

UNANIMOUS CONSENT REQUEST—S. 685

Mr. LEE. Madam President, I appreciate my friend and colleague, the Senator from Alabama, for leading this discussion today. This is an important one to have. And I am honored to be here to be part of it.

You know, the situation at the border, across our southern border, is, by any standard, a humanitarian crisis and nothing short of that. Vice President KAMALA HARRIS, appointed by President Biden as his border czar, publicly declared that she would focus as border czar on addressing the root causes of immigration.

However, now that KAMALA HARRIS is the Democrats' nominee for the Presidency, she and the legacy media want to pretend that was never the case. Axios even reported that Vice President KAMALA HARRIS "never actually had"—that is a direct quote—"never actually had" the title of border czar.

That is funny because that is a claim that contradicts the reporting that we have seen from Axios itself on this. In fact, we can see that right here in this chart.

On April 14, 2021, Axios reported that "Harris, [who had been] appointed by [President] Biden as border czar, said she would be looking for the 'root causes' that drive migration."

Moreover, a tweet from her official Twitter handle further emphasized her role:

@POTUS asked me to lead our diplomatic work with Mexico, El Salvador, Guatemala, and Honduras. To address the situation at the southern border, we have to address the root causes of migration. It won't be easy work—but it's necessary.

I agree; it is necessary. She took on this role. She acknowledged the role, and she failed.

Since Biden and HARRIS's inauguration a little more than 3½ years ago, over 10 million undocumented immigrants have entered the United States and have done so illegally. This figure exceeds the population of 36 States. Meaning the overwhelming majority of our States, 36 out of 50 have populations smaller than the total number of persons entering the United States illegally on the watch of border czar Vice President KAMALA HARRIS, thus creating a crisis that has been met with a troubling combination of silence and inaction from this administration—the executive branch of government responsible for enforcing our border laws and the border itself.

Now, if the Biden-Harris administration were serious about addressing the crisis at the border and addressing the issue and ensuring, in the process, that the real victims of government persecution in other countries would receive asylum here, then they would support reforming our broken asylum process. And, sadly, they are not. We are still encountering over 100,000 illegal immigrants at our southern border each month.

Now, since President Biden took office, there have been almost 10 million

illegal immigrant encounters nationwide. Keep in mind, this doesn't reflect the sum total of those who have crossed into our country. These are just the documented immigrant encounters throughout the country. Though, there are more. That is a subset of the total flow of illegal immigration. Over 360 individuals on the Terrorist Watchlist have been stopped while trying to cross the southern border.

And, shockingly, 27,583 Communist Chinese nationals have been encountered at the southwest border in the last year alone. That is a lot of people. And China is not close to the United States.

By any metric, the Biden-Harris administration has shown no interest in securing our border. In fact, the data suggests this administration wants as many illegal immigrants to enter this country as possible.

My Democrat colleagues want to pretend that Republicans are somehow responsible for this crisis. Why? Well, it is obvious why. They don't want to own it given that their party owns the crisis, as their party is running the administration and it is responsible for making decisions that has allowed this in.

What argument did they use in order to blame Republicans who are not in control of the administration, do not occupy the White House, or control the majority in this Chamber? What is their argument as to why we as Republicans are to blame? Well, because we were unwilling to pass a bad immigration bill that would have normalized thousands of illegal entries across our southern border each month—and particularly in the hands of the Biden administration, it could have and inevitably would have made the situation much worse.

But today I am offering a smaller bill, a narrower bill, a more focused bill that would help alleviate the crisis by closing loopholes in the law. These would be helpful. They are not necessarily things that represent a complete loophole such that President Biden would be powerless to enforce the border without them, but they would make it harder for President Biden to justify the massive loopholes that he has manipulated.

This isn't the entire answer. This bill wouldn't necessarily solve the whole problem. But if my Democratic colleagues can't agree that these commonsense reforms need to be adopted, then how can we take their concern about the border crisis seriously?

My bill, the Stopping Border Surges Act, would address loopholes in our immigration laws, which have helped create some of the perverse incentives for illegal immigration. It made it easier for the Biden administration to facilitate this flow of 10 million illegal immigrants into our country over the last 3½ years.

The bill would clarify that an adult cannot bring a child into this country

expecting that child to be his or her ticket to avoid detention. This would help eliminate the disturbing practice of what is sometimes referred to by the Border Patrol as the practice of recycling children and babies by coyotes and cartels.

People will bring in a child, and sometimes that same child will be brought in under similar circumstances over and over and over again as the ticket into the United States—the ticket thus making it less likely that they will be detained and ultimately deported.

It allows all unaccompanied children to be returned to their home countries, thus ending the incentive for the parents to send their young children here alone, leaving them vulnerable to abuse.

Sadly, we see what is happening to those children under the supervision of the Biden-Harris administration and Secretary Mayorkas. They are trafficked either into child slavery, sex slavery, or as drug dealers.

My bill would require that the Department of Health and Human Services provides DHS with biographical information about the persons to whom children are being released so that they know something about them, rather than just "This is the person to whom you are going to release the child."

It also requires asylum seekers to apply for and be denied asylum in at least one safe country on their route from their country of origin to the United States. It would combat the Biden-Harris administration's obliteration of the credible fear standard by heightening the burden of proof.

The correct application of this standard is pivotal to the operation of our asylum system and making sure that it is there for those who need it and not subject to rampant abuse by those not eligible for it.

It has been corrupted over the years. But this administration has destroyed it entirely—manipulating it to the point where it is now beyond recognition. We must fix it.

It is sad that we have to fix it, but we have to fix it in large part because it has been so distorted and abused by this administration, profiting international drug cartels to the tune of tens of billions of dollars a year, leaving a huge—huge—wake of human suffering in its path.

It would close loopholes and restrict asylum to aliens who present themselves at an official point of entry. We must eliminate these loopholes and not allow the Biden-Harris administration to make more of them.

Congress needs to take back the authority to establish law. We can start today by passing the Stopping Border Surges Act.

Ending the ambiguities in our current asylum law will help to mitigate the situation at the border and prevent unelected, unaccountable bureaucrats from acting with utter impunity to enforce their own policy preferences, culminating inevitably in open borders

with more than 10 million people coming into this country in a space of only 3½ years. So I urge my colleagues to support this legislation.

To that end, Madam President, as if in legislative session and notwithstanding rule XXII, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of S. 685 and that the Senate proceed to its immediate consideration; further, that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there an objection?

The majority whip.

Mr. DURBIN. Madam President, there is a pamphlet that is circulated to tourists and students alike entitled "How Laws Are Made," and it tells the basic process under our Federal Constitution for enacting legislation. It talks about committee hearings; it talks about votes in committee, votes on the floor—in the Senate, then in the House; conference committees, agreements, a lot of other votes. Finally, the measure is sent to the President, if it is successful, for his signature or his veto. That is the ordinary process.

You will not see what is happening on this floor of the Senate in the pamphlet to describe how laws are made. It is such an unusual thing. Here we are in the Senate, basically trying to say: I ask unanimous consent to ignore the Constitution as written and the laws as described and go ahead and pass this bill anyway.

Well, you might say there are times when that is needed—and it is—but when it comes to the issue of immigration, there is a much broader consideration.

The fact of the matter is, it has been almost 35 years since we have passed an immigration reform bill—35 years. I don't know how many times the Senator from Utah has voted for an immigration bill—perhaps not—but the point is, we have tried and can't bring the measure to the floor. There is resistance and objection, primarily from the Republican side of the aisle, for any type of comprehensive reform.

But there comes a time when there is a glimmer of hope. Once in a while, something happens around here, and you think things are going to be different. That happened not that long ago, a few months back.

We had a conservative Republican Senator from Oklahoma named JAMES LANKFORD. JAMES and I disagree on so many issues, but I respect him so very much when it comes to his legislative commitment. He sat down with CHRIS MURPHY, a Democratic Senator from the State of Connecticut, and they said: Can we, Republican and Democrat together, come up with a measure that won't solve every problem with immigration, but at least it will move us forward?

What are we going to include in that?

Well, we are going to include provisions that dictate what happens when

someone presents himself to the border: who would be considered in a fast fashion and who would not be.

We are going to put more Border Patrol agents on the border. They wrote a provision that the Border Patrol agents' union—thousands of men and women who risk their lives—endorsed.

Well, what are we going to do about fentanyl and narcotics that are coming into the United States as well? They added more provisions and then more law enforcement to stop the flow of narcotics.

There were provisions in that bill which I didn't like, but by and large, I had to say that was a good bill. It really was a bipartisan effort to solve some of the major problems we have.

Some on the Republican side said: Unless you pass this bipartisan bill, we are not going to allow other business to occur.

It was a pretty serious showdown moment. So we were prepared to do it. A lot of us were prepared to vote for this measure. It was bipartisan, it made real progress, and it really addressed the flow of people coming across the border.

What happened next is important. What happened next is one person stepped up and said: Stop. That person was Donald Trump, the former President of the United States. He said: I don't want this bipartisan measure that Senator LANKFORD and Senator MURPHY have crafted to pass in the Senate.

Critics said: Wait a minute, former President. If we don't do this, we won't do anything. We won't be able to address this measure significantly or constructively before the next election.

He said: So be it. Blame it on me, Donald Trump said. Kill this bill.

The word went out on the Republican side: Stop where you are. No measure is to pass, not even this bipartisan measure.

When it turned out that only a handful of Republicans were willing to defy Donald Trump, the measure died. That was the end of it.

You have to ask yourself, did we miss an opportunity there? The answer is, we certainly did—a bipartisan opportunity to do something constructive. And the decision was made by Donald Trump that he would rather have this issue going into the election in 2024 than to have any solution, bipartisan solution, which might inure to the credit of the Democrats as well as the Republicans. That was the end of the conversation.

So we find ourselves on the floor today with a measure that is being suggested on it by unanimous consent that, of course, did not go through committee and has not been reviewed, and it unfortunately has some serious flaws. Instead, this bill targets the most vulnerable people seeking safety and protection in the United States: children traveling without a parent or guardian, families with minor children, and asylum seekers fleeing persecution.

The bill that is before us—the unanimous consent request—would strip away protections for unaccompanied children. It would deport many of them back into the hands of smugglers, keep others in detention for up to a month, and keep them separated from adults who could care for them. This bill would require families to be detained—a failed policy that has disastrous effects on children and doesn't make the border any safer.

This bill would also create multiple new restrictions on asylum, undermining our longstanding commitment to refugees seeking safety, such as the people in Ukraine. Many of them were refugees to the United States, once attacked by Vladimir Putin, and I believe most Americans agree that providing protection for them and their families is the right thing to do.

The Biden administration is doing what it can under our outdated immigration laws to secure the border, and encounters between the ports of entry have decreased by more than 50 percent. Yes, there are too many flowing over the borders at various times, but we have seen dramatic reductions in those who are coming across our border now, and we could have seen more with this bipartisan bill, which Donald Trump and his loyalists ended up killing.

The administration has dramatically increased deportations, made tough changes in our asylum system, and improved access to lawful pathways to citizenship, but ultimately it is Congress's responsibility to reform our broken immigration system, which has not been updated, as I said earlier, in 35 years.

To resolve our challenges at the border, we need immigration reform that will actually fix our broken immigration system and provide the necessary resources to DHS to secure the border. Rather than providing additional resources, improving infrastructure, or adding more lawful pathways, this bill would undermine fundamental American values and put families and children at risk.

Recently, a bipartisan group of Senators had a tough border deal put together. I want to commend Senator LANKFORD for his courage in stepping up, particularly when Donald Trump was opposed to it. I wish the majority of Republicans would have stood behind their Senator from Oklahoma, but the Senator from Utah and others decided they wouldn't. They would rather take these opportunities to come to the floor and try the unanimous consent route.

Donald Trump was crystal clear. He said: Blame it on me if the bill fails. The bill failed, and I am blaming it on him just as he has. He doesn't want a solution; he wants an issue in November.

The time is long past due for my Senate Republican colleagues to stop partisan bickering, get behind JAMES LANKFORD's effort, and work on a bipartisan basis to pass the immigration

legislation the American people deserve.

I object.

The PRESIDING OFFICER (Ms. ROSEN). Objection is heard.

The Senator from Utah.

Mr. LEE. Madam President, I appreciate the thoughtful remarks from my friend and colleague, the distinguished Senator from Illinois. He and I have worked together on many issues. We don't agree on everything, but when we do agree, it is a lot of fun. We are able to do a lot of great things together. I appreciate his leadership on the Judiciary Committee and the fact that he has always been friendly toward me.

I also appreciate his reference to our sort of civics aspect of what we do. The notion of how a bill becomes a law is always, always instructive. It is always helpful to bring that up. You know, we have lost some of that in our system, and people get confused as to how laws are made.

Of course, the very first operative provision of the Constitution—article I, section 1—has only one clause, so it is clause 1. The very first language after the preamble says that all legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives.

Remember, legislative powers are lawmaking powers, meaning all power to make law—to make Federal law—is vested in this body and the body with which we share the legislative power just down the hall, the House of Representatives.

Article I, section 7 elaborates on this function and makes clear yet again that you cannot make a Federal law without following this formula. The formula prescribed by article I, section 7 is bicameral passage followed by presentment to the President of the United States. You have to pass the same legislative text down the hall and also pass it here. It doesn't matter in what order unless it is a revenue bill, but that is not relevant here, but it does have to be the same text passed by both bodies. Then and only then can you present it to the President for signature, veto, or acquiescence. That is how you make a law. That is what the Constitution requires.

Now, on top of that, we have a number of other procedures that we have added by Senate rule, precedent, procedure, common practice. Those are not required by the Constitution, but those rules and practices are acknowledged as legitimate by the Constitution. Yes, most of the time, we pass those, but it is ultimately up to us to decide when, whether, to what extent, and in what ways to follow all of our procedures.

And I agree with the Senator from Illinois—it does make sense whenever we can do it—that we always should follow our own procedures. It generally works out best if we can move something through committee, if we can have a full committee hearing and we can have what is called a markup, where

we introduce and entertain amendments to proposed legislation, pass it out of committee, and then bring it to the floor ultimately.

I think we generally have much better legislation when we do it that way, and I would love to follow that procedure with this particular bill. If what the Senator from Illinois and the chairman of the Judiciary Committee is offering is for us to have a full committee hearing and a markup on this bill, I would love that, and I would gladly entertain that.

Tragically, in the Senate, we have seen a deviation from that same practice—that same practice to which he attributes great significance, understandably, today. In fact, fully 94 percent of all legislative matters passed by this body are passed by this same procedure that I am attempting to utilize here today—by unanimous consent.

The way it works is, essentially somebody makes a request, and they ultimately come down to the floor like I have done today and say: Let's call up and pass this bill.

Why would we do that? Well, in many instances, committee chairmen have become somewhat stingy with what bills on which they are going to hold hearings and markups. We have been unable to get a hearing or a markup set on this bill, and so this bill, like so many others—in fact, like 94 percent of all legislation passed by this body—comes to the Senate floor today without the benefit of having had either a hearing or a markup.

Well, that doesn't stop the 94 percent of the legislation from moving forward. In fact, in addition to that 94 percent of the legislative proposals that are passed by unanimous consent, an additional number of them—I am not sure what the number is; it probably varies a little bit from year to year—but an additional number of them are brought to the floor and passed not unanimously but by rollcall vote without having had the benefit of either a full committee hearing or a markup. This, too, is unfortunate. Sometimes it is necessary and unavoidable, and other times, it is not.

The point is this: Neither the Constitution nor the Senate rules prohibit passing legislation this way. Sometimes it becomes necessary when the other path has been made unavailable to us by the majority party and the committee chairman.

In this circumstance, there is an additional reason why we need to bring this forward. We talked a minute ago about the legislative process required by the U.S. Constitution to pass a law to make or change any statute that is Federal in nature. You have to go through that article I, section 7 formula: bicameral passage in Congress, followed by presentment to the President for signature, veto, or acquiescence.

What the Constitution does not countenance and certainly prohibits is the making of new law or the modification

of existing law by the executive branch of government or by anyone or anything outside the framework of article I, section 7. That is what we have seen with our immigration laws, including and especially with this administration with regard to laws that are relevant here—laws, for example, involving asylum standards.

The asylum standards have morphed over the years, over many decades, and the practice of applying our asylum laws has become so different under this administration than what the law actually says, although this is comparable in many respects to another great frustration of mine that is closely related to this where we outsource *de facto* lawmaking authority to unelected, unaccountable bodies in the executive branch, allowing them to just make new law. We call them regulations to get around the obvious awkwardness that would otherwise be created by this thing called the Constitution to which we have all sworn an oath, but we allow, in effect, the executive branch to make laws that way under the form of rules and regulations.

But either way, whether it is by the stroke of the Executive pen or whether it is through an administrative Agency, we have seen laws being made and changed entirely outside the constitutionally authorized process recognized by article I, sections 1 and 7.

So it is one of the reasons we are here today because we have had the executive branch making and changing law not authorized by the Constitution, and we have had a lack of access to committee hearings and committee markups. So that is why we come here today and do this.

While it is not ideal, it is how 94 percent of the legislation passed by this body is, in fact, passed. So that kind of matters. That provides some helpful context.

We talked a little bit about asylum and how the asylum laws have been abused and modified. The idea behind asylum is that if you are subject to certain kinds of persecution in your home country, we want to provide people with a place to go.

The problem we had in this administration—the way it is supposed to work is if you show up without documents at the U.S. border and you make the case that you are entitled to stay here as an asylee, well, you are supposed to be detained until such time as they can decide the issue. You don't have a statutory or a constitutional right to be granted asylum. It is a discretionary grant of authority given to the Secretary of Homeland Security. No one has a guaranteed right to it. So you are supposed to be detained while they consider your application, whether or not they are going to grant it.

But instead, what this administration has been doing is just saying: OK. Come in. You claim asylum. And they let you go. And because there are so

many people coming in—about 10 million of them; many of them are claiming asylum—they decide that the best thing to do is not deport them because they can't handle all those asylum applications. They can't adjudicate them. They say: Well, let's just let them go—let them go and tell them that at some point you may hear about a hearing that will be scheduled before an immigration judge. We hope you will come to your immigration hearing. At the current rate, many of these people are being told that their immigration hearing may not happen until the mid-2030s.

This doesn't make any sense. This amounts to a de facto change in law.

It definitely amounts to a de facto change in law when we have got things like what is called immigration parole. Immigration parole is supposed to exist as a discretionary grant of authority, allowing the U.S. Government to let somebody come into the United States either for a specific humanitarian purpose or a public purpose. But it has to be individualized, not generalized by country, not broad categories, and an individual person. The law specifies that.

An example of a humanitarian purpose is somebody is in a foreign country. Maybe their mother lives here. She is about to die, and that person needs to come in and be there for the funeral with the understanding that he or she will probably leave thereafter.

The public use, the public benefit example, would be someone who maybe speaks an obscure language. We don't have adequate interpretation services in that language here. We need somebody to come in and translate for that language. We allow them to come in, be a translator for that trial, with the understanding that they will leave.

Well, this President has granted contrary to what the law allows. He has effectively rewritten the law so as to just grant huge categorical blocks of immigration parole. We are talking to the tune of hundreds of thousands of people who have been admitted in a single year on these things.

That is lawless. That is outside what the law requires. So, yes, that is a change of law, and that is why we need to tighten this law here.

Now, I do want to get to this point about the so-called border bill, the border bill that my friend and colleague from Illinois claims—mistakenly but very wrongly—was killed only by one man, Donald J. Trump. It is just not what happened, not what happened at all. And I don't agree with his description of the bill either.

The Senator from Illinois and I share a common friendship with and great affection for the senior Senator from Oklahoma. The senior Senator from Oklahoma did a fantastic job. He had done a great job on so many things that he decided that he would try to negotiate this. I think it was done at the request of the minority leader, the Republican leader in the Senate, to try to negotiate something.

The Senate Republican conference wanted legislation that would, in one way or another, tie President Biden's hands so he couldn't continue to abuse and negotiate that system of laws, and so he went in there. He did his best to negotiate that. At the end, most Members of our conference didn't feel comfortable with what he negotiated because it wouldn't adequately tie President Biden's hands.

It is not his fault, and it is not Donald Trump's fault. But the fact is that most of the Members of our conference didn't feel that it did enough to tie President Biden's hands.

Perhaps under the jurisdiction of a different President, that legislation might have worked but not with this President. It certainly didn't tie President Biden's hands.

So it wasn't Donald Trump who killed the bill. It was the fact that we didn't have the votes here.

So, look, this is a big deal. It matters. I reject, fundamentally, the premise that we can't reform any of our immigration laws without so-called comprehensive reform, which is usually code for something else, including allowing large numbers of persons entering illegally to be deemed legal.

So let's make sure we have the facts right, both on the way laws are made and based on what happened with this legislation and why it is necessary to pass the Stopping Border Surges Act.

The PRESIDING OFFICER. The Senator from Alabama.

Mrs. BRITT. Madam President, I appreciate the remarks from my distinguished colleague from Utah.

While my colleague from Oklahoma gets set, I just want to recap a couple of things. I mean, here we have today a fracking bill that has been put on the floor but yet blocked by Democrats.

We have a bill here just now closing asylum loopholes, helping unaccompanied children get back to their family, but that has been blocked by Democrats.

Earlier, you saw us put a bill on the floor that would actually help build a barrier on our southern border, but yet that was blocked by Democrats.

When we have looked at how Vice President HARRIS is running, it is obviously very different than the way she served.

If you look back in 2020, Vice President HARRIS said, "Trump's border wall is a complete waste of taxpayer money and won't make us any safer."

I am wondering if she will put a disclaimer that says that underneath her commercials that focus on and show the border wall.

She said, as a Senator, that she vowed to block any funding for the border wall and urged her colleagues to reject any funding for the border wall, which is actually exactly what they continued to do and you saw them do here today.

Here is the deal: You can't have it both ways. KAMALA HARRIS either wants to secure our border—which she

has had ample time to do—building barriers that help us keep Americans safe or she doesn't, which is what we have seen throughout her tenure both in the Senate and as Vice President. But yet now she is campaigning as something totally different.

We saw here today that her newfound support of a border wall is not supported by her Democratic colleagues here in the Senate.

I look forward to hearing more about what we have seen on the campaign trail versus, in actuality, where she stands.

On that, I see my distinguished colleague from Oklahoma and would love the opportunity to hear from him.

The PRESIDING OFFICER. The Senator from Oklahoma.

UNANIMOUS CONSENT REQUEST—S. 204

Mr. LANKFORD. Madam President, I come to the floor today to be able to talk about an issue that, apparently, there is a large belief among some that doesn't exist. So I wanted to be able to pull the veil back and to say this is actually an issue. And I can't believe I even have to have this conversation. And, in many ways, it is an incredibly difficult conversation to be able to have.

During the Presidential debate that happened just a few weeks ago now, there was a debate, ostensibly, between Vice President HARRIS and former President Donald Trump. It ended up being a debate between Vice President HARRIS, David Muir, Linsey Davis, all against Donald Trump.

There were multiple moments where the ABC moderators decided they were going to debate or correct Donald Trump when he spoke, and it became this very odd interchange that all America watched and thought: Well, that doesn't seem like a debate in that sense.

One of those moments was a really odd moment. There was a question about abortion to President Trump. That is a fair conversation for the moderators to bring up a question and to be able to talk about it. He has openly talked a lot about abortion. And, obviously, the vote that happened in the Supreme Court with the Dobbs decision has highlighted a lot of that conversation nationally since his Presidency.

President Trump, during that debate, talked about children who are aborted away the eighth or ninth month and then some even after. He mentioned that, to which the ABC News moderator, Linsey Davis, responded: "There is no State in the country where it's legal to kill a baby after it's born" and then immediately turned to Vice President HARRIS, where, literally, she jumped in to be able to debate the President and to try to "correct" him.

The problem is, there was no one to be able to moderate her in that debate and to make the simple statement, there are not only States in America where that can happen, there are States in America where that does happen.