worker protections by providing for transportation costs for H–2B workers, mandating that employers are responsible for fees, and requiring that American workers not be displaced. The H–2B program is far from perfect—and it could benefit from improvements—but its availability is vital to many businesses. It is our job to make sure that it works for all.

Tourism is vital to Maryland's economy, and programs like the Visa Waiver Program ensure our friends and allies around the world are able to visit our State. Each year, the Visa Waiver Program allows 16 million tourists to visit the United States and spend more than $51 billion, while supporting half a million jobs. This bill includes important provisions to expand the Visa Waiver Program that I have long fought for. These provisions give discretion to the Secretary of Homeland Security to include countries that meet strict security requirements, while also protecting our borders and creating jobs in the tourism industry. New national security requirements mean stronger passport controls, border security, and cooperation with American law enforcement.

The current system punishes our allies—and that is what is happening with our close friend Poland. Poland has been a longtime friend to the U.S. and has stood with us in Iraq and Afghanistan, fighting and dying alongside Americans. But Polish citizens cannot visit the U.S. without a visa. Expanding the Visa Waiver Program to Poland alone could mean $181 million in new spending and could support 1,500 new jobs. The expansion of the Visa Waiver Program is good for national security and economic development and helps our most trusted allies.

Now is the time for comprehensive immigration reform. Immigrants are part of the fabric of our country, and we all benefit from an approach that recognizes these contributions while ensuring that our laws are followed and respected. This bill does that, and I look forward to supporting its passage

[redacted]

Mr. ENZI. Mr. President, I rise to speak about the special procedures for certain nonimmigrant agricultural workers included in the underlying immigration bill. I have thoughts about the overall immigration bill which I will share later, but at this time I want to focus on a specific provision in the underlying substitute amendment.

Many farmers and ranchers in this country will tell you that they need reliable, dedicated, and experienced employees to make their operation successful. This could mean contracting with seasonal workers to help a farmer harvest row crops or for my colleague, Chairman LEAHY, it could mean finding employees to milk and move cows on dairy farms in Vermont. Agricultural labor in this country comes from a variety of places, and an important source is from temporary and seasonal foreign workers.

Currently, the H–2A program assists employers and foreign workers with visas to perform temporary and seasonal agricultural labor. The most common form of agricultural visa is for seasonal work in harvesting, planting, or maintaining crops. Workers usually get visas to the United States to perform work for several months and then return to their home nations. However, Congress and the administration for decades have recognized a special segment of temporary agricultural workers which are distinct from the others, particularly those industries within agriculture which require workers for longer periods because of the unique work they perform. Under the existing H–2A program, these occupations are recognized by special procedures which allow employees to meet the needs of the specialized industries they serve. Occupations which serve the livestock industry are examples of agricultural jobs that require temporary work for longer periods of time. Herding and managing livestock is an inherently different type of work than that which is performed by other temporary agricultural workers. In many cases, those working as temporary foreign workers in livestock related occupations often have rich cultural histories and family ties to herding which allow them to bring their unique experience to the United States and make significant contributions to our livestock industry.

This inherent challenge is evident in the special procedures which manage nonimmigrant sheepherders in the existing H–2A program. For over 50 years, temporary nonimmigrant agricultural workers have been coming to the United States to work as herders in the sheep and goat industry. Over all these decades, Congress has recognized the special nature of the sheepherding program in immigration law. At this time, I ask unanimous consent that the following letters dated July 28, 1987, from U.S. Senator Al Simpson and the response from Immigration and Naturalization Service, INS, Commissioner Alan Nelson dated November 4, 1987 be printed in the RECORD at the conclusion of my remarks.

In this exchange, Senator Simpson, serving as the chairman of the Judiciary Subcommittee on Immigration and a primary author of the Immigration Reform and Control Act of 1986, wrote the administration expressing the continued intent of Congress that the agency and its rules reflect the historical arrangement that sheepherders had within the H–2A program. Senator Simpson highlighted specifically the fact that sheepherders should not be subject to the same return requirements as other nonimmigrant temporary agricultural worker programs. In its response, the Immigration and Naturalization Service recognized the uniqueness of the sheepherder program, its effectiveness operating under these special procedures, and sheepherders should not be subject to the same return requirements as other nonimmigrant agricultural workers.

As a result, the H–2A sheepherder program has operated successfully with little change from when it first started. Currently, the special procedures fall under the authority of the U.S. Department of Labor and have continued to largely reflect the unique needs of sheepherders and other special procedure occupations.

That is why I am pleased this immigration bill includes language which authorizes special procedures for these very agricultural occupations. Section 2232 of the legislation creates the new nonimmigrant agricultural worker program. Within that section 218(A)(i) authorizes "special nonimmigrant visa processing and wage determination procedures for certain agricultural occupations". Those occupations include (A) sheepherding and goat herding; (B) itinerant commercial beekeeping and pollination; (C) open range production of livestock; (D) itinerant animal shearing; and, (E) custom combining industries. This is an important step forward in making sure that the nonimmigrant sheepherders and workers in other special occupations can continue to enter our country and work in these unique temporary agricultural jobs.

Particularly important is that the bill provides these special occupations with unique rules on work locations, and housing. This is because unlike the typical temporary nonimmigrant agricultural jobs performed in the United States, the special procedure occupations operate in unique conditions. For example, sheepherders may work alone or in teams monitoring animals graze in remote areas where mobile housing is required. For sheepherders, mobile sheep wagons serve as both a historical symbol and functional shelter from the elements of the range where teams of sheepherders prepare meals, bunk, and keep supplies for livestock. By including the housing language in this section, Congress clearly intends that traditional uses of these housing units continue for special procedure occupations.

I have expressed concerned in recent years about efforts by the U.S. Department of Labor to avoid consulting stakeholders when drafting new policies for special procedure occupations. Bypassing stakeholders has confused employers and employees and led to a number of inconsistent enforcement actions by agency personnel.

I ask unanimous consent that the letter I sent to the Department of Labor on November 14, 2011, as the ranking member of the Senate Health, Education, Labor and Pensions, HELP, Committee as well as the response I received on February 2, 2012, from Department of Labor Assistant Secretary Jane Oates be printed in the RECORD at the conclusion of my remarks. You will note that previous practice afforded the Secretary some discretion in how it

consults with special procedure stakeholders—specifically, that the "administrator may consult with affected employer and worker representatives." I am pleased that this bill includes text which requires that agencies "shall" consult with employer and employee representatives and publish for notice and comment regulations relating to the implementation of the special procedures. This is an important step in ensuring that both employers and employees are heard in the rulemaking process and their concerns are reflected in agency guidance. This consultation will help avoid future confusion amongst the parties, ensure that policies practically serve the program, and that there can be an end to inconsistent enforcement actions.

Mr. President, the occupations represented by these special procedures may affect only a few specific industries but play an important role in protecting the future of American agriculture. I am pleased the immigration bill allows occupations such as sheepherding to operate under the new program as it has operated for the past 50 years. In addition, I am pleased that the legislation recognizes a specific need to address the unique wage, housing, and operational components of the special procedure programs. Finally, it is vital that rulemaking requires agency consultation with stakeholders when drafting policies for the special procedure program. I thank the sponsors of this bill for their work on this section.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 28, 1987.

Hon. ALAN NELSON,
Commissioner, Immigration and Naturalization Service, Washington, DC.

DEAR AL: I am writing to comment on the Immigration Service's interim final regulations regarding the H-2A program, as they would affect the sheepherding program.

Congress clearly intended that the sheepherding program be allowed to continue in its present form and under its present conditions. This was actually explicitly stated in previous Senate versions of the Immigration Reform and Control Act. I am now concerned that the proposed regulations might not fulfill congressional intent in this area.

I understand that the interim final INS regulations require all H-2A workers to return home for a minimum of 6 months after residing in the U.S. for a period equal to three labor certifications. Under present practice, there is no such requirement in the H-2 sheepherding program. While I understand the reason for a "six month return" rule in other occupations, present practice allows a much briefer time outside of the U.S. after three labor certifications for sheepherders. I suggest that current practice be continued in this area.

Thank you for your attention and assistance. With best personal regards,

Most Sincerely,

ALAN K. SIMPSON,
United States Senator.

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, November 4, 1987.

Hon. ALAN K. SIMPSON,
U.S. Senate, Washington, DC.

DEAR SENATOR SIMPSON: This is in response to your letter of July 28, 1987 concerning the interim H-2A rule that requires that a person who holds H-2A status for three years must remain abroad for six months before he can again obtain H-2A status. You indicated this would be detrimental to the sheep industry, and that in promulgating the H-2A program Congress intended that the sheepherder program continue under the prior conditions.

Persons admitted as H-2 nonimmigrants have traditionally been limited to stays of no more than three years. The interim rule to which you referred, found in 8 CFR 214.2(h)(3)(viii)(C), was an attempt to strengthen this limitation to ensure that persons who hold H-2A status are nonimmigrants, and are not using the status as quasi-permanent residence. Our concern was the practice of employing an individual as an H-2A for three years, sending him abroad solely for the purpose of obtaining a new visa, and then bringing him back to the United States. Such actions do not constitute a meaningful interruption in employment in the United States, and turns H-2A nonimmigrant status into quasi-permanent residence, while leaving control over the alien's immigrant status with the employer.

We recognize that the prior H-2 sheepherder program worked effectively for the sheep industry. The administration has already recognized the uniqueness of this program through special provisions in the Department of Labor temporary agricultural labor certification process. Based on your statement regarding the intent of Congress regarding this program, in the final H-2A petition rule we will include a similar provision, and not require a six month absence after a sheepherder has been in the United States for three years.

Sincerely,

ALAN C. NELSON,
Commissioner.

U.S. SENATE,
Washington, DC, November 14, 2011.

Re Changes in the Special Procedures for the H-2A Program

Hon. HILDA L. SOLIS,
Secretary of Labor, U.S. Department of Labor, Washington, DC.

DEAR SECRETARY SOLIS: I write to respectfully request the Department of Labor reconsider several of the recent changes it made to Special Procedures for the H-2A Program. Although there are some positive changes, which are well intentioned, there are several that will have serious adverse impacts on H-2A employers. Specifically, I am concerned that the Department of Labor continues to make these changes with little or no input from stakeholders and offers little clarification as to how the guidance will be enforced.

Several Training and Employment Guidance letters (TEGLs) were issued June 14, 2011 and published in the Federal Register on August 4, 2011 in accordance with 20 CFR 655.102. Special procedures under this section are designed to provide the Secretary of Labor with a limited degree of flexibility in carrying out the responsibilities of the Immigration and Nationality Act (INA). However, the guidance issued under these TEGLs in 2011 deviates significantly from past interpretations of employment guidelines, was written devoid of stakeholder input and causes several significant challenges for the employers in the open range livestock industry.

Although several of the changes create significant challenges, those concerning sleeping units and variances are creating the one of the most alarming negative impacts on livestock producers. Guidelines concerning the use of mobile housing for open range occupations have remained unchanged for 22 years. A separate sleeping unit has been understood to be a bedroll/sleeping bag, bed, cot, or bunk. However, the latest TEGL references the term "housed" in regards to sleeping unit and adds a three day consecutive limitation for employees sharing a mobile housing unit on the range, such as a sheep wagon. This seems to imply that a separate sleeping unit is to include a separate "housing unit." Not only is the guideline inconsistent with previous standards but when interpreted strictly proves impractical for many employers. The resources necessary to move and secure multiple housing units in remote areas of range would not only hinder herding operations but could also prove to be dangerous in adverse weather conditions or during the shorter hours of daylight associated with the winter months.

H-2A employers engaged in sheep herding activities want to provide safe workplace conditions for their employees. However, when Department guidelines are vague, inconsistent or made without stakeholder input—challenges are due to arise that could adversely impact the industry and its employees. There is also ongoing concern about enforcement activities by the Department. Instances of inconsistent interpretations of guidance have been reported that concerns both long-standing policies and guidance resulting from the 2011 TEGLs. In the case of guidance that pre-dates the 2011 TEGLs, there have been instances in which employers are challenged for practices that are consistent with state standards for their occupation and in areas where the Department is to provide deference to state workforce and employment requirements.

Additionally, there has been a great deal of confusion over the revision of the requirements for variances by the 2011 TEGLs. In the past, operators were able to file a variance once with their appropriate state department of workforce and employment with no need to file additional variances for herding activities. However, the new guidance requires variances to be filed every year and can be applied to only extremely limited situations. This change limits flexibility for employers to best serve the needs of their employees and creates impractical consequences for a number of range operations. I encourage the Department to consider returning its policies to allow for variances to be filed once for activities recognized by the special procedures and to remove the time limit that has been imposed on variances.

Thank you for considering this request and these comments regarding the Special Procedures for the H-2A Program. Again, I encourage the Department to allow greater stakeholder participation in future changes to the special procedures. I look forward to the Department's response on this matter.

Sincerely,

MIKE ENZI,
United States Senator.

U.S. DEPARTMENT OF LABOR,
Washington, DC, Feb. 2, 2012

Hon. MICHAEL ENZI,
U.S. Senate,
Washington, DC.

DEAR SENATOR ENZI: Thank you for your letter to Secretary of Labor Hilda L. Solis requesting that the Department of Labor (Department) reconsider the recent changes made to Special Procedures for the H-2A Program through the Training and Employment Guidance Letters (TEGL) published in

the Federal Register on August 4, 2011. The TEGLs updated special procedures previously established under the H–2A Temporary Agricultural Program for occupations such as sheep and goat herding to reflect organizational changes as well as new regulatory provisions contained in the Temporary Agricultural Employment of H–2A Foreign Workers in the United States (H–2A Final Rule) published by the Department on February 12, 2010. Your letter has been referred to my office for response. The Employment and Training Administration is responsible for administering foreign labor certification program through the Office of Foreign Labor Certification (OFLC).

In your letter you state that even though there were some positive changes set forth in the TEGLs, the Department continues to make changes with little or no input from stakeholders and offers little clarification as to how the guidance will be enforced. Of particular importance, you cite changes pertaining to sleeping units made available to workers and to the variance procedure previously required of employers when petitioning for more than one worker to be housed in mobile units used in the open range. Your letter states that the above change in guidance limits flexibility for employers to best serve the needs of their employees and creates impractical consequences for a number of range operations.

To provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the Immigration and Nationality Act (INA), while not deviating from statutory requirements, the H–2A Final Rule provides the Administrator of OFLC with the authority to establish, continue, revise, or revoke special procedures for processing certain H–2A applications. The special procedures for sheep and goat herding, for example, have been recognized for many years and draw upon the historically unique nature of the agricultural work that cannot be completely addressed within the regulatory framework generally applied to other H–2A employers. Such procedures recognize the peculiarities of the industry or agricultural activity, and establish a reasonable and tailored means for such employers to meet underlying program requirements while not deviating from statutory requirements. Prior to making determinations regarding the use of special procedures, the H–2A Final Rule states that the "OFLC Administrator may consult with affected employer and worker representatives". The Department published these revised special procedures in June 2011 with a delayed effective date of October 1, 2011, to provide affected employers time to understand and adapt to any changes. The Department then published each TEGL as a notice in the Federal Register on August 4, 2011.

The special procedures published by the Department covering occupations involved in the open range production of livestock do not change the longstanding requirement that employers must provide housing and sleeping facilities to workers under the H–2A Program. Due to the unique nature of the work performed on the open range, employers in this industry are allowed to self-certify that housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards. Within the housing unit, workers must be afforded a separate sleeping unit such as a comfortable bed, cot, or bunk with a clean mattress. Therefore, it would be possible for the employer to continue to have one camp with more than one worker so long as each worker had his or her own bed. Because employers participating in the H–2A Program must make arrangements for housing workers several months in advance of the start date of work, the Department believes employers likewise have sufficient time to plan and arrange for the provision of sleeping units for its workers. Where it is temporarily impractical to set up a separate sleeping unit which would result in more than one worker having to share a bed, cot or bunk, the revised special procedures defined "temporary" as no more than three consecutive days to ensure workers promptly receive the housing benefits they are entitled to under the H–2A Program.

In your letter you also state that the new guidance departs from the previous practice of allowing employers to file a housing variance request only one time with the appropriate State Workforce Agency. Though the new guidance continues the practice of allowing employers to submit a written request for a housing variance, the Department's requirement has remained consistent by stipulating that "When filing an application for certification, the employer may request a variance from the separate sleeping unit(s) requirement to allow for a second herder to temporarily join the herding operation." Each open range production of livestock application is adjudicated on a case-by-case basis and conform to housing safety and health standards.

If you have any additional questions, please contact Mr. Tony Zaffirini, Office of Congressional and Intergovernmental Affairs, at (202)–693–4600.

Sincerely,

JANE OATES,
Assistant Secretary.

Mr. FEINSTEIN. Mr. President, I come to the floor today in support of S. 744, the bipartisan comprehensive immigration reform bill before the Senate.

Through the process of negotiation and compromise, including 212 amendments that were considered during the course of the Senate Judiciary Committee markup last month and now much discussion on the Senate floor, a workable, tough—but fair—bill sits before us, ripe for us to take action on a problem that has gone unresolved for far too long.

Colleagues, this is our last, best chance to achieve immigration reform.

The bill before the Senate provides long-sought-after solutions that will help fix our broken immigration system. It takes into consideration our country's modern-day national security, economic, and labor needs, as well as our country's age-old tradition of preserving family unity and promoting humanitarian policies.

It would also bring approximately 11 million undocumented individuals now living in the United States out of the shadows and on a path where they could proudly and openly contribute to this great nation.

The first fundamental principle of the bill is that we must control our Nation's borders and protect our national security.

Before a single undocumented person in the United Staes can earn a green card, several important "triggers" must be met, showing that the Federal Government has effectively secured the border and is enforcing current immigration laws. These triggers include the following:

No. 1, an unprecedented increase of 20,000 new full-time Border Patrol agents stationed along the southern border.

No. 2, the full deployment of the comprehensive southern border security strategy, which requires the Department of Homeland Security to conduct surveillance of 100 percent of the southern border region.

No. 3, DHS completion of the southern border fencing strategy, which includes at least 700 miles of pedestrian fencing along the southern border.

No. 4, implementation of a mandatory employment verification system for all employers, known as E-Verify, which will prevent unauthorized workers from obtaining employment.

No. 5, implementation of an electronic exit system at air and sea ports of entry that operates by collecting machine-readable visa or passport information from passengers of air and vessel carriers.

These enforcement improvements build upon the Department of Homeland Security's substantial progress in securing and managing our borders.

Over the past several years, DHS has deployed unprecedented amounts of manpower, resources, and technology to secure the Nation's borders, and these efforts have not only led to enhanced border security but have also expedited legitimate trade and travel.

The second fundamental principle included in the bill is the creation of a path to citizenship for the 11 million individuals who are living and working in the United States without proper immigration documentation.

While some have insisted that all 11 million undocumented immigrants should be deported, such a solution is not reasonable.

A majority of these individuals and families have become integrated into the fabric of their communities, and deportation would be a severe outcome. Many work and pay taxes, but they and their families live in the shadows and face the possibility of being picked up and deported, daily.

The State of California has the largest number of undocumented immigrants, estimated to be 2.6 million people or nearly one-fourth of all unauthorized immigrants currently living in the United States. These individuals have become an essential part of the California workforce. Many work in hotels, restaurants, agriculture, and the housing and construction industries.

A recent study of immigrants in California that was completed by Dr. Raul Hinojosa-Ojeda and Marshall Fitz of the Center for American Progress concluded that, "if all unauthorized immigrants were removed from California, the state would lose $301.6 billion in economic activity, decrease total employment by 17.4%, and eliminate 3.6 million jobs." The study further showed that, "if unauthorized immigrants in California were legalized, it would add 633,000 jobs to the economy, increase labor income by $26.9 billion, and increase tax revenues by $5.3 billion."

This bill establishes a process to bring these individuals out of the shadows.

The need to provide a stable, legal, and sustainable workforce through immigration reform is critical in the agricultural sector.