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4 MARKUP OF

5 H.R. 1932, THE KEEP OUR COMMUNITIES SAFE ACT OF 2011;

6 H.R. 2480, THE ADMINISTRATIVE CONFERENCE OF THE UNITED

7 STATES REAUTHORIZATION ACT OF 2011;

8 H.R. 704, THE SECURITY AND FAIRNESS ENHANCEMENT FOR

9 AMERICA ACT OF 2011; AND

10 H.R. 1002, THE WIRELESS TAX FAIRNESS ACT OF 2011

11 Thursday, July 14, 2011

12 House of Representatives

13 Committee on the Judiciary

14 Washington, D.C.

15 The committee met, pursuant to call, at 10:08

16 a.m., in Room 2141, Rayburn House Office Building,

17 Hon. Lamar Smith [chairman of the committee]

18 presiding.

19 Present: Representatives Smith, Sensenbrenner,

20 Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa,

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

26 Staff Present: Sean McLaughlin, Majority Chief
27 of Staff; Allison Halatei, Majority Deputy Chief of
28 Staff/Parliamentarian; Sarah Kish, Clerk; Jennifer
29 Lackey, Staff Assistant; Travis Norton, Majority
30 Counsel; John Hilton, Majority Counsel; Dimple Shah,
31 Majority Counsel; Perry Apelbaum, Minority Staff
32 Director; Norberto Salinas, Minority Counsel; and
33 Hunter Hammill, Minority Counsel.

34

35 Chairman Smith. The Judiciary Committee will
36 come to order.

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

40 Ms. Kish. Mr. Smith?

41 Chairman Smith. Present.

42 Ms. Kish. Mr. Sensenbrenner?

43 Mr. Coble?

44 Mr. Gallegly?

45 Mr. Gallegly. Present.

46 Ms. Kish. Mr. Goodlatte?

47 Mr. Goodlatte. Present.

48 Ms. Kish. Mr. Lungren?

49 Mr. Chabot?

50 Mr. Chabot. Present.

51 Ms. Kish. Mr. Issa?

52 Mr. Pence?

53 Mr. Forbes?

54 Mr. King?

55 Mr. King. Here.

56 Ms. Kish. Mr. Franks?

57 Mr. Franks. Here.

58 Ms. Kish. Mr. Gohmert?

59 Mr. Jordan?

60 Mr. Poe?
61 Mr. Chaffetz?
62 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. Quayle. Here.
71 Ms. Kish. Mr. Conyers?
72 Mr. Berman?
73 Mr. Nadler?
74 Mr. Nadler. Here.
75 Ms. Kish. Mr. Scott?
76 Mr. Watt?
77 Ms. Lofgren?
78 Ms. Lofgren. Here.
79 Ms. Kish. Ms. Jackson Lee?
80 Ms. Waters?
81 Mr. Cohen?
82 Mr. Johnson?
83 Mr. Pierluisi?
84 Mr. Quigley?

85 Ms. Chu?

86 Mr. Deutch?

87 Ms. Sanchez?

88 Mr. Coble?

89 Mr. Coble. Here.

90 Chairman Smith. Are there other Members who
91 wish to record their presence? If not, the clerk will
92 suspend.

93 [Pause.]

94 Ms. Kish. Mr. Chaffetz?

95 Mr. Chaffetz. Present.

96 Ms. Kish. Mr. Jordan?

97 Mr. Jordan. Present.

98 Chairman Smith. The clerk will report.

99 Ms. Kish. Mr. Chairman, 14 Members responded
100 present.

101 Chairman Smith. Okay. A working quorum is
102 present. The ranking member is on the way, and he
103 does not object to our proceeding, which we will do.

104 Pursuant to notice, I now call up H.R. 1932 for
105 purposes of markup, and the clerk will report the
106 bill.

107 Ms. Kish. H.R. 1932. To amend the Immigration
108 and Nationality Act --

109 Chairman Smith. Without objection, the bill

110 will be considered as read.

111 [The information follows:]

112

113 Chairman Smith. At our last markup, we
114 completed opening statements on this bill. So we will
115 now resume consideration of the bill, beginning with
116 amendments. And as I understand it, the gentlewoman
117 from California, Ms. Lofgren, is recognized for the
118 purpose of offering an amendment.

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

120 I will offer Conyers Number 12, in the absence
121 of Mr. Conyers. It is at the desk.

122 Chairman Smith. Does the gentleman from
123 California reserve --

124 Ms. Lofgren. Oh, it is Number 3.

125 Mr. Gallegly. Mr. Chairman?

126 Chairman Smith. The gentleman from California?

127 Mr. Gallegly. I insist on a point of order.

128 Chairman Smith. Okay. A point of order has
129 been reserved, and the clerk will report the
130 amendment.

131 Ms. Kish. Amendment to H.R. 1932 offered by Ms.
132 Lofgren of California. Page 1, beginning on line 6,
133 strike Section 2 and all that follows and insert the
134 following --

135 Chairman Smith. Without objection, the
136 amendment will be considered as read.

137 [The information follows:]

138

139 Chairman Smith. And the gentlewoman from
140 California is recognized to explain the amendment.

141 Ms. Lofgren. Mr. Chairman, there is no question
142 there are some problems with our removal system, and
143 we had discussed previously the problem that certain
144 countries refuse to take back their citizens once we
145 have ordered them removed. Other countries drag their
146 feet, unnecessarily prolonging the process, and that
147 is a real problem we face. And the solution is
148 improving our ability to get countries to cooperate.

149 Unfortunately, H.R. 1932 completely ignores this
150 problem. Rather than getting countries to take back
151 their citizens, the bill settles for the status quo
152 and authorizes an indefinite detention system that is
153 both extremely expensive and clearly unconstitutional.

154 This is a foreign policy issue and cannot be
155 solved by indefinitely locking up people who have no
156 control over whether or not their country takes them
157 back. The substitute amendment actually tries to
158 solve the problem by creating consequences for
159 recalcitrant foreign governments.

160 Under our immigration laws, we have only one
161 very blunt tool to get countries to accept their
162 citizen. The law says that if the Department of
163 Homeland Security certifies to the State Department

164 that a country is denying or delaying return of its
165 nationals, the State Department must deny all
166 immigrant visas, all nonimmigrant visas, or both for
167 citizens of the offending country.

168 That may sound like a great weapon, but the
169 reality is, it is more likely to hurt us than them.
170 And that is why it has only been used once and why the
171 sanction is almost never threatened. Countries like
172 China know that denying full classes of immigrant
173 and/or nonimmigrant visas only hurt American citizens
174 and businesses and do great damage to our country.

175 The amendment would make visa sanctions more
176 flexible, allowing the Government to deny specific
177 types of visas, like diplomatic visas, rather than
178 entire categories. Threatening and denying diplomatic
179 visas, which actually targets the offending
180 government, is a much more credible and effective tool
181 than targeting innocent people and American
182 businesses.

183 The Department of Homeland Security and the
184 State Department recently signed a Memorandum of
185 Agreement that provides a series of escalating steps
186 to get countries to cooperate with our removal
187 efforts. That MOA is already yielding significant
188 results, but this substitute would provide additional

189 authority and flexibility to turn up the heat.

190 The first part of this amendment would help
191 ensure that we can remove people who need to be
192 removed. The second part of the bill would provide a
193 process -- or the amendment, rather, for continuing to
194 detain those whom we still cannot remove if the
195 Government thinks they are especially dangerous.

196 Now I understand the majority believes we must
197 have a way of keeping people in custody if they really
198 pose a serious danger to our communities. But we
199 can't do that while ignoring the due process clause of
200 our Constitution. We can't take shortcuts with the
201 Constitution.

202 The bill before us would clearly fail
203 constitutional scrutiny because it authorizes
204 indefinite detention for a broad set of persons
205 without regard to constitutionally required factors or
206 procedures.

207 In *Zadvydas v. Davis*, the Supreme Court reviewed
208 a long line of cases addressing the constitutionality
209 of civil commitment or preventive detention. The
210 court made it clear that such detention is permissible
211 only if it is limited to especially dangerous persons
212 and only when accompanied by strong procedural
213 protections. This bill falls far short in both of

214 these regards.

215 First, the bill is not narrowly tailored. Any
216 person convicted of an aggravated felony can be
217 detained indefinitely. This would apply to persons
218 convicted of nonviolent crimes, including shoplifting,
219 passing a bad check, drug possession. And keep in
220 mind that these are individuals who have already
221 served their criminal sentence. It is civil detention
222 that we are talking about.

223 The Supreme Court has said that you have to have
224 additional factors, and there has to be a due process
225 requirement. There are no safeguards in the bill.
226 The Supreme Court case on the issue makes clear that a
227 lot is required -- appointed counsel, a hearing, the
228 Government's burden to prove by clear and convincing
229 evidence.

230 So this amendment actually refers to the process
231 that is in place in States that has been found
232 constitutional, that meets the requirements that the
233 court has laid out from a due process point of view
234 and would provide funding so that States would be
235 willing to use their civil commitment laws in cases
236 where we had an individual who was especially
237 dangerous and needed to be maintained in custody.

238 I think that if this amendment is accepted, it

239 will go a long way toward curing the defects in the
240 bill, and I heartily recommend its adoption and yield
241 back.

242 Chairman Smith. Thank you, Ms. Lofgren.

243 Does the gentleman from California insist on his
244 point of order?

245 Mr. Gallegly. I do, Mr. Chairman.

246 Mr. Chairman, we have consulted with the House
247 parliamentarian and have been informed that the
248 amendment is not germane. It goes outside the scope
249 of this committee's jurisdiction by dealing with
250 sanctions against other nations, which would fall on
251 the Foreign Affairs Committee.

252 It also goes outside the scope of this bill by
253 setting up a civil commitment scheme with the States.
254 The underlying bill simply provides DHS with the
255 ability to detain beyond the removal period certain
256 dangerous aliens ordered removed who cannot be
257 removed. It addresses only Federal actions with
258 regard to the detention and removal of aliens and does
259 not contemplate a State-run scheme.

260 I insist on the point of order that this
261 amendment is not germane.

262 Chairman Smith. Does the gentlewoman from
263 California wish to speak on the point of order?

264 Ms. Lofgren. Just briefly. I will not use the
265 5 minutes, Mr. Chairman.

266 If the parliamentarian has indicated that this
267 is not germane, I am not going to argue with that
268 ruling. I will note, however, that the committee has
269 the option of taking up matters on a discretionary
270 basis.

271 To rush forward to enact a bill that is not
272 constitutional is a mistake, especially when there is
273 an opportunity to work in a collaborative fashion to
274 craft a measure that will not be struck down by the
275 courts. So I will not contest the ruling, but I will
276 contest the judgment in insisting on the point of
277 order and yield back.

278 Chairman Smith. The chair is prepared to rule
279 on the point of order. And in the opinion of the
280 chair, the amendment is nongermane.

281 We will now go, I believe, to the gentlewoman
282 from California, Ms. Chu, for the purpose of her
283 offering an amendment.

284 Ms. Chu. Mr. Chair, I have an amendment at the
285 desk, Amendment Number 8.

286 Chairman Smith. The clerk will report the
287 amendment.

288 Ms. Kish. Amendment to H.R. 1932 offered by Ms.

289 Chu of California. Beginning on page 13 --
290 Chairman Smith. Without objection, the
291 amendment will be considered as read.
292 [The information follows:]
293

294 Chairman Smith. And the gentlewoman is
295 recognized to explain her amendment.

296 Ms. Chu. This bill pretends to be about
297 community safety and dangerous aliens, but Section
298 2(b) has nothing to do with either. That is why my
299 amendment would strike this section.

300 It has nothing to do with the Zadvydas case that
301 we have all heard so much about today. In the guise
302 of protecting this country from those who would do us
303 harm, Section 2(b) goes after all arriving aliens, the
304 vast majority of which have never committed a crime,
305 including asylum seekers and family members of U.S.
306 citizens.

307 Take the case of Lobsang Norbu, a Buddhist monk
308 from Tibet. He fled China after being arrested,
309 imprisoned, and tortured twice because of his
310 religious beliefs and political expressions in support
311 of Tibetan independence.

312 When he arrived in New York, he was immediately
313 placed in detention while applying for asylum. After
314 going through a horrendous ordeal in China, he was
315 imprisoned yet again, this time in the U.S. without
316 parole, without being able to argue his case before a
317 judge. He was held for 10 months.

318 When he did get a hearing, he was ultimately

319 granted asylum. He now lives in a Tibetan group home
320 and has a steady job in a restaurant.

321 This bill permits the prolonged detention of
322 persons like Lobsang, and it does so without any due
323 process. It specifically permits the detention of all
324 arriving aliens without any time limit and expressly
325 prohibits immigration judges from considering whether
326 the detainee poses a danger to the public or a risk of
327 flight.

328 And under this bill, Lobsang could be detained
329 even if he won every stage of their immigration
330 proceedings so long as DHS keeps appealing. That is
331 just not right.

332 The bill would mandate the detention of
333 permanent residents who were long ago released from
334 criminal custody for crimes they received as little as
335 one day in jail. Many of these residents have been
336 leading productive lives in the community and have
337 paid their debt to society. But under this bill, they
338 could be detained at any time at the Secretary's
339 discretion. It would apply even if the person has a
340 strong chance of avoiding deportation and even if the
341 person poses no danger to society whatsoever.

342 These provisions in Section 2(b) raise too many
343 due process and constitutional concerns. Locking up

344 refugees or green card holders who have served their
345 time for a small, nonviolent crime doesn't make us
346 safer. Instead, it wastes taxpayer dollars, redirects
347 more of ICE's limited resources towards detaining
348 nonviolent immigrants, and limits individual freedom
349 unfairly.

350 I urge my colleagues to support this amendment
351 and strike Section 2(b). And I yield back.

352 Chairman Smith. Thank you, Ms. Chu.

353 Mr. King. Mr. Chairman?

354 Chairman Smith. The gentleman from Iowa, Mr.
355 King, is recognized.

356 Mr. King. Thank you, Mr. Chairman.

357 I rise in opposition to this amendment. And in
358 1996, Congress mandated the detention of criminal
359 immigrants in deportation proceedings. However, in an
360 exercise of blatant judicial activism, the 9th Circuit
361 has ordered DHS to release from custody criminal
362 immigrants in the midst of removal proceeding.

363 The bill restores the plain meaning of existing
364 law, but the amendment strikes the provision. Why did
365 Congress provide for mandatory detention of criminal
366 immigrants?

367 First, because of the high recidivism rates of
368 criminal immigrants upon release. And for instance,

369 of the 35,318 criminal immigrants whom INS released
370 between 1994 and 1999, 37 percent had been convicted
371 of another crime in the United States by the year
372 2000. In less than half a decade, especially on
373 average, and almost 40 percent had been convicted of
374 another crime.

375 Second, history is clear. When illegal and
376 criminal immigrants in removal proceedings are not
377 detained, they simply abscond and disappear. Most of
378 those ordered removed become fugitives, and I remember
379 our former Attorney General testifying that 84 percent
380 disappeared in a previous testimony in a previous
381 administration.

382 Department of Justice records reveal that since
383 1996, nearly 800,000 nondetained aliens in removal
384 proceedings simply became fugitives. This represents
385 40 percent of all aliens who were not detained, an
386 incredible record of failure that we must end.

387 What happens when nondetained aliens abscond and
388 are then ordered removed? They are almost never
389 deported. The Department of Justice Office of the
390 Inspector General found that the INS was only able to
391 remove 13 percent of nondetained aliens who had final
392 orders of removal, and only 6 percent of nondetained
393 aliens from state sponsors of terrorism who had final

394 orders of removal.

395 This is why the U.S. Immigration and Customs
396 Enforcement has told us that over half a million
397 immigrant fugitives are now roaming our streets. This
398 is what this bill gets at, and this amendment guts the
399 bill.

400 Finally, I should point out that the bill
401 continues to allow noncriminal immigrants in removal
402 proceedings to seek release from custody on bond from
403 an immigration judge. Let's keep criminal immigrants
404 in detention. It saves lives and tears.

405 I urge my colleagues to oppose this amendment,
406 and I would yield back the balance of my time.

407 Thank you, Mr. Chairman.

408 Chairman Smith. Thank you, Mr. King.

409 Are there other Members who wish to be heard on
410 this amendment? The gentlewoman from California, Ms.
411 Lofgren?

412 Ms. Lofgren. Thank you.

413 I move to strike the last word.

414 Chairman Smith. The gentlewoman is recognized
415 for 5 minutes.

416 Ms. Lofgren. Section 2(a) of the bill provides
417 for indefinite detention of immigrants who cannot be
418 removed and who may pose a danger to the country, at

419 least that is the alleged purpose. But 2(b) of the
420 bill amends the Immigration Act relative to applicants
421 for admission. These are people who have done nothing
422 wrong, who do not necessarily have any criminal record
423 at all.

424 It would add a provision that expressly
425 authorizes the prolonged detention of all applicants
426 for admission until removal proceedings are final,
427 including determination of all appellate proceedings.
428 And this provision specifically states that,
429 "Notwithstanding any other provision of this section,
430 the alien may be detained under this section without
431 limitation until the alien is subject to a final order
432 of removal."

433 Now this is not constitutional. The due process
434 clause requires that if you are going to keep somebody
435 jailed for a substantial period of time, there at
436 least has to be hearing on this, and there has to be
437 some rationale behind it. There has to be some due
438 process.

439 At the hearing that we had, we had a witness who
440 talked -- and this is a great example -- about a
441 Christian minister from Indonesia who came to the
442 United States in 1999. He and his wife, Reverend
443 Soeoth and his wife, fled Indonesia. They were being

444 persecuted for practicing their faith.

445 And when they got to the United States, they
446 applied for political asylum, which the law provides.
447 However, his asylum application was denied. And when
448 it was denied -- and this sometimes happens. I mean,
449 mistakes are made. The U.S. Government came to his
450 home, and they arrested him. And they took him into
451 detention. That was in 2004.

452 He was kept in detention until 2007. That is 3
453 years that this Christian minister was kept in jail.
454 And finally, a habeas petition was granted, and he was
455 released on bond. Ultimately, he and his wife won
456 their motion to reopen their asylum case, and they did
457 win asylum.

458 Now a lot of people don't realize that the U.S.
459 Government will keep people whose asylum applications
460 have initially been denied in jail while all of the
461 appellate processes on the underlying issue is in
462 place. And many -- I mean, these are individuals who
463 are Christian ministers, who are victims of torture,
464 people who, ultimately, in many cases are successful
465 in proving their eligibility for political asylum.

466 I don't think that we want to draft a bill that
467 means that there is no relief for people who are
468 basically innocent to stay in jail -- tremendous

469 expense to the taxpayer, I might add -- just because
470 their appeal is going up the line.

471 Now we had a horrendous case that was presented
472 to us at the hearing on this bill. And a law
473 enforcement officer who was murdered by a criminal
474 alien who should have been removed. It was an
475 outrageous thing. But the witness spoke to us, and my
476 question, he wasn't interested in keeping the
477 persecuted Christian minister in jail for 3 years. He
478 was interested in making sure that criminals didn't
479 kill other people.

480 And that is the problem with Section 2(b) of
481 this bill. It is overbroad, and it is the wrong thing
482 to do. It is unconstitutional. I highly recommend
483 that we adopt Ms. Chu's amendment.

484 I yield back.

485 Chairman Smith. Thank you, Ms. Lofgren.

486 Are there other Members who wish to be heard?

487 The gentleman from Georgia, Mr. Johnson?

488 Mr. Johnson. Thank you, Mr. Chairman.

489 I move to strike the last word.

490 Chairman Smith. The gentleman is recognized for
491 5 minutes.

492 Mr. Johnson. Mr. Chairman, according to
493 recently released Department of Homeland Security

494 statistics, in fiscal year 2010, ICE detained
495 approximately 363,000 individuals. And of the
496 approximately 250 facilities that ICE uses to hold
497 illegal immigrants, all but 6 or 7 are owned by
498 private prison companies.

499 So, in other words, we have got a cottage
500 industry that is getting a shot in the arm should this
501 amendment fail to be adopted. Those private prisons
502 which do -- by the way, according to opensecrets.com,
503 are generous campaign contributors on both the State
504 and Federal levels. You can go check that out. It
505 just seems like something is fishy here, particularly
506 at a time where we are budget cutting.

507 We can't afford to even fund Pell grants, and we
508 want to slap inordinate interest onto Pell grants. We
509 want to limit the number of Pell grants or the amount
510 of money involved. And we want to stick it to the
511 recipients of the Pell grants by charging them a
512 higher interest rate to try to cure the debt.

513 But really what that is, is trying to keep folks
514 from -- I don't know why we would not want to educate
515 our people. And I certainly don't know why we would
516 want to spend \$44,630 per year, \$122 a day per
517 detainee in a private prison at a time when many of
518 those, and I would submit the majority of them, who

519 are detained simply committed a traffic offense.

520 And then they may have committed two traffic
521 offenses -- maybe speeding, driving on a suspended
522 license, running a red light, you know, on the way
523 home from work, trying to support their families,
524 helping our farmers with their crop harvesting,
525 keeping the price of food low as a result.

526 And so, I find it very interesting that we would
527 be willing to put an indefinite -- give the Federal
528 Government the requirement to hold detainees on minor
529 traffic offenses indefinitely for \$122 a day in a
530 private prison. That is like taking money out of the
531 hands, out of the mouths of hungry children, American
532 children. And then you want to cut the -- you want to
533 cut the social programs that benefit people.

534 It is just -- it is nonsense. But there is a
535 method in that madness over there, and it is not about
536 helping people. It is about helping the rich get
537 richer, and that is the only thing that they care
538 about, and that is just the bottom line.

539 Chairman Smith. Would the gentleman yield?

540 Mr. Johnson. I will.

541 Chairman Smith. I was going to let it go until
542 the last sentence or two, and maybe the gentleman
543 might want to revise those comments. But I just want

544 to reemphasize that the point of the bill is to detain
545 dangerous and violent illegal immigrants and those who
546 are a threat to our national security. We are not
547 talking about red light runners.

548 And I suspect by the gentleman's logic that we
549 could empty all prisons of all inmates and save a lot
550 of money as well, but I think the American people want
551 us to protect them from hardship, from abuse, from
552 losing their lives, from being harmed in many, many
553 different ways by individuals who could be detained,
554 and therefore, we could prevent a lot of those crimes
555 from occurring.

556 So I don't worry so much about the \$100 a day.
557 I think the American people, the innocent victims,
558 would be very happy for us to spend that money if they
559 could be spared being the innocent victim of a crime.

560 Mr. Johnson. Well, if I could reclaim my time?
561 Chairman Smith. And I thank the gentleman for
562 yielding.

563 Mr. Johnson. Thank you, Mr. Chairman.

564 And I would respectfully submit that Mr. King
565 talked about prisoners with a second conviction, and I
566 would argue that many of those second law violations
567 are, in fact, traffic court cases. And if I am wrong
568 about that, then I would like to see some figures.

569 Ms. Lofgren. Would the gentleman yield?

570 Mr. Johnson. Yes.

571 Chairman Smith. The gentleman's time has
572 expired. The gentlewoman is yielded an additional
573 minute without objection.

574 Ms. Lofgren. I would just like to clarify that
575 there are two provisions of this bill -- 2(a), which
576 deals with criminal aliens, and 2(b), which deals with
577 everybody, people who haven't committed a crime.

578 And you could have somebody who is a legal
579 permanent resident, who is married to a U.S. citizen,
580 who has lived here for 25 years -- as a matter of
581 fact, we have got cases where they got busted for
582 marijuana, which is not going to be a deportable
583 offense in most cases, who could be in jail
584 indefinitely. You could have asylum seekers, people
585 who have come and who have been tortured and are
586 trying to gain freedom in the U.S., as they are
587 permitted to do under American law, who are arguing
588 about the conditions.

589 2(b) is not about criminal aliens, and I just
590 think it is important to note that. We have a
591 difference of opinion, clearly. But I think it is
592 important to clarify the two parts of the bill.

593 And I thank the gentleman for yielding.

594 Mr. Johnson. Thank you.

595 And Mr. Chairman, I will yield back.

596 Chairman Smith. Thank you, Mr. Johnson.

597 Are there other Members who wish to be heard?

598 The gentleman from Tennessee, Mr. Cohen?

599 Mr. Cohen. Thank you, Mr. Chairman.

600 Could you yield for a question?

601 Chairman Smith. Are you directing --

602 Mr. Cohen. Yes, sir.

603 Chairman Smith. Yes, I would be happy to yield.

604 Mr. Cohen. I was just asking --

605 Chairman Smith. I didn't have the time. It is
606 your time.

607 Mr. Cohen. It is always your time.

608 [Laughter.]

609 Mr. Cohen. And I appreciate the tiny amount
610 that I get.

611 Chairman Smith. In that case, the time is
612 expired.

613 [Laughter.]

614 Mr. Cohen. I would ask for your indulgence,
615 extend the time.

616 Now Ms. Lofgren asked the question that always
617 concerns me, and that is does this bill, what part of
618 this bill would cause somebody to lose their liberty

619 for, say, a victimless crime that is a misdemeanor?

620 Chairman Smith. If the gentleman would yield?

621 We are talking about aggravated felons. We are
622 talking about individuals, not the traffic red light
623 runners. We are talking about individuals who are a
624 threat to other individuals, either on the basis of
625 the crimes they have committed or on the perceived
626 threat by various officials. We are not talking about
627 misdemeanors. We are talking about aggravated felons.

628 And in addition to that, if the gentleman will
629 take a look at the language of the bill, you will see
630 that there is a review every 6 months that is
631 possible. And so, there are provisions for the
632 regular review of the situation to justify the
633 continued detention of the individual in mind.

634 Mr. Cohen. Well, I like that. That sounds
635 good.

636 Ms. Lofgren, I would yield to you, and if we can
637 counter --

638 Ms. Lofgren. If you look at page 14 of the
639 bill, line 1, "Notwithstanding any other provision of
640 this section, an alien may be detained under this
641 section without limitation until the alien is subject
642 to a final order of removal."

643 That is anybody. That is somebody who is here

644 because they didn't get their papers. It is somebody
645 who is claiming political asylum. It is somebody who
646 committed a minor offense. It is any alien, and that
647 section -- it is problem, and the bill is
648 unconstitutional, but it is also wrong.

649 And I just think it is important to clarify what
650 the bill itself says, and I thank the gentleman for
651 yielding.

652 Mr. Cohen. I would like to reclaim my time and
653 then yield some time to the giver of all time.

654 [Laughter.]

655 Chairman Smith. I will take that. Thank you,
656 Mr. Cohen.

657 Let me direct your attention to page 16, (g) (1).
658 This is under Administrative Review. "The Attorney
659 General's review of the Secretary's custody
660 determinations under Section 236(a) shall be limited
661 to whether the alien may be detained, released on
662 bond, or released with no bond."

663 Furthermore, in another provision here, it is
664 the purview of the Secretary to, in their judgment,
665 release someone who has not posted a bond at all.

666 Lastly, in regard to the constitutionality of
667 the bill, I am gratified by the 10th Circuit's ruling,
668 which found that DOJ rules that are very similar to

669 this bill are, in fact, constitutional. So I am very
670 confident about the bill's constitutionality.

671 Ms. Lofgren. Would the gentleman yield?

672 Because the provision that you quoted on page 16 --

673 Chairman Smith. Yes.

674 Ms. Lofgren. -- relates to Section 236(a), not
675 to Section 235 that is the subject of the bill on page
676 14.

677 Mr. Cohen. Could we have an amendment that
678 makes it clear that nothing herein shall deprive a
679 person of their liberty for the --

680 Chairman Smith. Let me -- if the gentleman will
681 yield?

682 The point -- let me go back to the purpose of
683 the amendment. The amendment strikes all detention,
684 all mandatory detention. But the reason for that is
685 because of -- the reason for the purpose of this
686 section of the bill is because of the pervasive abuse
687 of asylum and the pervasiveness of asylum fraud.

688 We have a situation that we are trying to
689 address in this bill where you go back a few years,
690 and tens of thousands of people were released simply
691 on the basis of having claimed asylum when, in fact,
692 there was no such legitimate basis for claiming that
693 asylum. Thousands of people were released back into

694 our communities, many of them committed additional
695 crimes.

696 In 1996, Congress enacted the expedited removal
697 provision that I know not everybody agrees with. But
698 the point of that was to try to save a lot of innocent
699 victims in America and spare them the hardships and
700 dangers that they otherwise would have been subjected
701 to by these individuals who were wrongly released into
702 our communities.

703 So there is a philosophical disagreement, but I
704 still think that the point of the bill, the point of
705 the provision is a solid --

706 Mr. Watt. Would the gentleman yield? Would
707 the gentleman yield?

708 Chairman Smith. I think the gentleman from
709 Tennessee has the time.

710 Mr. Cohen. I would yield to Mr. Watt.

711 Mr. Watt. I take what the chairman says to be a
712 concession that what we are saying is true, that that
713 is the intent of the bill. And to get to a problem,
714 we have created another problem. We have overreacted,
715 and now we have a provision under this bill that would
716 apply to all aliens, not just those aliens that we
717 were worried about.

718 So, am I misunderstanding what the chairman is

719 saying? He intends for this bill to apply to all
720 aliens.

721 Mr. Cohen. I cannot either admit nor deny what
722 the chairman is admitting or not admitting.

723 Mr. Watt. Well, maybe --

724 Ms. Lofgren. Would the gentleman --

725 Mr. Cohen. But I will yield to the chairman to
726 admit or not admit.

727 Ms. Lofgren. Would the gentleman yield?

728 Mr. Cohen. Ms. Lofgren?

729 Ms. Lofgren. I would just note that the
730 chairman has indicated his intention relative to
731 asylees, and he is correct that there was at one time
732 a problem with asylees making bogus claims and
733 disappearing into the community. And it was a
734 problem. It was actually resolved administratively
735 before our change in the law.

736 But we now have very tough asylum rules, and we
737 have asylees immediately, if you come, if you are a
738 victim of torture, you appear to the United States
739 seeking freedom and safe haven, as our law provides,
740 the first thing that happens to you is you are put in
741 jail. And that oftentimes goes for a very long period
742 of time.

743 And these are people who have credible fears and

744 in most cases are granted asylum because the bogus
745 claims are screened out immediately. So we do have a
746 difference of opinion, but at least now we are talking
747 about what the bills does.

748 And I thank the gentleman for yielding.

749 Chairman Smith. The gentleman's time has
750 expired.

751 Mr. Cohen. It has been nice controlling the
752 time.

753 [Laughter.]

754 Mr. Cohen. And I yield back the remainder of
755 your time.

756 Mr. Nadler. Mr. Chairman?

757 Chairman Smith. Are there other Members who
758 wish to be heard? The gentleman from New York, Mr.
759 Nadler?

760 Mr. Nadler. First, I want to make the point
761 just on what was just said that the problem that the
762 chairman referred to about thousands of asylum seekers
763 bogus disappearing seems to have been solved
764 administratively and certainly by the amendments of
765 1996. And I have heard no claim that that problem
766 still exists.

767 Since the moment you come into this country
768 seeking asylum, you are put in jail pending a

769 determination. So I don't know why we have to go any
770 further here.

771 But I want to make a different point. As I read
772 Section 2(b)(5), it seems to say that anyone at any
773 point convicted of -- any person who came to this
774 country convicted of an aggravated felony. An
775 aggravated felony has been interpreted by the courts
776 as a misdemeanor conviction for stealing Tylenol and
777 cigarettes, petty larceny, and so forth.

778 But anyone convicted of any aggravated felony,
779 no matter how long ago, someone who was convicted of
780 an aggravated felony, no matter how minor or major 25
781 years ago, who served his sentence and who has been
782 released and who is still in this country for whatever
783 reason and has lived peacefully as a member of society
784 for 25 years, must be incarcerated. Is that the
785 intent of this provision, that someone who has lived
786 here for 20, 30 years as a peaceful, productive person
787 must be incarcerated because of something that
788 happened 30 years ago?

789 Chairman Smith. If the gentleman would yield?
790 Three answers to your two questions.

791 First of all, it is retroactive. That is the
792 case. If someone committed a crime years ago, that
793 would still implicate them. But I want to --

794 Mr. Nadler. Reclaiming my time on that point.
795 Do we really want to say that without discretion to
796 the department, without discretion to the Attorney
797 General or the Secretary or whoever it is, that
798 someone who may have committed a crime when they were
799 20 or 21 years old, who are now 50 or 60 years old and
800 have lived productively, we must put them in jail?
801 Does that make any sense at all?

802 Chairman Smith. If the crime was significant
803 enough, the answer is yes.

804 And if the gentleman will continue to yield, I
805 want to go back to the example you gave. I think it
806 was a theft of a pack of cigarettes of whatever.

807 Mr. Nadler. Yes.

808 Chairman Smith. Part of the definition of
809 "aggravated felony" I believe is a year in jail or
810 more. I don't know of any instance where someone is
811 going to be sentenced to a year in jail for the theft
812 of a pack of cigarettes. So I think it has be -- I
813 think it has to rise --

814 Ms. Lofgren. Would the gentleman yield?
815 Because welcome to California.

816 Mr. Nadler. Reclaiming my time --

817 Mr. Johnson. Would the gentleman yield? I
818 would like to respond to that.

819 Mr. Nadler. Reclaiming my time, Winston
820 Graham's petty larceny conviction was upheld as an
821 aggravated felony in 1999. Carlos Pacheco, who came
822 here as a green card holder as a 6-year-old child, in
823 2000, the Federal appeals court agreed that he was an
824 aggravated felon based on his misdemeanor conviction
825 in Rhode Island, misdemeanor conviction in Rhode
826 Island for stealing some Tylenol and cigarettes.

827 And Alexander Christopher's misdemeanor
828 shoplifting conviction, shoplifting misdemeanor was
829 upheld as an aggravated felony by a Federal appeals
830 court in 2001.

831 Mr. Johnson. Would the gentleman yield?

832 Mr. Nadler. So the fact that a State
833 misdemeanor conviction can be classified under our law
834 as an aggravated felony may show a problem with our
835 law, but it is the case.

836 Chairman Smith. If the gentleman would yield?

837 Mr. Nadler. Yes.

838 Chairman Smith. It is not just a single
839 misdemeanor that might be so classified. Typically,
840 these are individuals who have committed a series of
841 misdemeanors that the law enforcement authorities or
842 the judge feels is worthy of a year or more in jail.
843 Lots of times in these cases, there is far more to the

844 facts than the simple violation of a single
845 misdemeanor.

846 Mr. Nadler. Reclaiming my time, that may be the
847 case in some cases. It is not the case in other
848 cases. But the fact is our law, as it is now --

849 Chairman Smith. Right. If the gentleman will
850 yield?

851 In all cases, there is the applicable standard
852 of a year in jail or more.

853 Ms. Lofgren. Would the gentleman yield?

854 Mr. Johnson. It is actually 365 days.

855 Mr. Nadler. I will yield to the gentlelady.

856 Chairman Smith. The gentleman from New York has
857 the time.

858 Mr. Nadler. I yield to the gentlelady from
859 California.

860 Ms. Lofgren. First, nothing in the bill
861 authorizes -- it authorizes detention without
862 limitation of aliens who have not been convicted of a
863 crime. I think it is worth noting that.

864 And it is also, if you go back in time, and I
865 will give you a real-life example of someone who I ran
866 into a number of years ago of a businessman who had
867 three stores and many employees and had an import
868 business, furniture primarily. And he used to go and

869 buy furniture that he imported and sold.

870 And when we toughened up our screening
871 processes, he was tagged because when he was 21 years
872 old, he had been convicted of a drug offense in New
873 York and received a -- well, he pled guilty, as his
874 public defender told him to do, and he received I
875 think a year's sentence, which was waived. He never
876 spent a day in jail. And now, at age 57, this had
877 been caught, and he was in big trouble.

878 This bill would provide that there would be no
879 discretion. This person would be incarcerated
880 indefinitely. And I understand what the chairman is
881 saying his intent is, and I am not going to challenge
882 that that is, in fact, his intent. It is not what the
883 bill does.

884 The bill is far broader than the chairman says
885 his intent is. I don't think it is constitutional.
886 Certainly, if you look at the line of cases not only
887 in the circuits, but also in the Supreme Court. If it
888 passes, I suppose we will find out.

889 But I do think that just as a matter of proper
890 drafting, it is short of what we would hope that would
891 actually achieve what the chairman says his goals are,
892 and I would yield back to the gentleman from New York.

893 Chairman Smith. And the gentleman from New

894 York's time has expired.

895 Are there other Members who wish to be heard?

896 The gentleman from California, Mr. Berman?

897 Mr. Berman. Mr. Chairman, I have not heard a
898 response to the point raised by the gentlewoman from
899 California regarding we are beyond now the specific
900 amendment that is in front of us, but I think it is
901 part of it. Is there a provision in this bill that
902 allows the Federal Government to detain people who
903 have never been convicted of a crime indefinitely?

904 Chairman Smith. The quick answer, if the
905 gentleman will yield, is no.

906 Mr. Berman. And Ms. Lofgren reads language,
907 which on its face sounds like the answer is yes. Can
908 somebody give me something to reconcile the difference
909 between the language she read --

910 Chairman Smith. Well, if the gentleman will
911 yield?

912 The bill does take us back to the 1996
913 immigration legislation and does overrule the 9th
914 Circuit's decision. But we want to go back to what we
915 perceive to be the best law.

916 Mr. Berman. We all want to go back to what the
917 best law was.

918 Chairman Smith. I am talking about the 1996

919 bill.

920 Mr. Berman. Well, without accepting the
921 assumption.

922 Chairman Smith. Yes.

923 Mr. Berman. I still want to -- what is the
924 basis for denying that which the gentlewoman from
925 California read, which is the ability to detain
926 indefinitely an individual who has never been
927 convicted of a crime? Am I stating your position
928 correctly?

929 Chairman Smith. I think I understand the
930 gentleman's question. You can be detained if you have
931 been convicted of a serious crime. You can be
932 detained if you are a national security threat. You
933 can be detained if you have got a communicable
934 disease. But you do need to fall within those
935 categories.

936 Mr. Berman. I yield to the gentlelady from
937 California to once again repeat that, the second part
938 of this bill.

939 Ms. Lofgren. Okay. Page 14, line 1. Length of
940 detention. Line 2, "Notwithstanding any other
941 provision of this section, an alien may be detained
942 under this section without limitation until the alien
943 is subject to" -- it says "and final," but it should

944 be "a final order of removal."

945 And that relates to any alien who -- I mean, it
946 could be somebody who is undocumented, who is in
947 removal proceedings. It could be an asylum seeker. I
948 mean, it is any alien.

949 Mr. Berman. In other words, just to reclaim,
950 this is not about somebody who has a communicable
951 disease. It is not about somebody who has been deemed
952 by the executive branch to be a national security
953 threat. It is about anybody who has come, who has
954 sought admission, who has entered without inspection.
955 Each and every such person could be subject to
956 indefinite detention --

957 Ms. Lofgren. That is correct.

958 Mr. Berman. Not under the reasonable
959 constraints put forth by the chairman.

960 Ms. Lofgren. That is correct. If you read the
961 plain language on page 14. And I thank the gentleman
962 for yielding.

963 Chairman Smith. Okay. If the gentleman would
964 yield one more time?

965 Mr. Berman. Sure.

966 Chairman Smith. I am really still going back to
967 page 16, the administrative review. Any noncriminal
968 alien can still have the right to get bond. Is that

969 acknowledged?

970 Mr. Berman. Has the right to try to get a bond.

971 Chairman Smith. That is correct.

972 Ms. Lofgren. Would the gentleman yield?

973 Mr. Berman. But again, I am not here talking
974 about mandatory detention. I am here talking about
975 the Government deciding to indefinitely detain -- the
976 ability of the Government to indefinitely detain an
977 individual who has not committed a crime, who does not
978 have a communicable disease.

979 Chairman Smith. Right.

980 Mr. Berman. Who is not considered a national
981 security threat. The Government has the ability to
982 detain such a person indefinitely.

983 Chairman Smith. If the gentleman would yield?

984 Mr. Berman. And if that individual --

985 Chairman Smith. Any individual has the right to
986 be released on bond. Any individual.

987 Mr. Berman. Does every individual have a right
988 to bond?

989 Chairman Smith. And in addition to that,
990 perhaps in particularly egregious cases, the Secretary
991 has the right to release someone even with no bond.
992 So you have some built-in safeguards.

993 Mr. Berman. You have the right to seek a bond.

994 You don't have a right to get a bond.

995 Chairman Smith. That is right. Yes. The
996 system -- we have a legal system in this country that
997 we presume to work at least most of the time, and
998 let's just assume if there is a legitimate reason to
999 get the bond that they will be given the bond.

1000 Mr. Berman. I don't know. The legal system
1001 that allows the Federal Government to detain a person
1002 indefinitely because that person can't get a bond --
1003 that person has committed no crime, that person is not
1004 a national security threat, does not have a
1005 communicable disease -- that is not the legal system I
1006 know.

1007 Ms. Lofgren. Would the gentleman yield?
1008 Because I am sure innocently, but to refer to page 16,
1009 that relates to Section 236 of the act and to say that
1010 it protects those in 235 on page 14 is just simply
1011 inaccurate.

1012 And yes, it is true that there could be a
1013 release discretionarily, but there is no right to a
1014 bond hearing. And in fact, if you take a look at the
1015 categories, the nature of the bond hearing is simply
1016 to see whether the people are in that category. It is
1017 very limited.

1018 So I think that the gentleman is entirely

1019 correct, the gentleman from California. This can
1020 apply to hold people indefinitely who have done,
1021 committed no crime and in some cases are merely
1022 seeking a benefit that is provided for under law --

1023 Chairman Smith. The gentleman's time has
1024 expired. Without objection, the gentleman will be
1025 given an additional 60 seconds so that I can ask for
1026 some time. If the gentleman will yield?

1027 Mr. Berman. I have no objection to getting an
1028 additional minute to grant your request.

1029 Chairman Smith. Let me point out the three
1030 opportunities that someone has who are in the category
1031 that you and the gentlewoman from California have
1032 mentioned.

1033 One, you have the 6 months review. Two, you
1034 have the opportunity to get a bond. Three, the
1035 Secretary has discretion to release someone even with
1036 no bond whatsoever. I think those are adequate
1037 safeguards. We have a philosophical disagreement. I
1038 understand that, and I will --

1039 Mr. Nadler. Will the gentleman yield?

1040 Chairman Smith. Well, you have got the time.

1041 Mr. Berman. I would yield.

1042 Mr. Nadler. Thank you.

1043 Let me point out that this is very interesting,

1044 but the fact is where in American law have we ever
1045 seen or do we ever want to see a provision that says
1046 that any alien, which is any noncitizen, for no reason
1047 at all, may be subject to indefinite detention, albeit
1048 at the discretion of the Secretary he may be granted
1049 bond or apply for bond. But based on nothing at all.
1050 Maybe he made a remark that the Secretary didn't like.
1051 Maybe he published an article that someone didn't
1052 like.

1053 Any alien, and you read page 14, any alien may
1054 be detained without --

1055 Ms. Lofgren. Would the gentleman yield?

1056 Because once again, there has been confusion.
1057 The scheme that the chairman has mentioned relates to
1058 Section A of the bill, which is criminal aliens. It
1059 is not a proviso in Section B of the bill, where there
1060 is no provision.

1061 Chairman Smith. Let me try again, if the
1062 gentleman will yield?

1063 It is inaccurate to say for no reason at all.
1064 All of the individuals are deportable. They are
1065 deportable for some reason. You are not talking about
1066 innocent people.

1067 Mr. Nadler. That is not what this says.

1068 Mr. Berman. If they are deportable -- if I may

1069 reclaim my time -- they are deportable because they
1070 entered without inspection. The issue here is not the
1071 right to deport them. I don't challenge that right.
1072 The issue is the right, let's just say they had a
1073 final order of removal and no one -- the country
1074 wouldn't accept them.

1075 Whatever the reason is, you are here granting
1076 the Federal Government the right to indefinitely
1077 detain people who have done nothing other than come to
1078 this country without inspection. Indefinite
1079 detention, that is an alien concept to me, this point
1080 of phrase.

1081 Ms. Lofgren. And if the gentleman would yield?

1082 The fact that somebody has a prima facie case,
1083 you have entered without inspection, does not mean
1084 that there are not remedies under law. For example,
1085 you could be married to an American citizen and have a
1086 disabled child. And that might be an extreme hardship
1087 that would waive the 3- and 10-year bar that would
1088 allow you to be a beneficiary of an immigration
1089 petition on the part of your American citizen husband.

1090 And so, the fact that somebody has entered
1091 without inspection is not the end of the question.
1092 There are sometimes remedies under the law that serve
1093 American interests, that help keep families together.

1094 And I thank the gentleman for yielding.
1095 Chairman Smith. The gentleman's time has
1096 expired.
1097 The question is on the Lofgren Amendment. All
1098 in favor, say aye.
1099 Ms. Lofgren. It is the Chu Amendment.
1100 Chairman Smith. Oh, I am sorry. The
1101 gentlewoman from California, the Chu Amendment. All
1102 in favor, say aye.
1103 [A chorus of ayes.]
1104 Chairman Smith. All opposed, no.
1105 [A chorus of nays.]
1106 Chairman Smith. In the opinion of the chair,
1107 the nays have it, and the amendment is not agreed to.
1108 Ms. Chu. Mr. Chair, I ask for a recorded vote.
1109 Chairman Smith. The gentlewoman has asked for a
1110 recorded vote, and the clerk will call the roll.
1111 Ms. Kish. Mr. Smith?
1112 Chairman Smith. No.
1113 Ms. Kish. Mr. Smith votes no.
1114 Mr. Sensenbrenner?
1115 Mr. Sensenbrenner. No.
1116 Ms. Kish. Mr. Sensenbrenner votes no.
1117 Mr. Coble?
1118 Mr. Coble. No.

1119 Ms. Kish. Mr. Coble votes no.
1120 Mr. Gallegly?
1121 Mr. Gallegly. No.
1122 Ms. Kish. Mr. Gallegly votes no.
1123 Mr. Goodlatte?
1124 Mr. Goodlatte. No.
1125 Ms. Kish. Mr. Goodlatte votes no.
1126 Mr. Lungren?
1127 Mr. Lungren. No.
1128 Ms. Kish. Mr. Lungren votes no.
1129 Mr. Chabot?
1130 Mr. Chabot. No.
1131 Ms. Kish. Mr. Chabot votes no.
1132 Mr. Issa?
1133 [No response.]
1134 Ms. Kish. Mr. Pence?
1135 [No response.]
1136 Ms. Kish. Mr. Forbes?
1137 [No response.]
1138 Ms. Kish. Mr. King?
1139 Mr. King. No.
1140 Ms. Kish. Mr. King votes no.
1141 Mr. Franks?
1142 Mr. Franks. No.
1143 Ms. Kish. Mr. Franks votes no.

1144 Mr. Gohmert?
1145 [No response.]
1146 Ms. Kish. Mr. Jordan?
1147 Mr. Jordan. No.
1148 Ms. Kish. Mr. Jordan votes no.
1149 Mr. Poe?
1150 [No response.]
1151 Ms. Kish. Mr. Chaffetz?
1152 Mr. Chaffetz. No.
1153 Ms. Kish. Mr. Chaffetz votes no.
1154 Mr. Griffin?
1155 Mr. Griffin. No.
1156 Ms. Kish. Mr. Griffin votes no.
1157 Mr. Marino?
1158 Mr. Marino. No.
1159 Ms. Kish. Mr. Marino votes no.
1160 Mr. Gowdy?
1161 [No response.]
1162 Ms. Kish. Mr. Ross?
1163 [No response.]
1164 Ms. Kish. Mrs. Adams?
1165 [No response.]
1166 Ms. Kish. Mr. Quayle?
1167 Mr. Quayle. No.
1168 Ms. Kish. Mr. Quayle votes no.

1169 Mr. Conyers?
1170 Mr. Conyers. Aye.
1171 Ms. Kish. Mr. Conyers votes aye.
1172 Mr. Berman?
1173 Mr. Berman. Aye.
1174 Ms. Kish. Mr. Berman votes aye.
1175 Mr. Nadler?
1176 Mr. Nadler. Aye.
1177 Ms. Kish. Mr. Nadler votes aye.
1178 Mr. Scott?
1179 Mr. Scott. Aye.
1180 Ms. Kish. Mr. Scott votes aye.
1181 Mr. Watt?
1182 Mr. Watt. Aye.
1183 Ms. Kish. Mr. Watt votes aye.
1184 Ms. Lofgren?
1185 Ms. Lofgren. Aye.
1186 Ms. Kish. Ms. Lofgren votes aye.
1187 Ms. Jackson Lee?
1188 Ms. Jackson Lee. Aye.
1189 Ms. Kish. Ms. Jackson Lee votes aye.
1190 Ms. Waters?
1191 [No response.]
1192 Ms. Kish. Mr. Cohen?
1193 Mr. Cohen. Aye.

1194 Ms. Kish. Mr. Cohen votes aye.
1195 Mr. Johnson?
1196 Mr. Johnson. Aye.
1197 Ms. Kish. Mr. Johnson votes aye.
1198 Mr. Pierluisi?
1199 Mr. Pierluisi. Aye.
1200 Ms. Kish. Mr. Pierluisi votes aye.
1201 Mr. Quigley?
1202 Mr. Quigley. Aye.
1203 Ms. Kish. Mr. Quigley votes aye.
1204 Ms. Chu?
1205 Ms. Chu. Aye.
1206 Ms. Kish. Ms. Chu votes aye.
1207 Chairman Smith. And the gentleman from
1208 California, Mr. Issa?
1209 Mr. Issa. No.
1210 Ms. Kish. Mr. Issa votes no.
1211 Chairman Smith. The gentleman from South
1212 Carolina, Mr. Gowdy?
1213 Mr. Gowdy. No.
1214 Ms. Kish. Mr. Gowdy votes no.
1215 Chairman Smith. The gentleman from Florida, Mr.
1216 Ross?
1217 Mr. Ross. No.
1218 Ms. Kish. Mr. Ross votes no.

1219 Mr. Deutch?

1220 Mr. Deutch. Aye.

1221 Ms. Kish. Mr. Deutch votes aye.

1222 Ms. Sanchez?

1223 [No response.]

1224 [Pause.]

1225 Chairman Smith. Are there other Members who

1226 wish to cast their votes?

1227 Ms. Kish. Mr. Forbes?

1228 Mr. Forbes. No.

1229 Ms. Kish. Mr. Forbes votes no.

1230 Chairman Smith. The clerk will report.

1231 Ms. Kish. Mr. Chairman, 13 Members voted aye;

1232 18 Members voted nay.

1233 Chairman Smith. A majority having voted against

1234 the amendment, the amendment is not agreed to.

1235 The gentlewoman from Texas, Ms. Jackson Lee, is

1236 recognized for the purpose of offering an amendment.

1237 Ms. Jackson Lee. I have an amendment at the

1238 desk, Number 6.

1239 Chairman Smith. The clerk will report the

1240 amendment.

1241 Ms. Kish. Amendment to H.R. 1932 offered by Ms.

1242 Jackson Lee --

1243 Mr. Gallegly. Mr. Chairman?

1244 Chairman Smith. Without objection, the
1245 amendment will be considered as read.
1246 [The information follows:]
1247

1248 Chairman Smith. The gentleman from California?

1249 Mr. Gallegly. Mr. Chairman, I reserve a point
1250 of order.

1251 Chairman Smith. A point of order is reserved,
1252 and the gentlewoman from Texas is recognized to
1253 explain her amendment.

1254 [Pause.]

1255 Chairman Smith. The gentlewoman from Texas is
1256 recognized to explain her amendment.

1257 Ms. Jackson Lee. Thank you very much.

1258 Mr. Johnson. Mr. Chairman, we don't have a copy
1259 of it.

1260 Chairman Smith. Okay.

1261 Ms. Jackson Lee. It is Number 6.

1262 Chairman Smith. If the gentlewoman will suspend
1263 until everybody has a copy of the amendment?

1264 Ms. Jackson Lee. I absolutely do not mind, Mr.
1265 Chairman. Thank you.

1266 [Pause.]

1267 Chairman Smith. The gentlewoman will proceed.

1268 Ms. Jackson Lee. Thank you very much, Mr.
1269 Chairman.

1270 The Congress was begun by Republicans and the
1271 Republican majority in this House reading the U.S.
1272 Constitution on the House floor, and I hope that they

1273 can understand that as individuals are contained,
1274 there are questions -- or detained, questions about
1275 due process and the respect for the Constitution.

1276 It is ironic that this bill comes from a side
1277 that is focused on that individual liberty and that
1278 our Tea Party friends continue to list
1279 constitutionally limited government as a core value.

1280 Some of the individuals that may be detained
1281 under this bill, obviously, all of us agree that we do
1282 not want dangerous aliens to be free, as any other
1283 person who might be dangerous to society. That is not
1284 the case.

1285 But I do believe there is certain grounds for
1286 having a question of due process being raised,
1287 particularly if the individual makes the case that
1288 they are, in fact, documented, that they are, in fact,
1289 legitimate, or there is an interest and issues that
1290 need to be addressed.

1291 This bill permits ICE to indefinitely detain
1292 persons convicted of nonviolent crimes, including
1293 shoplifting, passing a bad check, and drug possession
1294 if someone at DHS simply signs a form stating that the
1295 person is dangerous. My amendment would replace H.R.
1296 1932's unconstitutional approach with a constitutional
1297 one, directing DHS to recommend that certain

1298 especially dangerous aliens who are approaching the
1299 end of the removal period, but who are not likely to
1300 be removed be referred to the appropriate States to
1301 begin civil commitment proceedings already under State
1302 law. I think a very fine mark for State interests and
1303 States rights.

1304 And because further commitment for such people
1305 would be in our mutual interests, the amendment would
1306 ensure that the Federal Government reimburses the
1307 States for holding such people. It is that simple.

1308 We have an existing process that is tried and
1309 tested, and it is constitutional. Shouldn't we use
1310 this process rather than create a system without any
1311 process that is clearly unconstitutional? As written,
1312 H.R. 1932 would clearly fail constitutional scrutiny
1313 because it would authorize indefinite detention for a
1314 broad set of persons without regard to
1315 constitutionally required factors or procedures.

1316 There is no requirement that a person having a
1317 mental condition or otherwise be especially dangerous.
1318 Nor is there counsel, a hearing, or even a personal
1319 interview. The bill permits ICE to indefinitely
1320 detain persons convicted of nonviolent crimes. Again,
1321 shoplifting, passing a bad check, and drug possession.

1322 Might I add possibly many of these people have

1323 been in the country all of their lives? And again, by
1324 a simple signature of an individual who determines
1325 that they might be dangerous. That is it.

1326 By contrast, the civil commitment schemes that
1327 have passed constitutional muster by the Supreme Court
1328 have been narrowly tailored and have come with robust
1329 procedural protections. I would ask my colleagues to
1330 recognize that as we look to ensure the homeland, our
1331 better approach obviously would be the idea of
1332 comprehensive immigration reform.

1333 In this instance, I am not sure if we are
1334 getting the better of this concern by, in essence,
1335 violating and simply abusing and misusing the idea of
1336 indefinite detention and disallowing any opportunity
1337 for a due process procedure to be in place. By
1338 allowing the States process to be in place, I believe
1339 that we can be both fair and balanced, adhering to
1340 what I know is the majority's adherence, loyalty, and
1341 complete commitment to the Constitution of the United
1342 States of America.

1343 With that, well, I would ask that this waiver --
1344 this germane -- this question be waived. I yield
1345 back.

1346 Chairman Smith. Thank you, Ms. Jackson Lee.

1347 Does the gentleman from California insist on his

1348 point of order?

1349 Mr. Gallegly. Yes, Mr. Chairman, I do.

1350 We have consulted with the House
1351 parliamentarian, Mr. Chairman, and have been informed
1352 that this amendment is not germane. It goes outside
1353 of the scope of this bill by setting up a civil
1354 commitment scheme with States.

1355 The underlying bill simply provides DHS with the
1356 ability to detain beyond the removal period certain
1357 dangerous aliens ordered removed who cannot be
1358 removed. It addresses only Federal actions with
1359 regard to detention and removal of aliens and does not
1360 contemplate a State-run scheme or reimbursement
1361 system.

1362 And on that, Mr. Chairman, I do insist on the
1363 point of order that the amendment is not germane and
1364 return the balance of my time.

1365 Chairman Smith. Thank you, Mr. Gallegly.

1366 Does the gentlewoman from Texas wish to speak on
1367 the point of order?

1368 Ms. Jackson Lee. Yes, I do, Mr. Chairman.

1369 The Bill of Rights, Constitution has a provision
1370 that indicates what not given to the Federal
1371 Government can be yielded to the States. You have an
1372 underlying structure of detention. I raise the

1373 question of a due process procedure. This is not an
1374 independent scheme. It is to suggest that the Federal
1375 Government would yield to the States on the issue of a
1376 due process structure so that the simple signing of a
1377 pen does not hold nonviolent individuals without their
1378 right to petition.

1379 It is not a mental health scheme in particular,
1380 but it makes mention of the fact that some individuals
1381 could be experiencing or have mental health issues.
1382 And the question is whether or not they have the
1383 ability or their lawyers have the ability to press
1384 that cause. I think it is completely germane to this
1385 bill that has to do with detention without relief.

1386 And your definition of dangerous also sweeps in
1387 a number of the acts that I have just indicated, which
1388 include shoplifting and bad check, drug possession.

1389 There is no delineation of what is to be dangerous --

1390 Chairman Smith. Does the gentlewoman from Texas
1391 wish to address the point of order?

1392 Ms. Jackson Lee. Yes, I would suggest that the
1393 amendment is appropriate because it is a complement to
1394 the Federal legislation, and we can yield to State
1395 laws. That is allowed.

1396 I ask for a decision by the chair. I yield
1397 back.

1398 Chairman Smith. Thank you, Ms. Jackson Lee.

1399 The chair is prepared to rule on the point of
1400 order. In the opinion of the chair, the amendment is
1401 not germane.

1402 Does the gentlewoman from Texas have another
1403 amendment, perhaps Amendment Number 7, she would wish
1404 to offer or not?

1405 Mr. Conyers. Mr. Chairman, could you explain
1406 your decision? Is that possible?

1407 Chairman Smith. I will associate -- the ranking
1408 member has asked me to explain the decision as far as
1409 it being nongermane. I will associate myself with the
1410 remarks of the gentleman from California, and that is
1411 the reason why I believe it is nongermane.

1412 Does the gentlewoman from Texas have another
1413 amendment?

1414 Ms. Jackson Lee. Yes, I do. Amendment Number
1415 7.

1416 Chairman Smith. Okay. The clerk will report
1417 the amendment.

1418 Ms. Kish. Amendment to H.R. 1932 offered by Ms.
1419 Jackson Lee of Texas. Beginning on page 5, line 9,
1420 strike through page 12, line 24 and insert the
1421 following.

1422 Chairman Smith. Without objection, the

1423 amendment will be considered as read.

1424 [The information follows:]

1425

1426 Chairman Smith. And we will suspend while
1427 Members get a copy of the amendment.

1428 Ms. Jackson Lee. Thank you.

1429 [Pause.]

1430 Chairman Smith. The gentlewoman is recognized
1431 to explain her amendment.

1432 Ms. Jackson Lee. Thank you very much, Mr.

1433 Chairman.

1434 To my colleagues, this amendment, I think, also
1435 speaks to the kinds of abuses that occur. Let us be
1436 reminded there is not one person sitting at this table
1437 that would argue in defense of dangerous aliens or
1438 individuals who are known terrorists, terror cells
1439 that we know exist in this country.

1440 My good friend, the chairman, and I have served
1441 on the Homeland Security Committee. This is not the
1442 issue. And to make this the issue in the Judiciary
1443 Committee on this particular bill is a false premise,
1444 and I respect the author of the bill and the intent.
1445 But frankly, there are cases that require some sort of
1446 relief or some sort of alternative.

1447 The amendment that I offer would replace H.R.
1448 1932's unconstitutional approach with a constitutional
1449 one. The Supreme Court has spoken clearly with
1450 respect to preventive detention schemes. Preventive

1451 detention is only constitutional when limited to
1452 especially dangerous persons, and it is only
1453 constitutional when it is accompanied by robust
1454 procedural protections.

1455 Like the Federal and State civil commitment
1456 scheme that existed for decades, this amendment urges
1457 or targets especially dangerous persons by focusing on
1458 persons who have been previously been in prison for a
1459 crime of violence, who suffer from a mental illness
1460 and who, because of that mental illness, would have
1461 substantial difficulty refraining from future acts of
1462 violence.

1463 The amendment provides the procedural
1464 protections that have been required by the Supreme
1465 court-approved civil commitment schemes. These
1466 include counsel, a hearing, and an opportunity to
1467 testify. Solving a problem requires more than just
1468 putting pen to paper. If the solution is
1469 unconstitutional, it is ineffective.

1470 H.R. 1932 will not make us any safer. It will
1471 just result in years of costly litigation because the
1472 Judiciary Committee failed to do the necessary work to
1473 design a constitutional scheme.

1474 One individual, for example, Majed Talat Hajbeh
1475 spent 15 months in a detention after the immigration

1476 judge ordered him removed. He was detained as a
1477 result of an administrative error, a mistake. Even
1478 though the Government was not able to effectuate his
1479 removal, his case exemplifies a law that explicitly
1480 permits the Government to detain individuals
1481 indefinitely who cannot be physically deported.

1482 He was from Jordan. He entered lawful as a
1483 permanent resident in 1993 on a family visa.
1484 Unfortunately, he failed to disclose on his
1485 application that he had married and then divorced
1486 during the 10 years between the time that his parents
1487 first petitioned for him and when they resubmitted the
1488 application.

1489 In 2003, he was arrested and charged in Federal
1490 court with falsifying his application for residency by
1491 checking "single" instead of "divorced." He
1492 reconciled with his wife, and they remarried.
1493 Although acquitted of the criminal charges by a jury,
1494 he was nevertheless taken into immigration custody,
1495 where he remained for 4 years, separated from his wife
1496 and 7 children, all lawful permanent residents or U.S.
1497 citizens.

1498 And he was ordered deported. He was ordered
1499 deported, but the immigration judge ruled that the
1500 Government could not deport him to Jordan because of

1501 the likelihood that he would be tortured. Yet he sat
1502 around there for however long a period of time.

1503 Eddie was held in immigration detention for 2
1504 years while the Government tried unsuccessfully to
1505 deport him to China. His case is another example of
1506 the problem with the law that explicitly permits the
1507 Government to detain individuals indefinitely.

1508 He was born in China, immigrated to the U.S. as
1509 a lawful permanent resident at 12. He shared a one-
1510 bedroom apartment in San Francisco with his parents
1511 and his two older siblings. He struggled in school
1512 because of limited English. He rarely saw his parents
1513 because they worked long hours -- father at Burger
1514 King, his mother as a babysitter.

1515 When Eddie was 16 years old, he was involved in
1516 an armed robbery and kidnapping, was sentenced as an
1517 adult to 7 years to life in prison. During his 19
1518 years in prison, he rededicated his life to preventing
1519 other immigrant youth from engaging in criminal
1520 activity.

1521 While incarcerated, he learned English, earned
1522 his GED, and did a number of other things. He was
1523 granted parole and released from prison. But his
1524 single conviction from two decades ago made him
1525 deportable. He spent an additional 2 years in

1526 immigration detention.

1527 And so, my point is, yes, that was a bad act, if
1528 you might say. But as well, he lived here all of his
1529 life and he had no rights to be able to petition to
1530 see whether or not he could remain in this country or
1531 whether he was a dangerous alien.

1532 I can't imagine why we would not add this
1533 amendment for some of the cases that exist that are
1534 just atrocious.

1535 Finally, I will acknowledge a family that had
1536 lived in this country all of their lives from Jordan.
1537 It came through this committee. We could never get
1538 any relief. We had temporary relief. And right after
1539 9/11, the neighbors saw people praying at their house.
1540 They were raided, and for years, they tried to fight
1541 to stay here. All their children love this country,
1542 and they were deported.

1543 We need to have ways of determining who is
1544 dangerous and who is not. I ask my colleagues to
1545 support this amendment.

1546 Chairman Smith. Thank you, Ms. Jackson Lee.

1547 The gentleman from California, Mr. Gallegly, is
1548 recognized.

1549 Mr. Gallegly. Thank you, Mr. Chairman.

1550 I oppose this amendment. The amendment would

1551 not allow DHS to detain most dangerous immigrants.
1552 The amendment only allows for the continued detention
1553 of dangerous immigrants who are mentally ill and as a
1554 result of this mental illness would have substantial
1555 difficulty in refraining from future acts of violence
1556 against others.

1557 This language, drawn from State and Federal
1558 civil commitment statutes, will not prevent the
1559 release of most dangerous immigrants. The Supreme
1560 Court has ruled that civil commitment laws must be
1561 confined to sexually dangerous individuals who have
1562 serious difficulty controlling their behavior or
1563 persons who are both mentally ill and unable to
1564 control their dangerousness because of their illness.

1565 This amendment will not allow the continued
1566 detention of immigrants who are sane, but highly
1567 dangerous. This amendment will not allow the
1568 continued detention of aliens who are mentally ill and
1569 highly dangerous, but able to control their
1570 dangerousness.

1571 The Federal Government must have the ability to
1572 keep such highly dangerous aliens off the streets.
1573 That is what the Keep Our Communities Safe Act does.
1574 It provides DHS with a vitally needed tool. This
1575 amendment takes that tool away.

1576 And Mr. Chairman, I urge my colleagues to join
1577 me in opposing this amendment and yield back.

1578 Chairman Smith. Thank you, Mr. Gallegly.

1579 The gentleman from Georgia, Mr. Johnson, is
1580 recognized.

1581 Mr. Johnson. Thank you, Mr. Chairman.

1582 I will yield to Ms. Jackson Lee.

1583 Ms. Jackson Lee. I thank the gentleman from
1584 Georgia, and I really appreciate my good friend from
1585 California. But it is not true, not true, not true,
1586 not true.

1587 This is not an amendment to release an
1588 individual on the streets. It is an amendment to
1589 provide a civil process that allows due process in the
1590 course of determining whether or not that individual
1591 should be detained. It is not a key that opens the
1592 gate or the jailhouse door. It is simply a process in
1593 place to determine whether or not individuals are
1594 falsely being held.

1595 Why are we afraid of that process? Because we
1596 have the structure of the bill that detains the
1597 individual, the question is whether you have persons
1598 incarcerated under this law, if it is passed, that are
1599 indefinitely held that legitimately should not be?

1600 They cannot expressed that if there is not a

1601 proceeding to allow them to do so. And as Americans
1602 and people sitting in this very audience, yes, we want
1603 those who will do us harm or who do not understand the
1604 difference between right and wrong and are dangerous
1605 to be incarcerated. But as we have watched trials
1606 around the world and when we raise our voices of
1607 concern as foreign governments hold Americans, we join
1608 together to ask for their relief and justice.

1609 We begin to do this kind of thing in this
1610 country and we totally violate and destroy the
1611 Constitution, the world watches us. And we are
1612 concerned about the safety of the American people, but
1613 we have to be a role model that we are not like the
1614 Libyas of the world. We are not like the Syrias of
1615 the world. And therefore, In order to suggest that we
1616 are not, a simple process that parallels this
1617 legislation, if it was to pass, is an appropriate
1618 scheme that provides for the opportunity for there to
1619 be a proceeding.

1620 All that this amendment does is provides the
1621 procedural protections that have been required by the
1622 Supreme Court-approved civil commitment. And it
1623 recognizes that that does not exist in this particular
1624 legislation, and it tries to avoid situations that I
1625 have just recounted for you where someone spends

1626 periods of time detained without the ability to
1627 petition and explain the wrongness of that decision.

1628 I can't imagine why that is not a simple process
1629 at all. It is not funny either. Because if you were
1630 incarcerated, it is not a funny act. And I welcome
1631 the debate on the question, but it is not humorous.

1632 And it really strikes me as being very
1633 challenging to not have Americans who live under a
1634 constitution and have the respect of the world be
1635 sensitive to both our image and our actions. It
1636 really disturbs me, and it also disturbs me when we,
1637 as Americans, want that kind of equal treatment.
1638 Because there are bad actors out there. I recognize
1639 that. There are bad actors around the world.

1640 But if any of our citizens traveled elsewhere
1641 around the world, we really will be looking -- and
1642 they will be immigrants or they will be foreigners, if
1643 you will, outside of this country. And the person has
1644 to ask themselves, those who have smiles on their
1645 faces have to ask themselves the question of how would
1646 you want to be treated? How would you want to be
1647 treated? If it is so funny, how would you want to be
1648 treated? That is the question.

1649 And so, I am simply saying that we want to make
1650 sure that we have the kind of provisions that would

1651 suggest that we are treating those here in this
1652 country, albeit they need to be detained, albeit that
1653 they may have a dangerous aspect, but they may not,
1654 with the fairness. And I believe this provision adds
1655 to a bill, Mr. Chairman, that is a very difficult
1656 hurdle for us to match on the constitutional basis.

1657 And I would ask my colleagues to support the
1658 amendment.

1659 Chairman Smith. Okay. Thank you, Ms. Jackson
1660 Lee.

1661 The question is on the amendment. All in favor
1662 --

1663 Mr. Conyers. Mr. Chairman?

1664 Chairman Smith. The gentleman from Michigan,
1665 the ranking member, Mr. Conyers, is recognized.

1666 Mr. Conyers. Thank you very much.

1667 I wanted to add to this discussion by citing the
1668 Supreme Court case of Zadvydas and Kim Ho Ma v. the
1669 Immigration and Naturalization Service to support this
1670 amendment because there is a problem that the
1671 gentlelady from Houston is trying to correct. And
1672 that problem is to make a part of the bill we are
1673 considering constitutional that may be
1674 unconstitutional because this Supreme Court case,
1675 decided in 2001, held that mere recertification does

1676 not meet constitutional standards.

1677 And what the bill says is that although
1678 indefinite detention is possible and constitutional in
1679 this country, it is not so unless it contains due
1680 process rights. And recertification doesn't make it.

1681 And so, what she is trying to do is put the
1682 constitutional part of this into the amendment, and I
1683 would like everybody to examine this case with me as
1684 we move forward in here. We are using it on this side
1685 in at least other amendments. But to me -- and maybe
1686 I should just read the constitutional provision.

1687 [Pause.]

1688 Mr. Conyers. Here we are. This is from the
1689 Supreme Court case decided in 2001 on this very
1690 subject of what to do with dangerous people and how
1691 they should be held inside the United States. And the
1692 language is, "We have upheld preventive detention
1693 based on dangerousness only when limited to special
1694 dangerous individuals and subject to strong procedural
1695 protections."

1696 That means due process. And then it goes on,
1697 "In cases in which preventive detention is of
1698 potentially indefinite duration, we have also demanded
1699 that the dangerousness rationale be accompanied by
1700 some other special circumstance such as mental illness

1701 that helps to create the danger."

1702 And then, "The serious constitutional problem
1703 arising out of a statute that in these circumstances
1704 permits an indefinite, perhaps permanent deprivation
1705 of human liberty without any such protection is
1706 obvious."

1707 Now, members of the Judiciary Committee, mostly
1708 lawyers, this is what the Supreme Court held only a
1709 decade ago. It is still good law. And for us to be
1710 debating this as if this case has never been decided I
1711 think is a serious mistake.

1712 The gentlelady from Texas's objective in this
1713 amendment is merely to provide the due process
1714 protections that are missing in the bill currently.
1715 And so, I urge, along with those of us who worked on
1716 this -- Zoe Lofgren, Howard Berman, Nadler -- to move
1717 from this discussion without citing what the Supreme
1718 Court decision is, is a serious mistake on the part of
1719 a very distinguished committee.

1720 And I yield back the balance of my time.

1721 Chairman Smith. Thank the gentleman for his
1722 comments.

1723 I am going to recognize myself for one minute.
1724 I believe and a lot of other individuals believe that
1725 the Zadvydas case can be distinguished. And in fact,

1726 in that 5-4 decision, Justice Kennedy wrote the
1727 dissent, and I believe that Justice Kennedy will write
1728 the majority opinion in a case that will uphold the
1729 constitutionality of this bill.

1730 Furthermore, I quoted a few minutes ago the 10th
1731 Circuit as saying that it is constitutional to detain
1732 individuals who are considered a danger to society or
1733 a national security risk. And --

1734 Mr. Conyers. Would the gentleman yield?

1735 Chairman Smith. And for the additional reasons
1736 of the safeguards I mentioned a while ago, I do think
1737 the bill is constitutional. I realize it will be
1738 challenged, and we will have to wait for the final
1739 determination.

1740 But I will yield to the gentleman from Michigan.

1741 Mr. Conyers. Thank you, Chairman Smith.

1742 In the first instance, the composition of the
1743 court, except for one person, hasn't changed. For the
1744 second, if you are saying that we should vote for a
1745 bill that you know is going to be challenged and will
1746 end up in the Supreme Court and that we have this
1747 decision that a majority, 5-4, have decided, I think
1748 that we should legislate on a less problematic basis.

1749 I mean, this is like taking a risk that we hope
1750 nobody challenges this bill or that it doesn't end up

1751 in the Supreme Court. Because unless you are hoping
1752 that the majority changes their mind or that something
1753 different happens or maybe there will be new
1754 replacements, I don't think you would want to
1755 recommend that we legislate on that basis in the
1756 Judiciary Committee.

1757 Chairman Smith. I thank the gentleman for his
1758 comments.

1759 Ms. Jackson Lee. Would the gentleman yield?

1760 Chairman Smith. And I will reclaim my time and
1761 point out there have actually been four new justices
1762 since *Zadvydas* was decided. And I wouldn't want to
1763 always say that the decision is going to be dependent
1764 upon new justices, but there may be individuals who
1765 would be more inclined to find this bill
1766 constitutional.

1767 Ms. Jackson Lee. Would the gentleman yield?

1768 Mr. Nadler. Would the gentleman yield?

1769 Chairman Smith. Although my one minute has
1770 expired, I will yield myself a couple more minutes so
1771 that I can yield first to the gentlewoman from Texas
1772 and then to the gentleman from New York.

1773 Ms. Jackson Lee. Mr. Chairman, thank you for
1774 that, and I associate myself with the ranking member's
1775 comments.

1776 And I do know that we have four new justices,
1777 and I would like to say with great respect that I
1778 expect that they will uphold the Constitution. But I
1779 want to make note of the fact my friend from
1780 California mentioned that this was a limited bill.

1781 The bill refers to a number of issues, such as
1782 disease, foreign policy, and it refers to beyond the
1783 mental health issue also to an idea of the community
1784 safety. What I am suggesting is for those very
1785 reasons, I believe that the constitutional aspect is
1786 crucial. So someone can determine whether or not they
1787 have an adverse effect on foreign policy or whether
1788 that contagious disease assessment is accurate.

1789 I just think that it ensures that this will be
1790 the kind of legislation that truly keeps the homeland
1791 secure. With that, I yield back to the chairman.

1792 Chairman Smith. I will yield to the gentleman
1793 from New York, Mr. Nadler.

1794 Mr. Nadler. Thank you.

1795 I just want to ask the chairman, do I gather
1796 from your comments that you concede that under the --
1797 Chairman Smith. Zadvydas?

1798 Mr. Nadler. Zadvydas. I sometimes think that
1799 people who are going to have major Supreme Court
1800 decisions named after them should be required to have

1801 pronounceable names. But in any event, do I gather
1802 that you concede that under the Zadvydas decision this
1803 would be unconstitutional, but you are hoping that the
1804 court will change?

1805 Chairman Smith. No. Reclaiming my time, that
1806 is not an accurate description of my feelings on the
1807 bill. I think Zadvydas can be distinguished, as
1808 others have done so, and we will be able to detain
1809 certain individuals for longer than we were able to
1810 detain them before on the basis of their either being
1811 a threat to society, aggravated felons, a threat to
1812 our national security, and other reasons as well.

1813 So I think Zadvydas can be distinguished, as the
1814 10th Circuit distinguished it.

1815 And I will yield to the gentleman from Michigan.
1816 Mr. Conyers. Well --

1817 Mr. Nadler. If I have the time, I will yield to
1818 the gentleman from Michigan. If not, I yield back the
1819 balance of my time.

1820 Mr. Conyers. Thank you very much, Mr. Nadler,
1821 for raising this because I don't think that we can
1822 argue this proposition involved in the amendment by
1823 having it both ways.

1824 Look, either Zadvydas is the controlling law of
1825 the land, and it does not contain the items that the

1826 chairman just enunciated. As a matter of fact, it
1827 goes out of its way to suggest that there has to be
1828 due process protections built into holding people that
1829 are enemies, terrorists, have mental problems, or
1830 anything else.

1831 And so, if the distinguished chairman of the
1832 committee will kindly reconsider the question posed by
1833 the gentleman from New York, he will find that what he
1834 said is not in the Zadvydas case. And not only that,
1835 it is exactly contrary to what is in the Zadvydas
1836 case.

1837 And I thank the gentleman for yielding.

1838 Chairman Smith. My time has expired. The
1839 question is on the Jackson Lee Amendment. All in
1840 favor, say aye.

1841 [A chorus of ayes.]

1842 Chairman Smith. Opposed, say no.

1843 [A chorus of nays.]

1844 Ms. Jackson Lee. Roll call?

1845 Chairman Smith. In the opinion of the chair,
1846 the nays have it. And a roll call vote has been
1847 requested, and the clerk will call the roll.

1848 Ms. Kish. Mr. Smith?

1849 Chairman Smith. No.

1850 Ms. Kish. Mr. Smith votes no.

1851 Mr. Sensenbrenner?
1852 [No response.]
1853 Ms. Kish. Mr. Coble?
1854 [No response.]
1855 Ms. Kish. Mr. Gallegly?
1856 Mr. Gallegly. No.
1857 Ms. Kish. Mr. Gallegly votes no.
1858 Mr. Goodlatte?
1859 [No response.]
1860 Ms. Kish. Mr. Lungren?
1861 Mr. Lungren. No.
1862 Ms. Kish. Mr. Lungren votes no.
1863 Mr. Chabot?
1864 Mr. Chabot. No.
1865 Ms. Kish. Mr. Chabot votes no.
1866 Mr. Issa?
1867 [No response.]
1868 Ms. Kish. Mr. Pence?
1869 Mr. Pence. No.
1870 Ms. Kish. Mr. Pence votes no.
1871 Mr. Forbes?
1872 [No response.]
1873 Ms. Kish. Mr. King?
1874 Mr. King. No.
1875 Ms. Kish. Mr. King votes no.

1876 Mr. Franks?
1877 Mr. Franks. No.
1878 Ms. Kish. Mr. Franks votes no.
1879 Mr. Gohmert?
1880 [No response.]
1881 Ms. Kish. Mr. Jordan?
1882 [No response.]
1883 Ms. Kish. Mr. Poe?
1884 [No response.]
1885 Ms. Kish. Mr. Chaffetz?
1886 Mr. Chaffetz. No.
1887 Ms. Kish. Mr. Chaffetz votes no.
1888 Mr. Griffin?
1889 [No response.]
1890 Ms. Kish. Mr. Marino?
1891 Mr. Marino. No.
1892 Ms. Kish. Mr. Marino votes no.
1893 Mr. Gowdy?
1894 [No response.]
1895 Ms. Kish. Mr. Ross?
1896 [No response.]
1897 Ms. Kish. Mrs. Adams?
1898 Mrs. Adams. No.
1899 Ms. Kish. Mrs. Adams votes no.
1900 Mr. Quayle?

1901 Mr. Quayle. No.
1902 Ms. Kish. Mr. Quayle votes no.
1903 Mr. Conyers?
1904 Mr. Conyers. Aye.
1905 Ms. Kish. Mr. Conyers votes aye.
1906 Mr. Berman?
1907 Mr. Berman. Aye.
1908 Ms. Kish. Mr. Berman votes aye.
1909 Mr. Nadler?
1910 Mr. Nadler. Aye.
1911 Ms. Kish. Mr. Nadler votes aye.
1912 Mr. Scott?
1913 Mr. Scott. Aye.
1914 Ms. Kish. Mr. Scott votes aye.
1915 Mr. Watt?
1916 Mr. Watt. Aye.
1917 Ms. Kish. Mr. Watt votes aye.
1918 Ms. Lofgren?
1919 Ms. Lofgren. Aye.
1920 Ms. Kish. Ms. Lofgren votes aye.
1921 Ms. Jackson Lee?
1922 Ms. Jackson Lee. Aye.
1923 Ms. Kish. Ms. Jackson Lee votes aye.
1924 Ms. Waters?
1925 [No response.]

1926 Ms. Kish. Mr. Cohen?
1927 Mr. Cohen. Aye.
1928 Ms. Kish. Mr. Cohen votes aye.
1929 Mr. Johnson?
1930 Mr. Johnson. Aye.
1931 Ms. Kish. Mr. Johnson votes aye.
1932 Mr. Pierluisi?
1933 Mr. Pierluisi. Aye.
1934 Ms. Kish. Mr. Pierluisi votes aye.
1935 Mr. Quigley?
1936 [No response.]
1937 Ms. Kish. Ms. Chu?
1938 Ms. Chu. Aye.
1939 Ms. Kish. Ms. Chu votes aye.
1940 Mr. Deutch?
1941 Mr. Deutch. Aye.
1942 Ms. Kish. Mr. Deutch votes aye.
1943 Ms. Sanchez?
1944 Ms. Sanchez. Aye.
1945 Ms. Kish. Ms. Sanchez votes aye.
1946 Chairman Smith. Are there other Members who
1947 wish to be recorded? The gentleman from South
1948 Carolina?
1949 Mr. Gowdy. No.
1950 Ms. Kish. Mr. Gowdy votes no.

1951 Chairman Smith. The gentleman from Florida?

1952 Mr. Ross. No.

1953 Ms. Kish. Mr. Ross votes no.

1954 Chairman Smith. The gentleman from -- has the

1955 gentleman from Pennsylvania voted?

1956 Okay. The gentleman from Wisconsin?

1957 Mr. Sensenbrenner. No.

1958 Ms. Kish. Mr. Sensenbrenner votes no.

1959 Chairman Smith. The gentleman from North

1960 Carolina?

1961 Mr. Coble. No.

1962 Ms. Kish. Mr. Coble votes no.

1963 Chairman Smith. The gentleman from Arkansas?

1964 Mr. Griffin. No.

1965 Ms. Kish. Mr. Griffin votes no.

1966 Mr. Conyers. You can only vote once.

1967 [Laughter.]

1968 Chairman Smith. The gentleman from Virginia?

1969 Mr. Goodlatte. No.

1970 Ms. Kish. Mr. Goodlatte votes no.

1971 Chairman Smith. And the other gentleman from

1972 Virginia?

1973 Mr. Forbes. No.

1974 Ms. Kish. Mr. Forbes votes no.

1975 Chairman Smith. The gentleman from Texas -- the

1976 two gentleman from Texas?

1977 Mr. Gohmert. No.

1978 Ms. Kish. Mr. Gohmert votes no.

1979 Chairman Smith. The gentleman from Texas?

1980 Mr. Poe. No.

1981 Ms. Kish. Mr. Poe votes no.

1982 Chairman Smith. The gentleman from Ohio?

1983 Mr. Jordan. No.

1984 Ms. Kish. Mr. Jordan votes no.

1985 [Laughter.]

1986 Chairman Smith. This is almost as good as

1987 proxy.

1988 Are there other Members who wish to be recorded?

1989 If not, the clerk will report.

1990 Ms. Kish. Mr. Chairman, 13 Members voted aye;

1991 21 Members voted nay.

1992 Chairman Smith. A majority having voted against

1993 the amendment, the amendment is not agreed to.

1994 We will now go to the gentleman from New York,

1995 Mr. Nadler, to offer an amendment.

1996 Mr. Nadler. Thank you, Mr. Chairman.

1997 I have an amendment at the desk.

1998 Chairman Smith. The clerk will report the

1999 amendment.

2000 Mr. Nadler. Nadler Number 9.

2001 Chairman Smith. The clerk will report Nadler
2002 Number 9.
2003 Ms. Kish. Amendment to H.R. 1932 offered by Mr.
2004 Nadler of New York. Page 13, strike lines 1 through
2005 10. Page 14, strike lines 8 through 15. Beginning on
2006 page 14, line 16, strike paragraph three and
2007 redesignate succeeding paragraphs accordingly.
2008 [The information follows:]
2009

2010 Chairman Smith. The gentleman from New York is
2011 recognized to explain his amendment.

2012 Mr. Nadler. Thank you, Mr. Chairman.

2013 We all swear an oath to uphold the Constitution,
2014 and our actions here should be consistent with that
2015 oath. That is why this bill is so disturbing. The
2016 idea that we can detain persons in the United States
2017 indefinitely with essentially no protections is a
2018 basic violation of the due process clause of the 14th
2019 Amendment. The Supreme Court, as well as other
2020 Federal courts, has found as much.

2021 My amendment focuses on two specific
2022 constitutional issues with the bill -- the ancient
2023 writ of habeas corpus, the ability to contest the
2024 legality of one's confinement, and the right to get
2025 justice in our courts more broadly.

2026 As our colleague from Tennessee, Ms. Black, on
2027 January 6th read Article I, Section 9, Clause 2 of the
2028 Constitution on the House floor, which says in part,
2029 "The privilege of the writ of habeas corpus shall not
2030 be suspended, unless in cases of rebellion or invasion
2031 the public safety may require it."

2032 The Framers recognized the importance of the
2033 writ of habeas corpus. As the Supreme Court said a
2034 couple of years ago in Boumediene, "The Framers viewed

2035 freedom from unlawful restraint as a fundamental
2036 precept of liberty. The understood the writ of habeas
2037 corpus as a vital instrument to secure that freedom."

2038 The Framers also knew the history of the writ of
2039 habeas corpus, how it had been suspended in England,
2040 including during the American Revolution and how
2041 trials of people accused of certain crimes under the
2042 English had been moved to Quebec.

2043 That is one of the grievances in the Declaration
2044 of Independence, that people were taken to a distance
2045 away from where the crimes were committed and where
2046 they lived and where they could get a trial by a jury
2047 of their peers. To prevent that from happening here,
2048 they protected it in the Constitution.

2049 This bill carves out immigration detention from
2050 the general practice of habeas corpus and consolidates
2051 virtually all such petitions challenging detention in
2052 the Federal District Court in Washington, D.C.

2053 No matter where one is held in detention, the
2054 habeas petition must be filed in a court in
2055 Washington. This is a change from the usual practice
2056 that habeas corpus petitions be filed in the Federal
2057 district where a person is detained, and it will make
2058 it virtually impossible for many persons in detention
2059 to exercise their habeas right.

2060 Many people detained -- we are talking about
2061 immigrants here -- speak little or no English, and
2062 about 84 percent do not have lawyers. It is already
2063 difficult for such persons to file habeas petitions,
2064 and this bill would make it that much harder.

2065 How is a person detained in an immigration
2066 prison in Houston, Texas, for example, who has no
2067 lawyer supposed to file a habeas corpus petition in
2068 Washington, D.C.? The Judicial Conference of the
2069 United States seems to agree.

2070 In a letter sent to Ranking Member Conyers on
2071 June 1st, the secretary of the Judicial Conference,
2072 James Duff writes that the Judicial Conference
2073 expresses a general concern that, "These habeas
2074 provisions would direct into a single Article III
2075 court a potentially large number of cases of a
2076 specific type that individual litigants may be
2077 unfairly burdened by a system of exclusive review in a
2078 distant tribunal" -- exactly the complaint made
2079 against the British king in the Declaration of
2080 Independence. That is my comment, not the
2081 conference's. "Therefore, the conference urges the
2082 reconsideration of these provisions."

2083 I ask unanimous consent that this letter from
2084 Secretary Duff be placed in the record.

2085 Chairman Smith. Without objection, the letter
2086 will be made a part of the record.
2087 [The information follows:]
2088

2089 Mr. Nadler. Thank you.

2090 Beyond habeas itself, Article III of the
2091 Constitution discusses the powers of the Federal
2092 judiciary and how it is to be used to settle cases and
2093 controversies. If we send every immigration detention
2094 habeas case to the Federal court in Washington, we
2095 will overwhelm it and literally prevent all other
2096 litigants or many other litigants from having their
2097 day in court for normal small business-related aspects
2098 or contracts or whatever.

2099 Let's look at the impact this bill would have.
2100 According to the Administrative Office of the U.S.
2101 Courts, during fiscal year 2009, 883 alien detainee
2102 habeas petitions were filed in Federal court. In
2103 fiscal year 2010, the number was 682. Those figures
2104 are conservative estimates, and greater numbers of
2105 habeas petitions can be expected as a result of some
2106 of the provisions which I would call unconstitutional
2107 in this bill.

2108 Based on the number of cases the D.C. Circuit
2109 Court handled in 2010, adding 700 to 1,000 new habeas
2110 cases would increase its caseload by 25 to 35 percent.
2111 It is hard to imagine the devastating impact such an
2112 increase would have as the D.C. District Court is
2113 overburdened already.

2114 Just recently D.C. District Court Chief Judge
2115 Royce Lamberth said that the several hundred habeas
2116 corpus petitions filed by Guantanamo inmates, by
2117 Guantanamo detainees in his court had already
2118 overburdened it so much that it will try very few
2119 civil cases during the spring and summer of 2011. He
2120 said it was already "as bad as we had seen it."

2121 The costs of these habeas provisions are clear.
2122 So, in other words, there are two problems here.
2123 Number one, we are saying that every immigration
2124 detainee with a good or bad case who is detained has
2125 to file a habeas petition in Washington, regardless of
2126 where they may be detained. And second of all, we are
2127 going to overburden the Washington court, which
2128 already has all the Guantanamo detainee cases coming
2129 in for habeas corpus.

2130 So why would we want to make these changes? The
2131 proponents of the legislation have not said why they
2132 want to make these changes. In fact, I have not heard
2133 a rational explanation of it from anyone. That may be
2134 because there isn't one.

2135 My amendment is very simple. It would strike
2136 the provisions in the bill that consolidate habeas
2137 petitions dealing with detention in the D.C. Federal
2138 court. It wouldn't change the law or it wouldn't this

2139 bill in any way. The habeas petitions would still be
2140 considered on the same basis as the provisions of this
2141 bill would otherwise say, but they would be considered
2142 where they are filed.

2143 If someone is held in detention in New York, you
2144 file a habeas petition in New York. If in Los
2145 Angeles, you file the habeas petition in Los Angeles.
2146 It wouldn't overburden the D.C. court and wouldn't
2147 tell the 84 percent of immigrants in detention who
2148 have no lawyers that that somehow you have got to file
2149 a habeas petition in Washington, D.C.

2150 I urge all Members to respect the right of
2151 habeas corpus and to allow people seeking justice in
2152 Federal court in D.C. to have their case heard by
2153 supporting my amendment and also by supporting the
2154 amendment not to further overburden an already
2155 overburdened court in Washington, D.C.

2156 I yield back the balance of my time.
2157 Chairman Smith. Thank you, Mr. Nadler.

2158 I will recognize myself in opposition.

2159 I oppose this amendment. The bill consolidates
2160 habeas cases regarding the detention of dangerous
2161 immigrants in criminal and other immigrants in removal
2162 proceedings into the District Court for the District
2163 of Columbia. The amendment strikes this provision of

2164 the bill.

2165 Consolidation is included because district
2166 courts around the country have applied the Zadvydas
2167 principles in an inconsistent manner with respect to
2168 habeas proceedings. Specifically, the 9th Circuit has
2169 essentially shifted the burden of proof to the
2170 Government to show that an immigrant seeking relief
2171 from detention is a flight risk or a danger to the
2172 community, when traditionally it was the alien's
2173 burden to disprove these elements.

2174 This unwarranted expansion of Zadvydas is
2175 resulting in the release of criminal immigrants in
2176 some jurisdictions. The goal of this provision of the
2177 bill is to ensure uniformity and consistency.

2178 Immigration is a technical and nuanced area of
2179 the law. There is value in ensuring that the judges
2180 who handle the very sensitive cases of detention of
2181 dangerous immigrants and criminal immigrants in
2182 removal proceedings have the appropriate expertise and
2183 that there be some semblance of uniformity in the
2184 application of the law.

2185 In a number of instances dealing with sensitive
2186 matters, Congress has passed similar legislation. For
2187 instance, in December 2005, Congress enacted the
2188 Detainee Treatment Act that amended a habeas statute

2189 to provide that "no court, justice, or judge" may
2190 exercise jurisdiction over any habeas suits filed by
2191 detainees at Guantanamo Bay other than the District
2192 Court for the District of Columbia.

2193 So I urge my colleagues to oppose this
2194 amendment.

2195 Mr. Nadler. Would the gentleman yield?

2196 Chairman Smith. However, I do consider this to
2197 be an issue that we can further discuss between now
2198 and the House floor.

2199 Mr. Nadler. Would the gentleman yield for a
2200 question?

2201 Chairman Smith. I will yield to the gentleman.

2202 Mr. Nadler. I appreciate the chairman's
2203 statement that this is an issue we can further
2204 discuss. But there are really two questions here.
2205 Number one, our normal practice, because courts always
2206 -- we have a diverse court system. Courts always
2207 interpret Supreme Court decisions, to some extent --
2208 not always, but often -- in inconsistent manners.

2209 The usual way we deal with that is that we
2210 appeal it, and ultimately, if there is a conflict in
2211 the circuits, the Supreme Court decides it. We don't
2212 normally treat inconsistent rulings by different
2213 courts by consolidating everything in one place.

2214 And second of all, how do we expect the 84
2215 percent of immigrants who have no lawyers to be able
2216 to go to Washington? And finally, we have the
2217 testimony of the Chief Judge of the Washington court
2218 saying that because of what you said, namely, the
2219 Guantanamo cases all being placed there, they are
2220 already overburdened, and their normal caseload, they
2221 can't handle.

2222 Chairman Smith. Okay. I thank the gentleman
2223 for his comments. Like I say, we will continue to
2224 discuss it.

2225 Let me also say, as chair, that apparently our
2226 time clock may not be working. So Members will just
2227 have to trust the chair with keeping the time.

2228 [Laughter.]

2229 Mr. Conyers. No problem.

2230 Chairman Smith. Any other Members who wish to
2231 be heard on this amendment?

2232 Mr. Conyers. Mr. Chairman?

2233 Chairman Smith. The question is on the --

2234 Mr. Conyers. Mr. Chairman?

2235 Chairman Smith. The gentleman from Michigan?

2236 Mr. Conyers. Thank you very much.

2237 I appreciate that Jerry Nadler has quoted the
2238 judiciary weighing in on this, begging this committee

2239 not to further overburden the D.C. court system.

2240 Please, we are reducing the appropriations to the

2241 judiciary, like we are everything else. And for us

2242 now to think that it is a fine idea to give one court

2243 system all these cases that occur anywhere in the

2244 United States is a horrendous step backwards.

2245 And I just can't imagine that we would do both

2246 of these things at the same time and not realize the

2247 trouble that we are creating.

2248 Mr. Johnson. Would the gentleman yield?

2249 Mr. Conyers. Absolutely. You were a former

2250 judge yourself.

2251 Mr. Johnson. And I know how difficult it is for

2252 litigants to file an appeal, but this process being

2253 proposed is one that is set up specifically to impose

2254 such burdensome procedures so as to negate the fact

2255 that there is a right to have a judge look into the

2256 propriety of the detention.

2257 And it then results on a practical level of

2258 detainees being stuck in detention in a private prison

2259 at \$122 a day for the taxpayers of this country,

2260 \$44,630 a year per inmate, with the profits going into

2261 the for-profit prison industrial complex.

2262 And I will yield back to Mr. Conyers.

2263 Mr. Conyers. Thank you, the gentleman from

2264 Georgia, Mr. Johnson.

2265 I yield to Jerry Nadler.

2266 Mr. Nadler. Thank you.

2267 Mr. Chairman, given the remarks of the chairman
2268 a few minutes ago, the assurances that we will work on
2269 this question with a view perhaps to changing it. And
2270 I would say, by the way, if we are going to change it,
2271 why D.C.? Why not Detroit or New York or Hawaii?
2272 Everything doesn't have to be in D.C.

2273 But in any event, given the fact that we will
2274 take another look at this, I will withdraw the
2275 amendment.

2276 Chairman Smith. Without objection, the
2277 amendment is withdrawn. And let me reassure the
2278 individual that we will discuss in good faith making
2279 some changes.

2280 Does the gentleman from New York have any other
2281 amendments?

2282 Mr. Nadler. Yes, I do. I have a couple of
2283 other amendments.

2284 I have Amendment Number 10.

2285 Chairman Smith. Okay. The clerk will report --

2286 Mr. Nadler. Oh, no, no, no. Oh, Mr. Chairman,
2287 in light of relooking at this, Amendment 10 really
2288 goes to the same thing. So if you look at this as

2289 part of the same process of looking at Number 9, we
2290 will --

2291 Chairman Smith. Also I want to say to the
2292 gentleman from New York that I believe his Amendment
2293 Number 11 may be nongermane, and as far as Number 12
2294 goes, he and I are continuing discussions on that
2295 subject as well, which I expect to be fruitful. So
2296 does the gentleman have any --

2297 Mr. Nadler. Yes, Number 12, given our
2298 continuing discussions, I will not offer now.

2299 But Number 10 -- Number 11, rather, given
2300 Section (b) (5) of the bill, which seems to deal with
2301 exactly the same subject, I don't see how it is
2302 ungermane.

2303 Chairman Smith. Does the gentleman want to
2304 offer amendment Number 11?

2305 Mr. Nadler. Yes, I will offer the amendment.

2306 Mr. Gallegly. Mr. Chairman?

2307 Mr. Nadler. I am killing two others. I will
2308 offer this one.

2309 Chairman Smith. Okay. The clerk will report --

2310 Mr. Gallegly. Mr. Chairman?

2311 Chairman Smith. -- Nadler Amendment Number 11,
2312 and the gentleman from California is recognized.

2313 Mr. Gallegly. I just want to reserve a point of

2314 order, Mr. Chairman.

2315 Chairman Smith. Okay. A point of order has
2316 been reserved, and the gentleman from New York is
2317 recognized to explain the amendment.

2318 Mr. Nadler. Thank you, Mr. Chairman. This is
2319 Nadler 11.

2320 I ask unanimous consent the reading of the
2321 amendment be dispensed with. Lamar?

2322 Chairman Smith. I am sorry?

2323 Mr. Nadler. I ask unanimous consent the reading
2324 of the amendment be dispensed with.

2325 Chairman Smith. Yes, without objection, the
2326 reading of the amendment will be suspended, and the
2327 gentleman is recognized.

2328 [The information follows:]

2329

2330 Mr. Nadler. Thank you, Mr. Chairman.

2331 The underlying bill imposes harsh new rules for
2332 detaining aliens who are either pending deportation or
2333 pending a decision on whether they should be deported.
2334 A very small number of these aliens, though, at the
2335 discretion of the Secretary of the Department of
2336 Homeland Security will not be deported.

2337 The exercise in prosecutorial agency discretion
2338 is known in the immigration context as deferred
2339 action. The granting of deferred action is extremely
2340 rare. According to DHS, fewer than 500 people are
2341 granted deferred action by ICE in 2010, fewer than the
2342 past. This is out of the millions of noncitizens in
2343 the U.S.

2344 While the number of people granted deferred
2345 action is infinitesimal, some people remain in the
2346 U.S. for many years in that status. In these cases,
2347 such persons are stuck in what is essentially an
2348 immigration limbo. Due to whatever a person who
2349 received deferred action may have done, they cannot
2350 legalize their status. But by the grace of DHS, they
2351 are allowed to remain in the U.S. for a period of time
2352 because the DHS presumably has determined that it is
2353 not in the interests of the United States to deport
2354 them.

2355 Every year or two, their status is up for
2356 renewal. If DHS chooses not to continue their
2357 deferred action status, they can be deported. But if
2358 DHS continues to grant it because they believe it is
2359 in the interests of the U.S., they stay here. This
2360 limbo exists, and that can go on indefinitely,
2361 whatever the merits of the individual case.

2362 Regardless of the triviality of whatever may
2363 have given rise to the deportation in the first place
2364 or how the person has conducted him or herself while
2365 under deferred action, status of the person remains
2366 stuck.

2367 My amendment is designed to end that limbo. It
2368 simply says that if someone who otherwise might be
2369 deported has been granted deferred action for 10 or
2370 more years and DHS determines either that the United
2371 States is unlikely to pursue the removal of the alien
2372 in the reasonably foreseeable future or that no
2373 substantial public purpose would be served by pursuing
2374 removal of the alien, DHS can, if it wishes, change
2375 their status to that of a lawful permanent resident.

2376 I know some of my colleagues have concerns about
2377 deferred action as a general policy. This amendment
2378 has nothing to do with that debate. And the amendment
2379 does not legalize everyone who is in deferred action.

2380 To be eligible for lawful residence, one would have
2381 had to have that status for 10 or more years, a very
2382 long time, and a very small proportion of the people
2383 in deferred action have that.

2384 In order to allow someone to get their green
2385 card, the DHS would also have to find that it was
2386 either not going to deport them anytime soon or that
2387 no public purpose would be served by doing so. That
2388 is a high bar to allow legal immigrant status to flow
2389 only to those most deserving.

2390 If DHS decided for 10 years it is not going to
2391 deport someone and that it is not likely or that there
2392 is no reason to do so, it does not make sense to
2393 continue that person in this immigration limbo. It is
2394 a waste of DHS's time, money, and effort. And it is
2395 unfair to an otherwise productive member of society.

2396 So I offer the amendment.

2397 Chairman Smith. Okay. Thank you, Mr. Nadler.

2398 Does the gentleman from California insist on his
2399 point of order?

2400 Mr. Gallegly. Yes, Mr. Chairman, I do insist on
2401 the point of order.

2402 We have consulted with the House parliamentarian
2403 and concluded that this amendment is not germane.

2404 This amendment allows the Secretary to adjust the

2405 status of certain aliens.

2406 The subject of the underlying bill deals only
2407 with detention and removal of certain aliens. It does
2408 not cover adjustment of status or immigration
2409 benefits. Therefore, I insist on my point of order
2410 that this amendment is not germane.

2411 Chairman Smith. Thank you, Mr. Gallegly.

2412 Does the gentleman from New York wish to speak
2413 on the point of order?

2414 Mr. Nadler. Yes, thank you, Mr. Chairman.

2415 I think it is germane because the bill, on page
2416 15, says -- well, page 14 and 15 are provisions
2417 dealing with detention of people in this status. It
2418 would mandate detention under certain circumstances,
2419 and this would say that we are cutting out an
2420 exception to that, in effect. So I think it is
2421 germane.

2422 Chairman Smith. Thank you, Mr. Nadler.

2423 The chair is prepared to rule on the point of
2424 order. In the opinion of the chair, the amendment is
2425 nongermane.

2426 We will proceed with amendments, and does the
2427 gentleman from Michigan, Mr. Conyers, have an
2428 amendment?

2429 Mr. Conyers. I have an amendment at the desk.

2430 Chairman Smith. The clerk will report the
2431 amendment.

2432 Mr. Conyers. I ask that it be reported, Number
2433 13.

2434 Ms. Kish. Amendment to H.R. 1932 offered by Mr.
2435 Conyers of Michigan. Beginning on page 13, line 21,
2436 strike paragraph two and redesignate succeeding
2437 paragraphs accordingly. Page 16, strike lines 22
2438 through 24 and redesignate succeeding subparagraphs
2439 accordingly.

2440 [The information follows:]

2441

2442 Chairman Smith. The gentleman is recognized to
2443 explain his amendment.

2444 Mr. Conyers. Thank you, Mr. Chairman.

2445 Members of the committee, this takes up the
2446 further examination of the Judy Chu Amendment that
2447 struck all of Section 2(b). And what I do now is to
2448 come behind her to strike only 2(b)(2), only a part of
2449 the amendment that she sought, and I supported her in
2450 that effort.

2451 But right now, what we want to deal with is the
2452 case of people who are brought into custody, taken by
2453 ICE, Border Patrol, asylum seekers, people crossing
2454 the border improperly only, and what we intend to do
2455 is to provide a different way for them to be handled
2456 other than being held indefinitely or for years
2457 waiting for judicial disposition.

2458 Section 2(b)(2) calls for the detention of all
2459 arriving aliens without any limitation in time. And
2460 so, an asylum seeker could be detained for years and
2461 without ever getting a day in court, and it would be
2462 true also for lawful permanent residents of this
2463 country who are just returning home to be with their
2464 children or their U.S. citizen spouse.

2465 We know that this isn't about keeping the public
2466 safe. And so, it is for this limited group of people

2467 that might be in violation of immigration law that we
2468 offer this limited amendment that strikes only (b) (2)
2469 for the asylum seekers and the border crossers.

2470 And I urge the careful consideration of this
2471 amendment by the committee. Return the balance of my
2472 time.

2473 Chairman Smith. Thank you, Mr. Conyers.

2474 And I will recognize myself in opposition.

2475 The United States has a long history of
2476 providing safe haven for aliens fleeing from
2477 persecution in their home countries. However, this
2478 historical generosity has also created an incentive
2479 for many illegal immigrants to falsely claim
2480 persecution and make fraudulent asylum claims in order
2481 to remain in the United States.

2482 By the mid 1990s, tens of thousands of aliens
2483 were arriving at U.S. airports each year without valid
2484 documents, often making meritless asylum claims,
2485 knowing that they would be released into the community
2486 pending asylum hearings before immigration judges
2487 because of a lack of detention space. Few were ever
2488 heard from again.

2489 In response, Congress enacted a provision
2490 contained in the Illegal Immigration Reform and
2491 Immigrant Responsibility Act of 1996 to create the

2492 mechanism of expedited removal. Under expedited
2493 removal, the Department of Homeland Security officer
2494 at an airport can immediately return an alien lacking
2495 proper documents to his or her country of origin
2496 unless the alien can establish a credible fear of
2497 persecution.

2498 If arriving aliens are not found to have a
2499 credible fear, they are subject to mandatory detention
2500 and removal. If credible fear is shown, then the
2501 alien will be able to make their case before an
2502 immigration judge.

2503 Unfortunately, the grant rate for credible fear
2504 determinations has become so high, 80 percent in 2009,
2505 that the risk that aliens seek to make fraudulent
2506 asylum claims at ports of entry once again remain
2507 substantial. However, the continued detention of
2508 aliens who receive credible fear determination still
2509 deters fraud. This bill thus requires the continued
2510 detention of arriving aliens until their asylum claims
2511 are approved.

2512 The lesson from the past is clear. Nondetained
2513 asylum seekers who are later denied asylum simply
2514 abscond. The Inspector General of the Department of
2515 Justice issued a report that looked at the INS's
2516 success in removing nondetained asylum seekers who

2517 were denied asylum. The INS removed only 3 percent of
2518 these nondetained aliens. Of course, most of the
2519 other 97 percent were illegal immigrants who simply
2520 disappeared into our communities.

2521 The release of illegal aliens making asylum
2522 claims also threatens the safety of our citizens. The
2523 Department of Justice's Inspector General has
2524 identified a number of terrorist aliens who filed
2525 frivolous asylum applications, were released pending
2526 their hearings, and used their freedom to commit or
2527 attempt to commit terrorist acts.

2528 For instance, in 1993, Mir Aimal Kansi murdered
2529 two CIA employees at CIA headquarters, and Ramzi
2530 Yousef masterminded the first World Trade Center
2531 attack while free after applying for asylum. Shahawar
2532 Matin Siraj was convicted of plotting to bomb a subway
2533 station in New York City while he was free after
2534 applying for asylum.

2535 The Inspector General expressed the concern that
2536 the Immigration Service "does not actively pursue
2537 denied asylum seekers, and because that group may
2538 include potential terrorists, it would be imprudent to
2539 give them so little attention."

2540 The goal of this amendment is to end mandatory
2541 detention for arriving illegal immigrants making often

2542 baseless asylum claims, and I urge my colleagues to
2543 oppose the amendment.

2544 Ms. Lofgren. Mr. Chairman?

2545 Mr. Conyers. Mr. Chairman?

2546 Chairman Smith. The gentlewoman from
2547 California, Ms. Lofgren?

2548 Ms. Lofgren. I would like to strike the last
2549 word --

2550 Chairman Smith. The gentlewoman is recognized
2551 for 5 minutes.

2552 Ms. Lofgren. -- and speak in support of Mr.
2553 Conyers's amendment.

2554 The amendment, as noted, strikes the section of
2555 the bill that really relates to arriving aliens and
2556 asylum seekers, many of whom pose absolutely no danger
2557 to the public, no risk of flight, and it does improve
2558 the bill.

2559 The bill and the rhetoric has been about keeping
2560 the community safe, dangerous aliens. But Section
2561 2(b) has nothing to do with that. We have numerous
2562 cases where individuals have made claims of asylum,
2563 and there was a dispute. And the person remains in
2564 custody for extended periods of time for no really
2565 very good reason while that dispute is being sorted
2566 out.

2567 Now, ironically, if we use up detention beds --
2568 and they are a limited resource -- for people who pose
2569 no threat to American society, that is a detention bed
2570 that can't be used for someone who does pose a threat
2571 to American society.

2572 So I think really should this bill become law
2573 and should it not be struck down by the court not only
2574 would this waste taxpayers' money, but it actually
2575 would have the perverse impact of making us less safe.

2576 And I will just give a brief example of the kind
2577 of disagreements that can occur on an asylum
2578 application.

2579 We had a case about 3 years ago of an
2580 individual, Mr. Balasundaram, who had sought asylum.
2581 He was a Tamil farmer who was persecuted during Sri
2582 Lanka's civil war. As you know, the Tamil Tigers were
2583 designated by the United States Government as a
2584 terrorist organization.

2585 And in 1997, this individual was captured at
2586 gunpoint. He was held against his will at a training
2587 camp, and finally he escaped. He was tortured, and he
2588 finally made his way to the United States to the Logan
2589 Airport.

2590 He made his claim of asylum there, and he was
2591 denied, because the Government said he had provided

2592 material support to the terrorist group, because when
2593 he was held against his will at gunpoint, he had
2594 served in the kitchen at this prison camp. And the
2595 Government said, well, that is material support, and
2596 it makes you ineligible for asylum. He disputed that.

2597 He was held for a number of years until,
2598 finally, the court decided that the fact that he was
2599 held against his will, and while held a prisoner
2600 worked in the prison camp, was not in fact material
2601 support to the Tamil Tigers. And his asylum was
2602 granted.

2603 Now why would we want to mandatorily keep that
2604 individual in prison at a very large cost to the
2605 taxpayers for multiple years under the provision of
2606 this act? It doesn't make any sense. It is wasteful
2607 of money. I think it is unconstitutional, but it is
2608 certainly wrong.

2609 And so Mr. Conyers' amendment will help improve
2610 the bill. It doesn't solve all the problems in the
2611 bill.

2612 I would note also that this has to do with not
2613 just asylum seekers but new entrants. And if we don't
2614 improve this bill, I think basically what we are going
2615 to say is that, you know, Mexican immigrants who are
2616 here without their papers are going to be locked up

2617 permanently. We have 11 million people here without
2618 their documents. As the president of the Southern
2619 Baptist Convention, Dr. Richard Land, testified at our
2620 hearing a couple of years ago, for many years the
2621 United States had two signs at our southern border.
2622 One said, "Help wanted"; the other said, "No
2623 trespassing."

2624 As so we now have a million farmworkers, migrant
2625 farmworkers, who are here without their documents, but
2626 we need them. With this bill, they are subject to
2627 mandatory permanent detention. I think that is not
2628 only wrong, it is adverse to the Nation's interests.

2629 And I strongly support Mr. Conyers' amendment
2630 and would yield to Mr. Conyers, if he has an
2631 additional statement to make.

2632 Seeing not, I would yield back my time.

2633 Chairman Smith. Thank you, Ms. Lofgren.

2634 The gentleman from Georgia, Mr. Johnson, is
2635 recognized?

2636 Mr. Johnson. Thank you, Mr. Chairman.

2637 I would imagine that some of the CEOs and board
2638 members and shareholders of the private for-profit
2639 prison industry are just salivating at the prospects
2640 of this measure passing.

2641 I will yield to the ranking member.

2642 Mr. Conyers. Thank you, Mr. Johnson.

2643 Well, members of the committee, I wish I could
2644 say that if this amendment were adopted that this
2645 would make this bill acceptable to me. I want to
2646 confess to all of you in advance that I would still
2647 not support the bill, but this would make it less
2648 unconstitutional if we would just correct this small
2649 part of it.

2650 And here is the provision, if you would look
2651 with me, especially my friend from Virginia, the
2652 chairman of the Subcommittee on Immigration, Mr.
2653 Gallegly, if you would look with me on page 13 and 14.
2654 All we want to do is -- here is the provision:
2655 Notwithstanding any other provision of this section,
2656 an alien may be detained under this section without
2657 limitation until the alien is subject to a final order
2658 of removal.

2659 Now, Chairman Gallegly, all I want to do is
2660 remove this 2(b) section because of the provision of
2661 "without limitation." And what we are doing is that
2662 we are trapping domestic workers that come over here.
2663 People that have lived in this country without proper
2664 documentation for decades, they will now be subject to
2665 being held as we are doing without limitation. We are
2666 saying people that cross the border to come to visit

2667 their own spouse can be locked up without limitation.
2668 People who are here that have never been properly
2669 admitted, they can be arrested without limitation.

2670 I mean, I can't think that a majority of members
2671 of this committee would say that is okay, lock them
2672 up. They worked here, their kids are here, they got
2673 off a plane from somewhere, and they don't have the
2674 documentation, and they are arrested. And we are here
2675 today in broad daylight and all of us, of course, are
2676 sober, saying that we are going to lock people up
2677 forever without limitation. I just can't imagine that
2678 we could all do this, and I would be happy to yield to
2679 Mr. Gallegly.

2680 Mr. Johnson. Let me reclaim my time, Mr.
2681 Chairman. I would reclaim my time.

2682 And I would say that the next Blackwater, the
2683 next Halliburton, all of whom made tremendous amounts
2684 of money from you, the taxpayer, and committed
2685 atrocities, economic atrocities, who is going to take
2686 their place? It is going to be CCA, Corrections
2687 Corporation of America, and also the GEO Group. Those
2688 are the two largest private owners of prisons in the
2689 United States.

2690 And with that, I would yield to Mr. Gallegly.

2691 Mr. Gallegly. I thank you very much. I thank

2692 the gentleman from Georgia.

2693 Associating my comments or the comments of Mr.

2694 Conyers, several years ago --

2695 Mr. Conyers. You are agreeing with me?

2696 Mr. Gallegly. I agree with you on some things.

2697 You are a good neighbor.

2698 I would just like to associate myself with your

2699 comments, because several years ago I took a CODEL to

2700 Kennedy Airport and also to Miami at the airport, the

2701 international ports of entry. And I have a report,

2702 that I would be happy to provide to the gentleman

2703 with, that of all of those that entered the country

2704 and that were considered a low risk of flight that

2705 were given entrance into the country, that were not

2706 considered a threat to not show up on the date -- they

2707 were given a date -- and of the ones that were

2708 considered low risk, only 6 percent ever returned to

2709 go to their hearing. And that is documented by, at

2710 that time, INS.

2711 Mr. Conyers. So then are you saying let's lock

2712 them up forever then?

2713 Ms. Lofgren. Will the gentleman yield?

2714 Mr. Conyers. Wouldn't you give them court

2715 procedures?

2716 Mr. Gallegly. No, I would --

2717 Chairman Smith. The gentleman from Georgia has
2718 the time, but it has expired.

2719 Ms. Lofgren. I would ask unanimous consent that
2720 the gentleman from Georgia be given an additional
2721 minute so that he might yield to me.

2722 Chairman Smith. Without objection, the
2723 gentleman --

2724 Mr. Gallegly. Can I just respond to --

2725 Chairman Smith. -- is yielded an additional 2
2726 minutes.

2727 Mr. Gallegly. I would just like to answer Mr.
2728 Conyers' statement.

2729 No, I do not think that they should be held in
2730 jail forever. I think that they should have expedited
2731 hearing and let the courts decide, and then abide by
2732 the court's decision.

2733 And I would yield back.

2734 Mr. Conyers. Well, that is what I am doing.

2735 Mr. Gallegly. But you are advocating that they
2736 be released out into the public.

2737 Mr. Conyers. No.

2738 Ms. Lofgren. If the gentleman would yield?

2739 Mr. Johnson. I yield to --

2740 Chairman Smith. The gentleman from Georgia has
2741 the time.

2742 Ms. Lofgren. The provision that Mr. Conyers has
2743 offered really would allow individuals who are seeking
2744 asylum to have due process. It is not a release.

2745 And as a matter of fact, and I know that the
2746 gentleman is sincere, but you are citing some abuses
2747 that we agreed with, I mean, that go back to the late
2748 1990s, where there was a problem. And the problem was
2749 resolved through changes of various administrative
2750 procedures. And although I didn't agree with
2751 mandatory incarceration of every single person who
2752 claims political asylum, that is the law today.

2753 And the question is whether there is going to be
2754 any review of that. And this bill is going to provide
2755 for no review, long-term, and, in some cases,
2756 permanent incarceration for people who had valid
2757 claims. These cases take sometimes many years to sort
2758 out.

2759 For example, the Tamil Tiger material support
2760 case took several years for a court to go in and tell
2761 the Government that they were completely out of it to
2762 say that someone who had been captured and forced to
2763 peel potatoes was giving material support to
2764 terrorists. He had a gun to his head. That took
2765 several years.

2766 Our Federal Government is not infallible. I

2767 know that that comes as a shock to the gentleman.
2768 Mistakes are made very, very often in these cases and
2769 need to be so sorted out. I yield back.

2770 Mr. Johnson. Reclaiming my time, I think we
2771 should rename this legislation the corporate welfare
2772 act of 2011 for private prisons.

2773 And with that, I will yield back.

2774 Chairman Smith. Thank you, Mr. Johnson.

2775 The gentleman from Virginia, Mr. Scott, is
2776 recognized?

2777 Mr. Scott. Mr. Chairman, I yield to the
2778 gentleman from Michigan.

2779 Mr. Conyers. Thank you very much, Mr. Scott.

2780 This is an important discussion because it gives
2781 us a chance to make sure that anybody that thinks as
2782 my friend from California and neighbor Mr. Gallegly
2783 that my amendment would create a release for certain
2784 people in the country illegally is absolutely without
2785 foundation. It is incorrect.

2786 Here is what it does, Mr. Gallegly. What we do
2787 is allow a person to come to court to be determined
2788 what their status is, which could end up getting them
2789 incarcerated. That is what the judge can do. They
2790 are not getting away with anything. But further, it
2791 allows the judge to give a bond, if he sees fit.

2792 And so there is a big difference between
2793 striking this provision so that the people making
2794 border crossings, or people that have worked as farm
2795 hands or domestics, or people that got off the plane
2796 without documentation, look, they are not terrorists.
2797 They are not the ones we are trying to get. But I
2798 don't propose that they be released. I refer them to
2799 the court, for them to be adjudicated, as you said,
2800 quickly.

2801 In that, I sense an agreement between us as to
2802 how we should dispose of these people that are
2803 arriving aliens, people who have crossed the border,
2804 or who have lived here for decades without proper
2805 documentation who now, unless you join me on this
2806 amendment, they can be arrested and kept in prison
2807 forever.

2808 And I thank the gentleman, and I yield back my
2809 time.

2810 Chairman Smith. The gentleman yields back his
2811 time. I think the gentleman from Virginia yields back
2812 his time.

2813 The question is on the amendment.

2814 All in favor say aye.

2815 [A chorus of ayes.]

2816 Opposed say no.

2817 [A chorus of nays.]

2818 In the opinion of the Chair, the noes have it,
2819 and the amendment is not agreed to.

2820 Ms. Lofgren. I would ask for a recorded vote,
2821 Mr. Chairman.

2822 Chairman Smith. And both the gentlemen and the
2823 gentlewoman have asked for a recorded vote, and the
2824 clerk will call the roll.

2825 Ms. Kish. Mr. Smith?

2826 Chairman Smith. No.

2827 Ms. Kish. Mr. Smith votes no.

2828 Mr. Sensenbrenner?

2829 [No response.]

2830 Ms. Kish. Mr. Coble?

2831 [No response.]

2832 Ms. Kish. Mr. Gallegly?

2833 Mr. Gallegly. No.

2834 Ms. Kish. Mr. Gallegly votes no.

2835 Mr. Goodlatte?

2836 [No response.]

2837 Ms. Kish. Mr. Lungren?

2838 [No response.]

2839 Ms. Kish. Mr. Lungren votes no.

2840 Mr. Chabot?

2841 [No response.]

2842 Ms. Kish. Mr. Issa?
2843 [No response.]
2844 Ms. Kish. Mr. Pence?
2845 Mr. Pence. No.
2846 Ms. Kish. Mr. Pence votes no.
2847 Mr. Forbes?
2848 [No response.]
2849 Ms. Kish. Mr. King?
2850 [No response.]
2851 Ms. Kish. Mr. Franks?
2852 Mr. Franks. No.
2853 Ms. Kish. Mr. Franks votes no.
2854 Mr. Gohmert?
2855 [No response.]
2856 Ms. Kish. Mr. Jordan?
2857 Mr. Jordan. No.
2858 Ms. Kish. Mr. Jordan votes no.
2859 Mr. Poe?
2860 [No response.]
2861 Ms. Kish. Mr. Chaffetz?
2862 Mr. Chaffetz. No.
2863 Ms. Kish. Mr. Chaffetz votes no.
2864 Mr. Griffin?
2865 Mr. Griffin. No.
2866 Ms. Kish. Mr. Griffin votes no.

2867 Mr. Marino?
2868 Mr. Marino. No.
2869 Ms. Kish. Mr. Marino votes no.
2870 Mr. Gowdy?
2871 Mr. Gowdy. No.
2872 Ms. Kish. Mr. Gowdy votes no.
2873 Mr. Ross?
2874 Mr. Ross. No.
2875 Ms. Kish. Mr. Ross votes no.
2876 Mrs. Adams?
2877 Mrs. Adams. No.
2878 Ms. Kish. Ms. Adams votes no.
2879 Mr. Quayle?
2880 Mr. Quayle. No.
2881 Ms. Kish. Mr. Quayle votes no.
2882 Mr. Conyers?
2883 Mr. Conyers. Aye.
2884 Ms. Kish. Mr. Conyers votes aye.
2885 Mr. Berman?
2886 [No response.]
2887 Ms. Kish. Mr. Nadler?
2888 Mr. Nadler. Aye.
2889 Ms. Kish. Mr. Nadler votes aye.
2890 Mr. Scott?
2891 Mr. Scott. Aye.

2892 Ms. Kish. Mr. Scott votes aye.
2893 Mr. Watt?
2894 Mr. Watt. Aye.
2895 Ms. Kish. Mr. Watt votes aye.
2896 Ms. Lofgren?
2897 Ms. Lofgren. Aye.
2898 Ms. Kish. Ms. Lofgren votes aye.
2899 Ms. Jackson Lee?
2900 Ms. Jackson Lee. Aye.
2901 Ms. Kish. Ms. Jackson Lee votes aye.
2902 Ms. Waters?
2903 [No response.]
2904 Ms. Kish. Mr. Cohen?
2905 Mr. Cohen. Aye.
2906 Ms. Kish. Mr. Cohen votes aye.
2907 Mr. Johnson?
2908 Mr. Johnson. Aye.
2909 Ms. Kish. Mr. Johnson votes aye.
2910 Mr. Pierluisi?
2911 Mr. Pierluisi. Aye.
2912 Ms. Kish. Mr. Pierluisi votes aye.
2913 Mr. Quigley?
2914 Mr. Quigley. Aye.
2915 Ms. Kish. Mr. Quigley votes aye.
2916 Ms. Chu?

2917 Ms. Chu. Aye.

2918 Ms. Kish. Ms. Chu votes aye.

2919 Mr. Deutch?

2920 [No response.]

2921 Ms. Kish. Ms. Sanchez?

2922 [No response.]

2923 Chairman Smith. Are there other members who

2924 wish to be recorded?

2925 The gentleman from Wisconsin?

2926 Mr. Sensenbrenner. No.

2927 Ms. Kish. Mr. Sensenbrenner votes no.

2928 Chairman Smith. The gentleman from North

2929 Carolina?

2930 Mr. Coble. No.

2931 Ms. Kish. Mr. Coble votes no.

2932 Chairman Smith. The gentleman from Iowa, Mr.

2933 King?

2934 Mr. King. No.

2935 Ms. Kish. Mr. King votes no.

2936 Mr. Forbes?

2937 Mr. Forbes. No.

2938 Ms. Kish. Mr. Forbes votes no.

2939 Ms. Sanchez?

2940 Ms. Sanchez. Aye.

2941 Ms. Kish. Ms. Sanchez votes aye.

2942 Chairman Smith. The clerk will report.

2943 Ms. Kish. Mr. Chairman, 12 members voted aye;
2944 17 members voted nay.

2945 Chairman Smith. The majority having voted
2946 against the amendment, the amendment is not agreed to.

2947 The gentlewoman from California, Ms. Chu, is
2948 recognized to offer an amendment.

2949 Ms. Chu. Mr. Chair, I have an amendment at the
2950 desk, amendment No. 14.

2951 Chairman Smith. The clerk will report the
2952 amendment.

2953 Ms. Kish. Amendment to H.R. 1932 offered by Ms.
2954 Chu of California.

2955 Page 14, strike lines 1 through 7, and insert
2956 the following: Release from detention of certain
2957 aliens. Aliens' credible fear of persecution. An
2958 alien who is found to have a credible or reasonable
2959 fear of persecution but is not released on parole by
2960 the Secretary of Homeland Security may request an
2961 initial custody determination or redetermination
2962 before an immigration judge and shall be released from
2963 detention unless the Secretary --

2964 Chairman Smith. Without objection, the
2965 amendment will be considered as read.

2966 [The information follows:]

2967

2968 And the gentlewoman is recognized to explain her
2969 amendment.

2970 Ms. Chu. Mr. Chair, my amendment builds upon
2971 Mr. Conyers' amendment. It strikes provisions from
2972 2(b)(2) in the bill and replaces it with a provision
2973 that provides more due process, allowing a bond
2974 hearing, as should be a person's right under the
2975 Constitution.

2976 Of course, what we have been discussing is that
2977 this bill substantially changes current law by
2978 expressly authorizing detention, without limitation,
2979 and to read from 2(b)(2)(e), it says, "Notwithstanding
2980 any other provision of this section, an alien may be
2981 detained under this section, without limitation, until
2982 the alien is subject to a final order of removal."

2983 Now, some of my colleagues on the other side
2984 argue that nearly all of these immigrants pose a
2985 danger to society. But for many, this is not the
2986 case.

2987 For instance, let's take Ms. G.Z., who spent 17-
2988 and-half months in detention, pursuing her asylum
2989 claim before she eventually accepted deportation
2990 rather than continuing to suffer the physical
2991 hardships of prison. Ms. G.Z. was a 19-year-old from
2992 Colombia who was abducted twice by members of the

2993 Revolutionary Armed Forces of Colombia, a leftist
2994 guerrilla insurgent group, as a result of her
2995 association with military officers and policemen.

2996 After a third kidnapping in 2006, the young
2997 woman fled to the United States in search of refuge.
2998 She arrived at Newark Liberty International Airport,
2999 where she was arrested and detained in New Jersey.

3000 Although the immigration judge found her
3001 testimony credible, the judge concluded that she did
3002 not meet the definition of a refugee.

3003 U.S. Immigration and Customs Enforcement ignored
3004 her requests for release on parole while her appeal
3005 was pending despite a diagnosis for anxiety and
3006 depression that was exasperated by her detention.

3007 In January 2008, after 17-and-half months in
3008 detention, she decided to accept deportation despite
3009 the fact that her fear of persecution was as strong as
3010 ever. And in fact, after her deportation, the U.S.
3011 Court of Appeals for the Third Circuit found that she
3012 had a well-founded fear of future persecution.

3013 Now under this bill, she would still be in jail
3014 today. The Government would have the ability to
3015 indefinitely hold refugees like her who don't pose a
3016 threat to our Nation without trial.

3017 Under this law, the authority would be able to

3018 keep legal residents detained for as long as they want
3019 without ever having to make a case for their detention
3020 before a judge.

3021 Now, I don't think somebody like Ms. G sounds
3022 like a dangerous criminal. Whether they are or not
3023 shouldn't be decided here by politicians hundreds of
3024 miles away without the facts of the case. And we
3025 shouldn't be making that choice for every legal
3026 permanent resident or refugee that comes for years to
3027 come. No, that decision should be made by a judge on
3028 a case-by-case basis. But under this bill, they
3029 wouldn't have that right.

3030 I yield back.

3031 Chairman Smith. Thank you, Ms. Chu.

3032 I recognize myself in opposition.

3033 This amendment is very similar to the previous
3034 Conyers amendment, so my objections are going to sound
3035 very familiar.

3036 The United States has a long history of
3037 providing safe haven for aliens fleeing from
3038 persecution in their home countries. However, this
3039 historical generosity has also created an incentive
3040 for unscrupulous illegal immigrants to falsely claim
3041 persecution and make fraudulent asylum claims in order
3042 to remain in the United States.

3043 By the mid-1990s, tens of thousands of aliens
3044 were arriving at U.S. airports each year without valid
3045 documents, often making meritless asylum claims
3046 knowing that they would be replaced released into the
3047 community pending asylum hearings before immigration
3048 judges because of a lack of detention space. Few were
3049 ever heard from again.

3050 In response, Congress enacted a provision
3051 contained in the Illegal Immigration Reform and
3052 Immigrant Responsibility Act of 1996 to create the
3053 mechanism of expedited removal.

3054 Under expedited removal, a Department of
3055 Homeland Security officer at an airport can
3056 immediately return an alien lacking proper documents
3057 to his or her country of origin unless the alien can
3058 establish a credible fear of persecution. If arriving
3059 aliens are not found to have a credible fear, they are
3060 subject to mandatory detention. If credible fear is
3061 shown, then the alien will be able to make their case
3062 before an immigration judge.

3063 Unfortunately, the grant rate of credible fear
3064 determinations has become so high -- 80 percent in
3065 2009 -- that the risk that aliens seek to make
3066 fraudulent asylum claims at ports of entry remains
3067 substantial. The detention of aliens who have

3068 received credible fear determinations has helped deter
3069 fraud. This bill thus requires the continued
3070 detention of arriving aliens until their asylum claims
3071 are approved.

3072 The lesson from the past is clear: Non-detained
3073 asylum seekers who are later denied asylum simply
3074 abscond. The Inspector General of the Department of
3075 Justice issued a report that looked at the INS's
3076 success in removing non-detained asylum seekers who
3077 were denied. The INS removed only 3 percent of these
3078 non-detained aliens. Of course, most of the other 97
3079 percent were illegal immigrants who simply disappeared
3080 into our communities.

3081 The release of illegal aliens making asylum
3082 claims also threatens the safety of our citizens. The
3083 Department of Justice's Inspector General has
3084 identified a number of terrorist aliens who file
3085 frivolous asylum applications were released pending
3086 their hearings and used their freedom to commit or
3087 attempt to commit terrorist acts.

3088 These examples that I am going to give that I
3089 mentioned a while ago bear repetition. For instance,
3090 in 1993, Mir Aimal Kansi murdered two CIA employees at
3091 CIA headquarters, and Ramzi Yousef masterminded the
3092 first World Trade Center attack while free after

3093 applying for asylum. Another individual was convicted
3094 of plotting to bomb a subway station in New York City
3095 while he was free after applying for asylum.

3096 The Inspector General expressed a concern that
3097 the Immigration Service, quote, "does not actively
3098 pursue denied asylum seekers, and because that group
3099 may include potential terrorists, it would be
3100 imprudent to give them so little attention."

3101 The goal of this amendment is to end mandatory
3102 detention for arriving illegal immigrants often making
3103 baseless asylum claims.

3104 So I urge my colleagues to oppose it.

3105 The gentlewoman from California is recognized.

3106 Ms. Lofgren. Thank you, Mr. Chairman. I move
3107 to strike the last word.

3108 Chairman Smith. The gentlewoman is recognized
3109 for 5 minutes.

3110 Ms. Lofgren. At least we are now having a
3111 discussion of what this bill does, which is to lock up
3112 without limitation people who have come seeking
3113 freedom in the United States.

3114 I want to focus on the second portion of Ms.
3115 Chu's amendment, which is aliens lawfully admitted for
3116 permanent residence.

3117 Because of our increased scrutiny at border

3118 entries and our ability to computerize data, there are
3119 a lot of people who are legal permanent residents, and
3120 the other side of the aisle is always saying how they
3121 are for legal residents doing it the right way, who
3122 are caught up in very unfortunate circumstances.

3123 One of the problems that we had in the '96 act
3124 was to allow bars for criminal offenses that are
3125 extremely old. And so you have circumstances where
3126 you have a legal permanent resident of the United
3127 States who has resided in the country for 20, 30, 40
3128 years; owns a home; is married to an American; has
3129 kids and grandkids; owns a business. But when they
3130 were 20, they did something wrong. They have been
3131 clean ever since, but when they go out to visit a
3132 family member and come back in, they are caught by
3133 their 20-year-old past.

3134 And without Ms. Chu's amendment, that person who
3135 has been caught with that kind of situation is going
3136 to rot in prison for a very long time.

3137 Ms. Chu does not substitute her judgment for
3138 judges'. What she is saying is, trust the process,
3139 have a review, and look at that case and see whether
3140 we should spend \$300,000 or \$400,000 keeping that
3141 lawful permanent resident locked up in jail, or
3142 whether we should have a judge take a look at the

3143 circumstances and make a determination that that
3144 person is not a flight risk and that it makes sense
3145 for the country to allow him not to be incarcerated.

3146 This is not about terrorists. It is not about
3147 criminals. It is about rational application of the
3148 law on a case-by-case basis.

3149 I find it distressing, extremely distressing,
3150 that the majority is so resistant to having the rule
3151 of law apply in these cases. It dismisses the
3152 Constitution so cavalierly for a group that started
3153 this Congress by reading the Constitution aloud, to
3154 simply ignore the Due Process Clause in the
3155 Constitution that applies to every person -- not just
3156 American citizens, every person who is in the U.S. is
3157 entitled to due process of law.

3158 Let me just give you -- you know sometimes it is
3159 easier to talk about non-immigration cases when you
3160 make this point. Let's talk about property rights.
3161 You wouldn't say, I don't think, that the Federal
3162 Government could come and seize the home of a legal
3163 permanent resident of the United States and just take
3164 their house without judicial review. I don't think
3165 that you would say that that would be right. I think
3166 you would say no, the Due Process Clause requires that
3167 you cannot take property without due process of law.

3168 What if that was a student visa holder who had
3169 that home? Could the Federal Government just come and
3170 rip them off, take their house, and never have a
3171 review of that? I don't think you would say that that
3172 is the case, because the Due Process Clause applies to
3173 everybody who is in the United States, everybody who
3174 is here lawfully, who is here unlawfully.

3175 Due process is the fundamental rule of law that
3176 keeps our society from being ruled by an overzealous
3177 Federal Government. For a group that has constantly
3178 expressed suspicion about the Government to now say
3179 that when it comes to immigration law, the Federal
3180 Government can run amok and never have a review by a
3181 court, never be bound by due process, is stunning. It
3182 is absolutely stunning to me. It is wrong. It is
3183 distressing.

3184 And while Ms. Chu's amendment would not solve
3185 all of the problems with this bill, it does certainly
3186 make improvements. And I highly recommend that it be
3187 adopted.

3188 And I would yield to the gentlelady from Texas.
3189 I yield back the balance of my time.

3190 Chairman Smith. Thank you, Ms. Lofgren.

3191 The gentlewoman from Texas, Ms. Jackson Lee, is
3192 recognized.

3193 Ms. Jackson Lee. I thank you, and I thank the
3194 gentlelady from California, Ms. Chu, for this very
3195 thoughtful amendment. And I thank my colleague, Ms.
3196 Lofgren, for laying out a very lucid statement.

3197 And, Mr. Conyers, let me suggest that I wanted
3198 to rise in support of yours, because you made a very
3199 valid point. It is a reasoned way to respond to what
3200 is an impossible bill to implement.

3201 Frankly, we know that we could possibly use this
3202 bill to detain 12 million individuals, and where will
3203 we house them? And the fear that I have is that those
3204 that are definitively here to do us harm, absolutely
3205 no question, moving in and out of various terrorist
3206 cells or other ways of thwarting law enforcement, we
3207 will have no place to put them. We will have no way
3208 to discern who they are because we will be putting
3209 individuals in detention that have a direct fear of
3210 persecution wherever they might be directed to go.

3211 Let me just use as an example, and again the
3212 overlapping jurisdictions of Homeland Security, I know
3213 when we sit in that meeting, we talk about how do we
3214 get the persons that are here to do us harm.

3215 And I just want to finish the story of Eddie. I
3216 told you he was from China. And he did make a mistake
3217 early in life, but when he got out -- while he was

3218 incarcerated, he learned English. He got his GED, an
3219 associate degree. And he began to talk against
3220 violence. He was granted parole and released from
3221 prison. But a single conviction from 2 decades ago
3222 made him deportable from the U.S., so ICE detained him
3223 immediately.

3224 He spent 2 years in immigration detention and
3225 was released simply because they could not get the
3226 travel documents to remove him to China, where he
3227 might have experienced persecution only because he had
3228 not been there, he had no experience living there.

3229 But let me tell you about Eddie. After he was
3230 released, he continued his violence prevention work
3231 with immigrant and youth communities. He currently
3232 works as a project manager for the Community Youth
3233 Center of San Francisco. He is a mayor appointee of
3234 the San Francisco Reentry Council, serves on the board
3235 of directors for San Francisco's Neighborhood Vision
3236 Project, is a national advisory board member of the
3237 Asian American Law Journal, cochairs the Asian Prison
3238 Support Committee based in Oakland.

3239 Eddie also appealed his removal order, and the
3240 U.S. Court of Appeals of the Ninth Circuit recently
3241 ruled that the Board of Immigration appeals erred when
3242 it denied him relief without considering his value and

3243 service to the community.

3244 But Ms. Chu's amendment allows those to have
3245 some intervening relief while they are being held and
3246 they have a definitive and reasonable fear of
3247 persecution. And I believe that that is an important
3248 aspect in her section 1.

3249 Why would we not want to, again, address this
3250 bill in a way that is balanced?

3251 And let me say, Mr. Chairman, to my colleague,
3252 she has direct language here that says unless the
3253 Secretary demonstrates that the alien poses a risk to
3254 public safety or is a flight risk. Those are easy to
3255 assert, and that means that all of those with even a
3256 specter of dangerousness could be held.

3257 And so I am wondering why we don't have the
3258 opportunity to support them, and why we can't
3259 encourage you to support an amendment that I think on
3260 its four corners is fair.

3261 I ask them to support the Chu amendment.

3262 I yield back.

3263 Mr. Gallegly. Will the gentlelady yield?

3264 Ms. Jackson Lee. Yes, I will.

3265 Mr. Gallegly. I just wanted to clarify for the
3266 record, is this the gentleman, your example, the
3267 gentleman you referred to as Eddie, is he the one that

3268 was convicted of armed robbery --

3269 Ms. Jackson Lee. As a 16-year-old, that is
3270 correct.

3271 Mr. Gallegly. Armed robbery and kidnapping?

3272 Ms. Jackson Lee. As a 16-year-old, you are
3273 absolutely right. I made that point. I said it
3274 earlier; you might not have heard me. But I also gave
3275 the record thereafter. Thank you.

3276 Chairman Smith. Okay, the gentlewoman yields
3277 back her time.

3278 The question is on the amendment.

3279 All in favor, say aye.

3280 [A chorus of ayes.]

3281 Chairman Smith. All opposed, nay.

3282 [A chorus of nays.]

3283 Chairman Smith. The nays barely have it.

3284 The amendment --

3285 Ms. Chu. Mr. Chairman, I ask for a recorded
3286 vote.

3287 Chairman Smith. A roll call has been requested.

3288 The clerk will call the roll.

3289 Ms. Kish. Mr. Smith?

3290 Chairman Smith. No.

3291 Ms. Kish. Mr. Smith votes no.

3292 Mr. Sensenbrenner?

3293 [No response.]
3294 Ms. Kish. Mr. Coble?
3295 [No response.]
3296 Ms. Kish. Mr. Gallegly?
3297 Mr. Gallegly. No.
3298 Ms. Kish. Mr. Gallegly votes no.
3299 Mr. Goodlatte?
3300 [No response.]
3301 Ms. Kish. Mr. Lungren?
3302 Mr. Lungren. No.
3303 Ms. Kish. Mr. Lungren votes no.
3304 Mr. Chabot?
3305 Mr. Chabot. No.
3306 Ms. Kish. Mr. Chabot votes no.
3307 Mr. Issa?
3308 [No response.]
3309 Ms. Kish. Mr. Pence?
3310 [No response.]
3311 Ms. Kish. Mr. Forbes?
3312 [No response.]
3313 Ms. Kish. Mr. King?
3314 [No response.]
3315 Ms. Kish. Mr. Franks?
3316 [No response.]
3317 Ms. Kish. Mr. Gohmert?

3318 [No response.]
3319 Ms. Kish. Mr. Jordan?
3320 Mr. Jordan. No.
3321 Ms. Kish. Mr. Jordan votes no.
3322 Mr. Poe?
3323 [No response.]
3324 Ms. Kish. Mr. Chaffetz?
3325 Mr. Chaffetz. No.
3326 Ms. Kish. Mr. Chaffetz votes no.
3327 Mr. Griffin?
3328 Mr. Griffin. No.
3329 Ms. Kish. Mr. Griffin votes no.
3330 Mr. Marino?
3331 Mr. Marino. No.
3332 Ms. Kish. Mr. Marino votes no.
3333 Mr. Gowdy?
3334 Mr. Gowdy. No.
3335 Ms. Kish. Mr. Gowdy votes no.
3336 Mr. Ross?
3337 Mr. Ross. No.
3338 Ms. Kish. Mr. Ross votes no.
3339 Mrs. Adams?
3340 [No response.]
3341 Ms. Kish. Mr. Quayle?
3342 Mr. Quayle. No.

3343 Ms. Kish. Mr. Quayle votes no.
3344 Mr. Conyers?
3345 Mr. Conyers. Aye.
3346 Ms. Kish. Mr. Conyers votes aye.
3347 Mr. Berman?
3348 Mr. Berman. Aye.
3349 Ms. Kish. Mr. Berman votes aye.
3350 Mr. Nadler?
3351 [No response.]
3352 Ms. Kish. Mr. Scott?
3353 Mr. Scott. Aye.
3354 Ms. Kish. Mr. Scott votes aye.
3355 Mr. Watt?
3356 Mr. Watt. Aye.
3357 Ms. Kish. Mr. Watt votes aye.
3358 Ms. Lofgren?
3359 Ms. Lofgren. Aye.
3360 Ms. Kish. Ms. Lofgren votes aye.
3361 Ms. Jackson Lee?
3362 Ms. Jackson Lee. Aye.
3363 Ms. Kish. Ms. Jackson Lee votes aye.
3364 Ms. Waters?
3365 [No response.]
3366 Ms. Kish. Mr. Cohen?
3367 Mr. Cohen. Aye.

3368 Ms. Kish. Mr. Cohen votes aye.
3369 Mr. Johnson?
3370 Mr. Johnson. Aye.
3371 Ms. Kish. Mr. Johnson votes aye.
3372 Mr. Pierluisi?
3373 Mr. Pierluisi. Aye.
3374 Ms. Kish. Mr. Pierluisi votes aye.
3375 Mr. Quigley?
3376 Mr. Quigley. Aye.
3377 Ms. Kish. Mr. Quigley votes aye.
3378 Ms. Chu?
3379 Ms. Chu. Aye.
3380 Ms. Kish. Ms. Chu votes aye.
3381 Mr. Deutch?
3382 Mr. Deutch. Aye.
3383 Ms. Kish. Mr. Deutch votes aye.
3384 Ms. Sanchez?
3385 Ms. Sanchez. Aye.
3386 Ms. Kish. Ms. Sanchez votes aye.
3387 Chairman Smith. Are there other members who
3388 wish to be recorded?
3389 The gentleman from Virginia, Mr. Forbes?
3390 Mr. Forbes. No.
3391 Ms. Kish. Mr. Forbes votes no.
3392 Chairman Smith. The gentleman from North

3393 Carolina?

3394 Mr. Coble. No.

3395 Ms. Kish. Mr. Coble votes no.

3396 Chairman Smith. The gentleman from Virginia,

3397 Mr. Goodlatte?

3398 Mr. Goodlatte. No.

3399 Ms. Kish. Mr. Goodlatte votes no.

3400 Chairman Smith. The gentleman from Iowa?

3401 Mr. King. No.

3402 Ms. Kish. Mr. King votes no.

3403 Chairman Smith. The gentleman from Arizona?

3404 Mr. Franks. No.

3405 Ms. Kish. Mr. Franks votes no.

3406 Chairman Smith. Okay.

3407 The clerk will report.

3408 Ms. Kish. Mr. Chairman, 13 members voted aye;

3409 16 members voted nay.

3410 Chairman Smith. The majority having voted

3411 against the amendment, the amendment is not agreed to.

3412 Are there other amendments?

3413 Ms. Jackson Lee. I have an amendment at the

3414 desk.

3415 Chairman Smith. Okay, the clerk will report the

3416 amendment of the gentlewoman from Texas.

3417 Ms. Jackson Lee. Amendment No. 16.

3418 Chairman Smith. Amendment No. 16.

3419 Ms. Kish. Amendment to H.R. 1932 offered by Ms.

3420 Jackson Lee of Texas. Beginning on page 15, line 15,

3421 strike paragraph 5 and redesignate succeeding

3422 paragraphs --

3423 Chairman Smith. Without objection, the

3424 amendment will be considered as read.

3425 [The information follows:]

3426

3427 Chairman Smith. The gentlewoman is recognized
3428 to explain her amendment.

3429 Ms. Jackson Lee. Thank you very much.

3430 This amendment again tries to track what I think
3431 is a fatal flaw in the bill. I know my colleagues
3432 want to take their chances with the newly defined
3433 Supreme Court.

3434 This amendment strikes the subsection of the
3435 bill that authorizes the long mandatory detention of
3436 criminal aliens without opportunity for custody
3437 review. The bill pretends to be about community
3438 safety and dangerous aliens, but section 2(b) has
3439 nothing to do with either.

3440 In the guise of protecting this country from
3441 those who will do us harm, section 2(B)(5) and 2(b)(6)
3442 would mandate the detention of permanent residents who
3443 were long-ago released from criminal custody and have
3444 been leading productive lives in the community.

3445 My friend from California wanted to make the
3446 point that Eddie had, as a prior life, had robbed and
3447 had a kidnapping. I'm sorry he did that at 16. The
3448 suggestion is that he was hanging around with the
3449 wrong crowd. His immigrant parents were working as
3450 hard as they could to make a living for them, living
3451 in a one-bedroom apartment or maybe a one-room

3452 apartment. And he admits that he made mistakes. But
3453 if we trust the judgment of our own penal system,
3454 Eddie was released, and he had reformed himself in the
3455 prison system. And it is well-noted by his bio
3456 thereafter that Eddie became a contributing member of
3457 the society of which we can be very be very proud, and
3458 continues to still do so, and brings a life experience
3459 that is valuable.

3460 Under this legislation without my amendment, it
3461 means that he would continue to linger, and linger,
3462 and linger. He would linger even though they could
3463 legitimately not get the travel documents to send him
3464 back to China. It would apply even if the person has
3465 a strong chance of avoiding deportation even if they
3466 pose no danger whatsoever. In his appeal, he was
3467 vindicated by the Ninth Circuit that said that his
3468 detention was in error.

3469 2(b)(5) makes us less safe. Ironically, these
3470 provisions make us less safe by prohibiting bond
3471 hearings for asylum-seekers and lawful permanent
3472 residents. The bill wastes limited bed space and
3473 makes it harder for ICE to prioritize the detention
3474 and removal of persons who really are dangerous.

3475 It ties ICE hands by mandating that ICE detain
3476 persons who are not dangerous in any way. Detaining a

3477 person who poses neither a danger to the community nor
3478 risk of flight is extremely costly, and we already
3479 spend \$2 billion annually on immigration detention.
3480 It cost \$122 per day, \$45,000 per year, to keep a
3481 single person in immigration custody.

3482 My colleague, Congresswoman Lofgren, and I
3483 worked on families and children, and we hold the
3484 Administration and the agencies, and whether you are
3485 considering this, that would be added expense, because
3486 we don't expect the children that may be in with the
3487 family members to be held in these conditions, or
3488 women, or pregnant women, or families that need
3489 housing where they can be together, when you detain
3490 the whole family. If the family has a 5-year-old, an
3491 infant, one on the way, all of them are going to be in
3492 detention with the family members. And they may in
3493 fact be nonstatus.

3494 So I am baffled as how we can handle this. I am
3495 absolutely baffled as to how we would work to
3496 maintaining all of us.

3497 My good friend from Georgia made an eloquent
3498 point before. Boy, this is a homerun for the industry
3499 of private prisons. This is the Republican job
3500 creation bill that is going to help everybody get a
3501 job holding folk that have already redeemed their

3502 lives, or could be in a process that would be
3503 acceptable.

3504 Mr. Chairman, this is not humorous, and I
3505 respect the intent and the true commitment and
3506 sincerity that might have generated this bill. But I
3507 will tell you, it is a nightmare. And I am just
3508 asking my colleagues to consider that.

3509 And I'd be happy to yield to the gentlelady.

3510 Ms. Lofgren. I thank the gentlelady for
3511 yielding.

3512 And I think it sometimes helps to have actual
3513 cases that focus our attention on the need for due
3514 process, so I would like to talk about the case of
3515 Warren Joseph who spent more than 3 years in prison
3516 before eventually winning his immigration case, and he
3517 never had a hearing to determine whether his detention
3518 was necessary.

3519 Mr. Joseph is a lawful permanent resident of the
3520 United States and a decorated veteran of the first
3521 Gulf War. He moved to United States from Trinidad
3522 nearly 22 years ago, has five U.S.-citizen children, a
3523 U.S.-citizen mother, and a U.S.-citizen sister.

3524 A few months after coming to United States when
3525 he was 21, Warren enlisted in the United States Army.
3526 He served in combat positions in the Persian Gulf, was

3527 injured in the course of duty, received numerous
3528 awards and commendations recognizing his valiant
3529 service in that war, including returning to battle
3530 after being injured and successfully rescuing fellow
3531 soldiers.

3532 Like many Gulf War veterans, indeed veterans of
3533 many wars, he returned to the United States with what
3534 was later diagnosed as post-traumatic stress disorder.
3535 His sister testified that she was shocked to see how
3536 much he had changed. He was anxious. He had
3537 recurring nightmares about killing people. He would
3538 wake up in a cold sweat. He became withdrawn. He
3539 thought about suicide.

3540 In 2003, he drank rust remover and had to be
3541 hospitalized. In 2001, Warren unlawfully purchased a
3542 handgun to sell to individuals to whom he owed money.
3543 He fully cooperated with an investigation by the
3544 Bureau of Alcohol, Tobacco and Firearms, and his
3545 actions were deemed not sufficiently serious to
3546 warrant incarceration.

3547 Two years later, however, suffering from partial
3548 paralysis and debilitating depression, he violated his
3549 probation. And here's how we violated it: He
3550 violated his probation because he moved in with his
3551 mother and he didn't tell his probation officer that

3552 he moved in with his mother. So he served 6 months
3553 for that probation violation.

3554 Upon his release in 2004, he was placed in
3555 removal proceedings and subjected to mandatory
3556 immigration detention. He remained in immigration
3557 prison for more than 3 years while he fought his
3558 deportation. During his entire period of
3559 incarceration, he was never granted a hearing to
3560 determine whether his detention was justified. And
3561 actually, after the U.S. Court of Appeals for the
3562 Third Circuit found he was entitled to apply for
3563 relief from removal and remanded the case back to
3564 immigration court, the Federal Government continued to
3565 subject him to mandatory detention, because they were
3566 appealing that.

3567 He was not released until he finally prevailed
3568 on his application for release before an immigration
3569 judge, which conclusively resolved his deportation
3570 case in his favor.

3571 Now what he said was, I joined the Army because
3572 I love the United States. I'm very disappointed that
3573 I have been treated this way, but I still love this
3574 country.

3575 We should have review on a case-by-case basis to
3576 make sure that wrong things to veterans suffering from

3577 PTSD are not caught up in this rush to mandatorily
3578 incarcerate on an indefinite basis people who have
3579 done, in some cases, very minor matters.

3580 And I thank the gentlelady for yielding.

3581 Chairman Smith. Thank you, Ms. Lofgren.

3582 Before I recognize the gentleman from South
3583 Carolina, let me make a couple of announcements.

3584 It is probably evident to members already that I
3585 expect this markup to continue to proceed until 2
3586 o'clock when we have votes, and I regret the
3587 individuals will be cramped for lunch, but I would
3588 like to get through this agenda.

3589 If we do not finish all these bills today by 2
3590 o'clock, we will resume the markup at 11 o'clock
3591 tomorrow morning.

3592 One other announcement is a little bit of a
3593 change in the order of these bills. After this bill
3594 is complete, we will go to the Administrative
3595 Conference bill, H.R. 2480; then H.R. 1022, the
3596 Wireless Tax Fairness Act; and then end up with H.R.
3597 704, the bill dealing with diversity with the visa
3598 lottery program. The reason for that is several
3599 individuals who have an interest in that bill are not
3600 going to be here, and then will return in time for
3601 consideration of that bill.

3602 The gentleman from South Carolina is recognized.

3603 Mr. Gowdy. I think the chairman.

3604 I oppose this amendment, Chairman Smith. The
3605 amendment would take criminal aliens out of ICE
3606 detention and put them right back in the neighborhoods
3607 where our constituents live.

3608 Mr. Chairman, I hasten to add, I could care less
3609 about the private prison industry. What I do care
3610 about is the fundamental obligation of Government,
3611 which is to provide law and order and public safety
3612 for its citizens.

3613 And with this amendment, two effects are bound
3614 to occur. Firstly, many of these criminal aliens will
3615 become recidivists and commit new crimes against our
3616 fellow citizens. This is the clear lesson of the
3617 past. When criminal aliens are released from
3618 detention, more than a third go on to commit
3619 additional crimes. Secondly, many of these criminal
3620 aliens will simply abscond and never show up for their
3621 removal proceedings. So, even after they are ordered
3622 deported, they will continue to menace society.

3623 The Department of Justice Office of Inspector
3624 General found that the INS was only able to remove 13
3625 percent of non-detained aliens with final orders of
3626 removal, and only 6 percent of non-detained aliens

3627 from state sponsors of terrorism. The Keep Our
3628 Communities Safe Act undoes the damage that liberal
3629 activist, presumptively reversible courts, such as the
3630 Ninth Circuit Court of Appeals, have done to laws we
3631 passed to protect our communities from criminal
3632 aliens.

3633 The Illegal Immigration Reform and Immigrant
3634 Responsibility Act of 1996 wisely provided for the
3635 mandatory detention of criminal aliens in removal
3636 proceedings for the two reasons I just stated.
3637 Unfortunately, the Ninth Circuit Court of Appeals has
3638 twisted the language of the 1996 bill in order to
3639 undermine mandatory detention.

3640 The Ninth Circuit wants our constituents to bear
3641 the risks that criminal aliens won't attack again,
3642 that they won't become fugitives from justice. This
3643 is not a risk that innocent American citizens should
3644 have to take.

3645 I should point out that the bill continues to
3646 allow noncriminal immigrants in removal proceedings to
3647 seek release from custody on bond from an immigration
3648 judge.

3649 On another front, activist courts have tried to
3650 get around the mandatory detention of criminal aliens
3651 by the artifice and stratagem of ruling that if a jail

3652 releases a criminal immigrant after they have served
3653 their sentence and there is a delay before DHS picks
3654 them up, the alien is suddenly no longer subject to
3655 mandatory detention.

3656 The Keep Our Communities Safe Act dismisses this
3657 outrageous move by courts and provides that a criminal
3658 immigrant is subject to mandatory detention at any
3659 time after the immigrant is released from jail. This
3660 amendment would put back in place the Ninth Circuit's
3661 misreading of our laws. Therefore, I urge my
3662 colleagues to oppose this --

3663 Ms. Jackson Lee. Will the gentleman yield?

3664 Will the gentleman yield?

3665 Mr. Gowdy. Certainly.

3666 Ms. Jackson Lee. I take the gentleman at his
3667 word that he is not in the business of promoting
3668 private prisons. By the nature of this bill, that
3669 will happen.

3670 But what I would suggest to you is, we don't
3671 have a disagreement about retaining individuals who
3672 would do us harm. We don't want to tie the hands of
3673 any entity that is responsible for that. What we are
3674 attempting to do is to recognize the extraordinary
3675 circumstances that require a custody review.

3676 And as much as my friend would like to point --

3677 I think my college in California, Ms. Lofgren, gave an
3678 example of someone who deserved mercy. Much as you
3679 would like to point to what happens when someone is
3680 16-years-old, you can't deny that Eddie is now here.
3681 He is a citizen, or he has status. And the fact is
3682 that he committed it as a youthful, unfortunate
3683 offender. And you wonder whether or not his
3684 indefinite detention would help secure the Nation.

3685 I ask my colleagues to support my amendment,
3686 just to say, does it help to keep someone like Eddie
3687 in indefinitely?

3688 And I think the gentleman for yielding.

3689 Mr. Gowdy. Mr. Chairman, I would conclude by
3690 saying hard facts make for bad law. And the
3691 overarching responsibility of government is to provide
3692 for the safety of its citizens.

3693 With that, I would yield back to the chairman.

3694 Chairman Smith. Okay. Thank you, Mr. Gowdy.

3695 The question is on the amendment.

3696 All in favor say aye.

3697 [A chorus of ayes.]

3698 Chairman Smith. Opposed, no.

3699 [A chorus of nays.]

3700 Chairman Smith. The noes have it.

3701 Ms. Jackson Lee. Roll call.

3702 Chairman Smith. A roll call has been requested.
3703 The clerk will call the roll.
3704 Ms. Kish. Mr. Smith?
3705 Chairman Smith. No.
3706 Ms. Kish. Mr. Smith votes no.
3707 Mr. Sensenbrenner?
3708 [No response.]
3709 Ms. Kish. Mr. Coble?
3710 [No response.]
3711 Ms. Kish. Mr. Gallegly?
3712 Mr. Gallegly. No.
3713 Ms. Kish. Mr. Gallegly votes no.
3714 Mr. Goodlatte?
3715 [No response.]
3716 Ms. Kish. Mr. Lungren?
3717 Mr. Lungren. No.
3718 Ms. Kish. Mr. Lungren votes no.
3719 Mr. Chabot?
3720 Mr. Chabot. No.
3721 Ms. Kish. Mr. Chabot votes no.
3722 Mr. Issa?
3723 [No response.]
3724 Ms. Kish. Mr. Pence?
3725 [No response.]
3726 Ms. Kish. Mr. Forbes?

3727 [No response.]
3728 Ms. Kish. Mr. King?
3729 Mr. King. No.
3730 Ms. Kish. Mr. King votes no.
3731 Mr. Franks?
3732 Mr. Franks. No.
3733 Ms. Kish. Mr. Franks votes no.
3734 Mr. Gohmert?
3735 [No response.]
3736 Ms. Kish. Mr. Jordan?
3737 Mr. Jordan. No.
3738 Ms. Kish. Mr. Jordan votes no.
3739 Mr. Poe?
3740 [No response.]
3741 Ms. Kish. Mr. Chaffetz?
3742 Mr. Chaffetz. No.
3743 Ms. Kish. Mr. Chaffetz votes no.
3744 Mr. Griffin?
3745 Mr. Griffin. No.
3746 Ms. Kish. Mr. Griffin votes no.
3747 Mr. Marino?
3748 Mr. Marino. No.
3749 Ms. Kish. Mr. Marino votes no.
3750 Mr. Gowdy?
3751 Mr. Gowdy. No.

3752 Ms. Kish. Mr. Gowdy votes no.
3753 Mr. Ross?
3754 Mr. Ross. No.
3755 Ms. Kish. Mr. Ross votes no.
3756 Mrs. Adams?
3757 Mrs. Adams. No.
3758 Ms. Kish. Ms. Adams votes no.
3759 Mr. Quayle?
3760 Mr. Quayle. No.
3761 Ms. Kish. Mr. Quayle votes no.
3762 Mr. Conyers?
3763 Mr. Conyers. Aye.
3764 Ms. Kish. Mr. Conyers votes aye.
3765 Mr. Berman?
3766 Mr. Berman. Aye.
3767 Ms. Kish. Mr. Berman votes aye.
3768 Mr. Nadler?
3769 [No response.]
3770 Ms. Kish. Mr. Scott?
3771 Mr. Scott. Aye.
3772 Ms. Kish. Mr. Scott votes aye.
3773 Mr. Watt?
3774 Mr. Watt. Aye.
3775 Ms. Kish. Mr. Watt votes aye.
3776 Ms. Lofgren?

3777 Ms. Lofgren. Aye.
3778 Ms. Kish. Ms. Lofgren votes aye.
3779 Ms. Jackson Lee?
3780 Ms. Jackson Lee. Aye.
3781 Ms. Kish. Ms. Jackson Lee votes aye.
3782 Ms. Waters?
3783 Ms. Waters. Aye.
3784 Ms. Kish. Ms. Waters votes aye.
3785 Mr. Cohen?
3786 Mr. Cohen. Aye.
3787 Ms. Kish. Mr. Cohen votes aye.
3788 Mr. Johnson?
3789 Mr. Johnson. Aye.
3790 Ms. Kish. Mr. Johnson votes aye.
3791 Mr. Pierluisi?
3792 Mr. Pierluisi. Aye.
3793 Ms. Kish. Mr. Pierluisi votes aye.
3794 Mr. Quigley?
3795 Mr. Quigley. Aye.
3796 Ms. Kish. Mr. Quigley votes aye.
3797 Ms. Chu?
3798 Ms. Chu. Aye.
3799 Ms. Kish. Ms. Chu votes aye.
3800 Mr. Deutch?
3801 Mr. Deutch. Aye.

3802 Ms. Kish. Mr. Deutch votes aye.
3803 Ms. Sanchez?
3804 Ms. Sanchez. Aye.
3805 Ms. Kish. Ms. Sanchez votes aye.
3806 Chairman Smith. Are there other members who
3807 wish to cast their votes?
3808 The gentleman from Virginia?
3809 Mr. Forbes. No.
3810 Ms. Kish. Mr. Forbes votes no.
3811 Chairman Smith. The clerk will report.
3812 Ms. Kish. Mr. Chairman, 14 members voted aye;
3813 15 members voted nay.
3814 Chairman Smith. The majority having voted
3815 against the amendment, the amendment is not agreed to.
3816 I am aware of only one more amendment and that
3817 is the amendment of the gentlewoman from Texas, Ms.
3818 Jackson Lee, and she is recognized to offer that
3819 amendment.
3820 Ms. Jackson Lee. Thank you very much, Mr.
3821 Chairman.
3822 And the amendment is No. 17.
3823 Chairman Smith. The clerk will report amendment
3824 No. 17.
3825 Ms. Kish. Amendment to H.R. 1932 offered by Ms.
3826 Jackson Lee of Texas.

3827 Chairman Smith. Without objection, the
3828 amendment will be considered as read.
3829 [The information follows:]
3830

3831 Chairman Smith. And the gentlewoman is
3832 recognized to explain the amendment.

3833 Ms. Jackson Lee. Thank you very much, Mr.
3834 Chairman.

3835 I hope that this is a coming-together amendment.
3836 It is a sense of Congress. It is very simple. It
3837 states that it is the sense of Congress to uphold the
3838 Constitution and ensure that the rights it affords
3839 individuals in the United States are protected.

3840 My amendment reaffirms that statement, that the
3841 principle of due process extends to all persons in the
3842 United States, regardless of whether or not they are a
3843 citizen of this country. And we would hope that this
3844 would be reaffirmed, that we would make every effort
3845 that legislation that is passed does not undermine
3846 those provisions that we have accepted as
3847 constitutional law and premised on the Constitution.

3848 And I would hope that everyone on the dais today
3849 would recognize two points: One that all of us agree
3850 that we do not support the exporting -- when I say
3851 that, into our communities -- of dangerous criminals
3852 and others that would do us harm. The second, of
3853 course, in order that you might take it is your
3854 choice, is that we adhere to the constitutional
3855 premise and language of due process that is in the

3856 Constitution of the United States.

3857 I'd ask my colleagues to support this amendment.

3858 Chairman Smith. If the gentlewoman would yield?

3859 Ms. Jackson Lee. I yield to the gentleman.

3860 Chairman Smith. I think this is a good
3861 amendment. And I support it and recommend it to my
3862 colleagues.

3863 All those in favor of the amendment, say aye.

3864 [A chorus of ayes.]

3865 Chairman Smith. Opposed, nay.

3866 [No response.]

3867 Ms. Jackson Lee. In the spirit of
3868 bipartisanship, can we get a vote, Mr. Chairman?

3869 Chairman Smith. I think it would be a better
3870 spirit of bipartisanship if the gentlewoman accepted a
3871 voice vote.

3872 Ms. Jackson Lee. Are you telling me that, as
3873 they say, the light might come on? With that, I ask
3874 unanimous consent to withdraw the request for a voice
3875 vote. And thank you very much.

3876 You haven't ruled yet.

3877 Chairman Smith. The majority having voted in
3878 favor, the amendment is agreed to.

3879 Are there any other amendments?

3880 If not, a recording quorum being present

3881 reporting quorum, the question is on reporting the
3882 bill as amended favorably to the House.
3883 Those in favor, say aye.
3884 [A chorus of ayes.]
3885 Chairman Smith. Opposed, no.
3886 [A chorus of nays.]
3887 Chairman Smith. The ayes still have it, and the
3888 bill as amended is reported favorably.
3889 Without objection --
3890 Ms. Lofgren. A recorded vote, please, Mr.
3891 Chairman?
3892 Chairman Smith. A recorded vote has been
3893 requested, and we will have a recorded vote. And the
3894 clerk will call the roll.
3895 Ms. Kish. Mr. Smith?
3896 Chairman Smith. Aye.
3897 Ms. Kish. Mr. Smith votes aye.
3898 Mr. Sensenbrenner?
3899 [No response.]
3900 Ms. Kish. Mr. Coble?
3901 [No response.]
3902 Ms. Kish. Mr. Gallegly?
3903 Mr. Gallegly. Aye.
3904 Ms. Kish. Mr. Gallegly votes aye.
3905 Mr. Goodlatte?

3906 [No response.]
3907 Ms. Kish. Mr. Lungren?
3908 Mr. Lungren. Aye.
3909 Ms. Kish. Mr. Lungren votes aye.
3910 Mr. Chabot?
3911 Mr. Chabot. Aye.
3912 Ms. Kish. Mr. Chabot votes aye.
3913 Mr. Issa?
3914 [No response.]
3915 Ms. Kish. Mr. Pence?
3916 [No response.]
3917 Ms. Kish. Mr. Forbes?
3918 [No response.]
3919 Ms. Kish. Mr. King?
3920 Mr. King. Aye.
3921 Ms. Kish. Mr. King votes aye.
3922 Mr. Franks?
3923 Mr. Franks. Aye.
3924 Ms. Kish. Mr. Franks votes aye.
3925 Mr. Gohmert?
3926 [No response.]
3927 Ms. Kish. Mr. Jordan?
3928 Mr. Jordan. Yes.
3929 Ms. Kish. Mr. Jordan votes aye.
3930 Mr. Poe?

3931 [No response.]
3932 Ms. Kish. Mr. Chaffetz?
3933 Mr. Chaffetz. Aye.
3934 Ms. Kish. Mr. Chaffetz votes aye.
3935 Mr. Griffin?
3936 Mr. Griffin. Aye.
3937 Ms. Kish. Mr. Griffin votes aye.
3938 Mr. Marino?
3939 Mr. Marino. Aye.
3940 Ms. Kish. Mr. Marino votes aye.
3941 Mr. Gowdy?
3942 Mr. Gowdy. Aye.
3943 Ms. Kish. Mr. Gowdy votes aye.
3944 Mr. Ross?
3945 Mr. Ross. Aye.
3946 Ms. Kish. Mr. Ross votes aye.
3947 Mrs. Adams?
3948 Mrs. Adams. Aye.
3949 Ms. Kish. Ms. Adams votes aye.
3950 Mr. Quayle?
3951 Mr. Quayle. Aye.
3952 Ms. Kish. Mr. Quayle votes aye.
3953 Mr. Conyers?
3954 Mr. Conyers. No.
3955 [No response.]

3956 Ms. Kish. Mr. Berman?
3957 Mr. Berman. No.
3958 Ms. Kish. Mr. Berman votes no.
3959 Mr. Nadler?
3960 [No response.]
3961 Ms. Kish. Mr. Scott?
3962 Mr. Scott. No.
3963 Ms. Kish. Mr. Scott votes no.
3964 Mr. Watt?
3965 Mr. Watt. No.
3966 Ms. Kish. Mr. Watt votes no.
3967 Ms. Lofgren?
3968 Ms. Lofgren. No.
3969 Ms. Kish. Ms. Lofgren votes no.
3970 Ms. Jackson Lee?
3971 Ms. Jackson Lee. No.
3972 Ms. Kish. Ms. Jackson Lee votes no.
3973 Ms. Waters?
3974 Ms. Waters. No.
3975 Ms. Kish. Ms. Waters votes no.
3976 Mr. Cohen?
3977 Mr. Cohen. No.
3978 Ms. Kish. Mr. Cohen votes no.
3979 Mr. Johnson?
3980 Mr. Johnson. No.

3981 Ms. Kish. Mr. Johnson votes no.
3982 Mr. Pierluisi?
3983 Mr. Pierluisi. No.
3984 Ms. Kish. Mr. Pierluisi votes no.
3985 Mr. Quigley?
3986 Mr. Quigley. No.
3987 Ms. Kish. Mr. Quigley votes no.
3988 Ms. Chu?
3989 [No response.]
3990 Ms. Kish. Mr. Deutch?
3991 Mr. Deutch. No.
3992 Ms. Kish. Mr. Deutch votes no.
3993 Ms. Sanchez?
3994 Ms. Sanchez. No.
3995 Ms. Kish. Ms. Sanchez votes no.
3996 Chairman Smith. The gentleman from North
3997 Carolina?
3998 Mr. Coble. Aye.
3999 Ms. Kish. Mr. Coble votes aye.
4000 Chairman Smith. The gentleman from Virginia,
4001 Mr. Forbes?
4002 Mr. Forbes. Aye.
4003 Ms. Kish. Mr. Forbes votes aye.
4004 Chairman Smith. The gentleman from California,
4005 Mr. Issa?

4006 Mr. Issa. Yes.

4007 Ms. Kish. Mr. Issa votes aye.

4008 Ms. Chu?

4009 Ms. Chu. No.

4010 Ms. Kish. Ms. Chu votes no.

4011 Mr. Conyers. No.

4012 Ms. Kish. Mr. Conyers votes no.

4013 Chairman Smith. The clerk will report.

4014 Ms. Kish. Mr. Chairman, 17 members voted aye;

4015 14 members voted nay.

4016 Chairman Smith. The ayes have it, and the bill

4017 as amended is ordered reported favorably.

4018 Without objection, the bill will be reported as

4019 a single amendment in the nature of a substitute

4020 incorporating the amendment, and staff is authorized

4021 to make technical and conforming changes. Members

4022 will have 2 days to submit their views.

4023 We will now go to H.R. 2480, the Administrative

4024 Conference of the United States Reauthorization Act of

4025 2011.

4026 Pursuant to notice, I now call up H.R. 2480 for

4027 purposes of mark up. The clerk will report the bill.

4028 Ms. Kish. H.R. 2480 to amend title 5, United

4029 States Code, to authorize appropriations for the

4030 Administrative Conference of the United States for

4031 fiscal years 2012, 2013, and 2014, and for other
4032 purposes.

4033 In the House of Representatives, July 8, 2011,
4034 Mr. Smith of Texas for himself and Mr. Coble
4035 introduced the following bill, which was referred to
4036 the Committee on the Judiciary.

4037 Chairman Smith. Without objection, the bill
4038 will be considered as read.

4039 [The information follows:]

4040

4041 Chairman Smith. I will recognize the gentleman
4042 from Michigan, the ranking member, for an opening
4043 statement.

4044 Mr. Conyers. Thank you, Chairman Smith.

4045 Today we consider H.R. 2480, legislation
4046 reauthorizing the Administrative Conference of the
4047 United States.

4048 The conference makes recommendation to improve
4049 the efficiency and fairness of agency rulemaking and
4050 procedure that, in turn, saves many millions of
4051 taxpayer dollars. There are several critical reasons
4052 why the conference should be further reauthorized and
4053 well-funded, and I will put all of these in the
4054 record.

4055 To date, this committee has conducted eight
4056 hearings this Congress on various perceived
4057 shortcomings in our Nation's regulatory system with
4058 little persuasive effect sometimes. Unlike any other
4059 entity in Washington, however, the conference provides
4060 a truly independent, in my view, nonpartisan, and
4061 constructive environment where some of our leading
4062 policymakers, academics, and practitioners can share
4063 their expertise and experience in crafting
4064 recommendations.

4065 The conference has already begun to examine how

4066 the Congressional Review Act can be improved, an
4067 effort -- well, it has been sometimes pretty
4068 contentious.

4069 But finally, my concluding observation is that
4070 the conference is unique and, I think, irreplaceable.
4071 By reauthorizing the conference as we propose here, we
4072 are making an investment in our Nation's future.

4073 And I observe that the rare instances of
4074 unanimity between both Justice Scalia and Justice
4075 Breyer can occur on the Supreme Court, and I think the
4076 same model can happen here in the Judiciary Committee
4077 as well.

4078 And so I am pleased to make the opening comments
4079 about this measure of extending the conference, and I
4080 yield back the balance of my time.

4081 Chairman Smith. I thank gentleman from Michigan
4082 for his comments, and I would like to associate myself
4083 with him. And in the interest of time, I will ask
4084 unanimous consent that my opening statement be made a
4085 part of the record.

4086 [The information follows:]
4087

4088 Chairman Smith. I am aware of one amendment to
4089 this the bill, and the gentleman from Tennessee, Mr.
4090 Cohen, is recognized to offer his amendment.

4091 Mr. Cohen. Thank you, Mr. Chairman. I
4092 appreciate you working with me on the amendment.

4093 The amendment raises the annual authorization
4094 from \$2.75 million to \$2.9 million --

4095 Chairman Smith. The clerk will report the
4096 amendment.

4097 Ms. Kish. Amendment to H.R. 2480 offered by Mr.
4098 Cohen. Page 2, line --

4099 Chairman Smith. And without objection, the
4100 amendment will be considered as read.

4101 [The information follows:]

4102

4103 Chairman Smith. The gentleman is recognized.

4104 Mr. Cohen. Thank you, Mr. Chairman. Once
4105 again, I thank you for working with me on this
4106 amendment.

4107 This amendment would raise from \$2.75 million to
4108 \$2.9 million the annual appropriation for fiscal years
4109 2012 through 2014. The \$2.9 million figure represents
4110 a bipartisan compromise. The original amendment that
4111 I offered what have kept ACUS at its authorized level,
4112 which is \$3.2 million. I understand the reason for
4113 reducing the authorization level in the underlying
4114 bill was to address budgetary concerns, but those
4115 concerns can be addressed and would be addressed in
4116 the appropriations process, where appropriators rarely
4117 appropriate the full authorization amount anyway.

4118 I appreciate that we authorizing ACUS. That is
4119 a good start. The \$2.9 million should be sufficient
4120 to cover their annual fixed costs of \$2.4 million and
4121 allow some more money for ACUS to fund valuable
4122 research into the functioning of the administrative
4123 system.

4124 I only hope going forward appropriators
4125 understand how tight of a margin this authorization
4126 level provides. ACUS's work has generated tremendous
4127 cost-saving for the taxpayers, savings that far exceed

4128 its small budget.

4129 The \$100 million savings in alternative dispute
4130 resolution methods, which were recommended to avoid
4131 costly and time-consuming litigation, one of the worst
4132 things that we could ever have on the basis of my
4133 understanding of this committee, and several other
4134 ACUS recommendations to increase the efficiency of a
4135 range of other administrative procedures, including
4136 duplicative hearings and streaming appeals from agency
4137 action, resulted in savings of \$3.75 million.

4138 ACUS's recommendations on agencies work with
4139 nongovernmental organizations that have already issued
4140 standards in a particular area helped agencies to
4141 avoid developing regulations from scratch, and that
4142 estimate could potentially save as much as \$1 billion.

4143 In fact, ACUS could probably solve the budget
4144 crisis, the deficit crisis, and the debt ceiling, but
4145 not doing that, the \$2.9 million, and indeed even \$3.2
4146 million, is a small amount to pay for such great cost
4147 savings that come into the millions and almost
4148 billions of dollars.

4149 I thank Chairman Smith and subcommittee Chairman
4150 Coble for moving to reauthorize ACUS and for agreeing
4151 to this modest increase in the authorization level,
4152 which is an exception to the rule.

4153 I urge my colleagues to support this amendment.

4154 Thank you, and I yield back the remainder of my
4155 time.

4156 Chairman Smith. Thank you, Mr. Cohen.

4157 I recognize myself in support of the amendment.

4158 Without objection, my entire statement of
4159 support will be made a part of the record.

4160 [The information follows:]

4161

4162 Chairman Smith. I do think this is a good
4163 amendment. I appreciate the gentleman's offering it.
4164 It provided a good balance, and I recommend it to my
4165 colleagues as well.

4166 Are there other members who wish to be heard on
4167 this amendment?

4168 If not, the question is on the amendment.

4169 All in favor, say aye.

4170 [A chorus of ayes.]

4171 Chairman Smith. All opposed, nay.

4172 [No response.]

4173 Chairman Smith. In the opinion of the Chair,
4174 the ayes have it, and the amendment is agreed to.

4175 Are there any other amendments?

4176 If not, a reporting quorum being present, the
4177 question is on reporting the bill as amended favorably
4178 to the House.

4179 Those in favor say aye.

4180 [A chorus of ayes.]

4181 Chairman Smith. Opposed, no.

4182 [No response.]

4183 Chairman Smith. The ayes have it, and the bill
4184 as amended is reported favorably.

4185 Without objection, the bill will be reported as
4186 a single in the nature of a substitute incorporating

4187 the amendment. The staff is authorized to make
4188 technical and conforming changes. Members will have 2
4189 days to submit views.

4190 We will now go to H.R. 1002, the Wireless Tax
4191 Fairness Act of 2011.

4192 Pursuant to notice, I now call up H.R. 1002 for
4193 purposes of mark up.

4194 The clerk will report the bill.

4195 Ms. Kish. H.R. 1002, to restrict any State or
4196 local jurisdiction from imposing a new discriminatory
4197 tax --

4198 Chairman Smith. Without objection, the bill
4199 will be considered as read.

4200 [The information follows:]

4201

4202 Chairman Smith. And I will recognize myself and
4203 then the ranking member for opening statements.

4204 Almost all adult Americans now own a mobile
4205 telephone and subscribe to wireless telecommunications
4206 services. Mobile phones have become a critical
4207 communication tool for most social and business
4208 transactions. New smart phone technology even allows
4209 subscribers to stream movies and download music to
4210 their mobile phone.

4211 As wireless services have simplified American
4212 life, consumer cell phone bills have become
4213 increasingly complicated. Many State and local
4214 governments impose excessive fees, taxes, and other
4215 charges on wireless subscriptions that are not imposed
4216 on other goods and services.

4217 A recent study showed that between 2003 and
4218 2007, State and local taxes on wireless subscriptions
4219 increased four times faster than the sales tax rate on
4220 other goods and services.

4221 In my home State of Texas, the average combined
4222 State and local tax rate on wireless services is about
4223 4 percent higher than our sales tax.

4224 I am an original cosponsor of the Wireless Tax
4225 Fairness Act, and I would like to commend both Ms.
4226 Lofgren and Mr. Franks for their bipartisan effort to

4227 enact this legislation.

4228 This bill freezes State and local government
4229 taxes on wireless services for 5 years. The National
4230 Conference of State Legislators and the National
4231 League of Cities have admitted that States need to
4232 reform their wireless tax policies. This bill gives
4233 States the breathing room to do so and prevents new
4234 discriminatory taxes in the interim.

4235 State and local revenue should not be affected
4236 by this legislation, because its relief is prospective
4237 only. Under the bill, States are still free to raise
4238 taxes on wireless subscriptions as long as the tax
4239 hike is generally applicable to all goods and
4240 services.

4241 This legislation simply promotes tax fairness.
4242 It does not tell States what tax rate they must impose
4243 on wireless subscriptions. The wireless industry
4244 continues to deliver new benefits that enhance our
4245 social and business communications on almost a daily
4246 basis. Discriminatory State tax policies stifle that
4247 innovation.

4248 I encourage my colleagues to support this act,
4249 and I want to congratulate both Ms. Lofgren and Mr.
4250 Franks on coming together on a bill that I understand
4251 now actually has a majority of the Members of the

4252 House as cosponsors. It is a credit to them, and I
4253 expect to see this bill enacted into law.

4254 The gentleman from Michigan, the ranking member,
4255 is recognized for his opening statement.

4256 Mr. Conyers. Thank you, Chairman Smith.

4257 We have to consider and balance competing
4258 interests in legislation. And that is what I want to
4259 begin our discussion with of the Wireless Tax Fairness
4260 Act.

4261 On one hand, we should ensure that the States
4262 don't burden interstate commerce through their taxing
4263 authority. But on the other hand, we should ensure
4264 that the States maintain the authority to tax activity
4265 within their borders. So there are two concerns that
4266 I would like to discuss with you.

4267 I agree with the argument in support of this
4268 bill that increased taxes and fees on wireless
4269 services hurt consumers. Especially during these
4270 difficult financial times, every penny matters and
4271 every increased expenditure can have a negative impact
4272 on the choices consumers make, obviously.

4273 Another concern is the negative impact this
4274 measure would have on the tax revenues of States and
4275 municipalities. Like consumers, the local governments
4276 and the States are experiencing reduced revenues and

4277 increased costs as a direct result of a lingering,
4278 deep recession. And so States and municipalities have
4279 to balance their budgets to provide essential police
4280 and fire services, and we already are reading of
4281 police and fire departments in cities that are being
4282 reduced. Somewhere I read some are being eliminated
4283 completely.

4284 So during this climate, the question is how to
4285 keep the State and local governments afloat. Because
4286 of the reduced revenues, States do what they have to
4287 do, namely cut budgets, reduce funding even for
4288 critical services, including schools, law enforcement,
4289 and other important things. In conjunction with
4290 reducing the spending, they sometimes have to consider
4291 raising taxes and fees, such as those on wireless
4292 services, to help increase revenue.

4293 The current estimates, State and local
4294 governments rely on revenue from telecommunications to
4295 the tune of about \$20 billion every year. Now, the
4296 measure before us would prevent the States and local
4297 governments from raising taxes to increase revenue
4298 from this source. Is this wise?

4299 In essence, this legislation is picking one
4300 industry, eliminating one industry alone from revenue-
4301 raising consideration. Instead of limiting State or

4302 local governments' ability to provide its residents
4303 with services, we should consider how to help State
4304 and local governments during this economic climate.

4305 And so I am interested in the discussion of the
4306 proponents of this legislation that suggest this bill
4307 promotes a more effective tax policy. It is clear
4308 that the communications industry wants fair tax
4309 policies. We can understand that. But it is also
4310 equally clear that State and local governments need to
4311 reform their communications tax policies, and how do
4312 we do it?

4313 That is the challenge before us, and I look
4314 forward to the discussion on the measure.

4315 And I return any time that may be unused.

4316 Chairman Smith. Okay, thank you, Mr. Conyers.

4317 The gentleman from Arizona, the sponsor of the
4318 bill, is recognized.

4319 Mr. Franks?

4320 Mr. Franks. Thank you, Mr. Chairman.

4321 And, Mr. Chairman, we would like to thank you,
4322 sir, for scheduling this markup of H.R. 1002, the
4323 Wireless Tax Fairness Act of 2011.

4324 Congresswoman Lofgren and I re-introduced H.R.
4325 1002 with broad bipartisan support of 144 original
4326 cosponsors. That number now is 236.

4327 The access to wireless networks, Mr. Chairman,
4328 represents a key component of millions Americans'
4329 livelihoods, provides efficient communication
4330 capability -- whether phone, broadband, Internet, or
4331 otherwise -- necessary to run a successful small
4332 business. The exorbitant taxes on wireless customers
4333 are not only unfair, but they are counterintuitive,
4334 adding yet another costly impediment to the success of
4335 so many American businesses, which are struggling in
4336 the midst of a prolonged recession and an already
4337 heavy tax burden.

4338 These taxes also single out low-income and
4339 senior Americans who frequently rely on wireless
4340 service as their sole means of telephone and Internet
4341 access.

4342 The Wireless Tax Fairness Act provides a
4343 balanced approach that protects the revenue needs of
4344 States and localities while allowing for a 5-year
4345 hiatus to develop a rational tax regime that maintains
4346 the affordability of wireless services. The Wireless
4347 Tax Fairness Act is a constitutionally sound, pro-
4348 consumer bill.

4349 And I look forward to the committee marking up
4350 this important bill, so it can be considered by the
4351 full House, Mr. Chairman. And I thank you again, sir,

4352 for making this markup possible this morning.

4353 Chairman Smith. Thank you, Mr. Franks.

4354 The gentlewoman from California, Ms. Lofgren,
4355 the other sponsor of this bill, is recognized.

4356 Ms. Lofgren. Thank you, Mr. Chairman. And
4357 thank you for bringing this legislation before us now
4358 for a markup.

4359 It is very satisfying. I introduced this bill
4360 not just in this Congress, but in the 110th and the
4361 109th. And now with 236 cosponsors, it appears that
4362 we are going to be able to move forward. And I think
4363 that is important.

4364 I think almost everyone agrees that expanding
4365 broadband Internet access and adoption is very
4366 important to the economic future of the United States.
4367 As the FCC put it in the National Broadband Plan, the
4368 U.S. must lead the world in broadband innovation and
4369 investment, and take all appropriate steps to ensure
4370 Americans have access to modern, high-performance
4371 broadband and the benefits it enables.

4372 In the state of the Union address earlier this
4373 year, President Obama announced his call of extending
4374 high-speed wireless networks to cover 98 percent of
4375 Americans within 5 years.

4376 I introduced the Cell Tax Fairness Act because

4377 discriminatory taxes on wireless service are not
4378 consistent with this top national priority. Cell
4379 phone bills on average are taxed at a far higher rate
4380 than other goods and services. In many jurisdictions,
4381 the taxation of wireless approaches or even exceeds
4382 the rates of so-called sin taxes on goods like alcohol
4383 and tobacco. Many States, for example, have lower
4384 effective tax rates on beer than they do wireless
4385 service.

4386 These disproportionate taxes discourage
4387 investment and adoption of wireless services,
4388 including advanced wireless broadband.

4389 Before he became the President's chief
4390 economist, Austan Goolsbee published a peer-reviewed
4391 study finding that dead-weight losses -- or that is,
4392 the accumulated losses -- to society of up to \$5 for
4393 every \$1 in taxes on broadband service, including
4394 wireless. As has been mentioned, these taxes fall
4395 particularly hard on working and lower income
4396 Americans and also on minority Americans who are most
4397 likely to rely on their cell phone for all of their
4398 communications, including access to the Internet.

4399 This regressive tax burden is very troubling
4400 during this economic time. And I think it is one of
4401 the reasons why the Association of Hispanic State

4402 Legislators and the Association of Black State
4403 Legislators have come forward to support this bill.
4404 Now for 14 years before I was a member of
4405 Congress, I served on the board of supervisors for
4406 Santa Clara County. So I really understand the need
4407 for local governments to balance their budgets and
4408 raise revenues, and I know that times are tough. But
4409 this bill does not affect any existing taxes, only new
4410 and discriminatory taxes that would be put in place
4411 after enactment.

4412 Also, it would not prevent States and cities
4413 from raising taxes on cell phone services if those
4414 taxes were uniform and on other goods and services.
4415 So this only prevents the discrimination against a
4416 vital service that should grow.

4417 I also think that the ultimate goal here is
4418 modernization of State and local telecommunications
4419 taxes. Separate higher taxes on wireless services are
4420 outdated. And in 2000, the National Governors
4421 Association called on State governments to re-examine
4422 State and local tax treatment of the
4423 telecommunications industry. The National Conference
4424 of State Legislatures has called on this as well.

4425 But unfortunately, only one State, Virginia, has
4426 actually enacted reforms to telecommunications tax

4427 structure. And in 2006, the National Association of
4428 State Legislators recognized that many local
4429 government officials are actually going to work to
4430 defeat any legislative effort to reform tax rates.

4431 So I really think that is an initial reason why
4432 congressional action is necessary here. We need a
4433 timeout, and I hope during this timeout States and
4434 localities will refocus on enacting reforms that will
4435 work on a permanent basis.

4436 I do believe that State and local governments
4437 should have autonomy to set tax rates, but there are
4438 rare exceptions when Congress needs to intervene
4439 because those policies impede or interfere with a
4440 national goal. And this is one of those instances.

4441 The National Broadband Plan said wireless
4442 broadband is --

4443 Chairman Smith. The gentlewoman's time is
4444 expiring.

4445 Ms. Lofgren. I would ask for an additional 30
4446 seconds.

4447 Chairman Smith. Without objection.

4448 Ms. Lofgren. Wireless broadband is poised to
4449 become a key platform for innovation in the United
4450 States over the next decade, and discriminatory
4451 taxation on the services really disrupts that

4452 potential.

4453 After so many years of working on this, I am so
4454 delighted that we are about to enact this bill.

4455 And I yield back the time, Mr. Chairman.

4456 Chairman Smith. Thank you, Ms. Lofgren.

4457 I am going to recognize myself for another
4458 minute before I recognize the gentleman from
4459 California for an amendment.

4460 I heard the gentlewoman refer to the fact that
4461 for the last three congresses, she has introduced this
4462 bill and has been very persistent about it. I hope
4463 the gentlewoman appreciates the bipartisan approach of
4464 the Chair. Believe me, I was tempted to introduce the
4465 bill as my own in this Congress and did not do so in
4466 recognition of her longstanding efforts on this
4467 particular piece of legislation.

4468 With that, I will recognize the gentlewoman for
4469 purposes of offering an amendment.

4470 Does the gentlewoman have an amendment at the
4471 desk?

4472 Ms. Lofgren. Yes, I have an amendment at the
4473 desk. It is Lofgren 001.

4474 Chairman Smith. The clerk will report the
4475 amendment.

4476 Ms. Kish. Amendment to H.R. 1002 offered by Ms.

4477 Lofgren --

4478 Chairman Smith. Without objection, the

4479 amendment will be considered as read.

4480 [The information follows:]

4481

4482 Chairman Smith. And the gentlewoman is
4483 recognized for purposes of explaining the amendment.

4484 Ms. Lofgren. Thank you, Mr. Chairman.

4485 The amendment would exempt local tax increases
4486 on wireless from the moratorium in the bill, provided
4487 that they are approved directly by voters in the
4488 relevant jurisdiction. In order for a tax increase to
4489 qualify for this exception, it would have to be fully
4490 transparent. In other words, the ballot measure would
4491 have to make it clear what the impact would be on the
4492 wireless bills on individual customers.

4493 Now I continue to believe that imposing separate
4494 higher taxes on wireless services is bad policy.
4495 However, if the voters in a particular jurisdiction
4496 decide to impose a wireless tax increase directly upon
4497 themselves, I think it is reasonable for Congress to
4498 respect that choice.

4499 Now in some States, such as California, voter
4500 approval of local taxes is already required. And it
4501 is my understanding that if this amendment is adopted,
4502 The League of California Cities will drop its
4503 opposition to the overall bill.

4504 I would hope that if this amendment is adopted,
4505 and I think there is bipartisan support for it, that
4506 this would not detract from the ultimate goal, which

4507 is to modernize telecommunications tax policy across
4508 the United States. If the legislation is enacted and
4509 local governments instead focus their efforts on a
4510 wave of ballot initiatives for discriminatory taxes
4511 instead of reform, the national goal of broadband
4512 deployment would be seriously undercut.

4513 That said, I am happy to offer this amendment
4514 today as a way of building consensus on the
4515 legislation. And in particular, I would like to thank
4516 Ms. Chu and Ms. Sanchez for working with me to craft
4517 the language for this amendment. I urge my colleagues
4518 to support it. And I think --

4519 Chairman Smith. Will the gentlewoman yield?

4520 Ms. Lofgren. I would certainly be happy to
4521 yield, Mr. Chairman.

4522 Chairman Smith. I support the amendment, which
4523 carves out local taxes imposed by referendum from the
4524 bill's tax moratorium. Congress should not interfere
4525 if voters in a community want to impose a
4526 discriminatory wireless tax on themselves directly.
4527 So I urge my colleagues to vote yes on this amendment.

4528 I yield back.

4529 Are there any other members who wish to be heard
4530 on this amendment?

4531 The gentleman from Arizona, Mr. Franks?

4532 Mr. Franks. Mr. Chairman, I won't read my whole
4533 statement, I just add my support to the amendment.

4534 Mr. Chairman Smith. Okay. Thank you, Mr.
4535 Franks.

4536 The question is on the amendment.

4537 All in favor say aye.

4538 [A chorus of ayes.]

4539 Chairman Smith. All opposed, no.

4540 [No response.]

4541 Chairman Smith. The ayes have it, and the
4542 amendment is agreed to.

4543 Does the gentlewoman from California, Ms.
4544 Waters, have an amendment?

4545 Ms. Waters. Yes.

4546 Chairman Smith. The clerk will report the
4547 amendment.

4548 Ms. Kish. Amendment to H.R. 1002 offered by Ms.
4549 Waters of California --

4550 Chairman Smith. Without objection, the
4551 amendment will be considered as read.

4552 [The information follows:]

4553

4554 Chairman Smith. And the gentlewoman is
4555 recognized to explain the amendment.

4556 Ms. Waters. Thank you, Mr. Chairman.

4557 My amendment would simply require a GAO study to
4558 determine the extent to which the taxes imposed by
4559 State and local governments impact the costs consumers
4560 pay for mobile wireless services. The amendment would
4561 further require a report on whether the moratorium on
4562 new wireless taxes have any impact on the costs
4563 consumers pay for mobile services during the 5-year
4564 period.

4565 While I am genuinely concerned about the States'
4566 disproportionately high rates for mobile services, I
4567 am equally as alarmed by the reports of cramming and
4568 mobile wireless company's general lack of transparency
4569 regarding some of the hidden fees consumers pay
4570 providers for their mobile wireless services.

4571 Over time, these hidden fees and extra charges
4572 can be equally as burdensome on consumers as State and
4573 local taxes. For example, I have with me here today a
4574 mobile wireless bill with charges for the billing
4575 cycle ending June 25, 2011. In a summary of prior
4576 activity, the bill reflects a refund to the customer
4577 of \$9.99. The wireless customer was incorrectly
4578 charged for a third-party ringtone application that he

4579 did not agree to purchase. The correction was only
4580 made once the customer what brought the incorrect
4581 charge to the attention of the carrier.

4582 The FCC estimates that more than 20 million
4583 American consumers have been hit by these types of
4584 unauthorized charges that some refer to as cramming,
4585 which occurs when a phone company or an unaffiliated
4586 third-party tacks unauthorized fees onto phone bills.

4587 The example bill I have also displays the
4588 typical credits, taxes, adjustments, and other charges
4589 for the entire billing cycle. There is a line item
4590 for government fees and taxes, which reflects wireless
4591 taxes assessed by the State of Virginia.

4592 However, in addition to these charges, the
4593 customer, like many other wireless consumers, is
4594 charged a vague regulatory cost-recovery charge. Is
4595 this regulatory recovery charge being used toward
4596 investments and deployment of new wireless technology,
4597 or is it used to lobby the Federal Communications
4598 Commission on a particular adjudicatory rule-making
4599 procedure? We do not know for sure.

4600 Therefore, I am skeptical about whether the
4601 consumer will benefit from lower mobile wireless rates
4602 in the absence of an increase in taxes at the local or
4603 State level.

4604 H.R. 1002 does not propose anything that
4605 guarantees the benefits its supporters are suggesting
4606 will result from the bill's passage. The Wireless Tax
4607 Fairness Act would, however, preempt State law by
4608 limiting and prohibiting new taxes for a particular
4609 industry at a time when States are facing dire
4610 budgetary constraints.

4611 Moreover, we cannot know for sure how wireless
4612 companies will behave once we implement this new
4613 moratorium. Just last month, a federal judge in
4614 Illinois approved a proposed \$1 billion settlement of
4615 a class-action lawsuit brought against AT&T. The
4616 lawsuit stemmed from taxes and fees AT&T assessed on
4617 its data plans. These taxes and fees impacted
4618 customers who use their AT&T mobile phones to access
4619 the Internet.

4620 The plaintiffs had initiated lawsuits in every
4621 State, alleging that the taxes and fees imposed by
4622 AT&T violated the Internet Tax Freedom Act, which
4623 imposed a moratorium on taxes on Internet access
4624 services until November 2014. Eventually, the
4625 lawsuits were consolidated before a federal court in
4626 Illinois.

4627 As part of the court-approved settlement, AT&T
4628 is required to cease imposing taxes and fees on its

4629 data services. In addition, it must seek a refund
4630 from State and local governments on behalf of its
4631 customers of almost \$1 billion in erroneously paid
4632 taxes. Disbursing the refunds to consumers will be a
4633 complicated process due to the fact that AT&T did not
4634 retain the taxes and fees collected from its
4635 customers. Rather, it remitted these fees to State
4636 and local governments in each State.

4637 In other words, AT&T took advantage of the
4638 moratorium imposed, improperly taxed its customers,
4639 and used those fees to pay its State and local taxes.

4640 Since mobile wireless is the future of the
4641 Nation's communications infrastructure, the wireless
4642 taxes and fees will have a significant impact on the
4643 vast majority of Americans who are increasingly
4644 dependent on mobile wireless devices for communication
4645 and access to the Internet.

4646 Therefore, I believe a GAO study is warranted,
4647 and I would urge my colleagues to support this
4648 amendment so that, at the end of the moratorium, we
4649 can have a full record of information available to
4650 determine if the bill achieved its intended purposes.
4651 To the extent this bill is intended to prevent
4652 burdensome, discriminatory taxes against providers and
4653 consumers of mobile services, I believe we need to

4654 require the GAO to supply Congress with information
4655 that may be useful in deciding how States should
4656 proceed in taxing new technology.

4657 I thank you, Mr. Chairman --

4658 Ms. Lofgren. May I ask unanimous consent that
4659 the gentlelady be given an additional 30 seconds so
4660 she might yield to me?

4661 Ms. Waters. I thought you were -- I yield back
4662 the balance of my time.

4663 Chairman Smith. Without objection, the
4664 gentlewoman is granted an additional 30 seconds for
4665 the purposes of yielding to the gentlewoman from
4666 California.

4667 Ms. Lofgren. I just wanted to say that I think
4668 I do not object to this amendment at all. I think it
4669 is absolutely fair to track what happens.

4670 For this to have the positive impact, benefit
4671 needs to flow to consumers, and I think we ought to
4672 track what goes on, and I recommend that we accept the
4673 amendment.

4674 Ms. Waters. I appreciate that.

4675 Chairman Smith. If the gentlewoman would yield?

4676 I support the amendment as well and recommend it
4677 to my colleagues.

4678 Ms. Waters. Thank you very much. Bipartisan

4679 support --

4680 Chairman Smith. And the gentlewoman yields back
4681 the balance of her time.

4682 Are there any other members who wish to be
4683 heard?

4684 The gentleman from Arizona, Mr. Franks?

4685 Mr. Franks. Mr. Chairman, just once again, I
4686 will add my support for the amendment and hope my
4687 colleagues will do so as well.

4688 Chairman Smith. Thank you, Mr. Franks.

4689 The question is on the amendment.

4690 All in favor, say aye.

4691 [A chorus of ayes.]

4692 Chairman Smith. Opposed, nay.

4693 [No response.]

4694 Chairman Smith. The ayes have it. The
4695 amendment is agreed to.

4696 The gentleman from Michigan, Mr. Conyers, is
4697 recognized.

4698 Mr. Conyers. Mr. Chairman, I ask to strike the
4699 last word.

4700 Chairman Smith. The gentleman is recognized for
4701 5 minutes.

4702 Mr. Conyers. I have an amendment, and I was
4703 attempting to append the Main Street Fairness Act that

4704 Bill Delahunt and I and many on the committee have
4705 introduced for years, but I think I will introduce it
4706 as a standalone bill rather than append it here.

4707 And so I will not offer my amendment, and I
4708 yield back my time.

4709 Chairman Smith. Thank you, Mr. Conyers, for
4710 doing that.

4711 The question is on reporting the bill as an
4712 amended favorably to the House.

4713 Those in favor say aye.

4714 [A chorus of ayes.]

4715 Chairman Smith. Opposed, no.

4716 [No response.]

4717 Chairman Smith. The ayes have it, and the bill
4718 as amended is order reported favorably.

4719 Without objection, the bill will be reported as
4720 a single amendment in the nature of a substitute
4721 incorporating amendments adopted. The staff is
4722 authorized to make technical and conforming changes.
4723 Members will have 2 days to submit views.

4724 Let me say to members that we have completed
4725 work on three bills, which is a testament to members'
4726 patience and willingness to forgo lunch. We have one
4727 more bill to go. We are not going to take it up
4728 today.

4729 The committee will stand in recess, and we will
4730 resume markup at 11 o'clock tomorrow morning.
4731 [Whereupon, at 1:44 p.m., the committee
4732 recessed, to reconvene at 11:00 a.m., Friday, July 15,
4733 2011.]