

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, everybody in this Chamber, I hope, will consider supporting this amendment. I urge its adoption.

I reserve the remainder of my time.

EXHIBIT 1

LIST OF ORGANIZATIONS THAT SUPPORT  
FEINGOLD-BROWNBACK AMENDMENT NO. 4083

American Bar Association  
American Civil Liberties Union  
American Immigration Lawyers Association  
American Jewish Committee  
Amnesty International  
Asian American Justice Center  
Asian Pacific American Legal Center, Los Angeles, CA  
Bernardo Kohler Center, Inc., Austin, Texas  
Casa de Esperanza, Bound Brook, New Jersey  
Catholic Charities USA  
Center for Gender and Refugee Studies, Univ. of California, Hastings College of the Law  
Center for National Security Studies  
Chicago Bar Association  
Church World Service Immigration and Refugee Program  
Episcopal Church  
Episcopal Migration Ministries  
Families for Freedom, Brooklyn, NY  
Hebrew Immigrant Aid Society  
Hispanic National Bar Association  
Human Rights First  
Human Rights Watch  
Immigrant Law Center, St. Paul, MN  
Immigrant Legal Advocacy Project, Portland, ME  
Immigrant Legal Resource Center  
Immigration Unit of Greater Boston Legal Services  
Institute of the Sisters of Mercy of America  
Jubilee Campaign USA, Inc.  
Leadership Conference on Civil Rights  
Legal Momentum  
Mexican American Legal Defense and Education Fund  
National Advocacy Center of the Sisters of the Good Shepherd  
National Council of La Raza  
National Immigration Forum  
National Immigration Law Center  
National Immigration Project  
National Network to End Violence Against Immigrant Women  
New York State Defenders Association Immigrant Defense Project  
Open Society Policy Center  
Opening Doors Immigration Services, Denton, TX  
Presbyterian Church (USA), Washington Office  
Refugee Resource Project  
Service Employees International Union  
Sisters of Mercy of the Americas  
Sikh American Legal Defense and Education Fund  
Sikh Coalition  
South Asian American Leaders of Tomorrow  
Tahirih Justice Center  
Union for Reform Judaism  
United Methodist Church, General Board of Church and Society  
Unitarian Universalist Service Committee  
U.S. Committee for Refugees and Immigrants  
U.S. Conference of Catholic Bishops  
Washington Defenders Association Immigrant Defense Project, Seattle, WA  
World Relief, the humanitarian arm of the National Association of Evangelicals USA

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been advised that the objection to setting aside amendments has been withdrawn, so we will be able to stack the votes on the remainder of the amendments.

While I have recognition, I would like to comment briefly in support of the amendment offered by the Senator from Wisconsin. The standard of clear and convincing evidence, unless prohibited as a matter of law, is a very tough standard and I don't think ought to be imposed here. It is preferable to use the regular four-part standard, which includes a requirement that the petitioner is likely to succeed on the merits.

This particular matter has been commented on by a number of very distinguished jurists. Judge Frank Easterbrook, appointed by President Reagan, said that the interpretation in the current bill—the interpretation that this amendment is designed to change—could require removal of an alien who was both likely to prevail in court and likely to face serious injury or death if deported.

Judge Bruce Selya from the First Circuit, appointed by President Reagan, said that the very situation the current bill would create is, in his words, “absurd” and “Kafkaesque.”

Judge Jerry Smith, another Reagan appointee on the Fifth Circuit Court of Appeals, said that the situation the bill would create is “peculiar, at best.”

I believe the interest of justice would be promoted by allowing the courts to utilize the current standards for granting stays and not imposing this extraordinary standard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am deeply grateful to the chairman, especially for his support of this amendment but also for his leadership on this legislation. It is extremely important to this country. I know he worked so hard in committee to come up with a good package that I am able to support. I particularly thank him for his support of the amendment.

I yield such time as the Senator from Kansas requires. I thank him for his tremendous help on this amendment.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank my colleague from Wisconsin for bringing forward this amendment and for highlighting the issue. I hope we can get a strong vote from all of our colleagues on the amendment.

We heard about the issue of clear and convincing evidence that one has to meet to keep from being sent home even though the standard is lower for one to actually win the case. I don't know anywhere else in the law where one has to meet a higher standard at that point in the system than one would on final adjudication. This is really backward in that particular situation.

I don't want to talk about that in particular, as I do the specific situations that can arise and we can see easily enough happen. I have been to one of the detention facilities in New York, a place called Wackenhut—an incredible name for a detention facility. I have been to detention facilities on the border. I met with people who sought asylum.

I recognize the problem a number of people are targeting on this issue—and I think it is a legitimate concern to raise—that too many people are claiming asylum status who are not legitimate asylees, and they are not going to win in the system and are flooding the system with requests. That is a legitimate concern. One can go into some of these detention facilities and find a lot of people who are saying they are seeking asylum and asylum status, and on its face one can question whether it is a legitimate case. That is a proper issue to raise, and I think the people who put forward this amendment are targeting a correct issue.

Having said that, I have also worked with a number of people who, if you take them in this situation and say: You can't meet clear and convincing on the initial status, you are going home and wait there before you can come here for asylum status, and we send them home, they are going to prison or they are likely to disappear. They are likely to disappear in that situation. I say disappear as in being killed in those host countries to which they would go back. We can think of some pretty easy ones. I had six refugees from North Korea in my office last week. If they go home, they are in the Gulag and probably will not survive.

What about Iran? What happens if someone from Iran comes to this country and seeks asylum status, and we say it doesn't look clear and convincing to us? How about Zimbabwe under Mugabe? That could happen in this situation. If you are in a family that has been opposed to his leadership in that country, and we say: Well, I don't know, and you are saying it is an uncle who caused a situation about which Mugabe is concerned, and we say: I don't know, did the uncle do much; we don't have a factual record on this—he doesn't have a factual record at all because they didn't let him leave with any factual record; you are going on his testimony, and he has to meet clear and convincing evidence—it would be very logical for a judge to say: You don't meet clear and convincing evidence. It is your word on this. We don't have a factual record. We can't get to a factual record. You are going back to Zimbabwe. And if he goes back to Zimbabwe, it is highly likely he will disappear, as in being killed. This guy isn't going to make it, isn't going to survive.

In that situation, we should have the standard the same on the stay as on the final injunction, particularly at this early stage in the process and particularly when somebody's physical life is in jeopardy.