, I yield back.

1676 Chairman Smith. I thank Mr. Issa for his comments.

1677 The clerk will call the roll. I am sorry. The clerk
1678 will report.

1679 Ms. Kish. Mr. Chairman, 19 Members voted aye; 11
1680 Members voted nay.

1681 Chairman Smith. Without objection, the bill will be
1682 reported. And the staff is authorized to make technical and
1683 conforming changes. Members will have 2 days to submit
1684 their views.

1685 Ms. Lofgren. Mr. Chairman, may I make an inquiry as
1686 to the schedule?

1687 Chairman Smith. I thank the gentlewoman for her
1688 inquiry.

1689 Yes. It is my intent to proceed through the bills in
1690 the order in which they are listed, with the exception of
1691 the last bill we have down on the schedule, H.R. 2552, the
1692 Identity Theft Improvement Act of 2011. I expect to take
1693 that up next week.

1694 Ms. Lofgren. What about 1981? The Protecting
1695 Children from Internet Pornography Act?

1696 Chairman Smith. Oh, I listed the wrong one. That is
1697 the one we will wait for next week, 1981, Protecting
1698 Children from Internet Pornographers.

1699 H.R. 2552, we will take up today.

1700 Ms. Lofgren. Thank you.

1701 Chairman Smith. We will now move to H.R. 1550 --

1702 Mr. Nadler. Mr. Chairman? Mr. Chairman? Mr.
1703 Chairman?

1704 Chairman Smith. The gentleman from New York is
1705 recognized.

1706 Mr. Nadler. Just to clarify. Do you expect to take
1707 up every bill except 1981 today?

1708 Chairman Smith. That is correct. That is the goal.

1709 Mr. Nadler. Okay. Thank you.

1710 Chairman Smith. Okay. H.R. 1550, the Federal Law
1711 Enforcement Recruitment and Retention Act of 2011. Pursuant
1712 to notice, I now call up H.R. 1550 for purposes of markup,
1713 and the clerk will report the bill.

1714 Ms. Kish. H.R. 1550. To establish programs in the
1715 Department of Justice and in the Department of Homeland
1716 Security to help States that have high rates of homicide and
1717 other violent crime, and for other purposes.

1718 Chairman Smith. Without objection, the bill will be
1719 considered as read.

1720 [The information follows:]

1721

1722 Chairman Smith. And I will recognized myself for an
1723 opening statement and then the ranking member.

1724 H.R. 1550, the Federal Law Enforcement Recruitment and
1725 Retention Act of 2011, was introduced by Mr. Pierluisi to
1726 help focus the Justice Department's law enforcement efforts
1727 on the areas of the country that need them the most.

1728 Crime in the United States began to rise sharply in
1729 the 1960s and continued up to its peak in 1991. In
1730 response, Congress and the States reformed their criminal
1731 laws, including tougher penalties and truth in sentencing
1732 laws and dedicated additional resources to target the rising
1733 crime rate.

1734 It appears that our focus on crime has been
1735 successful. Since the mid 1990s, crime has significantly
1736 decreased. The violent crime rate is the lowest it has been
1737 since the mid 1970s, and almost half of what it was in 1991.

1738 Crime in the United States has continued to fall in
1739 spite of the difficult economic times. The violent crime
1740 rate fell 5 percent from 2008 to 2009 and another 5 percent
1741 from 2009 to 2010. Despite this encouraging news, we are
1742 far from solving the problem of violent crime in all areas
1743 of the country. There are still jurisdictions where violent
1744 crime remains a very serious issue and is even on the rise.

1745 For example, in my district, the number of murders in
1746 the City of Austin nearly doubled last year from 22

1747 homicides in 2009 to 38 homicides in 2010. The problem of
1748 high-crime areas is often compounded by the fact that
1749 Federal law enforcement positions in certain areas of the
1750 country remain vacant.

1751 Difficulty with the recruitment and retention of
1752 Federal law enforcement officers in certain areas is not a
1753 new problem. In 2000, a representative of the DEA testified
1754 before the House Government Reform Committee that "few
1755 personnel from the continental United States are willing to
1756 accept a transfer to Puerto Rico."

1757 H.R. 1550 directs the Department of Justice to
1758 establish a program to consider, in coordination with State
1759 and local governments, the need to recruit, assign, and
1760 retain Federal law enforcement personnel in areas of the
1761 country with high rates of homicides and other violent
1762 crimes. We need crime fighters in order to effectively
1763 fight crime.

1764 While this legislation does not authorize new
1765 spending, it does direct the department to redirect its
1766 current resources to address jurisdictions where violent
1767 crime remains a serious problem. H.R. 1550 has bipartisan
1768 support and has been endorsed by the law enforcement
1769 community. This legislation will help improve the safety of
1770 the many Americans who live in fear of violent crime in
1771 their neighborhoods.

1772 I urge my colleagues to support the bill and want to
1773 again thank the gentleman from Puerto Rico for introducing
1774 this bill.

1775 And I will now recognize our ranking member, Mr.
1776 Conyers of Michigan, for his opening statement.

1777 Mr. Conyers. Thank you, Chairman Smith.

1778 I ask unanimous consent that my statement be entered
1779 into the record.

1780 Chairman Smith. Without objection, the gentleman's
1781 opening statement will be made a part of the record.

1782 [The statement of Mr. Conyers follows:]

1783

1784 Mr. Conyers. And that leaves very little for me to
1785 say, except my thanks to the gentleman from Puerto Rico for
1786 introducing this timely piece of legislation.

1787 The problems have been readily, accurately described,
1788 and we applaud you having the courage to point out the
1789 problems that are existing in your country. And it is
1790 important that we take them to heart because there are
1791 similar places in the United States, particularly in our
1792 inner-city communities, where the crime rate is
1793 substantially different from the rest of the surrounding
1794 area.

1795 And so, I applaud, as does the chairman, H.R. 1550,
1796 and I yield back the balance of my time.

1797 Chairman Smith. Thank you, Mr. Conyers.

1798 The chairman of the Crime Subcommittee, the gentleman
1799 from Wisconsin, Mr. Sensenbrenner, is recognized for an
1800 opening statement.

1801 Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

1802 I have an opening statement that I would like to ask
1803 unanimous consent to be put in the record.

1804 Chairman Smith. Without objection, so ordered.

1805 [The statement of Mr. Sensenbrenner follows:]

1806

1807 Mr. Sensenbrenner. "H.R. 1550, introduced by Mr.
1808 Pierluisi, addresses the problem of high-crime areas across
1809 the United States.

1810 We are fortunate to live in a time of declining crime
1811 rates, despite the difficult economic climate. The violent
1812 crime rate has fallen by over 5 percent in each of the last
1813 2 years, and the rate of property crimes has fallen 8.5
1814 percent over the past decade. Clearly, this is a trend that
1815 we hope to continue.

1816 However, in spite of the decline in national crime
1817 rates, there are parts of the country where homicides and
1818 other violent crimes remain a serious, and even increasing,
1819 problem. These areas need our help.

1820 The Department of Justice is already taking steps to
1821 address the areas of the country with high crime rates. For
1822 example, in February 2010, the U.S. Attorney's Office in
1823 Puerto Rico entered into a memorandum of understanding with
1824 Puerto Rican law enforcement to provide greater
1825 prosecutorial coordination in cases involving concurrent
1826 jurisdiction, including drug trafficking in airports, bank
1827 robberies, and the sexual exploitation of minors. Federal
1828 prosecutors in Puerto Rico have also been busy bringing
1829 indictments against 34 individuals for drug trafficking in
1830 November 2010, and another 132 indictments for drug
1831 trafficking as part of a joint ATF-DEA-Puerto Rico police

1832 department strike force in December 2010.

1833 However, there is still more work to do. H.R. 1550
1834 directs the Department of Justice to consider how to best
1835 assign, recruit, and retain Federal law enforcement officers
1836 in the areas of the country hit hardest by violent crime.
1837 This is common-sense legislation that, instead of
1838 authorizing new spending, asks the Department of Justice to
1839 use its current resources as wisely as possible.

1840 I support this legislation, and I encourage my
1841 colleagues to vote in support of H.R. 1550."

1842 And let me just state that this is a good bill. There
1843 is an amendment in the nature of a substitute which makes it
1844 better. I support the amendment, and I support the bill and
1845 commend the gentleman from Puerto Rico for doing a good job
1846 in crafting it.

1847 In the interest of time, I yield back the balance of
1848 my time.

1849 Chairman Smith. Thank you, Mr. Sensenbrenner.

1850 The gentleman from Virginia, Mr. Scott, ranking member
1851 of the Crime Subcommittee, is recognized.

1852 Mr. Scott. Thank you, Mr. Chairman.

1853 I would ask unanimous consent that my statement be
1854 placed in the record.

1855 Chairman Smith. Without objection, so ordered.

1856 [The statement of Mr. Scott follows:]

1857

1858 Mr. Scott. And just thank the gentleman from Puerto
1859 Rico for his interest and leadership in making sure that the
1860 recruitment and retention of law enforcement officers is an
1861 increased priority, particularly in high-crime areas.

1862 And I yield back.

1863 Chairman Smith. Thank you, Mr. Scott.

1864 We will now recognize the sponsor of the bill, Mr.
1865 Pierluisi, who is always looking out for Puerto Rico, for
1866 his opening statement.

1867 Mr. Pierluisi. Thank you, Mr. Chairman.

1868 First and foremost, I want to thank you for scheduling
1869 H.R. 1550 for markup today and for working with me to
1870 advance this bipartisan legislation.

1871 I also want to express my gratitude for Congressman
1872 Michael Grimm, a 9-year FBI veteran, for partnering with me
1873 on this bill. Our bill would direct the Department of
1874 Justice to place a priority on recruiting, signing, and
1875 retaining Federal law enforcement in jurisdictions with a
1876 high rate of homicides or other violent crimes.

1877 Violent crime exacts a terrible price. Its costs are
1878 measured not only in the number of lives lost, but also in
1879 the number of citizens who live in fear that they or someone
1880 they love might be the next victim.

1881 Although violent crime in the United States has
1882 generally fallen over the past few years, certain American

1883 communities have become less rather than more secure. Much
1884 of the increase in violence experienced by these communities
1885 is due to drug trafficking and other serious crimes that
1886 cross State and national borders, such as along the
1887 Southwest border.

1888 In these instances, the Federal Government has
1889 particularly strong interest in protecting its citizens.
1890 Nevertheless, the evidence strongly suggests that
1891 recruitment and retention of Federal law enforcement
1892 officers poses a major challenge. The struggle to fill
1893 these critical positions and to keep them filled is
1894 particularly acute in many jurisdictions that are
1895 experiencing a high rate of murders and other violent
1896 crimes.

1897 In fact, the high incidence of crime in a jurisdiction
1898 often deters a Federal law enforcement officer from seeking
1899 assignment in that jurisdiction and frequently leads to
1900 early turnover at great expense to the employing agency.

1901 I raise the example of Puerto Rico, but this bill is
1902 not exclusive of Puerto Rico. It can apply to other areas
1903 as well. In the case of Puerto Rico, the statistics are
1904 alarming, and yet the number of Federal law enforcement
1905 personnel assigned to Puerto Rico is well below the national
1906 average.

1907 But we have looked into other areas, and we see

1908 similar patterns in, for example, Louisiana, Maryland, and
1909 South Carolina, where again you see that their crime exceeds
1910 the national average, yet the number of Federal law
1911 enforcement personnel assigned to those areas is also too
1912 low.

1913 At the same time, I agree with the statement made by
1914 the ranking member that in inner cities, you see violent
1915 crime in the rise or at unacceptable levels, cities like
1916 Detroit, Cincinnati, and Richmond, just to mention a couple.

1917 So the question becomes, why do Federal law
1918 enforcement agencies have high vacancy rates in high-need
1919 jurisdictions? The budget shortfall might be one reason.
1920 We know that the Department of Justice has been asked to do
1921 more with fewer resources, including fewer agents. But the
1922 problem goes beyond money.

1923 Fewer workers are entering law enforcement than in the
1924 past. Those who do seek to enter the profession are more
1925 likely to be disqualified because of health reasons, such as
1926 obesity or substance abuse. And military recruitment, which
1927 has understandably risen in recent years, is competing with
1928 law enforcement for the same talent.

1929 In the face of these challenges, it is prudent for the
1930 Federal Government to develop a comprehensive plan to
1931 recruit, assign, and retain law enforcement officers in
1932 those jurisdictions that have the highest rates of murder or

1933 other violent crime. The Federal Government cannot be
1934 passive in filling law enforcement shortages, hoping the
1935 right candidates will volunteer. Nor it can simply expect
1936 agents to remain with the Government, particularly when the
1937 private sector often pays more.

1938 Instead, the Federal Government must proactively
1939 address personnel challenges by dedicating staff to
1940 recruitment and retention. Indeed, a number of local
1941 departments have successfully addressed staffing shortages
1942 by establishing units specifically charged with recruitment
1943 and retention. The Department of Justice, therefore, can
1944 and, wherever feasible, should implement those practices
1945 that have proven most effective at the State and local
1946 level.

1947 But I want to be clear about something. This bill
1948 does not pretend to micromanage the Department of Justice or
1949 impose a single solution. The bill instead enables DOJ to
1950 determine which incentives to offer or steps to take in
1951 order to improve recruitment and retention and requires the
1952 department to provide us with an annual report on its
1953 efforts in this area.

1954 That way, this Congress, as well as this committee,
1955 will be able to evaluate the efficacy of DOJ's actions to
1956 reduce its personnel shortages in high-need jurisdictions.
1957 I urge all of my colleagues on this committee to vote in

1958 favor of the bill, and I yield back the balance of my time.

1959 Chairman Smith. Thank you, Mr. Pierluisi.

1960 And the gentleman from Puerto Rico is recognized to

1961 offer his manager's amendment.

1962 Mr. Pierluisi. There is an amendment at the desk, Mr.

1963 Chairman.

1964 Chairman Smith. The clerk will report the amendment.

1965 Ms. Kish. Amendment in the nature of a substitute to

1966 H.R. 1550 offered by Mr. Pierluisi of --

1967 Chairman Smith. Without objection, the amendment will

1968 be considered as read.

1969 [The information follows:]

1970

1971 Chairman Smith. And the gentleman is recognized to
1972 explain his manager's amendment.

1973 Mr. Pierluisi. Thank you, Mr. Chairman.

1974 This amendment would limit the legislation's
1975 application to the Department of Justice. The original
1976 bill, or the bill as filed, would cover DOJ and the
1977 Department of Homeland Security. Now the substitute
1978 basically limits the bill to the Department of Justice.

1979 It would also require the Attorney General to
1980 establish the program within 120 days and to provide an
1981 annual report on the implementation of the program. In
1982 addition, the amendment would make certain technical
1983 changes.

1984 For the reasons I already laid out, I urge all of my
1985 colleagues to vote in favor of this amendment in the nature
1986 of a substitute, and I yield back the balance of my time.

1987 Chairman Smith. Thank you, Mr. Pierluisi.

1988 Without objection, I will make my opening statement a
1989 part of the record.

1990 [The statement of Chairman Smith follows:]

1991

1992 Chairman Smith. "This manager's amendment to H.R.
1993 1550, introduced by Mr. Pierluisi, makes a number of
1994 important changes to the underlying bill, while still
1995 focusing on the recruitment and retention of Federal law
1996 enforcement officers in the areas that need them the most.

1997 This amendment strikes the requirement that a similar
1998 program be established in the Department of Homeland
1999 Security, provides that the Department of Justice has 120
2000 days to implement the program, and directs DOJ to report to
2001 Congress on its efforts to address recruitment, assignment,
2002 and retention of law enforcement in areas with high rates of
2003 violent crime.

2004 I thank the gentleman from Puerto Rico for introducing
2005 this amendment and for working with committee staff to
2006 refine and strengthen H.R. 1550.

2007 I urge my colleagues to support this amendment."

2008 I associate myself with the gentleman's remarks.

2009 Are there any other Members who wish to be heard on
2010 the amendment?

2011 [No response.]

2012 Chairman Smith. If not, all in favor of the manager's
2013 amendment, say aye.

2014 [A chorus of ayes.]

2015 Chairman Smith. All opposed, nay.

2016 [No response.]

2017 Chairman Smith. In the opinion of the chair, the ayes
2018 have it, and the amendment is agreed to.

2019 Are there any other amendments?

2020 [No response.]

2021 Chairman Smith. If not, a reporting quorum being
2022 present, the question is on reporting the bill, as amended,
2023 favorably to the House. Those in favor, say aye.

2024 [A chorus of ayes.]

2025 Chairman Smith. Opposed, no.

2026 [No response.]

2027 Chairman Smith. The ayes have it, and the bill, as
2028 amended, is ordered reported favorably.

2029 Without objection, the bill will be reported as a
2030 single amendment in the nature of a substitute incorporating
2031 the amendment adopted. And the staff is authorized to make
2032 technical and conforming changes. Members will have 2 days
2033 to submit views.

2034 We will now take up H.R. 2076, the Investigative
2035 Assistance for Violent Crimes Act of 2011. Pursuant to
2036 notice, I now call up H.R. 2076 for purposes of markup, and
2037 the clerk will report the bill.

2038 Ms. Kish. H.R. 2076. To amend Title 28, United
2039 States Code, to clarify the statutory authority for the
2040 longstanding practice of the Department of Justice of
2041 providing --

2042 Chairman Smith. Without objection, the bill will be
2043 considered as read.
2044 [The information follows:]
2045

2046 Chairman Smith. I will ask unanimous consent that my
2047 opening statement be made a part of the record.
2048 [The statement of Chairman Smith follows:]
2049

2050 Chairman Smith. "The Federal Bureau of Investigation
2051 (FBI) currently does not have specific statutory authority
2052 to assist in the investigation of mass killings or attempted
2053 mass killings or other violent crimes occurring in non-
2054 Federal venues.

2055 H.R. 2076, the Investigative Assistance for Violent
2056 Crimes Act of 2011, allows the FBI to provide State and
2057 local law enforcement authorities with assistance if
2058 requested when the violent act does not appear to otherwise
2059 violate a Federal law.

2060 This situation often arises when the FBI is asked to
2061 assist local authorities with shootings and mass killings at
2062 some public places such as a shopping mall or a school.

2063 The FBI often assists State and local authorities in a
2064 variety of matters. That is the way it should be. The FBI
2065 has long trained State, local, and international law
2066 enforcement officials. The public expects FBI resources to
2067 be used to preserve order and save lives when necessary.

2068 However, in some mass shootings situations, the FBI
2069 has had difficulty finding the necessary Federal
2070 jurisdiction to provide the requested assistance.

2071 I commend Mr. Gowdy for introducing this legislation.
2072 He has taken a very logical approach to fixing what could be
2073 a very serious problem.

2074 Before anyone jumps to criticize this bill as an

2075 expansion of Federal authority, let me emphasize that this
2076 bill does not expand the jurisdiction of the FBI. Any
2077 assistance from the FBI must be requested by the State or
2078 local authority and agreed to by Federal authorities. In
2079 other words, the FBI will only step in when State or local
2080 counterparts ask for help and they agree to help.

2081 This legislation is simple, but very much needed. The
2082 FBI looks to Federal law to determine what authority it has
2083 been granted by Congress. That is why we must give the FBI
2084 the specific authority to respond to requests for assistance
2085 from State and local law enforcement authorities when mass
2086 killings or other acts of violence are committed or
2087 attempted.

2088 I urge my colleagues to support this bill."

2089 And I will yield my time to the gentleman who
2090 introduced the bill, the gentleman from South Carolina, Mr.
2091 Gowdy.

2092 Mr. Gowdy. Thank you, Mr. Chairman, for your
2093 leadership on this committee and for yielding to me.

2094 Mr. Chairman, the FBI frequently receives requests for
2095 assistance from State and local law enforcement on myriad
2096 matters. The most serious of these include the
2097 investigation of mass killings or attempted mass killings
2098 and other violent crimes occurring in public venues.

2099 The Bureau, in reviewing their assistance to State and

2100 local authorities, realized the absence of a Federal statute
2101 directly providing jurisdiction to the Bureau to respond to
2102 such requests. Consequently, no clear jurisdiction exists
2103 for the Bureau to use their crisis management assets to
2104 assist in the resolution of these incidents.

2105 When circumstances justify, the Bureau willingly
2106 assists. But in evaluating their response to these matters,
2107 it could be suggested that a Federal officer is acting
2108 outside his or her scope of employment.

2109 This bill, H.R. 2076, called the Investigative
2110 Assistance for Violent Crimes Act of 2011, specifically
2111 allows the Bureau to provide State and local law enforcement
2112 with the assistance requested when the violent act does not
2113 appear to otherwise violate a Federal law, and local law
2114 enforcement has many reasons to request assistance from the
2115 FBI, including, just to name a few, access to Federal labs,
2116 access to criminal profile, trap and trace capabilities, and
2117 Title III surveillance authority, to highlight just a few.

2118 In some highly publicized mass shootings, the Bureau
2119 has had difficulty finding the necessary Federal
2120 jurisdiction to provide the requested assistance and has
2121 instead relied upon statutes drafted for other purposes.

2122 Mr. Chairman, history regrettably has provided myriad
2123 examples of instances where the Bureau assisted State and
2124 local law enforcement authorities through alternative

2125 jurisdictions without a specific authority to point to.

2126 These matters -- and these are just a few, Mr.
2127 Chairman. December 5, 2007, mass shooting in Omaha,
2128 Nebraska. The mass shooting at Virginia Technical
2129 Institute.

2130 Mr. Chairman, some members of this committee may
2131 remember Susan Smith drowning her two sons in South
2132 Carolina. In that case, I was a brand-new Federal
2133 prosecutor. And I remember my friend and colleague Tommy
2134 Pope, who now serves with great distinction in the South
2135 Carolina House of Representatives, asking the Bureau to help
2136 with trap and trace orders when they thought it might
2137 possibly be a carjacking. As we later found out, it was a
2138 State murder case. But at the time, they needed help from
2139 the Bureau, and they needed help from the Federal system.

2140 In each of these examples, as with many others,
2141 statutory authority to assist with mass killings and violent
2142 crime matters would have been more appropriate. This bill
2143 does not expand in any way, shape, or form the jurisdiction
2144 of the FBI. The FBI will not and cannot act unilaterally in
2145 these matters. The request has to be made by State or local
2146 authorities.

2147 Mr. Chairman, I worked with the Bureau for 6 years as
2148 a Federal prosecutor and then with 10 years subsequent to
2149 that as a State prosecutor, and it is important to me that

2150 the request be made by State and local law enforcement, one
2151 of whom, my colleague, Mrs. Adams, served with great
2152 distinction in the State of Florida as a sheriff's deputy.
2153 It is important that that distinction be preserved, and it
2154 is preserved.

2155 Mr. Chairman, this bill is supported by the FBI agents
2156 association, representing 12,000 active and retired from
2157 duty special agents of the Bureau. I would ask that a
2158 letter that they sent to me be included in the record by
2159 unanimous consent.

2160 Mr. Sensenbrenner. [Presiding] Without objection.

2161 [The information follows:]

2162

2163 Mr. Gowdy. And Mr. Chairman, I would respectfully
2164 request my colleagues give this bill every reasonable
2165 consideration.

2166 And with that, I would yield back.

2167 Mr. Sensenbrenner. The chair recognizes the ranking
2168 member, the gentleman from Michigan, Mr. Conyers?

2169 Mr. Conyers. Thank you, Chairman.

2170 I want to commend Trey Gowdy for bringing his
2171 prosecutorial experience to bring this bill to fruition.
2172 This is the first bill that I can recall that he has
2173 authored that I enthusiastically join in support. He has
2174 identified the fact that the Department of Justice, the FBI,
2175 and the association of FBI agents all are in support of the
2176 bill, and so am I.

2177 And I ask unanimous consent that my statement be
2178 included in the record.

2179 Mr. Sensenbrenner. Without objection.

2180 [The statement of Mr. Conyers follows:]

2181

2182 Mr. Sensenbrenner. Now the chair recognizes himself,
2183 as chair of the Crime Subcommittee, briefly.

2184 This is a good bill. I support it. Just to clarify
2185 and make sure that the record is clear, it gives the FBI
2186 specific statutory authority to investigate mass killings or
2187 attempted mass killings or other violent crimes in non-
2188 Federal venues. And that is the important part of it.

2189 I ask unanimous consent that my statement appear in
2190 the record, and without objection, it will.

2191 [The statement of Mr. Sensenbrenner follows:]

2192

2193 Mr. Sensenbrenner. "The Federal Bureau of
2194 Investigation (FBI) does not currently have specific
2195 statutory authority to assist in the investigation of mass
2196 killings or attempted mass killings or other violent crimes
2197 that occur in non-Federal venues such as schools, colleges,
2198 universities, office buildings, malls, or other public
2199 places.

2200 Often these events are protracted and overwhelm the
2201 resources of State and local law enforcement officers.

2202 While the FBI receives requests for such assistance
2203 from State and local law enforcement, there is no specific
2204 Federal statute which directly provides jurisdiction to the
2205 FBI to respond to such requests. This assistance is
2206 specifically asked for and generally granted, but there is
2207 the possibility that a Federal officer could be found to be
2208 acting outside of their scope of employment.

2209 H.R. 2076, the Investigative Assistance for Violent
2210 Crimes Act of 2011, provides statutory authorization to the
2211 FBI to provide assistance when the violent act does not
2212 appear to otherwise violate a Federal law.

2213 The issue that this bill addresses often surfaces when
2214 the FBI is asked to assist local authorities with shootings
2215 and mass killings resulting from violent rampages at some
2216 public place such as a shopping mall or a school, but could
2217 apply in other situations.

2218 In some mass shootings, the FBI has had difficulty
2219 finding the necessary Federal jurisdiction to provide the
2220 requested assistance and has instead relied upon statutes
2221 drafted for other purposes.

2222 Within the confines of the current laws, the FBI has
2223 struggled to find specific Federal jurisdiction to provide
2224 the requested assistance.

2225 Currently, if requested by State or local authorities,
2226 the FBI may investigate the felonious killing of State and
2227 local law enforcement officers; the FBI may assist in the
2228 investigation of a felony crime of violence in which the
2229 victim appears to have been selected because they are a
2230 traveler; and the FBI may investigate serial killings.

2231 There has been some disagreement about whether the
2232 serial killing statute would apply to a single murderous act
2233 that resulted in three or more deaths, or whether it would
2234 require three separate and unrelated murders.

2235 There is also a general statute, 42 U.S.C. 10501,
2236 which permits a State to submit an application for Federal
2237 law enforcement assistance to the Attorney General for
2238 approval in the event of a law enforcement emergency
2239 existing throughout the State or in a part of the State, but
2240 this appears to address law enforcement emergencies that are
2241 very large in scope.

2242 FBI jurisdiction is not being expanded by this bill.

2243 It simply ensures that the FBI can render assistance to
2244 their State and local counterparts when required for very
2245 serious matters.

2246 This bill also raises the amount of reward money that
2247 could be paid by the Department of Justice for assistance by
2248 the public and retains current congressional reporting
2249 requirements for certain rewards. I thank Mr. Gowdy for his
2250 work on this measure.

2251 I urge my colleagues to support this bill."

2252 And the chair now recognizes the ranking member of the
2253 Crime Subcommittee, the gentleman from Virginia, Mr. Scott.

2254 Mr. Scott. Thank you, Mr. Chairman.

2255 Throughout its 100-year history, the Federal Bureau of
2256 Investigation has worked closely with State and local law
2257 enforcement officials to investigate crimes, especially
2258 felony crimes such as violent acts, mass killings, and
2259 others. And we are accustomed to seeing them provide their
2260 skills, their resources, and their expertise to State and
2261 local law enforcement agencies in cases such as mass
2262 killings, shootings at schools, and other non-Federal
2263 venues.

2264 So it may come as a surprise to some of us to learn
2265 that the FBI does not currently have technical statutory
2266 authority to provide such assistance. Current law is
2267 ambiguous. However, H.R. 2076, when passed, would eliminate

2268 the ambiguity and explicitly grant the FBI the authority to
2269 provide State and local law enforcement with investigative
2270 assistance requested in cases where those officials are
2271 investigating violent acts and shootings at venues, such as
2272 schools, non-Federal office buildings, and shopping malls,
2273 where the violent act does not appear to otherwise violate a
2274 Federal law.

2275 While the State and local law enforcement agencies may
2276 request assistance, it is within the discretion of the
2277 Attorney General and FBI to determine the appropriateness of
2278 providing such help. We certainly assist State and local
2279 law enforcement through award of Byrne JAG grants, and other
2280 forms of assistance. So I believe it is appropriate that we
2281 grant the FBI the authority to assist local and State
2282 authorities where they deem it is appropriate.

2283 Without this statutory clarification, the question
2284 will remain about whether or not the FBI can appropriately
2285 provide the requested aid. This bill has the support of the
2286 FBI agents association, a voluntary professional association
2287 currently representing over 12,000 active and retired FBI
2288 special agents.

2289 Mr. Chairman, I want to thank the gentleman from South
2290 Carolina for bringing this issue to our attention. And the
2291 only question I have about it is why there would be any --
2292 the bill apparently limits it to shootings and mass

2293 killings. My question is why there would be any limitation
2294 on the authority?

2295 The present law is it has to be requested. And even
2296 if requested, it is not mandatory. So I would hope that we
2297 would consider even expanding it to any situation where the
2298 locals have requested it. The FBI can provide it or not
2299 provide it using their good judgment. So I want to thank
2300 again the gentleman from South Carolina and yield back the
2301 balance of my time.

2302 Mr. Sensenbrenner. Without objection, other Members'
2303 opening statements will be placed in the record at this
2304 time.

2305 [The information follows:]

2306

2307 Mr. Sensenbrenner. Are there any amendments?

2308 [No response.]

2309 Mr. Sensenbrenner. Hearing none, the chair notes the
2310 presence of a reporting quorum. Those in favor of reporting
2311 the bill favorably will say aye.

2312 [A chorus of ayes.]

2313 Mr. Sensenbrenner. Opposed, no.

2314 [No response.]

2315 Mr. Sensenbrenner. The ayes appear to have it. The
2316 ayes have it, and the bill is reported favorably. Without
2317 objection, Members will have 2 days to submit views.

2318 And pursuant to notice, the chair now calls up the
2319 bill H.R. 1059, to protect the safety of judges by extending
2320 the authority of the Judicial Conference to redact sensitive
2321 information contained in their financial disclosure reports,
2322 and for other purposes.

2323 The clerk will read the bill.

2324 Ms. Kish. H.R. 1059. To protect the safety of judges
2325 by extending the authority --

2326 Mr. Conyers. Mr. Chairman, I ask unanimous consent
2327 the bill be considered as read.

2328 Mr. Sensenbrenner. Without objection. Without
2329 objection, the bill will be open for amendment at any point.

2330 [The information follows:]

2331

2332 Mr. Sensenbrenner. The chair asks unanimous consent
2333 that an opening statement by the chairman of the full
2334 committee, Mr. Smith, be included in the record.
2335 [The statement of Chairman Smith follows:]
2336

2337 Chairman Smith. "I support H.R. 1059 and thank Mr.
2338 Conyers for sponsoring it. I also thank Mr. Cohen and Mr.
2339 Johnson for serving as cosponsors.

2340 H.R. 1059 promotes an important goal -- providing
2341 security for Federal judges.

2342 Under the Ethics in Government Act, judges and other
2343 high-level judicial branch officials must file annual
2344 financial disclosure reports. This requirement increases
2345 public confidence in Government officials and better enables
2346 the public to judge the performance of those officials.

2347 However, recognizing the nature of the judicial
2348 function and the increased security risks it entails,
2349 Congress also enacted legislation that allows the Judicial
2350 Conference to redact statutorily required information in a
2351 financial disclosure report where the release of the
2352 information could endanger the filer or his or her family.

2353 Those seeking to harm or intimidate Federal judges
2354 might use a disclosure form to identify where someone's
2355 spouse or child works or goes to school on a regular basis.

2356 Individuals targeting judges for harassment have also
2357 been known to file false liens on property owned by judges
2358 and their families. Harassers could use judicial financial
2359 disclosure reports to more easily identify such property.

2360 The Judicial Conference delegated to its Committee on
2361 Financial Disclosure the responsibility for implementing the

2362 financial disclosure requirements for judges and judicial
2363 employees under the Ethics in Government Act. The committee
2364 monitors the release of financial disclosure reports to
2365 ensure compliance with the statute.

2366 In consultation with the U.S. Marshals Service, the
2367 committee also reviews and approves or disapproves any
2368 request for the redaction of statutorily mandated
2369 information where the filer believes the release of the
2370 information could endanger the filer and their family.
2371 Under the Judicial Conference's regulations, no redaction
2372 will be granted without a clear nexus between a security
2373 risk and the information for which redaction is sought.

2374 The law has worked well through the years and has been
2375 reauthorized twice since 2001. But it expires at the end of
2376 this calendar year if we fail to act.

2377 Last year the Marshal Service investigated and
2378 analyzed almost 1,400 threats and inappropriate
2379 communications to judicial officials -- nearly three times
2380 as many threats as recorded in 2003. And there were more
2381 than 3,900 "incidents" and arrests at U.S. court facilities
2382 in 2010.

2383 Financial disclosures are an important part of
2384 maintaining an open and transparent Government. But
2385 Government transparency should not come at the cost of
2386 personal security for Government officials.

2387 Judges and other judicial employees perform important
2388 work that is integral to our democratic system of
2389 government. In order to preserve the integrity of our
2390 democracy, we must protect the integrity of our courts. And
2391 that means ensuring the security of judges and other
2392 judicial employees from intimidation and threats.

2393 In closing, there is no evidence that the current law
2394 is being abused. I support H.R. 1059 and urge the committee
2395 to extend the redaction authority permanently.”

2396 Mr. Sensenbrenner. The chair will recognize himself
2397 very briefly to say that this is an oldie, but goodie.
2398 During my chairmanship, I tried to make this permanent since
2399 we always do when it expires. The other body wanted to do
2400 more oversight on it. I have not been able to detect any
2401 oversight being done by the other body, but we have to get
2402 this bill passed so that the judges are not placed in
2403 jeopardy by something that is in their financial disclosure.

2404 The chair also asks unanimous consent to include in
2405 the record a letter dated July 19th by James C. Duff,
2406 Secretary of the Judicial Conference of the United States,
2407 supporting this legislation.

2408 Without objection, it is entered into the record.

2409 [The information follows:]

2410

2411 Mr. Sensenbrenner. And the chair now recognizes the
2412 author of the bill, the gentleman from Michigan, Mr.
2413 Conyers.

2414 Mr. Conyers. Thank you, Mr. Chairman.

2415 This bill goes back a ways. I would like to try to
2416 remember what we did with it during my chairmanship on the
2417 committee. But I can't recall it was so long ago.

2418 My colleagues from Tennessee and Georgia, Steve Cohen
2419 and Hank Johnson, have joined me. I urge that it be
2420 supported, and I would like to yield my time to Hank
2421 Johnson, if he has any additional comments he would like to
2422 make.

2423 Mr. Johnson. Well, for fear that anything I say may
2424 cause us to lose momentum on this, I will decline,
2425 respectfully.

2426 Thank you, Mr. Chairman.

2427 This is a wonderful bill, and it is one that we fought
2428 for in the last session, as I recall. And I would ask that
2429 all Members be in favor of it.

2430 Mr. Conyers. Well, you may have cost me support even
2431 with that brief comment.

2432 Mr. Sensenbrenner. The chair will not ask if there is
2433 any objection at this point. Without objection, other
2434 Members' opening statements will be placed in the record at
2435 this point.

2436 [The information follows:]

2437

2438 Mr. Sensenbrenner. Are there any amendment?

2439 [No response.]

2440 Mr. Sensenbrenner. Hearing none, a reporting quorum
2441 is present. Those in favor of reporting the bill favorably
2442 will say aye.

2443 [A chorus of ayes.]

2444 Mr. Sensenbrenner. Opposed, no.

2445 [No response.]

2446 Mr. Sensenbrenner. The ayes appear to have it. The
2447 ayes have it. The bill is reported favorably. And without
2448 objection, Members will have 2 days to submit views, if that
2449 is their desire.

2450 The chair now states that pursuant to notice, I call
2451 up the bill H.R. 2552 for purposes of markup, and the clerk
2452 will report the bill.

2453 Ms. Kish. H.R. 2552. To amend Title 18 United States
2454 Code to change the state of mind requirement for certain
2455 identity theft offenses, and for other purposes.

2456 Mr. Sensenbrenner. Without objection, the bill is
2457 considered as read.

2458 [The information follows:]

2459

2460 Mr. Sensenbrenner. Without objection, the chair will
2461 put the full committee chair, Mr. Smith's opening statement
2462 into the record and yield himself 5 minutes to make an
2463 opening statement of his own.

2464 [The statement of Chairman Smith follows:]

2465

2466 Chairman Smith. "H.R. 2552, the Identity Theft
2467 Improvement Act of 2011, was sponsored by Congressman
2468 Goodlatte and cosponsored by Congressman Schiff, a former
2469 member of this committee, to help the Justice Department
2470 pursue and convict those who use stolen identities to commit
2471 crime.

2472 Identity theft is a persistent problem in the United
2473 States. According to the Justice Department, in 2008 an
2474 estimated 12 million people -- representing 55 percent of
2475 people age 16 or older in the United States -- experienced
2476 at least one incident of identity theft within a 2-year
2477 period. The total financial cost of identity theft in 2008
2478 was over \$17 billion.

2479 Identity theft is often used by illegal immigrants to
2480 enter and remain in the United States. For example, on May
2481 12, 2008, Immigration and Customs Enforcement (ICE)
2482 conducted a worksite enforcement action at Agriprocessors,
2483 Inc., a kosher meat processor in Postville, Iowa.

2484 Three hundred and six illegal immigrant employees were
2485 criminally charged, 62 were released on humanitarian
2486 grounds, and 21 were held on administrative charges.

2487 The majority of the defendants were charged with
2488 aggravated identity theft in conjunction with the felony of
2489 using false identification to commit immigration-related
2490 crimes.

2491 However, a recent Supreme Court decision has made
2492 prosecuting identity theft more difficult. In Flores-
2493 Figueroa v. U.S., the Supreme Court held that the aggravated
2494 identity theft statute requires the Government to prove that
2495 the defendant knew the means of identification belonged to
2496 another person. It is not sufficient that the Government
2497 prove that the defendant knew that the identification was
2498 fake, or even that it was stolen.

2499 This knowledge requirement is difficult to establish
2500 in immigration cases. Under this decision, an illegal
2501 immigrant can use someone else's Social Security number and
2502 evade responsibility because the authorities can't prove
2503 that the illegal immigrant specifically knew that number
2504 belonged to another person.

2505 As a direct result, in the meat processor case, a
2506 manager of the plant has already successfully withdrawn her
2507 guilty plea.

2508 Likewise, the former vice president of the plant is
2509 facing aggravated identity theft charges in relation to his
2510 employment of large numbers of illegal immigrants.
2511 According to a recent news article, he intends to move for
2512 dismissal of these charges based on the Flores-Figueroa
2513 decision.

2514 H.R. 2552 corrects the identity theft statute so that
2515 the Government need not prove that someone using a false

2516 means of identification to commit a felony knows that the ID
2517 belongs to another person.

2518 The impact on the victim is still the same, regardless
2519 of whether a criminal makes up a Social Security number that
2520 belongs to a real person or knowingly steals an individual's
2521 identification documents.

2522 Identity theft is an incredibly destructive crime that
2523 can destroy the lives of its victims. The law must be fixed
2524 to ensure that perpetrators are punished.

2525 H.R. 2552 still protects defendants' rights, while
2526 removing an impractical and unfair hurdle to our identity
2527 theft and immigration investigations.

2528 This legislation helps improve our efforts to catch
2529 and prosecute illegal immigrants and other criminals who
2530 commit felonies using false ID.

2531 I urge my colleagues to support the bill."

2532 Mr. Sensenbrenner. This bill addresses identity
2533 theft, which remains a serious problem in America. The bill
2534 clarifies the Government's burden of proof for crimes that
2535 involve the use of false identities in the commission of
2536 other felonies.

2537 Federal law prohibits identity theft and identity
2538 fraud, specifically the knowing possession or use of
2539 identification without lawful authority. The penalties are
2540 broken down into three categories. First, up to 5 years for

2541 garden variety identity theft. Second, up to 20 years for
2542 second offenses and identity thefts which facilitate drug
2543 offenses or violent crimes. And third, up to 30 years if
2544 the identity theft facilitates terrorism.

2545 In 2004, Congress expanded the law to add a provision
2546 known as aggravated identity theft. Codified at 18 U.S.C.
2547 1028(a), this statute provides for a consecutive 2-year
2548 sentence for using another person's identity to commit
2549 another felony. These felonies include theft, embezzlement,
2550 fraud, false statements, wire fraud, and false statements in
2551 connection to acquiring a firearm.

2552 It also includes several immigration-related offenses
2553 in the list of predicate felonies, including fraud relating
2554 to citizenship, fraud relating to alien registration cards,
2555 failure to leave the U.S. following deportation, and
2556 harboring and unlawful employment offenses under the
2557 Immigration and Nationality Act.

2558 Congress intended to deter and punish the use of
2559 stolen identity information while committing a serious
2560 crime. A recent decision from the Supreme Court, however,
2561 has raised the bar of what prosecutors must prove to convict
2562 such criminals.

2563 In Flores-Figueroa, the offender was a citizen of
2564 Mexico. In 2000, to secure employment, Flores gave his
2565 employer a false name, birth date, and Social Security

2566 number, along with a counterfeit alien registration card.
2567 The Social Security number and the number on the alien
2568 registration card were not those of a real person.

2569 In 2006, Flores presented his employer with a new
2570 counterfeit Social Security and alien registration cards.
2571 These cards, unlike Flores's old alien registration card,
2572 used his real name. But this time the numbers on both cards
2573 were, in fact, numbers assigned to other people.

2574 Flores was arrested and charged with identity theft
2575 under 18 U.S. Code 1028(a). Flores moved for a judgment of
2576 acquittal on the aggravated identity theft counts. He
2577 claimed the Government could not prove that he knew the
2578 numbers on the counterfeit documents were numbers assigned
2579 to other people.

2580 The court ruled that the Government must prove that a
2581 defendant charged with identity theft actually knew the ID
2582 documents belonged to another person. The addition of this
2583 element seriously compromises our efforts to combat identity
2584 theft. This type of knowledge can be virtually impossible
2585 to prove in an average case.

2586 Where a criminal presents stolen identities, how would
2587 the prosecutors prove that the defendant knew that the ID,
2588 such as a Social Security number, actually belonged to
2589 another person, as opposed to being fictional. It would be
2590 easy for suspects to invade this element of the crime. They

2591 would simply assert that they knew the documents were false,
2592 but they were not correlated to an actual human.

2593 This bill simply removes the element the court imposed
2594 from the section of identity theft law. It aids the
2595 authorities in prosecuting those who use stolen ID
2596 information to commit dangerous felonies, including
2597 terrorism-related offenses. The bill does not increase or
2598 decrease sentencing, nor expands the reach of the statute.
2599 It is a fair response to a problem created by the court when
2600 it interpreted the law to include an element not intended by
2601 Congress.

2602 I yield back the balance of my time and recognize the
2603 full committee chair, the gentleman from -- full committee
2604 ranking member, the gentleman from Michigan, Mr. Conyers.

2605 Mr. Conyers. Thank you, Chairman Sensenbrenner.

2606 First of all, this is not an improvement to the
2607 Identity Theft Act, and it is too bad that after this long
2608 string of bipartisan agreement this morning, we now come
2609 across a bill in which I don't think we can continue this
2610 agreement that we have enjoyed so much.

2611 I do not agree that the mens rea requirement for
2612 aggravated identity theft should be completely eliminated.
2613 Number two, we do impose additional penalties in this bill.
2614 Section 1028(a) imposes a mandatory additional penalty of 2
2615 years imprisonment on anyone who knowingly transfers,

2616 possesses, or uses without lawful authority a means of
2617 identification of another person.

2618 The Supreme Court has held in a case where the issue
2619 was whether an individual who uses identification that
2620 doesn't belong to him or her but does not know that such
2621 identification actually belongs to someone else can receive
2622 a 2-year mandatory sentence. Now the Supreme Court said no.
2623 The court held that the defendant had to know the
2624 identification belonged to someone else in order to receive
2625 the mandatory minimum sentence.

2626 And the Supreme Court I think in this case was
2627 correct. We shouldn't impose a 2-year sentence on
2628 individuals who did not intend to actually steal the
2629 identity of another person and who did not know that it, in
2630 fact, belonged to another person.

2631 So I oppose mandatory minimum sentences because they
2632 unnecessarily tie a judge's hands and in the end sometimes
2633 end up achieving unjust results. So I urge my colleagues to
2634 consider this as a non-improvement rather than an
2635 improvement to the bill that is under consideration.

2636 I thank you, Mr. Chairman, and return the balance of
2637 my time.

2638 Chairman Smith. [Presiding] Thank you, Mr. Conyers.

2639 I understand the chairman of the Crime Subcommittee
2640 has given his opening statement. So we will go to the

2641 ranking member of the Crime Subcommittee, Mr. Scott, for his
2642 opening statement.

2643 Mr. Scott. Thank you, Mr. Chairman.

2644 Mr. Chairman, this bill would lessen the burden of
2645 proof on the prosecution in aggravated identity theft cases.
2646 It purports to fix a Supreme Court case, Flores, that held
2647 that to be culpable of aggravated identity theft under 18
2648 U.S.C. 1028(a), a person must have known that the
2649 identification documents they used belonged to another
2650 person. This also appears to apply to 18 U.S.C. 1028(a)(7).

2651 Section 1028(a) imposes a 2-year consecutive mandatory
2652 minimum sentence on individuals who use a fraudulent ID
2653 document in connection with another offense. It adds a
2654 harsh penalty because it is intended to go after the most
2655 serious cases, those where someone knowingly possessed,
2656 used, or transferred another's identity.

2657 It adds it on top of the punishment they get for the
2658 underlying fraud. This bill would change the law so the
2659 mandatory minimum would apply regardless of whether the
2660 person knew the identity belonged to an actual person. This
2661 would essentially gut the meaning of aggravated identity
2662 theft, as 1028(a) is named, and equate it with general
2663 document fraud.

2664 Let me give you an example of why this distinction is
2665 important. If someone makes up a birth certificate and a

2666 fictional name with a fictional birth date and uses that
2667 document for employment purposes, they would be treated
2668 exactly the same as someone who stole a birth certificate
2669 that belonged to another person, knowing it belonged to that
2670 person, and used it for employment purposes.

2671 Both individuals are guilty of fraud, but it is only
2672 the second individual who would receive the enhanced
2673 punishment because that person knowingly harmed an actual
2674 person. This bill would require the judges treat the two
2675 exactly the same and sentence each to 2 years mandatory
2676 minimum in prison, in addition to the sentence that they get
2677 for the underlying fraud.

2678 The bill does not distinguish between the different
2679 levels of culpability of the two individuals, and it would
2680 not allow a judge to do so either. Now I oppose mandatory
2681 minimums in all cases because they take the discretion from
2682 judges and give it to prosecutors, whose charging decision
2683 dictates the sentence at the start of the case.

2684 We have seen how mandatory minimums distort our
2685 judicial system because they require judges to impose
2686 sentences that they disagree with and impose sentences which
2687 the Judicial Conference says are violative of common sense.
2688 One example is the case of Pamela Brown, a Jamaican national
2689 who lived in the United States and used four false documents
2690 to work. She opened a bank account under a false name only

2691 to deposit checks, only to deposit her paychecks. She
2692 purchased the false documents on the street and did not know
2693 they belonged to somebody.

2694 Six months pregnant, she was indicted for aggravated
2695 identity theft. At the sentencing, the Federal judge stated
2696 that she felt that 2 years in prison was too long, and she
2697 would have given less time if she could. There are
2698 countless other people like Ms. Brown, who would be subject
2699 to a 2-year mandatory minimum sentence under H.R. 2552,
2700 people who do not intend to hurt anybody, but who did not
2701 know they were using documents who belonged to another
2702 person.

2703 Now, yes, Mrs. Brown should have been punished for
2704 fraud, but did she deserve the 2-year mandatory minimum for
2705 aggravated identity theft? We should reserve the punishment
2706 for individuals who actually intend to steal somebody's
2707 identity and count that as the aggravated case and others
2708 just as simple fraud, as the law presently exists.

2709 So I would hope we would defeat the bill and not make
2710 this change. And I yield back.

2711 Chairman Smith. Okay. Thank you, Mr. Scott.

2712 I understand that the sponsor of the bill, Mr.
2713 Goodlatte, is on his way back. In his absence, without
2714 objection, his opening statement will be made a part of the
2715 record.

2716 [The statement of Mr. Goodlatte follows:]

2717

2718 Mr. Goodlatte. "Mr. Chairman, I urge my colleagues to
2719 support H.R. 2552, the Identity Theft Improvement Act of
2720 2011. It is bipartisan legislation to strengthen the
2721 Federal criminal laws punishing identity theft.

2722 Identity theft is a serious and growing threat. The
2723 Federal Trade Commission estimates that as many as 9 million
2724 Americans have their identities stolen each year.

2725 Identity thieves use identifying information such as a
2726 consumer's Social Security number, credit card numbers, or
2727 other financial account information in order to conduct such
2728 fraud as opening up new credit cards and gaining access to
2729 bank accounts. The ramifications can be financially
2730 disastrous for citizens and can be extremely difficult to
2731 resolve. We must crack down hard on these criminals.

2732 The fear of identity theft is also consistently cited
2733 as a reason many Americans are cautious about engaging in
2734 more transactions online. This is unfortunate because of
2735 the multitude of ways the Internet can help consumers shop,
2736 do business, and communicate efficiently and at low cost.

2737 The United States has many Federal statutes targeting
2738 identity theft. However, some of these laws were weakened
2739 by a recent Supreme Court case.

2740 18 U.S.C. 1028 and 1028(a) contain criminal
2741 punishments for certain identity theft violations when those
2742 violations are in connection with other Federal crimes and

2743 State felonies. In 2009, the Supreme Court ruled that the
2744 language of those Federal statutes require not only that the
2745 criminal use the identification documents of another person,
2746 but also that the criminal knew the documents were those of
2747 another actual person.

2748 The context of that case was that an illegal alien had
2749 given an employer counterfeit Social Security and alien
2750 registration cards containing his name but the
2751 identification numbers of other individuals. He was charged
2752 with two immigration offenses as well as aggravated identity
2753 theft.

2754 The Supreme Court overturned the conviction on the
2755 aggravated identity theft count explaining that the language
2756 of the relevant statutes required prosecutors to prove not
2757 only that the defendant used identity documents that were
2758 not his own, but also that the defendant knew the identity
2759 documents were those of another actual person.

2760 Identity theft occurs when someone intentionally and
2761 unlawfully uses identity documents that are not his own.
2762 Our Federal statutes should reflect this reality.

2763 H.R. 2552 amends these Federal statutes to make clear
2764 that when an identity thief intentionally and unlawfully
2765 uses identity documents that are not his own, prosecutors do
2766 not need to show that the criminal also knew that the
2767 identity documents were those of another actual person.

2768 This clarification will help prosecutors put identity
2769 thieves behind bars and will help safeguard American
2770 citizens from identity-related crimes.

2771 I urge the members of this Committee to support this
2772 bipartisan legislation."

2773 Chairman Smith. And would the gentleman from
2774 Virginia, Mr. Scott, like to be recognized to offer a
2775 germane amendment?

2776 Mr. Scott. With that limitation, Mr. Chairman, that
2777 disqualifies several amendments that I have.

2778 Chairman Smith. Well, the gentleman is recognized.

2779 Mr. Scott. I would like to first offer Amendment
2780 Number 1, Mr. Chairman.

2781 Chairman Smith. The --

2782 Mr. Sensenbrenner. Mr. Chairman? Mr. Chairman? I
2783 reserve a point of order.

2784 Chairman Smith. A point of order has been reserved.

2785 The clerk will report the amendment.

2786 Ms. Kish. Amendment to H.R. 2552 offered by Mr. Scott
2787 of Virginia. Add at the end the following. Aggravated
2788 identity theft. Section 102(a)(1) of Title 18 United States
2789 Code is amended --

2790 Chairman Smith. Without objection, the amendment will
2791 be considered as read.

2792 [The information follows:]

2793

2794 Chairman Smith. And the gentleman is recognized to
2795 explain the amendment.

2796 Mr. Scott. Thank you, Mr. Chairman.

2797 Mr. Chairman, this would strike the 2-year consecutive
2798 mandatory minimum sentence in the aggravated identity theft
2799 statute and replaces it with a 4-year maximum sentence.
2800 This bill would create a strict liability case by removing
2801 the requirement that the prosecution knew that the person
2802 had documents that actually belonged to somebody.

2803 The aggravated identity theft means you are stealing
2804 somebody's ID. If the bill goes forward and remains a
2805 mandatory minimum, there would essentially be no difference
2806 between regular fraudulent use of documents and aggravated
2807 identity theft.

2808 This, by striking the 2-year mandatory minimum, we
2809 would allow the judge to essentially use good judgment and
2810 make the appropriate sentence for the appropriate cases. So
2811 I would hope we would adopt the amendment.

2812 Mr. Sensenbrenner. Mr. Chairman?

2813 Chairman Smith. Thank you, Mr. Scott.

2814 Does the gentleman from Wisconsin insist on his point
2815 of order?

2816 Mr. Sensenbrenner. I do. Mr. Chairman, I make a
2817 point of order that the amendment is not germane.

2818 The amendment deals with sentences and terms of

2819 sentences. The bill relates to the mens rea requirement.
2820 It is outside the scope of the bill and, thus, is
2821 nongermane.

2822 Chairman Smith. Thank you, Mr. Sensenbrenner.

2823 Does the gentleman from Virginia wish to speak on the
2824 point of order?

2825 Mr. Scott. No, Mr. Chairman. I understand that you
2826 have made a response --

2827 Chairman Smith. Okay. The gentleman from New York?

2828 Mr. Nadler. Thank you.

2829 Mr. Conyers. You have to rule on the point of order.

2830 Mr. Nadler. I would like to speak on the point of
2831 order.

2832 Chairman Smith. Okay. The gentleman is recognized to
2833 speak on the point of order.

2834 Mr. Nadler. Thank you.

2835 The argument against on the point of order is that it
2836 is outside the scope of the bill because the bill doesn't
2837 deal with the sentence. It simply changes the mens rea
2838 requirement.

2839 But changing the mens rea requirement subjects people
2840 to this sentence. You would not otherwise be subjected to
2841 the sentence. And therefore, the amendment goes directly to
2842 the subject matter of the bill, and therefore, the amendment
2843 should be in order.

2844 If you change the mens rea requirement, then people
2845 who would not be subject to this sentence will now be
2846 subject to this sentence. That is the whole point of the
2847 bill.

2848 Changing the sentence, therefore, goes directly to the
2849 point of the bill and is within the scope of the bill and
2850 should be in order.

2851 Chairman Smith. Thank you, Mr. Nadler.

2852 The chair is prepared to rule on the point of order.
2853 In the opinion of the chair, the amendment is not germane.

2854 Does the gentleman from Virginia, Mr. Scott, have
2855 another amendment?

2856 Mr. Scott. Thank you.

2857 Amendment Number 2.

2858 Mr. Conyers. Should we call --

2859 Chairman Smith. The clerk will report Amendment
2860 Number 2 and --

2861 Ms. Kish. Amendment to H.R. 2552 offered by Mr. Scott
2862 of Virginia.

2863 Mr. Sensenbrenner. Mr. Chairman, I reserve a point of
2864 order.

2865 Chairman Smith. Point of order is reserved. And
2866 without objection, the amendment will be considered as read.

2867 [The information follows:]

2868

2869 Chairman Smith. And the gentleman from Virginia is
2870 recognized to explain his amendment?

2871 Mr. Scott. Mr. Chairman, this amendment creates an
2872 affirmative defense for individuals who can show that they
2873 did not know that the identification document they possessed
2874 belonged to another person. We have talked about the
2875 problem prosecution has in determining whether or not the
2876 person knew. This would put the burden of proof on the
2877 individual to show that they did not know.

2878 In this case, if you can affirmatively show that you
2879 did not know that the documents you had actually belonged to
2880 a person, and just had not been made up and printed, you
2881 should not be subject to the aggravating factors in the
2882 underlying bill. You are talking about the mens rea, and if
2883 you can show you did not in fact have the mens rea, then you
2884 should not be saddled with the underlying crime of
2885 aggravated identity theft.

2886 Now, you will still be guilty of fraud, but you are
2887 not guilty of the underlying additional aggravation that you
2888 inflicted harm on somebody. And if you can show you did not
2889 have the intent to inflict that harm, you ought not be
2890 subject to the two-year aggravated mandatory minimum.
2891 And so, I would hope that we would adopt the amendment, Mr.
2892 Chairman. And yield back.

2893 Chairman Smith. Thank you, Mr. Scott. Does the

2894 gentleman from Wisconsin insist on his point of order?

2895 Mr. Sensenbrenner. I do. Mr. Chairman, I make a
2896 point of order that the amendment is not germane for the
2897 same reasons as I made a point of order on the last
2898 amendment. This amendment deals with terms of imprisonment,
2899 tries to change those as what the gentleman from Virginia
2900 stated, and, thus, must fall.

2901 Chairman Smith. Thank you, Mr. Sensenbrenner.

2902 Does the gentleman offering the amendment wish to
2903 speak on the point of order?

2904 Mr. Scott. Well, Mr. Chairman, this deals directly
2905 with the what the person knew. The underlying bill asked
2906 what he knew, and this has an affirmative -- instead of the
2907 underlying evidence being presented by the prosecution, it
2908 requires the defendant to come up with the information to
2909 show that he in fact did not know. I think it is completely
2910 consistent with the underlying bill, and would hope that you
2911 would find this one in order.

2912 Chairman Smith. Okay. Thank you, Mr. Scott.

2913 The chair is prepared to rule on the point --

2914 Mr. Conyers. Mr. Chairman.

2915 Chairman Smith. The ranking member, the gentleman
2916 from --

2917 Mr. Conyers. To the point of order --

2918 Chairman Smith. -- Michigan is recognized?

2919 Mr. Conyers. -- to the challenge here. Could the
2920 chair kindly provide in the record a reason for these
2921 decisions, because it seems to me that the germaneness
2922 requirement has been met in the previous amendment of Mr.
2923 Scott's. And to me, it has been met here. And if we could
2924 get some writing or statement about why it is not germane,
2925 it would help us in these future challenges. And I thank
2926 the chair.

2927 Chairman Smith. I thank the gentleman from Michigan,
2928 Mr. Conyers. The chair is prepared to rule on the point of
2929 order, and I will associate myself with the comments made by
2930 the gentleman from Wisconsin as to the reasons why it is not
2931 germane. And in the opinion of the chair, the amendment is
2932 not germane.

2933 The gentleman from Virginia, Mr. Scott, I think has
2934 another amendment, which is germane. And the gentleman is
2935 recognized for the purposes of offering an amendment?

2936 Mr. Scott. Thank you, Mr. Chairman. I have an
2937 amendment number 3.

2938 Chairman Smith. The clerk will report the amendment?

2939 Ms. Kish. Amendment to H.R. 2552, offered by Mr.
2940 Scott of Virginia, page 2, beginning in line 2, strike "or
2941 under Section" --

2942 Chairman Smith. Without objection, the amendment will
2943 be considered as read.

2944 [The information follows:]

2945

2946 Chairman Smith. And the gentleman from Virginia is
2947 recognized to explain the amendment?

2948 Mr. Scott. Thank you, Mr. Chairman.

2949 This amendment will limit the scope of H.R. 2552 to
2950 general identity theft and retain the current legal standing
2951 for aggravated identity theft.

2952 As has been discussed, this bill would blur the
2953 distinction between regular identity theft and aggravated.
2954 It does so by removing what the Supreme Court has held is an
2955 element of the crime of aggravated identity theft, namely
2956 knowledge that the identification document used belonged to
2957 an actual person and was not simply a fictional person.
2958 Under this bill, both of these crimes would receive a two-
2959 year mandatory sentence, on top of the sentence for using
2960 the documents to begin with.

2961 My amendment would only allow for such a change in the
2962 documents fraud depths section. In other words, cases that
2963 do not involve aggravated identity theft and are not subject
2964 to the two-year consecutive mandatory minimum sentence, the
2965 prosecution would not need to prove that the person actually
2966 knew the identification belonged to another person.

2967 However, in cases of aggravated identity theft, under
2968 18 U.S.C. 1028(a), they would continue to have to prove it
2969 as the Supreme Court said last year. This distinguishes
2970 between those who are more culpable and those who are less

2971 so, which is something the law is supposed to do. It also
2972 reserves a higher burden of proof for cases with the biggest
2973 hammer, which also makes sense.

2974 I do not support mandatory minimum sentences because
2975 it deprives the court of the ability to impose a sentence
2976 that fits the crime and the offender and places discretion
2977 in the prosecution, a biased party in the proceedings. But
2978 if we are going to insist on applying mandatory minimums,
2979 then we should at least make sure that there is a rational
2980 basis for them other than the bias of the prosecution to get
2981 the longest sentence possible.

2982 I urge my colleagues to vote yes on this amendment.

2983 Chairman Smith. Thank you, Mr. Scott.

2984 Mr. Goodlatte. Mr. Chairman.

2985 Chairman Smith. The gentleman from Virginia, Mr.
2986 Goodlatte, is recognized?

2987 Mr. Goodlatte. Thank you, Mr. Chairman.

2988 Mr. Chairman, I appreciate the chair bringing this
2989 legislation forward. And I know my opening statement has
2990 been submitted to the record, and I apologize for not being
2991 here when the chairman did bring the legislation forward.
2992 But I do want to speak strongly in opposition to this
2993 amendment, which eviscerates the whole purpose of the
2994 legislation.

2995 The problem that we have is that individuals are

2996 stealing identities, and they do not care whose identity it
2997 is. So, if it happens that it is the identity of a real
2998 person and the prosecution cannot prove that it is they knew
2999 in advance it was the identity of a real person, then the
3000 Supreme Court says the statute does not apply. And as a
3001 result, we have, I think, a serious problem, a loophole, for
3002 criminals to follow when they seek to create a separate
3003 identity and engage in identity theft.

3004 So, this amendment exempts the aggravated identity
3005 theft statute from the application of the bill. It
3006 effectively undoes all the work that Congress did in passing
3007 the law in 2004, and leaves Americans vulnerable to those
3008 who would use fake or stolen American identities to commit
3009 serious felonies.

3010 By exempting aggravated identity theft, this amendment
3011 significantly weakens the government's ability to prosecute
3012 those who use false IDs to commit terrorist offenses. The
3013 aggravated identity theft statute specifically targets
3014 identity theft that facilitates certain felonies, including
3015 terrorism offenses.

3016 This law was not passed on a whim. We know that the
3017 9/11 hijackers used identity fraud to carry out their
3018 attacks. Although the hijackers used their real names to
3019 gain access to airplanes, the likelihood of their success
3020 would have been greatly reduced had they been unable to

3021 doctor pertinent identification documents throughout their
3022 plot. Before entering the United States, the hijackers
3023 manipulated travel documents to conceal their travel
3024 history. According to the 9/11 Commission Report, all but
3025 one of the 9/11 hijackers acquired some form of U.S.
3026 identification document, some by fraud. Acquisition of
3027 these forms of identification assisted them in boarding
3028 commercial flights, renting cars, and other activities.

3029 This amendment moves us in the wrong direction,
3030 destroying our ability to pursue domestic terrorists who use
3031 stolen and false documents to attack us from within. And I
3032 urge my colleagues to reject this amendment.

3033 Mr. Nadler. Mr. Chairman?

3034 Ms. Lofgren. Mr. Chairman?

3035 Chairman Smith. Thank you, Mr. Goodlatte.

3036 The gentleman from New York, Mr. Nadler, is
3037 recognized?

3038 Mr. Nadler. Thank you, Mr. Chairman. I will use my
3039 support for this amendment as an opportunity to oppose the
3040 bill as well so I do not have to make two speeches.

3041 It is already against the law -- it is up to five
3042 years in jail for identity theft. If you make up a social
3043 security card or anything else, you have no idea that you
3044 are stealing anybody's, and you may not be stealing
3045 anybody's. You make up a number, that is five years, and it

3046 ought to be. That is a serious crime.

3047 What the Supreme Court said was that you cannot have
3048 an additional two-year minimum over the regular identity
3049 theft for using somebody's card unless you know you are
3050 using somebody's card. That is a normal mens rea
3051 requirement.

3052 This bill, and the Supreme Court in the law said
3053 knowingly and meant knowingly, and this bill would undo
3054 that.

3055 But Mr. Goodlatte was saying that all these terrible
3056 things that the hijackers did ought to be crimes, and they
3057 are. And this bill would not affect that. If you steal
3058 anyone's identity or steal no one's identity because making
3059 identity fraud, it is up to a five-year sentence. But if
3060 you want to make an aggravated crime on top of that for
3061 deliberately stealing somebody's identity, fine. But there
3062 ought to be a requirement that you know that you are
3063 stealing somebody's identity to make it a worse crime than
3064 just stealing an identity.

3065 So, the clear statutory intent was to have two
3066 different crimes: crime one, making up an identity, serious
3067 crime, five years in jail. No one questions that. Crime
3068 two, stealing Joe's identity, knowing you are stealing Joe's
3069 identity. That is certainly a serious extra crime because
3070 it hurts Joe. But if you simply make up a number and it

3071 happens to be Joe's, but you had no knowledge of that, that
3072 should not be an additional crime. And it certainly should
3073 not be an additional crime if it is not anybody's number.

3074 So, knowingly makes sense to have the additional
3075 crime. The amendment would go a long way toward restoring
3076 that. The bill goes the wrong way. If you want to have two
3077 degrees of crime, one knowingly stealing somebody's
3078 identity, more serious than normal identity theft, which is
3079 a serious crime, then do that. The Supreme Court has left
3080 us with that as the state of the law. It is logical. We
3081 ought to maintain it and defeat this bill.

3082 I now yield to the gentleman from Virginia?

3083 Mr. Scott. Thank you.

3084 Mr. Chairman, as the gentleman has New York has said,
3085 using the identity and not knowing that it was an actual
3086 person is a crime. If it is a birth certificate, I
3087 understand it is 15 years, and other documents up to five
3088 years. So, the terrorists are not getting away with
3089 anything.

3090 The aggravating element is that you are knowingly
3091 using somebody else's ID. If you did not know it, then you
3092 do not get the enhanced penalty for knowing you used
3093 somebody's ID. I have just been informed that if you use
3094 these ID for terrorism cases, you do not get away clean.
3095 You get up to 30 years if you are using them for terrorist

3096 purposes. So, the example that my good friend from Virginia
3097 used, those people are subject to 30 years, not just a
3098 little two-year mandatory minimum.

3099 I thank the gentleman from New York for yielding and
3100 yield back to him.

3101 Chairman Smith. The gentleman yields back his time.
3102 Does anyone else want to be recognized on the amendment?

3103 The gentlewoman from California, Ms. Lofgren?

3104 Ms. Lofgren. Thank you, Mr. Chairman. I move to
3105 strike the last word.

3106 Chairman Smith. The gentlewoman is recognized for
3107 five minutes?

3108 Ms. Lofgren. I, as with my colleague from New York,
3109 will speak not just about the amendment, but about the bill
3110 because the amendment does in fact put the law back to where
3111 it is today. And I appreciate that.

3112 Nobody disputes that the victims of true identity
3113 theft should be made whole, perpetrators punished. But this
3114 bill does not accomplish those goals. Indeed, I do not
3115 think it is about that at all. It is about making felons
3116 out of undocumented farm boys, bus boys, and nannies simply
3117 for working to put food on their family's table. And it
3118 requires they serve at least two years in prison for doing
3119 so, even if there was no intent to take someone's identity
3120 and no harm to anyone else.

3121 I recall my colleague from Wisconsin attempted in 2005
3122 in H.R. 4437 to make a felony out of the mere status of
3123 being in the United States --

3124 Mr. Sensenbrenner. Will the gentlewoman yield?

3125 Ms. Lofgren. I would yield, Mr. Sensenbrenner.

3126 Mr. Sensenbrenner. The gentleman from Wisconsin had
3127 an amendment to reduce it from a felony to a misdemeanor.

3128 How did the gentlewoman from California vote on that?

3129 Ms. Lofgren. Reclaiming my time, I voted no because I
3130 do not think it ought to be a crime to live and breathe in
3131 the United States.

3132 Mr. Sensenbrenner. Okay. So, you voted to keep it a
3133 felony. Thank you.

3134 Ms. Lofgren. I voted against the bill.

3135 That bill never became law for a good reason, and this
3136 bill should not either. The system of justice has long been
3137 built upon the principle that the punishment should fit the
3138 crime. This bill flies in the face of that principle as has
3139 been noted. There is already statutes relating to
3140 criminalizing possession or use of false identification
3141 documents that are certainly adequate to deal with actual
3142 cases of identity fraud and misuse.

3143 The Supreme Court decision in *Flores-Figueroa v.*
3144 *United States* was not a close call. It was a 9-0 decision
3145 indicating that there was a need for mens rea. And this

3146 bill would destroy that ruling.

3147 I think it is important to say what this bill really
3148 is about. It is about immigration. It is about
3149 immigration.

3150 I am sure you will recall the Postville case where
3151 there were unauthorized workers in Postville, Iowa, who were
3152 caught in a raid during the Bush Administration. They were
3153 rounded up and held in cattle cars, and they were more or
3154 less forced to plead guilty to aggravated identity theft,
3155 and in the face of two-year sentences, many did so. The
3156 judge presiding over that said afterwards that it was really
3157 the most ashamed he has ever been of being a district court
3158 judge.

3159 Those convictions, those guilty pleas, were overturned
3160 by the Supreme Court because really working for a living,
3161 paying into social security under a false number should not
3162 be a felony. And I think that the undocumented immigrants
3163 who are trying to feed their families should not be guilty
3164 of a felony.

3165 True identity theft is a serious crime deserving
3166 serious punishment, but that is not what this bill
3167 addresses. It is not about terrorism. It is not about
3168 fraud. It is about immigration. It is about primarily very
3169 low level immigrants, people who are in the fields, people
3170 who are busing tables, people who are nannies, people who

3171 are doing the hard work that we benefit from, paying into
3172 social security. And to say that those people are
3173 aggravated felons is preposterous.

3174 I would hope --

3175 Mr. Conyers. Would the gentlewoman yield?

3176 Ms. Lofgren. I would hope that we would say no to
3177 this bill, yes to this amendment. And, yes, I would yield
3178 to the ranking member.

3179 Mr. Conyers. I thank the gentlelady for her
3180 perceptions.

3181 Could I just alert the distinguished gentleman from
3182 Iowa, who may not have seen this as an immigration bill,
3183 that he ought to take note of this, because normally he
3184 weighs in on all immigration matters with great vigor. And
3185 I thank the gentlelady.

3186 Ms. Lofgren. Reclaiming my time, I again would urge
3187 that this misguided measure be defeated, that the gentleman
3188 from Virginia's amendment, which essentially puts the law
3189 back to where it is, a tough law, I might add, be adopted,
3190 and that we do not turn the busboys, nannies, and migrant
3191 farm workers into aggravated felons by passing this bill.
3192 And with that, I would yield back.

3193 Chairman Smith. Thank you, Ms. Lofgren. Are there
3194 are other members who wish to be heard on this amendment?

3195 The gentleman from Iowa, Mr. King, is recognized?

3196 Mr. King. Thank you, Mr. Chairman. I, you know,
3197 would have been happy enough not to engage here today.

3198 But I just want to make the point that of all the
3199 people that are working in the United States, those that are
3200 doing so illegally, we often hear they are not criminals.
3201 But identity theft is a crime, and it is committed over and
3202 over again, millions of times across this country. And it
3203 affects the employment base of the United States of America.

3204 This amendment just carves it out and makes it an
3205 exception, so I oppose the amendment. And I would remind
3206 people while we have this opportunity to think about it,
3207 that when they are standing on the assembly line, or when
3208 they punch the time clock, or when they engage in whatever
3209 it is that is commerce, and they look next to them and they
3210 are working next to someone whom they either suspect or
3211 perhaps even in their own knowledge base have confirmed are
3212 illegal.

3213 This is not a victimless crime. This is not something
3214 you just shrug your shoulders about. And we have had
3215 witnesses before the Immigration Committee that said, yeah,
3216 I worked on the line with illegal people, and I need my
3217 little exemption or carve out, and somebody disrespected me
3218 when they checked my ID. And I have asked them, well, did
3219 you turn those folks in? Did you inform the boss that you
3220 are working next to somebody that is illegal? And their

3221 answer is invariably no, with maybe a shrug of the
3222 shoulders. But it is not a shrug of the shoulders. It is a
3223 job that either an American or a lawful immigrant can be
3224 taking here in this country.

3225 And meanwhile, last December, the 8th of December, the
3226 President signed the bill that extended the Bush tax
3227 brackets, and into that bargain was at least \$212 billion in
3228 transfer payments actually borrowed from American investors,
3229 foreign investors, about 10 percent of it borrowed from the
3230 Chinese as a matter of fact, to pay unemployment benefits
3231 out to 99 weeks. Now, why are we doing something like that
3232 here in this Congress when we are looking at a debt ceiling
3233 increase of \$2.4 trillion, which magically just gets us past
3234 the election of 2012? All the while we should be looking at
3235 what is good for the long-term benefit of the United States
3236 of America.

3237 How do we structure tax and law, and that includes
3238 immigration law and identity theft law, so that we respect
3239 the rule of law, retain the rule of law, and that the people
3240 that can lawfully work in the United States have that
3241 opportunity to do so. And instead, we shrug our shoulders
3242 at something like this.

3243 So, this amendment is a shoulder shrugging towards
3244 criminal acts that I believe need to be enhanced.

3245 And I would --

3246 Mr. Conyers. Would the gentleman yield?

3247 Mr. King. -- yield to the gentleman from Michigan?

3248 Mr. Conyers. I thank the gentleman.

3249 Then I am correct to assume that you agree with the

3250 Zoe Lofgren's observation that there is an immigration

3251 factor in this amendment? That is very important.

3252 Mr. Goodlatte. Would the gentleman yield?

3253 Mr. King. Reclaiming my time and yielding to the

3254 gentleman from Virginia?

3255 Mr. Goodlatte. I thank the gentleman.

3256 Well, first of all, the gentlewoman from California

3257 keeps referring to these as undocumented workers. Clearly

3258 they are not undocumented workers because they have already

3259 engaged in fraud. At best, they are misdocumented workers,

3260 but they have engaged in fraud to obtain an identity other

3261 than their own.

3262 And, more importantly than that, it does not matter

3263 whether this person is an illegal immigrant or whether they

3264 are seeking fraudulent documentation for some other reason,

3265 it does not matter to them whether it belongs to somebody

3266 else or whether it is something that is created out of whole

3267 cloth. And, therefore, there is no reason under the law to

3268 draw a distinction between those who know that it is

3269 somebody else's identity and those who do not. They are

3270 both bent upon the same fraudulent purposes, and the law

3271 should be consistent in that regard.

3272 And I thank the gentleman for yielding.

3273 Mr. King. And in reclaiming my time, I would just
3274 reiterate this point. Identity theft is a very, very
3275 serious crime. And once you have had your identity stolen
3276 by someone, you never know if you ever get it back again.
3277 It is always out there. It is kind of like whatever we say
3278 or do goes into cyberspace and lives forever. When someone
3279 steals your identity, you never know where it is
3280 proliferated, how many copies are made, where it might show
3281 up, or you might end up with having obligations that are
3282 attached to your identity. And that is, I believe, the
3283 force that is behind the bill that has been brought before
3284 us.

3285 And I would point this question out also, and that is,
3286 if they are willing to steal someone's identity and present
3287 social security numbers, driver's license, those are just
3288 the breeder documents. The balance of those documents, in
3289 order to get a job, open a loan, buy a home, whatever they
3290 might do, what other crimes are they willing to do if they
3291 have such disrespect for American law?

3292 And with that, I would yield back. Thank you very
3293 much.

3294 Chairman Smith. Thank you, Mr. King.

3295 The question is on the amendment.

3296 All in favor of the amendment, say aye?
3297 [A chorus of ayes.]
3298 Chairman Smith. All opposed?
3299 [A chorus of nays.]
3300 Chairman Smith. In the opinion of the chair, the nos
3301 have it, and the amendment is not agreed to.
3302 Mr. Scott. Mr. Chairman, roll call.
3303 Chairman Smith. The gentleman from Virginia asked for
3304 a roll call vote, and the clerk will call the roll?
3305 Ms. Kish. Mr. Smith?
3306 Chairman Smith. No.
3307 Ms. Kish. Mr. Smith votes no.
3308 Mr. Sensenbrenner?
3309 Mr. Sensenbrenner. No.
3310 Ms. Kish. Mr. Sensenbrenner votes no.
3311 Mr. Coble?
3312 Mr. Coble. No.
3313 Ms. Kish. Mr. Coble votes no.
3314 Mr. Gallegly?
3315 Mr. Gallegly. No.
3316 Ms. Kish. Mr. Gallegly votes no.
3317 Mr. Goodlatte?
3318 Mr. Goodlatte. No.
3319 Ms. Kish. Mr. Goodlatte votes no.
3320 Mr. Lungren?

3321 [No response.]

3322 Ms. Kish. Mr. Chabot?

3323 [No response.]

3324 Ms. Kish. Mr. Issa?

3325 [No response.]

3326 Ms. Kish. Mr. Pence?

3327 [No response.]

3328 Ms. Kish. Mr. Forbes?

3329 [No response.]

3330 Ms. Kish. Mr. King?

3331 Mr. King. No.

3332 Ms. Kish. Mr. King votes no.

3333 Mr. Franks?

3334 Mr. Franks. No.

3335 Ms. Kish. Mr. Franks votes no.

3336 Mr. Gohmert?

3337 [No response.]

3338 Ms. Kish. Mr. Jordan?

3339 [No response.]

3340 Ms. Kish. Mr. Poe?

3341 [No response.]

3342 Ms. Kish. Mr. Chaffetz?

3343 [No response.]

3344 Ms. Kish. Mr. Griffin?

3345 [No response.]

3346 Ms. Kish. Mr. Marino?
3347 [No response.]
3348 Ms. Kish. Mr. Gowdy?
3349 Mr. Gowdy. No.
3350 Ms. Kish. Mr. Gowdy votes no.
3351 Mr. Ross?
3352 Mr. Ross. No.
3353 Ms. Kish. Mr. Ross votes no.
3354 Ms. Adams?
3355 Mrs. Adams. No.
3356 Ms. Kish. Mrs. Adams votes no.
3357 Mr. Quayle?
3358 Mr. Quayle. No.
3359 Ms. Kish. Mr. Quayle votes no.
3360 Mr. Conyers?
3361 Mr. Conyers. Aye.
3362 Ms. Kish. Mr. Conyers votes aye.
3363 Mr. Berman?
3364 [No response.]
3365 Ms. Kish. Mr. Nadler?
3366 Mr. Nadler. Aye.
3367 Ms. Kish. Mr. Nadler votes aye.
3368 Mr. Scott?
3369 Mr. Scott. Aye.
3370 Ms. Kish. Mr. Scott votes aye.

3371 Mr. Watt?

3372 Mr. Watt. Aye.

3373 Ms. Kish. Mr. Watt votes aye.

3374 Ms. Lofgren?

3375 Ms. Lofgren. Aye.

3376 Ms. Kish. Ms. Lofgren votes aye.

3377 Ms. Jackson Lee?

3378 [No response.]

3379 Ms. Kish. Ms. Waters?

3380 Ms. Waters. Aye.

3381 Ms. Kish. Ms. Waters votes aye.

3382 Mr. Cohen?

3383 [No response.]

3384 Ms. Kish. Mr. Johnson?

3385 Mr. Johnson. Aye.

3386 Ms. Kish. Mr. Johnson votes aye.

3387 Mr. Pierluisi?

3388 Mr. Pierluisi. Aye.

3389 Ms. Kish. Mr. Pierluisi votes aye.

3390 Mr. Quigley?

3391 Mr. Quigley. Aye.

3392 Ms. Kish. Mr. Quigley votes aye.

3393 Ms. Chu?

3394 Ms. Chu. Aye.

3395 Ms. Kish. Ms. Chu votes aye.

3396 Mr. Deutch?

3397 [No response.]

3398 Ms. Kish. Ms. Sanchez?

3399 [No response.]

3400 Ms. Kish. Mr. Pence?

3401 [No response.]

3402 Chairman Smith. The gentleman from Pennsylvania, Mr.

3403 Marino?

3404 Mr. Marino. No.

3405 Ms. Kish. Mr. Marino votes no.

3406 Chairman Smith. The gentleman from Arkansas, Mr.

3407 Griffin?

3408 Mr. Griffin. No.

3409 Ms. Kish. Mr. Griffin votes no.

3410 Chairman Smith. The gentleman from Ohio, Mr. Chabot?

3411 Mr. Chabot. No.

3412 Ms. Kish. Mr. Chabot votes no.

3413 Chairman Smith. The gentleman from Indiana, Mr.

3414 Pence?

3415 Mr. Pence. No.

3416 Chairman Smith. The gentleman from Virginia, Mr.

3417 Forbes?

3418 Mr. Forbes. No.

3419 Ms. Kish. Mr. Forbes votes no.

3420 Chairman Smith. Are there other members who wish to

3421 be recorded on the amendment?

3422 If not, the clerk will report?

3423 Ms. Kish. Mr. Chairman, 10 members voted aye; 16

3424 members voted no.

3425 Chairman Smith. A majority having voted against the

3426 amendment, the amendment is not agreed to.

3427 Are there any other amendments?

3428 If not, a reporting quorum being present, the question

3429 is on reporting the bill favorably to the House.

3430 Those in favor, say aye?

3431 [A chorus of ayes.]

3432 Chairman Smith. Opposed, no?

3433 [A chorus of nays.]

3434 Chairman Smith. In the opinion of the chair, the ayes

3435 have it, and the bill is ordered reported favorably.

3436 Without objection, the bill will be --

3437 Ms. Lofgren. I would like a roll call vote on it, Mr.

3438 Chairman.

3439 Chairman Smith. Roll call vote has been requested,

3440 and the clerk will call the roll?

3441 Ms. Kish. Mr. Smith?

3442 Chairman Smith. Aye.

3443 Ms. Kish. Mr. Smith votes aye.

3444 Mr. Sensenbrenner?

3445 Mr. Sensenbrenner. Aye.

3446 Ms. Kish. Mr. Sensenbrenner votes aye.
3447 Mr. Coble?
3448 [No response.]
3449 Ms. Kish. Mr. Gallegly?
3450 Mr. Gallegly. Aye.
3451 Ms. Kish. Mr. Gallegly votes aye.
3452 Mr. Goodlatte?
3453 Mr. Goodlatte. Aye.
3454 Ms. Kish. Mr. Goodlatte votes aye.
3455 Mr. Lungren?
3456 [No response.]
3457 Ms. Kish. Mr. Chabot?
3458 Mr. Chabot. Aye.
3459 Ms. Kish. Mr. Chabot votes aye.
3460 Mr. Issa?
3461 [No response.]
3462 Ms. Kish. Mr. Pence?
3463 Mr. Pence. Aye.
3464 Ms. Kish. Mr. Pence votes aye.
3465 Mr. Forbes?
3466 Mr. Forbes. Aye.
3467 Ms. Kish. Mr. Forbes votes aye.
3468 Mr. King?
3469 Mr. King. Aye.
3470 Ms. Kish. Mr. King votes aye.

3471 Mr. Franks?
3472 Mr. Franks. Aye.
3473 Ms. Kish. Mr. Franks votes aye.
3474 Mr. Gohmert?
3475 [No response.]
3476 Ms. Kish. Mr. Jordan?
3477 [No response.]
3478 Ms. Kish. Mr. Poe?
3479 [No response.]
3480 Ms. Kish. Mr. Chaffetz?
3481 [No response.]
3482 Ms. Kish. Mr. Griffin?
3483 [No response.]
3484 Ms. Kish. Mr. Griffin votes aye.
3485 Mr. Marino?
3486 Mr. Marino. Yes.
3487 Ms. Kish. Mr. Marino votes yes.
3488 Mr. Gowdy?
3489 Mr. Gowdy. Yes.
3490 Ms. Kish. Mr. Gowdy votes yes.
3491 Mr. Ross?
3492 Mr. Ross. Yes.
3493 Ms. Kish. Mr. Ross votes yes.
3494 Mrs. Adams?
3495 Mrs. Adams. Yes.

3496 Ms. Kish. Ms. Adams votes yes.
3497 Mr. Quayle?
3498 Mr. Quayle. Aye.
3499 Ms. Kish. Mr. Quayle votes aye.
3500 Mr. Conyers?
3501 Mr. Conyers. No.
3502 Ms. Kish. Mr. Conyers votes no.
3503 Mr. Berman?
3504 [No response.]
3505 Ms. Kish. Mr. Nadler?
3506 Mr. Nadler. No.
3507 Ms. Kish. Mr. Nadler votes no.
3508 Mr. Scott?
3509 Mr. Scott. No.
3510 Ms. Kish. Mr. Scott votes no.
3511 Mr. Watt?
3512 Mr. Watt. No.
3513 Ms. Kish. Mr. Watt votes no.
3514 Ms. Lofgren?
3515 Ms. Lofgren. No.
3516 Ms. Kish. Ms. Lofgren votes no.
3517 Ms. Jackson Lee?
3518 [No response.]
3519 Ms. Kish. Ms. Waters?
3520 Ms. Waters. No.

3521 Ms. Kish. Ms. Waters votes no.
3522 Mr. Cohen?
3523 [No response.]
3524 Ms. Kish. Mr. Johnson?
3525 [No response.]
3526 Ms. Kish. Mr. Johnson votes no.
3527 Mr. Pierluisi?
3528 Mr. Pierluisi. No.
3529 Ms. Kish. Mr. Pierluisi votes no.
3530 Mr. Quigley?
3531 Mr. Quigley. No.
3532 Ms. Kish. Mr. Quigley votes no.
3533 Ms. Chu?
3534 Ms. Chu. No.
3535 Ms. Kish. Ms. Chu votes no.
3536 Mr. Deutch?
3537 [No response.]
3538 Ms. Kish. Ms. Sanchez?
3539 [No response.]
3540 Chairman Smith. The gentleman from North Carolina,
3541 Mr. Coble?
3542 Mr. Coble. Aye.
3543 Ms. Kish. Mr. Coble votes aye.
3544 Chairman Smith. Are there other members who wish to
3545 record their votes?

3546 If not, the clerk will report?

3547 Ms. Kish. Mr. Chairman, 16 members voted aye; 10
3548 members voted nay.

3549 Chairman Smith. In the opinion of the chair, the ayes
3550 have it, and the bill is reported favorably. Staff is
3551 authorized to make technical and conforming changes.

3552 Members will have two days to submit their views.

3553 [The information follows:]

3554

3555 Chairman Smith. We have one more bill to take up
3556 today, and that is H.R. 963, the See Something, Say
3557 Something Act of 2011. Pursuant to notice, I now call up
3558 H.R. 963 for purposes of markup. And the clerk will report
3559 the bill?

3560 Ms. Kish. H.R. 963, To amend the Homeland Security
3561 Act of 2002 to provide immunity for ports --

3562 Chairman Smith. Without objection, the bill will be
3563 considered as read.

3564 [The information follows:]

3565

3566 Chairman Smith. And I will recognize myself and then
3567 the ranking member for opening statements.

3568 H.R. 963, the See Something, Say Something Act of 2011
3569 encourages citizens to help defend America against
3570 terrorists without fear of being sued.

3571 The bill creates immunity from civil suits for any
3572 individual who, in good faith, reports to authorities any
3573 suspicious activity related to an act of terrorism. It
3574 codifies immunity protection for law enforcement officials
3575 who act on these tips in good faith.

3576 I would like to thank Chairman Peter King of the
3577 Homeland Security Committee, who has long advocated for this
3578 and other measures to keep America safe. I also want to
3579 thank Senators Joe Lieberman and Susan Collins, the chair
3580 and ranking member of the Senate Homeland Security
3581 Committee, who co-sponsored the Senate version of H.R. 963.

3582 Alert and vigilant citizens are America's first line
3583 of defense against terrorist attacks. This is why the Obama
3584 Administration has launched the See Something, Say Something
3585 campaign to encourage citizens to report their suspicions of
3586 potential terrorist activities. Citizens who share
3587 information to stop a possible terrorist attack should be
3588 praised, not sued.

3589 The Subcommittee on the Constitution held a hearing on
3590 H.R. 963 on June 24th, 2011. That hearing demonstrated the

3591 compelling need for this legislation to encourage the free
3592 flow of information about possible terror threats. Even the
3593 minority witness, Chief Chris Burbank of Salt Lake City
3594 Police Department, testified that he was not opposed to this
3595 legislation.

3596 The testimony from all of the witnesses underscored
3597 the importance of citizen alertness and involvement in
3598 preventing terrorist attacks.

3599 In the decade since the September 11th attacks, we
3600 have seen several terrorist plots foiled by citizens coming
3601 forward and alerting law enforcement officials to their
3602 suspicions. Tragically we have also seen deaths caused by
3603 terrorism that could have been prevented if people had felt
3604 more comfortable voicing their reasonable suspicions.

3605 Unfortunately, at least part of our citizens'
3606 reluctance to share their suspicions may be based on fear of
3607 being sued. In 2006, six men were removed from a U.S.
3608 Airways flight after passengers reported what they sincerely
3609 believed to be suspicious behavior. The authorities
3610 questioned the men and released them, but then men then sued
3611 the airport, airline, police, and the passengers. In
3612 response, Congress adopted Section 1104 of Title VI of the
3613 U.S. Code on a bipartisan basis in 2007 to protect Good
3614 Samaritans from this type of litigation in the
3615 transportation context. But as other incidents show,

3616 terrorists' desire to attack is not limited to our
3617 transportation systems.

3618 The protections created by Section 1104 only apply to
3619 reports of a "suspicious transaction, activity, or
3620 occurrence that involves or is directed against a passenger
3621 transportation system or vehicle or its passengers." H.R.
3622 963 extends protection from costly lawsuits to any citizen
3623 who reports suspicious terrorism related activity in good
3624 faith, whether transportation is involved or not. Americans
3625 should not have to pay one cent of legal defense costs for
3626 helping to prevent a terrorist attack.

3627 That concludes my opening statement. And the
3628 gentleman from Michigan, the ranking member, Mr. Conyers, is
3629 recognized for his statement?

3630 Mr. Conyers. Thank you, Chairman Smith.

3631 This is an incredibly ironic case of a bill that is a
3632 solution in search of a problem.

3633 The second thing that we should consider is that it
3634 also smacks of a racial profiling, something that we have
3635 always fought, but never had to deal with in terms of actual
3636 legislation.

3637 Third, President Obama does advocate See Something and
3638 Say Something as a positive program, but he never suggested
3639 that we make it a law. And now unfortunately, the Congress
3640 has already made it a law, not one law, but two laws. They

3641 cover the same issues, the same subject, namely immunity for
3642 reports of suspicious activities.

3643 As a matter of fact, our colleague from New York,
3644 Peter King, during this Congress has offered this bill,
3645 which is nearly identical to his own proposal that was
3646 enacted and signed into law in 2007. Please, committee,
3647 this is redundant in the kindest description I can think of
3648 for this measure.

3649 There is no evidence that this legislation addresses a
3650 real problem. Last month when the subcommittee held
3651 hearings on the measure before us, the proponents failed to
3652 demonstrate any real need for additional legislative
3653 immunity for reports. We do not need this bill.

3654 They also failed to address a significant legal issue,
3655 as a matter of fact, issues, raised by this legislation and
3656 the concern that it could have a significant impact on the
3657 doctrine of qualified immunity for law enforcement
3658 officials.

3659 And the most problematic concern presented by this
3660 bill is that it appears to be designed to send a threatening
3661 message to minority communities. A very troubling tone was
3662 set on the hearings last month by focusing repeatedly on
3663 allegations of Muslim extremism. And so, the use of race or
3664 ethnicity as a proxy for criminality in determining whom to
3665 target for elevated law enforcement scrutiny is a tactic

3666 very well known in the African-American community in the
3667 United States.

3668 It was known earlier as driving while black. Among
3669 Arab nations, it was known as flying while Muslim. And now,
3670 we are going to pass another law dealing with this premise,
3671 which is a false one, because the overtones of racial
3672 focusing is far too prominent in this bill for me to lend it
3673 any support.

3674 I thank you, Mr. Chairman.

3675 Chairman Smith. Thank you, Mr. Conyers.

3676 The gentleman from Arizona, Mr. Franks, chairman of
3677 the Constitution Subcommittee, is recognized?

3678 Mr. Franks. Well, thank you, Mr. Chairman, and I want
3679 to add my thanks to you, sir, for your leadership in
3680 sponsoring this important bill.

3681 For those that would suggest that this bill is a
3682 solution in search of a problem, I believe are severely
3683 diminishing the problem of terrorism in our country. This
3684 is a consensus where we reached pretty ubiquitously in this
3685 country that terrorism is very real. We have changed our
3686 entire government over the last few years for that reason.

3687 And our biggest challenge, Mr. Chairman, is in being
3688 able to know what terrorists are doing and being able to
3689 understand the threat they face. So, intelligence and
3690 information is vital. And that is why it was my hope that

3691 this bill would not be controversial.

3692 When a citizen sees suspicious activity that could be
3693 related to a terrorist attack, Mr. Chairman, they should
3694 share that information without hesitation. This is why the
3695 Department of Homeland Security has made it a centerpiece of
3696 its anti-terror efforts to tell citizens, "If you see
3697 something, say something." This bill will support that
3698 effort by ensuring that citizens who see something and say
3699 something will not be sued for it.

3700 The threat of litigation can only discourage citizens
3701 from sharing their suspicions with the proper authorities.
3702 And that threat, Mr. Chairman, unfortunately is very real.

3703 At last month's hearing, Dr. Zuhdi Jasser, my fellow
3704 Arizonan, described the organized campaigns of Law Fair, in
3705 which terrorist groups attempt to use the legal process to
3706 silence and intimidate anyone who attempts to counter or
3707 expose militancy. Dr. Jasser testified that this bill is
3708 necessary to make the goals of the Administration's "See
3709 Say, Say Something" campaign a reality.

3710 Information is the most important tool we have for
3711 preventing terrorist attacks, Mr. Chairman. And an alert
3712 citizenry is the most important source of information about
3713 potential terrorist attacks.

3714 When an American reasonably suspects that an act of
3715 terrorism may be in the works, his or her focus should only

3716 be on alerting the authorities and preventing that attack,
3717 not on avoiding civil liability.

3718 Now, Mr. Chairman, you said it once in your opening
3719 statement, but at our hearing, the minority witness, Chief
3720 Chris Burbank of the Salt Lake City Police Department said
3721 that he is not opposed to the legislation. And certainly,
3722 Mr. Chairman, you will remember that he spoke specifically
3723 of his opposition to racial profiling. What Chief Burbank
3724 did testify is that the law enforcement needs to be cautious
3725 in terms of how they process citizen information because
3726 citizens are not trained in anti-terrorism or legal
3727 standards of probable cause and reasonable suspicion.

3728 But that is exactly what this bill is designed to do,
3729 Mr. Chairman, to encourage citizens to report their
3730 suspicions to an authorized official, so that official with
3731 their training and experience and expertise can take
3732 reasonable good faith actions in response.

3733 The more that our law enforcement and anti-terror
3734 professionals know, the better they can understand our
3735 enemies' plans and stop those attacks before they occur.
3736 The list of terror attacks that have been prevented or
3737 mitigated by brave citizens stepping forward and sharing
3738 their suspicions is a long one. The Unabomber's reign of
3739 terror was ended when his brother came forward with his
3740 suspicions. Street vendors who noticed suspicious smoke

3741 coming from a parked van prevented last year's attempted
3742 bombing of Times Square. Possible attacks on Fort Dix in
3743 Dallas were stopped in the planning phase because of tips
3744 from concerned citizens.

3745 By tragic contrast, Mr. Chairman, 13 men and women
3746 were murdered by Major Nidal Hasan at Fort Hood, Texas.
3747 Perhaps this tragedy could have been avoided if more
3748 concerns had been raised about Major Hasan's extremism and
3749 his communication with Jihadi cleric Anwar al-Awlaki.

3750 When people report their suspicions, lives can be
3751 saved. When they remain silent, the consequences can be
3752 deadly. Worries about lawsuits should be the furthest thing
3753 from a citizen's mind when a terror plot may be in progress.
3754 Our citizens should rely on their own reasonable instincts
3755 and common sense and do the right thing. H.R. 963 will make
3756 clear that our anti-terror strategy is based on citizens
3757 exercising their vigilance and common sense, not the fear of
3758 costly litigation.

3759 And, Mr. Chairman, I would yield back. Thank you.

3760 Chairman Smith. Thank you, Mr. Franks, for that
3761 opening statement.

3762 The gentleman from New York, Mr. Nadler, is
3763 recognized?

3764 Mr. Nadler. Thank you, Mr. Chairman.

3765 This legislation revisits existing immunities granted

3766 by Federal and State law to persons making reports to law
3767 enforcement and to law enforcement officers acting on those
3768 reports, but does not change the immunity that they have in
3769 any way.

3770 Community law enforcement cooperation has been one of
3771 the keys to success in fighting crime and terrorism. I am
3772 glad to see there is a developing enthusiasm on this
3773 subject, even from some of my colleagues who have in the
3774 past opposed such efforts as the cops' program.

3775 The See Something, Say Something initiative is
3776 familiar to every New Yorker. Our police force has worked
3777 over many years to develop the trust and cooperation
3778 necessary to make their efforts more effective. The
3779 community-oriented policing program that we pioneered is a
3780 model for the country. And See Something, Say Something is
3781 very important.

3782 So, what are my concerns today? Given the current
3783 state of the law, this is completely unnecessary
3784 legislation. Under the law today, anyone who in good faith
3785 points out something or in good faith says, I think that guy
3786 may be a terrorist, is completely indemnified. This law
3787 does not change that. Anyone who points out something, as
3788 long as he is in good faith, is completely indemnified. He
3789 cannot be held liable in any way. What does this bill do to
3790 that? Nothing.

3791 He still cannot be held liable in any way. But, of
3792 course, whether there is merits or not, this person can be
3793 sued. But the burden of proof to say that the person who
3794 saw something and said something should be liable. The
3795 burden of proof is on the complainant. He has got to prove
3796 that this person was not in good faith, that they were not
3797 in good faith in making that claim. That is the current
3798 law. This bill does not change that, nor should it.

3799 What this law does is that it imposes fees and costs
3800 on an unsuccessful plaintiff. This places individuals who
3801 may truly have been the victims of racial or religious
3802 profiling, who may have been a victim of a non-good faith
3803 complaint, in a terrible spot. If the court dismisses the
3804 complaint, finding the defendant immune under the existing
3805 law or under this bill, the unsuccessful plaintiff, even if
3806 he brought the case in good faith would be liable for
3807 attorney's fees and costs to the defendant. There is no
3808 similar penalty imposed on a defendant no matter who
3809 egregious the conduct, no matter how frivolous the assertion
3810 of immunity.

3811 I am deeply concerned about the punitive nature of
3812 this bill. And in light of existing legal protections for
3813 individuals in law enforcement, I am concerned this could
3814 shield the rights of actual victims of racial profiling.
3815 This is not a hypothetical question. Profiling goes on all

3816 the time. We have a long and unhappy history of this view,
3817 and although the targets change -- African-Americans,
3818 Hispanics, Irish, Italians, Jews -- it remains a serious
3819 problem and a grotesque injustice, which, under certain
3820 circumstances, demands a remedy.

3821 The only law enforcement professional present at our
3822 hearing, Salt Lake City policy chief, Chris Burbank,
3823 contrary to the recollections of the distinguished chairman
3824 of the committee apparently, told us that the current law
3825 provides adequate immunity from suits, and strongly
3826 cautioned against the enactment of this bill.

3827 Current law protects good faith reports of suspicious
3828 activity. Law enforcement is not complained to us about any
3829 gap in the law. We have not heard from the Department of
3830 Homeland Security, which is promoting the See Something, Say
3831 Something program. We have not heard from them that they
3832 believe the law needs to be changed in any way. There has
3833 been no rash of lawsuits against complainers necessitating
3834 this legislation.

3835 So, this legislation restates the current law, but
3836 says that someone who in bad faith, that someone who was
3837 characterized in good faith as a danger can sue. Someone
3838 who is profiled for the damages, but if he cannot prove his
3839 claim, he has to pay all the costs. It does not put it on
3840 the other party. So, this is a tremendous damper on anyone

3841 who is improperly and falsely accused of suing in court.

3842 Again, under current law, someone who wants to point
3843 out something is totally indemnified as long as it is in
3844 good faith, and we should not go any further than that.

3845 I yield back.

3846 Chairman Smith. Would the gentleman yield?

3847 Mr. Nadler. I just yielded back. I will yield.

3848 Chairman Smith. Yield to me. The reason I asked the
3849 gentleman to yield is I wanted to read an excerpt from the
3850 transcript of the hearing that we referred to. And in
3851 response to a question by Mr. Franks, Chief Burbank replied
3852 to the question, do you oppose H.R. 963. Chief Burbank
3853 said, "Well, let me say this, that I am not opposed to the
3854 legislation." So, the chief did say that. I know he said
3855 other things as well, but I did not want the gentleman to be
3856 under the impression that what I quoted the chief as saying,
3857 he did not say.

3858 Mr. Nadler. But he did --

3859 Chairman Smith. He said both.

3860 Mr. Nadler. -- express strong reservations about the
3861 legislation. That was the import of his testimony. I do
3862 not have the transcript in front of me, so I cannot --

3863 Chairman Smith. I have got the quote. I would like
3864 to see your quote about the --

3865 Mr. Nadler. I do not have the transcript in front of

3866 me; I did not come prepared. But the entire important of
3867 his testimony was as I just said.

3868 Chairman Smith. Okay. We are probably both correct,
3869 and he may have said both things.

3870 In any case, the Judiciary Committee will stand in
3871 recess until after this series of two votes.

3872 [Recess.]

3873 Chairman Smith. The Judiciary Committee will resume
3874 its markup. And the clerk will call the roll?

3875 Ms. Kish. Mr. Smith?

3876 Chairman Smith. Present.

3877 Ms. Kish. Mr. Sensenbrenner?

3878 Mr. Coble?

3879 Mr. Gallegly?

3880 Mr. Goodlatte?

3881 Mr. Lungren?

3882 Mr. Chabot?

3883 Mr. Chabot. Here.

3884 Ms. Kish. Mr. Issa?

3885 Mr. Pence?

3886 Mr. Forbes?

3887 Mr. Forbes. Here.

3888 Ms. Kish. Mr. King?

3889 Mr. Franks?

3890 Mr. Franks. Here.

3891 Ms. Kish. Mr. Gohmert?
3892 Mr. Jordan?
3893 Mr. Poe?
3894 Mr. Chaffetz?
3895 Mr. Griffin?
3896 Mr. Marino?
3897 Mr. Marino. Here.
3898 Ms. Kish. Mr. Gowdy?
3899 Mr. Ross?
3900 Mrs. Adams?
3901 Mrs. Adams. Here.
3902 Ms. Kish. Mr. Quayle?
3903 Mr. Conyers?
3904 Mr. Berman?
3905 Mr. Nadler?
3906 Mr. Scott?
3907 Mr. Watt?
3908 Ms. Lofgren?
3909 Ms. Jackson Lee?
3910 Ms. Waters?
3911 Mr. Cohen?
3912 Mr. Johnson?
3913 Mr. Johnson. Here.
3914 Ms. Kish. Mr. Pierluisi?
3915 Mr. Quigley?

3916 Ms. Chu?

3917 Ms. Chu. Here.

3918 Ms. Kish. Mr. Deutch?

3919 Ms. Sanchez?

3920 Mr. Coble?

3921 Mr. Coble. Here.

3922 Ms. Kish. Mr. Goodlatte?

3923 Mr. Goodlatte. Present.

3924 Ms. Kish. Mr. Marino?

3925 Mr. Marino. Present.

3926 Ms. Kish. Mr. Gohmert?

3927 Mr. Gohmert. Present.

3928 Ms. Kish. Mr. Quayle?

3929 Mr. Quayle. Here.

3930 Ms. Kish. Mr. Gowdy?

3931 Mr. Gowdy. Here.

3932 Chairman Smith. The clerk will report?

3933 Ms. Kish. Mr. Chairman, 13 members responded present.

3934 Chairman Smith. Okay. Reporting quorum being

3935 present, we will move ahead with amendments to H.R. 963.

3936 And does the gentleman from Georgia have an amendment?

3937 Okay. The gentleman from Georgia has an amend at the desk,

3938 and the clerk will report the amendment?

3939 Ms. Kish. Amendment to H.R. 963, offered by Mr.

3940 Johnson of Georgia. Add at the end of the bill --

3941 Chairman Smith. And the gentleman from Arizona --

3942 Mr. Franks. Mr. Chairman, could I reserve a point of
3943 order?

3944 Chairman Smith. Reserves a point of order.

3945 Ms. Kish. Amendment to H.R. 963 --

3946 Chairman Smith. Without objection, the amendment will
3947 be considered as read.

3948 [The information follows:]

3949

3950 Chairman Smith. And the gentleman from the Georgia is
3951 recognized to explain his amendment?

3952 Mr. Johnson. Thank you, Mr. Chairman.

3953 This amendment would add a reporting requirement to
3954 the bill. It would simply require collection of data on
3955 suspicious activity reports to produce statistical
3956 information necessary to determine if suspicious activity
3957 reporting programs are effective in identifying terrorists.

3958 Suspicious activity reports contain information about
3959 criminal activity that may also reveal terrorist pre-
3960 operational planning. According to the Congressional
3961 Research Service, every day more than 800,000 police
3962 officers collect and document information regarding
3963 behaviors, incidents, and other suspicious activity
3964 associated with crime, including terrorism.

3965 Since September the 11th, complaints about racial
3966 profiling in the Arab, Middle Eastern, Muslim, and South
3967 Asian communities have been on the rise. Unfortunately,
3968 since September 11th, terrorist suspicious has often been
3969 reported on appearance rather than behavior.

3970 The ranking member pointed out a case where six people
3971 were taken off on an airline because other passengers
3972 thought that they looked dangerous. It was a clear case of
3973 profiling, and as a result, the aggrieved individuals filed
3974 a lawsuit against the airline and others.

3975 This amendment, while it refers to persons, could be
3976 at some point interpreted Allah Citizens United as a
3977 corporation having the rights of a person. I am concerned
3978 about it from that standpoint.

3979 But this amendment is necessary to ensure that with
3980 suspicious activity reports, the program, the emphasis is
3981 not on racial or ethnic characteristics of individuals, but
3982 on detecting behaviors and activities with potential links
3983 to terrorism.

3984 Many times, reports of suspicious activities are not
3985 made due to the activity itself, but to the person
3986 conducting the activity. For example, two imams traveling
3987 to a conference on anti-Muslim prejudice ironically were
3988 pulled off a flight to North Carolina because passengers on
3989 the plane felt uncomfortable with their Muslim attire. Even
3990 after being rescreened by airport security, they were not
3991 allowed back on the plane.

3992 Allowing bias to influence enforcement actions erodes
3993 public trust and creates detrimental case law. Because this
3994 bill would have the unintended consequences of immunizing
3995 people and perhaps even corporations who act on bias and
3996 prejudice, it is vital to include a reporting requirement to
3997 the bill.

3998 Data collection is important so that we can determine
3999 whether the policies enacted are actually focusing on

4000 criminal behavior instead of race, ethnicity, religious
4001 practice, or simply on the basis of speaking Arab.

4002 No American should be made to feel like a second class
4003 citizen. All Americans have the right to be treated
4004 equally. Racial profiling is an unacceptable patrol tactic
4005 that cannot be tolerated. This amendment would allow us to
4006 determine if suspicious activity reporting programs are in
4007 fact effective in identifying terrorists and other violent
4008 criminals based on behavior instead of race, religion, or
4009 ethnicity.

4010 I urge all of my colleagues to join me and vote this
4011 amendment out favorably.

4012 Thank you, Mr. Chairman, and I yield back.

4013 Chairman Smith. Thank you, Mr. Johnson.

4014 Does the gentleman from Arizona insist on his point of
4015 order?

4016 Mr. Franks. Mr. Chairman, I must insist on my point
4017 of order. The bill we are considering today deals only with
4018 potential acts of terrorism. The rules of the House require
4019 that amendments be on the same subject as the bill under
4020 consideration. This amendment is on a different subject
4021 because it requires a report on numerous types of reporting
4022 programs, some of which cover violent crimes that are not
4023 terrorism related. And for this reason, the amendment, in
4024 my opinion, is not germane to the underlying bill.

4025 Chairman Smith. Thank you, Mr. Franks.

4026 Does the gentleman who offered the amendment wish to
4027 speak on the point of order?

4028 Mr. Johnson. I will decline.

4029 Chairman Smith. Okay. Mr. Johnson yields back the
4030 time.

4031 The chair is prepared to rule on the point of order.
4032 In the opinion of the chair, the amendment is not germane.

4033 We will continue to consider amendments, and the
4034 gentlewoman from California, Ms. Chu, is recognized?

4035 Ms. Chu. Mr. Chairman, I have an amendment at the
4036 desk. It is amendment number 5.

4037 Chairman Smith. The clerk will report the amendment?

4038 Ms. Kish. Amendment to H.R. 963 offered by Ms. Chu of
4039 California. Page 4, line 5, insert after "code" the
4040 following: Section (e), rule of construction."

4041 Chairman Smith. Without objection, the amendment will
4042 be considered as read.

4043 [The information follows:]

4044

4045 Chairman Smith. And the gentlewoman is recognized to
4046 explain the amendment?

4047 Ms. Chu. Mr. Chair, my amendment is straightforward.
4048 It says that if a person contacts law enforcement about
4049 something based solely on someone's race, religion,
4050 ethnicity, or national origin, they would not receive
4051 immunity from civil lawsuits.

4052 The safety and security of American citizens is
4053 extremely important to all, and I support the idea of the
4054 public being vigilant about reporting what they believe to
4055 be suspicious activity. However, as written, the See
4056 Something, Say Something Act could be used unfairly against
4057 people who might look different just because they wear a
4058 turban or a veil.

4059 Throughout our history, many Americans have been
4060 singled out and discriminated against because of the color
4061 of their skin or national origin. However, after September
4062 11th, more and more members of the Arab, Muslim, Sikh, and
4063 South Asian-American communities have been viewed as suspect
4064 based solely on religion, national origin, or attire.

4065 In fact, there was a recent incident right here at the
4066 Capitol in April. Two Sikh-American civil rights advocates
4067 were visiting the Hill to attend a policy hearing where I
4068 was one of the speakers. They were wearing turbans and
4069 beards as required by their faith. They attempted to drop

4070 off their luggage in a Canon office room that I had reserved
4071 for them. The capitol police stopped and questioned them
4072 because they were following up on someone's tip that there
4073 were two Middle Eastern men acting suspiciously.
4074 Ironically, one of the advocates had come to the Hill to
4075 speak about his personal experiences with post-9/11
4076 discrimination.

4077 I would like to point out just clear up a problem in
4078 stereotype that Sikh-Americans are not Arab-American,
4079 Muslim-American, or Middle Eastern, not that any of these
4080 groups should be the subject of racial profiling. This one
4081 incident is a prime example of the type of racial and
4082 religious profiling that may occur as a result of the Act.
4083 That is why I am offering this amendment to make it clear
4084 that individuals who choose to make reports solely based on
4085 race, religion, ethnicity, or national origin will not
4086 receive immunity under this Act. We need to send a strong
4087 message that profiling of any kind is intolerable and will
4088 not be condoned.

4089 I urge my colleagues to support my amendment.

4090 Chairman Smith. Thank you, Ms. Chu.

4091 I will recognize myself in opposition to the
4092 amendment.

4093 This amendment would have the effect of discouraging
4094 citizens from reporting suspicious activity if the activity

4095 happens to involve someone of a different race, religion,
4096 ethnicity, or national origin from the reporter.

4097 In 2007, a teenage clerk at an electronics store was
4098 asked by two men to transfer a videotape to a DVD. When the
4099 teenager and another employee went into the back room and
4100 started the process of transferring the tape, they found
4101 themselves watching several Jihadists shooting some very
4102 large weapons. The teen frantically told his co-worker what
4103 he had witnesses, and then he said, "I do not know what to
4104 do. Should I call someone or is that being racist?"

4105 Fortunately that young man was brave enough to
4106 overcome his fear of political correctness. He called the
4107 FBI, and as a result, a group of terrorists who became known
4108 as the Fort Dix 6 were captured. The FBI believes the Fort
4109 Dix 6 were in the final stages of preparing for an armed
4110 assault on Fort Dix, and perhaps other military
4111 installations where they could have killed or injured untold
4112 numbers of men and women in our armed forces.

4113 The contrast of the 2009 Fort Hood shooting could not
4114 be more striking or tragic. There is substantial evidence,
4115 as Dr. Jasser testified at the hearing on H.R. 963, that
4116 Nidal Hasan's suspicious behavior went unaddressed in part
4117 because of colleagues' fears of being branded a racist.

4118 Ordinary citizens are not trained in the law of racial
4119 profiling or due process. They cannot know whether their

4120 suspicions will lead anywhere. It is law enforcement
4121 officers' job to analyze the information that citizens bring
4122 them. But we want citizens to share that information with
4123 law enforcement officers free from fear of being sued. By
4124 creating an exemption to the bill's immunity, the amendment
4125 reinserts fear of the lawsuit in a way that will discourage
4126 reports.

4127 A citizen deciding whether to report suspicious
4128 activity would have to calculate whether a plaintiff or a
4129 court would label them as racist if their suspicions were
4130 mistaken. The Chu amendment subjects ordinary citizens to a
4131 more restrictive rule against profiling than Administration
4132 policy applies to Federal law enforcement officials.

4133 The Department of Justice's guidance regarding the use
4134 of race by Federal law enforcement agencies provides that,
4135 "Given the incalculably high stakes involved in such
4136 investigations, Federal law enforcement officials who are
4137 protecting National security or preventing catastrophic
4138 events, may consider race, ethnicity, and other relevant
4139 factors to the extent permitted by our laws and the
4140 Constitution."

4141 Citizens who make a good faith report based on
4142 objectively, reasonable suspicious should be entitled to the
4143 same deference unless a court holds otherwise.

4144 The standard for immunity under H.R. 963 is color

4145 blind and fair. Was the report made in good faith and based
4146 on reasonable suspicious?

4147 The bill provides immunity for Americans who report
4148 suspicious activity without regard to the race, religion,
4149 ethnicity, or national origin of the party engaged in the
4150 suspicious activity, or the party making the report. To be
4151 eligible for immunity, the citizen's report must be made in
4152 good faith and based on objectively reasonable suspicious.
4153 A report based only on racial animus would not meet this
4154 standard.

4155 The bill does not encourage racial profiling in any
4156 way whatsoever. That is why a similar bill was adopted with
4157 304 bipartisan votes in the Democratic controlled Congress
4158 of 2007. That law has not led to any known incidents of
4159 racial profiling.

4160 The message that citizens need to hear loud and clear
4161 is that if you see something, say something. So, I oppose
4162 the Chu amendment because it undermines that message.

4163 Are there other members who wish to be recognized on
4164 the amendment?

4165 The gentleman from Virginia, Mr. Scott?

4166 Mr. Scott. Thank you, Mr. Chairman.

4167 Mr. Chairman, I rise in support of the gentlelady's
4168 amendment. There have been publicly reported incidences
4169 where people have been asked off the plane solely because of

4170 their ethnicity, particularly Muslims. And if someone were
4171 to report and cause someone to be removed from a plane
4172 solely because of racial prejudice, without this amendment,
4173 there would be serious questions as to whether that person
4174 would be immunized for that mean-spirited, despicable
4175 report. The victim of that kind of situation would be in a
4176 situation where they could not even file a suit without
4177 betting their house on the outcome of the immunity.

4178 So, I would hope we adopt the amendment so that you
4179 would not be immunized when you make reports based on
4180 someone's ethnicity, causing someone to get off a plane or
4181 otherwise be arrested and incarcerated just because of your
4182 racial prejudices. We should not be immunizing that.

4183 I yield back.

4184 Mr. King. Mr. Chairman?

4185 Chairman Smith. Thank you, Mr. Scott.

4186 The gentleman from Iowa, Mr. King?

4187 Mr. King. Thank you, Mr. Chairman. I just ask if the
4188 gentlelady from California that is offering the amendment
4189 would yield to a question? Ms. Chu?

4190 Ms. Chu. Yes?

4191 Mr. King. Would you yield to a question?

4192 Ms. Chu. Certainly.

4193 Mr. King. Thank you. I just listened to your
4194 presentation on your amendment, and I noted that at least

4195 twice you said that this amendment would prohibit -- I will
4196 look at the language -- would prohibit using race, religion,
4197 ethnicity, or national origin solely as a criteria. And
4198 that is your position?

4199 Ms. Chu. Yes, it is.

4200 Mr. King. And then, could you explain to me where
4201 this word "solely" comes from, the origin of that? Is that
4202 part of your amendment that it not be used solely as a
4203 criteria?

4204 Ms. Chu. Well, as I said, I certainly believe that
4205 citizens should report on suspicious activity. But if the
4206 basis for that suspicious activity is seeing somebody out
4207 there who is of a different ethnicity, and if that is the
4208 sole reason that they are reporting them, well, that is what
4209 this amendment addresses. This amendment would stop that.

4210 Mr. King. I appreciate that and the sentiment, too.
4211 So, why does your amendment not say "solely based upon race,
4212 religion, ethnicity, or national origin?" Why is that word
4213 omitted from your amendment?

4214 Mr. Scott. Will the gentlelady yield?

4215 Ms. Chu. Yes.

4216 Mr. King. I control the time. I am reclaiming my
4217 time. I just take it back, and I would ask the gentlelady
4218 from California if she would respond to that question. And
4219 then I would be happy to yield, if I have time, to the

4220 gentleman from Virginia.

4221 Ms. Chu. Well, the court looks at the totality of the
4222 case in determining the reasonableness of that case. And
4223 that is why the term "solely" is not used.

4224 Mr. King. I thank you and reclaim my time. I do not
4225 know that it is necessary now to yield the gentleman from
4226 Virginia, because the point that the gentlelady makes, it
4227 also conforms with the point that the chairman has made,
4228 that that perspective is already existing policy. It is a
4229 policy that has been approved by this Administration.

4230 But my position is that, you know, I made the
4231 statement earlier that there seems to be a willingness to
4232 profile in the case of immigration when we advocated for
4233 open borders, but an unwillingness to allow for
4234 consideration of race, ethnicity when it comes to law
4235 enforcement.

4236 I just wanted to reinforce this point that profiling
4237 as it is cast around here is a pretty loose term. But it is
4238 necessary when it comes to law enforcement. And if we had a
4239 law enforcement officer or officers or a policy within any
4240 of the jurisdictions of law enforcement that specifically
4241 prohibited the utilization of profiling in any case, that
4242 would be putting blindfolds on top of our law enforcement
4243 officers. And what this bill seeks to do is ask people to
4244 be objective, not be biased, and not use profiling as a

4245 specific and exclusive component, but use our good judgment
4246 to try to protect the American people.

4247 See Something, Say Something, this amendment is
4248 unnecessary because the very policy that the gentlelady has
4249 said she seeks to advocate here is a policy that is already
4250 in place.

4251 And I would yield back then the balance of my time.
4252 Thank you.

4253 Chairman Smith. Thank you, Mr. King.

4254 Are there other members who wish to be recognized?

4255 If not, the question is --

4256 Ms. Jackson Lee. Mr. Chairman?

4257 Chairman Smith. The gentlewoman from Texas, Ms.
4258 Jackson Lee?

4259 Ms. Jackson Lee. Mr. Chairman, first of all, I would
4260 like to congratulate Congresswoman Chu for the enormous
4261 leadership that she has shown on these issues. We have been
4262 in several meetings with her in my capacity as the
4263 chairperson and now ranking member of the Transportation
4264 Security Subcommittee on Homeland Security.

4265 The underlying bill has great value, but I understand
4266 the gist of the amendment, and that is, of course, to ensure
4267 as amended to Section A(1) as to make sure that the
4268 voluntary report that is given is not on the basis of a
4269 person's race, religion, ethnicity, or national origin.

4270 There are those in this country, because of the climate in
4271 which we live, will fall victim to those kind of issues.

4272 And so, for the receiver of the information or the
4273 report that is given, we are just suggesting or she is
4274 making the point that that should not be the sole basis.

4275 I think it is a reasonable perspective. I think the
4276 point that Mr. King has made is reasonable as well. And I
4277 hope that we can find a way to address a very important
4278 point that she has made.

4279 It is real that individuals, either because of race,
4280 because of their attire. We are well reminded of the
4281 innocent imams that were in the airport in Minneapolis, and
4282 because of their prayers, it was thought they had wrong
4283 intentions. And their instance, the airlines, the pilot,
4284 and others were found to be incorrect.

4285 So, I think it is an important note. This is an
4286 important bill. We will encourage citizens to be open and
4287 energetic on their understanding of protecting the homeland
4288 as they can do as citizens, or those inside this country.
4289 But we will remind them through this particular language of
4290 the falseness of trying to focus on a person's race,
4291 religion, ethnicity, or national origin.

4292 With that, I do not know if the gentlelady --

4293 Mr. Scott. Would the gentlelady --

4294 Ms. Jackson Lee. I would be happy to yield to the

4295 gentleman from Virginia.

4296 Ms. Scott. Yes, in response to the question from the
4297 gentleman from Iowa, the amendment is self-explanatory. It
4298 says, "A voluntary report made or caused to be made on the
4299 person of someone's race or ethnicity shall not be construed
4300 as a good faith and based on objectionably reasonable
4301 suspicion of voluntary report."

4302 The fact of the matter is, as the gentlelady from
4303 Texas has indicated, there are people in America who believe
4304 that suspicion exists solely because of ethnicity. The
4305 people are scared just because a person is of a particular
4306 ethnicity. And they make a report, and it is followed
4307 through, and the pilot on the airplane says, well, I do not
4308 want those people on the plane. And report that and have
4309 people removed from the plane. And there are public reports
4310 of this happening. We should not remove any recourse of
4311 those people who have been victims of that might have. And
4312 that is what this bill does, and the amendment would fix
4313 that. You just cannot tell -- I do not like people of that
4314 ethnicity, and I do not want to fly with them on a plane.
4315 If you get the pilot to agree, that is it.

4316 Well, that is not fair, and they ought to have a
4317 recourse against that kind of thing. And this amendment
4318 would protect it. And I thank the gentlelady from
4319 California for introducing it.

4320 Ms. Jackson Lee. Reclaiming my time.

4321 Mr. Scott. I yield back.

4322 Ms. Jackson Lee. Reclaiming my time. I think the
4323 other aspect of issues that are not before us as we begin to
4324 define further how we secure the homeland, there are other
4325 tactics that are being looked at. I think it is public
4326 knowledge that behavior is being looked at.

4327 I think this is a perfectly legitimate amendment on
4328 its four corners because what it indicates is that do not
4329 discriminate and do not let that voluntary report be on the
4330 person's race, religion, ethnicity, or national origin. It
4331 does not eliminate other ways that a volunteer or a
4332 bystander might note that something is happening.

4333 For example, in the Times Square incident, the example
4334 where this came out in its fullness and where the city of
4335 Houston -- excuse me, city of New York was highlighted is
4336 that this was a campaign that they had either utilized or
4337 began to let citizens adopt as their own. And so, there was
4338 someone who saw something and said something. As busy as
4339 Times Square is, a truck, some activity. That is what we
4340 are talking about. We are not talking about getting
4341 citizens to watch a Sikh or someone with a head dress or
4342 someone that appears to be Muslim or appears to have another
4343 religious background to be in the eye of the storm just
4344 because of that. I do not see why that simple premise

4345 cannot be codified in this bill.

4346 We all want to see something and say something. So, I
4347 ask my colleagues to support the Chu amendment.

4348 Chairman Smith. Thank you, Ms. Jackson Lee.

4349 The gentleman from Virginia, Mr. Forbes, is
4350 recognized?

4351 Mr. Forbes. Thank you, Mr. Chairman.

4352 I have listened to the debate, and the arguments being
4353 made are different than the amendment that is actually being
4354 presented.

4355 But, Mr. Chairman, I want to, first of all, thank you
4356 for bringing this bill. And the reason is because I can
4357 think of no better situation to highlight the philosophical
4358 differences between our two sides of the aisle than the
4359 debate that we have just heard. And I respect the opinions
4360 on both sides. But I was shocked again by the ranking
4361 member's statement earlier as we began this debate when he
4362 essentially said that just because the President says a
4363 policy is important, we should not take him seriously and
4364 actually pass a law to help him accomplish that purpose.

4365 And, you know, oftentimes we think when it comes to
4366 crime, it is okay to talk about it, just do not dare do
4367 something that is actually going to put a law that will help
4368 us address that policy. The President has recognized the
4369 importance of people coming forward with suspicious

4370 activity. This law helps do that.

4371 The second thing is, we have heard once again -- I
4372 cannot remember -- I am sure there has been a situation. I
4373 just cannot remember a time when we have had any substantial
4374 piece of criminal legislation that my friends on the other
4375 side of the aisle did not open their box of objections and
4376 pull out the stamp that says racial profiling and put on
4377 there, and then pull out the other one that says targeted to
4378 minorities and stamp that.

4379 And I am not arguing that they do not believe that. I
4380 am saying that is why this bill is so important, because
4381 there are many citizens who hear that taking place, whether
4382 there is justification for that or not. And they realize
4383 that when they go in a courtroom, there may be a jury
4384 somewhere that reaches into that same box of objections and
4385 says, we are going to rubber stamp that this was racial
4386 profiling, or, we are going to rubber stamp that this was
4387 directed to minorities. And they say, I am not going to get
4388 involved. I am not going to report it.

4389 The gentleman from New York earlier today talked about
4390 the chilling effect, and I am glad he did because there are
4391 two chilling effects we are talking about here. This bill
4392 addresses the chilling effect when somebody sees a
4393 suspicious activity. And read the bill. The bill says they
4394 have to have been in good faith, and it has to be based on

4395 an objective, reasonable suspicion. I have never seen a
4396 case -- maybe it exists; I would ask the minority to bring
4397 it forward -- where something based solely on race was an
4398 objectively reasonable suspicion.

4399 But, Mr. Chairman, the problem is, what the President
4400 has recognized, what this bill does is to say we want those
4401 people coming forward because what activity are they
4402 reporting? It is in the bill. It is activity relating to
4403 terrorism. And we would rather err on the side of them
4404 reporting this activity and stopping a terrorist attack on
4405 the United States than err on the side of trying to stop
4406 them.

4407 Now, the gentleman from New York talked about today
4408 the difficulty because we are putting a chilling effect on
4409 another group of people, and what group was he talking
4410 about? The people who are bringing lawsuits against
4411 individuals who reported activity that was in good faith,
4412 based on reasonably objective suspicions, regarding
4413 terrorism.

4414 And, Mr. Chairman, if we have to weigh that balance, I
4415 think this committee ought to be saying, we want to
4416 encourage people when they are in good faith and based on
4417 objectively reasonable suspicions, to get that information
4418 to law enforcement so we can stop a terrorist attack on this
4419 country. And if it means in the process that I make it a

4420 little more difficult for somebody to file a lawsuit to
4421 penalize them for doing it, then I am glad to support that
4422 piece of legislation. And I thank you for bringing it
4423 forward. And I hope --

4424 Ms. Jackson Lee. Would the gentleman yield?

4425 Mr. Forbes. Yes, ma'am, I will yield.

4426 Ms. Jackson Lee. You know, I want to thank the
4427 gentleman because there is nothing wrong with having a
4428 different perspective. I am on Homeland Security. I
4429 frankly believe this is an excellent underlying premise to
4430 encourage See Something, Say Something.

4431 What I will just make the point to the gentleman's
4432 comments is that founding fathers established what is a Bill
4433 of Rights that says things like freedom of religion, freedom
4434 of association, because even in their non-knowledge of where
4435 we are today, they felt it was imperative to ensure that
4436 kind of protection here in the United States.

4437 Mr. Forbes. And let me reclaim my time.

4438 Ms. Jackson Lee. And so, that is what we are doing
4439 here now.

4440 Mr. Forbes. Well, we are doing that in the underlying
4441 bill. But I want to point out to the gentlelady that we are
4442 doing that, but there is nothing in here at all that would
4443 give credence to someone who reported something solely based
4444 on race. That was the argument, but that is not the

4445 underlying bill, and that is not the amendment.

4446 And, Mr. Chairman, with that, I yield back the balance
4447 of my time.

4448 Chairman Smith. Thank you, Mr. Forbes, for that
4449 statement.

4450 The vote is on the amendment. All in favor, say aye?

4451 [A chorus of ayes.]

4452 Chairman Smith. Opposed, nay?

4453 [A chorus of nays.]

4454 Chairman Smith. In the opinion of the chair, the nos
4455 have it, and the amendment is not agreed to.

4456 Mr. Chu. Mr. Chair, I ask for a recorded vote.

4457 Chairman Smith. A recorded vote has been requested,
4458 and the clerk will call the role?

4459 Ms. Kish. Mr. Smith?

4460 Chairman Smith. No.

4461 Ms. Kish. Mr. Smith votes no.

4462 Mr. Sensenbrenner?

4463 [No response.]

4464 Ms. Kish. Mr. Coble?

4465 [No response.]

4466 Ms. Kish. Mr. Gallegly?

4467 Mr. Gallegly. No.

4468 Ms. Kish. Mr. Gallegly votes no.

4469 Mr. Goodlatte?

4470 [No response.]

4471 Ms. Kish. Mr. Lungren?

4472 [No response.]

4473 Ms. Kish. Mr. Chabot?

4474 [No response.]

4475 Ms. Kish. Mr. Issa?

4476 [No response.]

4477 Ms. Kish. Mr. Pence?

4478 [No response.]

4479 Ms. Kish. Mr. Forbes?

4480 Mr. Forbes. No.

4481 Ms. Kish. Mr. Forbes votes no.

4482 Mr. King?

4483 [No response.]

4484 Ms. Kish. Mr. Franks?

4485 Mr. Franks. No.

4486 Ms. Kish. Mr. Franks votes no.

4487 Mr. Gohmert?

4488 [No response.]

4489 Ms. Kish. Mr. Jordan?

4490 [No response.]

4491 Ms. Kish. Mr. Poe?

4492 [No response.]

4493 Ms. Kish. Mr. Chaffetz?

4494 Mr. Chaffetz. No.

4495 Ms. Kish. Mr. Chaffetz votes no.
4496 Mr. Griffin?
4497 Mr. Griffin. No.
4498 Ms. Kish. Mr. Griffin votes no.
4499 Mr. Marino?
4500 [No response.]
4501 Ms. Kish. Mr. Gowdy?
4502 Mr. Gowdy. No.
4503 Ms. Kish. Mr. Gowdy votes no.
4504 Mr. Ross?
4505 Mr. Ross. No.
4506 Ms. Kish. Mr. Ross votes no.
4507 Mrs. Adams?
4508 Mrs. Adams. No.
4509 Ms. Kish. Ms. Adams votes no.
4510 Mr. Quayle?
4511 Mr. Quayle. No.
4512 Ms. Kish. Mr. Quayle votes no.
4513 Mr. Conyers?
4514 [No response.]
4515 Ms. Kish. Mr. Berman?
4516 [No response.]
4517 Ms. Kish. Mr. Nadler?
4518 [No response.]
4519 Mr. Scott?

4520 Mr. Scott. Aye.

4521 Ms. Kish. Mr. Scott votes aye.

4522 Mr. Watt?

4523 [No response.]

4524 Ms. Kish. Ms. Lofgren?

4525 [No response.]

4526 Ms. Kish. Ms. Jackson Lee?

4527 Ms. Jackson Lee. Aye.

4528 Ms. Kish. Ms. Jackson Lee votes aye.

4529 Ms. Waters?

4530 [No response.]

4531 Ms. Kish. Mr. Cohen?

4532 [No response.]

4533 Ms. Kish. Mr. Johnson?

4534 [No response.]

4535 Ms. Kish. Mr. Pierluisi?

4536 Mr. Pierluisi. Aye.

4537 Ms. Kish. Mr. Pierluisi votes aye.

4538 Mr. Quigley?

4539 [No response.]

4540 Ms. Kish. Ms. Chu?

4541 Ms. Chu. Aye.

4542 Ms. Kish. Ms. Chu votes aye.

4543 Mr. Deutch?

4544 [No response.]

4545 Ms. Kish. Ms. Sanchez?

4546 [No response.]

4547 Ms. Kish. Mr. Poe?

4548 Mr. Poe. No.

4549 Chairman Smith. The gentleman from North Carolina,
4550 Mr. Coble?

4551 Mr. Coble. No.

4552 Ms. Kish. Mr. Coble votes no.

4553 Chairman Smith. The gentleman from Texas?

4554 Mr. Gohmert. No.

4555 Ms. Kish. Mr. Gohmert votes no.

4556 Chairman Smith. The gentleman from Virginia?

4557 Mr. Goodlatte. No.

4558 Chairman Smith. The gentleman from Utah? You have
4559 already voted.

4560 The gentleman from Iowa?

4561 Mr. King. No.

4562 Ms. Kish. Mr. King votes no.

4563 Chairman Smith. Other members who wish to be
4564 recorded?

4565 Gentleman from Pennsylvania?

4566 Mr. Marino. No.

4567 Ms. Kish. Mr. Marino votes no.

4568 Chairman Smith. The clerk will report?

4569 Ms. Kish. Mr. Chairman, 4 members voted aye; 16

4570 members voted nay.

4571 Chairman Smith. The majority having voted against the
4572 amendment, the amendment is not agreed to.

4573 Are there other amendments?

4574 Ms. Jackson Lee. I have an amendment at the desk.

4575 Chairman Smith. The gentlewoman from Texas is
4576 recognized for the purpose of offering an amendment?

4577 Ms. Jackson Lee. I have an amendment at the desk, Mr.
4578 Chairman.

4579 Chairman Smith. And the clerk will report the
4580 amendment?

4581 Ms. Kish. Amendment to H.R. 963, offered by Ms.
4582 Jackson Lee of Texas. Page 4, line 5, insert after "code"
4583 the following.

4584 Chairman Smith. Without objection, the amendment will
4585 be considered as read.

4586 [The information follows:]

4587

4588 Chairman Smith. And the gentlewoman is recognized to
4589 explain her amendment?

4590 Ms. Jackson Lee. Thank you, Mr. Chairman. With your
4591 indulgence, I just want to indicate for the record that I
4592 was detained on the floor of the House debating Rule --
4593 excuse me, the FAA Extension Bill. I just want to quickly
4594 add into the record that if I had been present on the
4595 Lofgren-Berman amendment number 2 to H.R. 704, I would have
4596 voted no. To final passage of H.R. 704, I would have voted
4597 no. To the Scott amendment on number 3 to H.R. 2552, I
4598 would have voted yes. And on final passage of 2552, I would
4599 have voted yes.

4600 I would ask unanimous consent that the record of my
4601 votes be placed appropriately in the record.

4602 Chairman Smith. Without objection, it will be made a
4603 part of the record.

4604 [The information follows:]

4605

4606 Ms. Jackson Lee. Thank you, Mr. Chairman. I believe
4607 that my amendment has been passed out.

4608 Mr. Chairman, let me say again that I think there is a
4609 lot of agreement on the concept of this particular amendment
4610 -- excuse me, on this particular legislation. And I am
4611 interested in explaining this amendment.

4612 This amendment has to do with allowing the issue of
4613 racial profiling to be addressed and to ensure as the
4614 information is passed on to the recipient, in most instances
4615 the law enforcement officer, that racial profiling does not
4616 exist.

4617 We have already heard that those of us on this side of
4618 the aisle seem to want to place in the eye of the discussion
4619 issues that are either offensive to others, they believe to
4620 be redundant to others. But I would again go back
4621 historically to the drafting of the Bill of Right. And I do
4622 not know how the founding fathers crafted this document that
4623 would allow us to have a living Constitution for this period
4624 of time, but they were very clear about issues dealing with
4625 discrimination or the protection of the right of religion,
4626 and the right of access, and the right of movement, and
4627 speech. They further became clear under the 14th Amendment
4628 about due process.

4629 And I think that even without the idea of terrorism,
4630 they had a concept that the individual rights of those in

4631 this Nation should be protected. And so, for those who
4632 think this is frivolous, and we do not need to ensure this,
4633 and it always brought up, I think many of us on this side of
4634 the aisle have the same idea. These laws are not for
4635 yesterday or not for today. They are for a term that is not
4636 defined. And so, 2020, 2030, 3010, if this Nation still
4637 exists, this Constitution needs to be a living document.

4638 This language to ensure and protect against what has
4639 been documented that has occurred in this Nation. There has
4640 been racial profiling. We have documented through the work
4641 of this committee, through the work of the 90s extensive
4642 racial profiling that violated the rights of citizens.

4643 So, this amendment is to prevent racial profiling in
4644 this very good bill and to ensure that the recipient of the
4645 information, in this instance, a law enforcement officer or
4646 a law enforcement agency, does not itself engage in racial
4647 profiling dealing with race, ethnicity, national origin, or
4648 religion in selecting which individuals to subject to
4649 investigating. So, they have a responsibility to ensure
4650 that that does not happen.

4651 With that, I ask my colleagues to support this
4652 amendment.

4653 Chairman Smith. Thank you, Ms. Jackson Lee. I will
4654 recognize myself in opposition.

4655 The Constitution prohibits the consideration of race

4656 or ethnicity in law enforcement decisions in all but the
4657 most exceptional circumstances. The constitutional
4658 guarantee of equal protection of the laws will apply with
4659 full force whether or not it is specified in this bill.

4660 The bill does not encourage racial profiling in any
4661 way. That is why a similar bill was adopted with 304
4662 bipartisan votes in the Democratic-controlled Congress of
4663 2007. And I just checked the record, and my colleagues on
4664 the committee might be interested in knowing that about half
4665 of the Democratic conference voted for this bill in the last
4666 Congress.

4667 This law has not led to any known incidents of racial
4668 profiling because it does not change the laws that govern
4669 profiling. H.R. 963 does not change the laws that govern
4670 profiling either.

4671 This amendment, by contrast, does change the current
4672 legal regime governing profiling. The amendment contradicts
4673 current Administration guidelines for the cases in which
4674 Federal law enforcement officers may consider race or
4675 ethnicity.

4676 The Department of Justice's guidance regarding the use
4677 of race by Federal law enforcement agencies provides that,
4678 "Given the incalculably high stakes involved in such
4679 investigations, Federal law enforcement officers who are
4680 protecting national security or preventing catastrophic

4681 events may consider race, ethnicity, and other relevant
4682 factors to the extent permitted by our laws and the
4683 Constitution."

4684 The Department of Justice guidelines go on to specify
4685 the types of dangerous circumstances where limited
4686 consideration of national origin or ethnicity might be
4687 considered. For example, the guidelines provide that if
4688 U.S. intelligence sources report that terrorists from a
4689 particular ethnic group are planning to use commercial
4690 jetliners as weapons by attacking them, then PSA personnel
4691 and other Federal and State authorities may subject members
4692 of that group to a heightened scrutiny. As long as it is
4693 used carefully and constitutionally, information about
4694 national origin can be relevant to the officials who protect
4695 us from terrorism.

4696 The Department of Justice guidelines go on to
4697 specifically reject the limits on law enforcement officers
4698 that the Jackson Lee contemplates. The Department of
4699 Justice under both the Bush and Obama Administrations has
4700 carefully tailored this limited exception to the policy
4701 against profiling. This policy is in place because the
4702 Department of Justice understands that as the Supreme Court
4703 has held, "It is obvious and unarguable that no governmental
4704 interest is more compelling than the security of the
4705 Nation."

4706 By limiting the permissible use of relevant
4707 information to a specific locale and scheme, the Jackson Lee
4708 amendment overturns this careful balance and restricts law
4709 enforcement officers more than the Constitution requires.

4710 It would be exceedingly dangerous to upset the careful
4711 constitutional balance by which the Administration currently
4712 protects both the homeland and our civil liberties. This
4713 bill should not deny the Administration constitutionally
4714 permissible tools in the War on Terror.

4715 H.R. 963 is about creating immunity for citizens who
4716 report suspicious activity reasonably in good faith. It is
4717 not about racial profiling, and it does not change the laws
4718 that generally prohibit and always limit racial profiling.
4719 The Jackson Lee amendment, however, changes Administration
4720 profiling policy in a way that would tie the hands of the
4721 officials whose job is to fight terrorism. So, I suggest
4722 that we reject this amendment.

4723 Ms. Jackson Lee? Would the gentleman yield?

4724 Chairman Smith. And I would be happy to yield the
4725 gentlewoman from Texas.

4726 Ms. Jackson Lee. I think the real question, Mr.
4727 Chairman, is finding a way -- and I am going to continue to
4728 write and rewrite this language so that we can be in the
4729 spirit of the founding fathers.

4730 I just want to raise the point again of the incident

4731 in 2006 where the imams were removed from the U.S. Airways.
4732 And the actions, if you want to look behaviorally about
4733 their actions or their behavior, was including a prayer
4734 before boarding the flight. The seats that the plaintiffs
4735 had been assigned to, which I assume they did not assign
4736 themselves. The airline assigned them to. And their need
4737 for seatbelt extensions. And I hope that we do not have
4738 discrimination against persons who are obese.

4739 But after they were removed from the aircraft, Mr.
4740 Chairman, and interrogated by law enforcement officials,
4741 they concluded that the imams did not harbor malicious
4742 intent nor planned to engage in the acts of terrorism. To
4743 heighten the ridiculousness, U.S. Airways still refused them
4744 service on alternate flights.

4745 So, we are talking about situations that will not
4746 protect the homeland. In fact, it may endanger the homeland
4747 if we allow foolish activities to occur. We want to
4748 encourage See Something, Say Something. As I said, the Good
4749 Samaritan in Times Square did the right thing, and it was
4750 not stereotyping as much as it was looking at suspicious
4751 behavior. Praying is not suspicious.

4752 So, the question becomes, what in this bill, if it
4753 becomes law and signed by the President, who is, as I
4754 understand it, is well aware of the positive aspects of
4755 this. We as legislators need to ensure that we do not have

4756 that problem. I do not see that in the underlying bill, and
4757 I believe that we can find a common ground to be able to
4758 ensure that that occurs.

4759 With that, I yield back to the gentleman.

4760 Chairman Smith. I will reclaim my time. Does the
4761 gentlewoman want to withdraw her amendment or not?

4762 Ms. Jackson Lee. No, I do not want to withdraw it. I
4763 want to continue working on it, though.

4764 Chairman Smith. Okay. In that case, I urge my
4765 colleagues to support the relevant Obama policies now in
4766 place in regard to this particular subject, and vote no on
4767 the amendment.

4768 Ms. Jackson Lee. There is a gentleman that wants to
4769 --

4770 Chairman Smith. The gentleman from Virginia, I will
4771 yield to him.

4772 Mr. Scott. Thank you, Mr. Chairman.

4773 Mr. Chairman, in your remarks you pointed out a
4774 situation where there was, in citing the language in the
4775 amendment, trustworthy information relevant to the locality
4776 and time frame that links the person of a particular race
4777 and so forth to that particular incident or scheme. I think
4778 that would certainly be covered under this.

4779 Mr. Chairman, this does not change racial profiling.
4780 It does not change any procedures. On line 2, it says, "in

4781 carrying out this act." This Act gives an immunity. What
4782 this amendment would do is, if you are participating in
4783 racial profiling, that you do not get the immunity under
4784 this law. That is all it does. It does not discourage
4785 racial profiling, but if you do it, you do not have the
4786 immunity, and you may subject to a lawsuit if it is
4787 unreasonable. That is all it does. And I would hope that
4788 we would adopt the amendment.

4789 I do not think we ought to be having racial profiling,
4790 but certainly if you are doing that, the victims of your
4791 profiling ought to have a recourse to stop you from doing
4792 it.

4793 I yield back.

4794 Chairman Smith. Okay. Thank you, Mr. Scott. I will
4795 reclaim my time, which I think was a little bit more than to
4796 which I was entitled.

4797 Are there other members who wish to be heard on the
4798 amendment?

4799 The gentleman from Virginia, Mr. Forbes?

4800 Mr. Forbes. Mr. Chairman, I would just once again say
4801 that the whole focus of this bill is not just to grant
4802 immunity. It is to stop the chilling effect from people who
4803 would report these kind of activities and make sure that
4804 they are being reported.

4805 The second thing is, like with any bill, there are

4806 situations that may fall between the cracks. There are
4807 things that could happen that we could come back and we
4808 could think of various situations where we would say we wish
4809 that did not happen. But I think the balance of this bill
4810 is important for us to keep in mind. If we do not get the
4811 balance right, and if a terrorist attack slips through the
4812 cracks, we are talking about thousands or hundreds of
4813 thousands of Americans that could die because we did not
4814 have it right. If, on the other hand, we do not have it
4815 exactly right and we cause somebody to be embarrassed or
4816 whatever, we do not want that happen. But when you weigh
4817 those two things, certainly the thing that we want to avoid
4818 the most and the focus of this bill is guarding and
4819 defending Americans from terrorist activity. That is what
4820 this bill strikes a good balance at.

4821 And, Mr. Chairman, with that, I yield back the balance
4822 of my time.

4823 Ms. Jackson Lee. Will the gentleman yield? Will the
4824 gentleman yield?

4825 Mr. Forbes. I have yielded my time.

4826 Chairman Smith. The gentleman has yielded back his
4827 time. Thank you, Mr. Forbes.

4828 The question is on the amendment.

4829 All in favor, say aye?

4830 [A chorus of ayes.]

4831 Chairman Smith. Opposed, nay?

4832 [A chorus of nays.]

4833 Chairman Smith. In the opinion of the chair, the nos
4834 have it, and the amendment is not agreed to.

4835 Let me say to members of the committee that we are
4836 expecting votes in about 10 minutes. I do not know whether
4837 we will finish or not. If we do not, we will resume the
4838 markup tomorrow afternoon after lunch.

4839 Are there any other amendments?

4840 The gentleman from Virginia, Mr. Scott, is recognized?

4841 Mr. Scott. Thank you, Mr. Chairman. Amendment number
4842 1.

4843 Chairman Smith. The clerk will report the amendment?

4844 Ms. Kish. Amendment to H.R. 963, offered by Mr. Scott
4845 of Virginia. Page 3, line 14, insert after "the plaintiff"
4846 the following: "Only if the plaintiff did not act⁴ in good
4847 faith in bringing an action against" --

4848 Chairman Smith. Without objection, the amendment will
4849 be considered as read.

4850 [The information follows:]

4851

4852 Chairman Smith. And the gentleman is recognized to
4853 explain his amendment?

4854 Mr. Scott. Thank you, Mr. Chairman.

4855 The underlying bill says that those found to be immune
4856 from civil liability should receive all reasonable costs and
4857 attorney's fees from the plaintiff. Mr. Chairman, the
4858 plaintiff should not have to bet his house on whether or not
4859 the lawsuit will come out in his favor. The bill requires
4860 that even if you have a winning lawsuit, now you have to bet
4861 your house on the outcome.

4862 It is not unreasonable to think, and in some of these
4863 cases the person who thinks they might have immunity could
4864 easily run up costs and expenses and legal fees to really
4865 intimidate someone from ever bringing the case.

4866 The amendment says that if you are an authorizing
4867 official or the person is found to be immune from civil
4868 liability, they can recover attorney's fees and costs only
4869 if the plaintiff did not act in good faith in bringing the
4870 case. That is the normal situation in lawsuits. The
4871 abandonment of that rule would have serious consequences in
4872 developing areas of the law, such as potential litigants
4873 might be loath to espouse novel legal theories for fear of
4874 incurring additional expenses if the court does not agree
4875 with them. Without this amendment, even if you have a good
4876 case, you would be afraid to bring it.

4877 There is no evidence, Mr. Chairman, that frivolous
4878 lawsuits are being filed in these cases. Not a single case
4879 has been offered to explain the rationale for the bill. No
4880 one has lost a case for making a good faith report. And so,
4881 I would hope that we would not intimidate people who have
4882 winning cases from bringing that case for fear of losing the
4883 house or losing hundreds of thousands of dollars if they
4884 bring a case in good faith and just happened to lose.

4885 I yield back.

4886 Chairman Smith. Thank you, Mr. Scott.

4887 The gentleman from Arizona, Mr. Franks, is recognized?

4888 Mr. Franks. Well, thank you, Mr. Chairman.

4889 Mr. Chairman, I would oppose this amendment because
4890 essentially citizens who report their suspicious activities
4891 or suspicions, as it were, in good faith should not be
4892 exposed to litigation costs and attorney's fees as their
4893 reward. There should be no good faith exception for
4894 plaintiffs who file meritless lawsuits that negatively
4895 affect national security.

4896 The fee shifting language in this bill is exactly the
4897 same language in 6 U.S.C. Section 1104 that applies to
4898 transportation. And, Mr. Chairman, there have been no
4899 problems with that language, and it should not be changed.

4900 The amendment adds an additional burden of proof that
4901 citizens must meet to recover attorney's fees. This risks

4902 tipping the balance and encouraging citizens who see
4903 something suspicious to remain silent because they fear
4904 having to pay attorney's fees if they say something, even if
4905 they win the lawsuit against them.

4906 As I said in my opening statement, Mr. Chairman,
4907 Americans should not have to pay one penny of legal defense
4908 costs for helping to prevent a terrorist attack on their
4909 fellow Americans.

4910 Chairman Smith. Thank you, Mr. Franks.

4911 The question is on the Scott amendment.

4912 All in favor, say aye?

4913 [A chorus of ayes.]

4914 Chairman Smith. Opposed, nay?

4915 [A chorus of nos.]

4916 Chairman Smith. In the opinion of the chair, the nos
4917 have it, and the amendment is not agreed to.

4918 I have one more amendment listed, and that belongs to
4919 the gentleman from Virginia, Mr. Scott.

4920 The clerk will report the amendment?

4921 Ms. Kish. Amendment to H.R. 963, offered by Mr. Scott
4922 of Virginia. Page 4, line 5, insert after "code" the
4923 following: "Affirmative defense, the immunity from civil
4924 liability provided under this section may be asserted only
4925 as an affirmative defense in accordance with Rule 8(c) of
4926 the Federal Rules of Civil Procedure."

4927 Chairman Smith. And without objection, the amendment
4928 will be considered as read.
4929 [The information follows:]
4930

4931 Chairman Smith. And the gentleman from Virginia is
4932 recognized to explain his amendment?

4933 Mr. Scott. Thank you. Mr. Chairman, in civil cases,
4934 the burden of proof is initially on the plaintiff. Under
4935 this bill, we are asking the plaintiff not only to prove the
4936 case, but also prove that the defendant acted in bad faith.

4937 If a plaintiff wrongfully accused of suspicious
4938 behavior, proves that the accusation is in fact false, that
4939 they were accused of suspicious behavior, proves it is
4940 false, now they also have to prove that the person who
4941 accused them acted in bad faith. The plaintiff is not in
4942 the position of knowledge of why they were falsely accused.

4943 If the report was in good faith, then let the person
4944 say, well, I acted in good faith, and prove it. You cannot
4945 prove that it was in bad faith. And so, in this case, even
4946 though the accusation was false, the plaintiff has no
4947 recourse, and if they try to get recourse, they have to risk
4948 attorney's fees. You can prove that if you were wrongfully
4949 accused and still cannot bring a case. It should not be the
4950 defendant with the burden of proof that he was acting.

4951 Should it not be the defendant having the burden of proof
4952 that they were acting in good faith and based on reasonable
4953 suspicion? The defendant is the one who has the knowledge
4954 of the actions that led to the report and their line of
4955 thinking. It would simply be an unfair and unreasonable

4956 burden for anybody else but the defendant to come forth and
4957 explain what happened.

4958 Since the burden of proof falls on the plaintiffs in
4959 civil cases, the only way to require the defendants have the
4960 burden of proof is to create their immunity as an
4961 affirmative defense, and that is what this amendment does.
4962 By inserting it into the bill, we are ensuring that those
4963 with the information are the ones responsible for bringing
4964 it forward, not somebody having to prove what is in somebody
4965 else's mind.

4966 I encourage my colleagues to support the amendment.
4967 Otherwise, we are encouraging people to just keep their
4968 mouths shut about unreasonable reports. And as long as they
4969 keep it to themselves, the plaintiff can never prove what
4970 happened.

4971 I yield back.

4972 Chairman Smith. Thank you, Mr. Scott.

4973 I recognize myself in opposition. And I do want to
4974 say I think this amendment is very much well intended, but I
4975 also think it is going to have perhaps unexpected
4976 consequences, as I will explain.

4977 The amendment limits the bill's protections by
4978 providing that they can only be asserted as an affirmative
4979 defense. We should not limit the ways that the bill's
4980 substantive protections are applied. H.R. 963 is not a

4981 procedural bill. It creates a substantive rule of law.
4982 That rule of law applied to any person who makes a good
4983 faith report, and it applies to Federal, State, and local
4984 law enforcement officials.

4985 This is my concern. We cannot anticipate all the
4986 situation in which H.R. 963 may be invoked. It may arise in
4987 cases in Federal, State, tribal, or municipal courts across
4988 the country. It would be unwise to bind all potential
4989 parties and courts to a single Federal pleading rule.

4990 The Scott amendment would mean that Good Samaritans
4991 always bear the burden of proving their good faith and
4992 reasonableness. Instead of placing this burden on all Good
4993 Samaritans, we should assign the burden of proof according
4994 to the ordinary rules of procedure. This can involve
4995 complicated analyses that depend on the plaintiff's
4996 pleadings, the jurisdiction, and the facts of the case.

4997 The amendment's one size fits all Federal rule,
4998 putting the burden on the Good Samaritans is not
4999 appropriate. No such weakening amendment was included when
5000 the Democratic Congress adopted 6 U.S.C. 1104 in 2007. In
5001 my judgment, the amendment, though maybe not intended to do
5002 so, weakens the bill and should be defeated.

5003 That concludes my --

5004 Mr. Scott. Would the gentleman yield?

5005 Chairman Smith. I will be happy to yield to the

5006 gentleman from Virginia.

5007 Mr. Scott. Thank you, Mr. Chairman. Without this
5008 amendment, the prima facie that has to be brought is not
5009 only that allegations of suspicion were false, but you also
5010 have to prove, as part of the ongoing case, what was on the
5011 mind of somebody when do not have any idea of what it was.

5012 It is not unreasonable for the prima facie case just
5013 to show the false allegations, and then if somebody wants to
5014 assert immunity, that can be the affirmative defense. So,
5015 this is a reasonable amendment.

5016 Chairman Smith. We will have to have an honest
5017 disagreement and difference of opinions.

5018 The question is on the amendment. All in favor, say
5019 --

5020 Mr. Watt. Mr. Chairman.

5021 Chairman Smith. The gentleman from North Carolina,
5022 Mr. Watt?

5023 Mr. Watt. Mr. Chairman, I move to strike the last
5024 word.

5025 Chairman Smith. The gentleman is recognized for five
5026 minutes?

5027 Mr. Watt. I will not prolong it, but I want to rise
5028 in support of this amendment because I think it makes more
5029 reasonable something that I think we are probably
5030 overreacting to.

5031 I heard something right after 9/11 in the context of
5032 the Patriot Act debate that keeps resonating in my mind over
5033 and over again. And that is that we will know that they
5034 have won when we start to react in such a way that we start
5035 to impinge on our own personal lives and our activities.
5036 Since I heard that, there is a whole industry of reactive
5037 things to the prospect of terrorism. We keep modifying our
5038 behavior in anticipation of the most unlikely kind of event
5039 occurring. And there really is no effective way to defend
5040 against the possibility that something can occur. We can
5041 keep modifying our actions over and over and over and over
5042 again as we have.

5043 I think this bill is another example of that. Most of
5044 what we have passed in this committee that had controversy
5045 to it today illustrates the point that I am trying to make.
5046 And this modest amendment tamps that down. I mean, I am not
5047 saying that anybody's intentions are bad here. I mean, we
5048 all have good intentions. But there is only so much we
5049 should be modifying our own day-to-day activities in
5050 anticipation of some unforeseen, unlikely event. Otherwise,
5051 we have lost the fight at the beginning of this process.

5052 So, I just wanted to say that. I could have said it
5053 by striking the last word on the bill itself or on even the
5054 earlier bills. I was seeking attention when you called on
5055 Mr. Issa out of order, but decided not to say it. But I

5056 just thought it needed to be said.

5057 We are, in my opinion, steps beyond where I think we
5058 should prudently go in reaction to the fear of terrorism.
5059 And I fear that that statement that somebody made way back
5060 long ago is becoming more and more and more a reality of
5061 where we are. I yield back.

5062 Chairman Smith. Thank you, Mr. Watt.

5063 Now, the question is on the amendment. All in favor,
5064 say aye?

5065 [A chorus of ayes.]

5066 Chairman Smith. Opposed, say nay?

5067 [A chorus of nays.]

5068 Chairman Smith. In the opinion of the chair, the nos
5069 have it, and the amendment is not agreed to.

5070 A reporting quorum being present, the question is on
5071 reporting the bill favorably to the House. Those in favor,
5072 say aye?

5073 [A chorus of ayes.]

5074 Chairman Smith. Opposed, no?

5075 [A chorus of nays.]

5076 Chairman Smith. In the opinion of the chair, the ayes
5077 have it, and the bill is ordered reported favorably.

5078 Without objection, the bill will be reported, and the
5079 staff is authorized to make technical and conforming
5080 changes.

5081 Members will have two days to submit views.

5082 [The information follows:]

5083

5084 Chairman Smith. I thank all members for their
5085 participation today. We made a lot of progress, at least in
5086 the opinion of the chair, and marked up six bills.

5087 We stand adjourned.

5088 [Whereupon, at 2:52 p.m., the committee was
5089 adjourned.]