

and has not yet been removed from the United States, to get legal status.

Now, lest my colleagues think I am exaggerating, let me provide a real-world example of this loophole. Last year, Mohammed El Shorbagi pleaded guilty to providing material support to Hamas. His act of providing material support to Hamas would not have barred him from establishing good moral character under current law because it is not one of those grounds specifically included in the list of acts that prevent an alien from establishing "good moral character" under our immigration laws.

Now, I would hope these what I would call technical fixes are the kinds of commonsense solutions my colleagues would support. We have to ensure those aliens who have committed crimes, such as failure to register as a sex offender, or alien smuggling while using a firearm, are permanently barred and ineligible for benefits. We must also ensure those aliens who have committed acts or who engage in conduct in association with a terrorist organization, or perhaps have even committed terrorist acts themselves, are rendered permanently ineligible for any legal status and are barred from our country.

Finally—and this is not a technical fix; this, I believe, is a conscious decision on the part of the bill drafters to omit this category of individuals—my amendment would close the loophole in this bill that allows legalization of those illegal aliens who have already had their day in court and violated court-ordered deportations. These are known as absconders and, in fact, have committed a felony, if found guilty of their failure to deport once ordered deported, or if they have been deported and simply reentered the country.

Unlike the first half of my amendment, this is not a technical correction. In other words, the decision to legalize this population of illegal aliens was no drafting oversight.

Mr. LEAHY. Madam President, I ask the Senator from Texas to do me the courtesy of allowing me 1 minute to take care of something that is going to be accepted, and that is going to modify an amendment that is to be accepted.

Mr. CORNYN. Madam President, I yield for that purpose but claim my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

AMENDMENT NO. 1165, AS MODIFIED, TO
AMENDMENT NO. 1150

Mr. LEAHY. Madam President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 1165.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Madam President, I ask unanimous consent that Senators CASEY and SCHUMER be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. KOHL, Mr. CASEY, and Mr. SCHUMER, proposes an amendment numbered 1165, as modified, to amendment No. 1150.

Mr. LEAHY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

In section 218E(d) of the Immigration and Nationality Act (as added by section 404(a)), strike paragraphs (2) and (3) and redesignate paragraph (4) as paragraph (3).

At the end of section 218E, add the following:

"(i) SPECIAL RULE FOR ALIENS EMPLOYED AS DAIRY WORKERS.—Notwithstanding any other provision of this Act, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a dairy worker—

"(1) may be admitted for a period of up to 3 years;

"(2) may not be extended beyond 3 years; and

"(3) shall not be subject to the requirements of subsection (h)(4).

In section 218G of the Immigration and Nationality Act (as amended by section 404(a)), strike paragraph (11) and insert the following:

"(11) SEASONAL.—

"(A) IN GENERAL.—The term 'seasonal', with respect to the performance of labor, means that the labor—

"(i) ordinarily pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(ii) because of the nature of the labor, cannot be continuous or carried on throughout the year.

"(B) EXCEPTION.—Labor performed on a dairy farm shall be considered to be seasonal labor.

At the end of section 404, add the following:

(c) CONFORMING AMENDMENT.—Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by inserting "or work on a dairy farm," after "seasonal nature,".

Mr. LEAHY. Madam President, this modification is required by the authors of the bill in order for dairy provisions to be accepted into this bill. I have attempted through this language to ensure as best we can that our Nation's dairy farmers have adequate access to labor in the future. This amendment only deals with prospective immigration and is focused on dairy only.

Dairy is a year-round operation where interruptions to a farmer's labor force can have significant consequences—the H-2A provisions as they exist in the bill now do not adequately address the unique needs of dairy because they permit only 10-month terms of work. This sort of interruption does not work for dairy farmers, who need year-round, dependable employees.

In the AgJOBS legislation that this body passed last year and that we re-introduced this year, I supported a much broader provision to address the unique needs of the dairy industry. That provision had the overwhelming endorsement of America's family dairy operations. Unfortunately, there were

objections from the Bush administration and the authors of the bill now pending, so I have worked with the managers of this bill to craft this compromise.

This modification would enable dairy farmers to have multiple avenues to employ legal workers in the future. First, under the H-2A program, dairy farmers would have the ability to hire workers for a 3-year period after which time the workers would return home. Second, this amendment would refine the H-2A program to allow dairy farmers to more easily obtain workers under the normal H-2A time frame of 10-month work periods. In combination with available opportunities under the Y visa program, these changes should provide significant opportunities for America's dairy farmers to obtain future legal workers to meet their needs. I urge support for this modified amendment to ensure that essential changes for dairy farmers become part of this legislation.

Madam President, I thank the Senator from Texas for his courtesy.

Mr. GRAHAM. Madam President, there is no objection on our side to this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1165), as modified, was agreed to.

AMENDMENT NO. 1168 TO AMENDMENT NO. 1150

Mr. GRAHAM. Madam President, if I could request the indulgence of Senator CORNYN, on behalf of Senator HUTCHISON, I call up amendment No. 1168 and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for Mrs. HUTCHISON, for herself Mr. BINGAMAN, Mr. DOMENICI, Mr. MCCAIN, Mr. KYL, Mrs. FEINSTEIN, and Mr. CORNYN, proposes an amendment numbered 1168 to amendment No. 1150.

Mr. GRAHAM. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide local officials and the Secretary of Homeland Security greater involvement in decisions regarding the location of border fencing)

On page 6, line 11, strike the second period and insert the following: "

(C) in paragraph (2), as redesignated—

(i) in the header, by striking "SECURITY FEATURES" and inserting "ADDITIONAL FENCING ALONG SOUTHWEST BORDER"; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

"(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.