

Aurora, CO, tweeted after the killings in Aurora, IL: “Months from now, as people talk about the mass shooting in Aurora, someone will ask, ‘Which Aurora mass shooting are you talking about?’”

Mass shootings have become too common in America. They make the news, but tens of thousands of Americans die every year from gun violence, and many of those deaths are barely reported or noted. They die in suicides and gun accidents, alone or in small groups, in domestic disturbances, in gang disputes, and in crossfire.

I am honored to represent the city of Chicago, but my heart breaks to know that last year more than 2,700 people were injured or killed by gun violence in that great city.

Let's face it, America is confronting an epidemic of gun violence. We need thoughts and prayers, but we need so much more. We need action to do something.

Do the lives of these policemen mean anything? Of course, they do. They mean a great deal to their families, and they mean a great deal to this Nation.

Do the lives of these victims who died mean anything? I met the families—four of them. They are heartbroken, and their lives will never be the same.

We need action to close the deadly gaps in America's gun background check system. Much of the work needs to take place at the State level. State and local law enforcement agencies are investigating how this tragedy might have been prevented and how to prevent another violent felon from slipping through the cracks in the system.

We also have a responsibility here. It is not enough for a moment of silence. It is not enough for prayers to be offered. We need to do more to keep guns out of the hands of people who should not have them.

This week, the House of Representatives will vote on a measure to close the gun show and internet loopholes in our background check system. These loopholes make a mockery of the law, which says we want to make sure that no dangerous person buys a firearm or keeps a firearm in America. It is critically important, and I support the House's effort, but, sadly, I have to predict that this measure will not even come up for a debate—let alone a vote—in this Republican-controlled Senate. There is just no way that they will consider any gun safety measure.

After Columbine and nearly every mass shooting and natural disaster since, a carpenter who lives in Illinois has crafted wooden memorials to honor the fallen.

His name is Greg Zanis, 68 years old. In 20 years, he has made and delivered—listen to this—more than 26,274 handmade wooden crosses, Stars of David, and crescent moons to communities across this country.

Greg drove to Sandy Hook, CT, after 26 first graders and educators were murdered in their grade school. He drove to Las Vegas after 58 people were

killed at a music festival. He drove to the First Baptist Church in Sutherland Springs, TX, after 26 worshippers were killed. He drove to Pittsburgh, PA, to honor the 11 worshippers killed at the Tree of Life synagogue.

Even after all that tragedy, the mass murder at Henry Pratt hit Greg Zanis especially hard. You see, Greg Zanis's hometown is Aurora, IL. Mr. Zanis told a reporter from the New York Times that he could drive away from all of the other tragedies, but he said: “I am not going to be able to get away from this one.”

To those who will say that the aftermath of a mass shooting is not the time to talk about gun safety, I have one simple question: When is the right time to talk about gun safety? If we are going to talk about it only on the days when no one dies in America because of the use of guns, then, of course, we will never talk about it.

Will you wait until this killing comes to your community, your church, your kid's school? Is that what it will take before Members of the Senate and the people across this Nation feel as Greg Zanis does, that you just can't escape this carnage anymore? I pray that is not the case.

We need to work together. Let's start. Let's do something sensible and bipartisan in the name of gun safety to make our background check systems as effective as they can be.

Look at those faces. Eleven days ago, they were alive, part of a family, loved—sons, fathers, grandfathers—and now they are gone because one man who never should have owned a gun took it to work in a fit of anger and killed these five men. It is time for this Senate and this Congress to do something.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, what is the legislative situation?

The PRESIDING OFFICER. The pending question is on the Miller nomination.

Mr. LEAHY. I thank the Presiding Officer.

I ask unanimous consent to speak as in morning business.

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

#### DECLARATION OF NATIONAL EMERGENCY

Mr. LEAHY. Mr. President, President Trump declared a national emergency 2 weeks ago. He did this in order to build a pet project of his. In the process, he said it was his intent to siphon billions of dollars that Congress had appropriated to help our men and women in uniform. Now, I am not sure what lawyers he consulted, but those lawyers seem to have overlooked our Nation's

founding document—the U.S. Constitution.

I know the President likes to communicate in 280 characters or less, so I will point him to a 77-character phrase he may want to review: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”

That is a short sentence, but our Founders knew what it meant. They enshrined it in article I, section 9 of the Constitution, and they established that Congress—and Congress alone—possesses the power of the purse. That Congress has exclusive power over our government's spending priorities is one of the most critical checks and balances in our constitutional system. The President can propose funding for whatever project he wants. He has the absolute right to propose funding, but it is the job of Congress to decide where to invest the American people's hard-earned tax dollars.

Let's review the facts. For over 2 years, the President has repeatedly tried and has repeatedly failed to convince Congress that building his southern border wall is a good idea. He has failed to get a deal with Mexico despite giving his word and promising his supporters more than 200 times that Mexico would pay for it. He promised that Mexico would pay for it while knowing, of course, that Mexico would not pay a cent for it. Then he failed to get a deal with his own party even during the 2 years when the Republicans controlled the Presidency, the U.S. Senate, and the U.S. House of Representatives. He also failed to get a deal after he forced the country into a 35-day government shutdown over the issue—a shutdown, incidentally, that cost our country at least \$11 billion, to say nothing of the number of people whose lives were so disrupted that many either lost their apartments, were unable to pay their mortgages, were unable to pay their bills, or were unable to pay for the medical care they needed.

Yet, in the face of all of these failings, he has decided to go it alone. He has decided to stretch his powers—beyond all recognition—under the National Emergencies Act. There is no rational basis to justify the use of this authority. So we should look at what a bipartisan group of Republicans and Democrats wrote—a group of 58 former senior national security officials who had to help secure our country under both Republican and Democratic Presidents.

They wrote: “There is no factual basis for the declaration of a national emergency” on the southwest border.

I ask unanimous consent that the Joint Declaration of Former United States Government Officials be printed in the RECORD.

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

#### JOINT DECLARATION OF FORMER UNITED STATES GOVERNMENT OFFICIALS

We, the undersigned, declare as follows:

1. We are former officials in the U.S. government who have worked on national security and homeland security issues from the White House as well as agencies across the Executive Branch. We have served in senior leadership roles in administrations of both major political parties, and collectively we have devoted a great many decades to protecting the security interests of the United States. We have held the highest security clearances, and we have participated in the highest levels of policy deliberations on a broad range of issues. These include: immigration, border security, counterterrorism, military operations, and our nation's relationship with other countries, including those south of our border.

a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997. She has also been a member of the Central Intelligence Agency External Advisory Board since 2009 and of the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

b. Jeremy B. Bash served as Chief of Staff of the U.S. Department of Defense from 2011 to 2013, and as Chief of Staff of the Central Intelligence Agency from 2009 to 2011.

c. John B. Bellinger III served as the Legal Adviser to the U.S. Department of State from 2005 to 2009. He previously served as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001 to 2005.

d. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. Department of State from 2009 to 2012.

e. Antony Blinken served as Deputy Secretary of State from 2015 to 2017. He previously served as Deputy National Security Advisor to the President from 2013 to 2015.

f. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.

g. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008. He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.

h. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

i. Johnnie Carson served as Assistant Secretary of State for African Affairs from 2009 to 2013. He previously served as the U.S. Ambassador to Kenya from 1999 to 2003, to Zimbabwe from 1995 to 1997, and to Uganda from 1991 to 1994.

j. James Clapper served as U.S. Director of National Intelligence from 2010 to 2017.

k. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to 2017.

l. Eliot A. Cohen served as Counselor of the U.S. Department of State from 2007 to 2009.

m. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, as U.S. Ambassador to Iraq from 2007 to 2009, as U.S. Ambassador to Pakistan from 2004 to 2007, as U.S. Ambassador to Syria from 1998 to 2001, as U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.

n. Thomas Donilon served as National Security Advisor to the President from 2010 to 2013.

o. Jen Easterly served as Special Assistant to the President and Senior Director for Counterterrorism from 2013 to 2016.

p. Nancy Ely-Raphel served as Senior Adviser to the Secretary of State and Director of the Office to Monitor and Combat Trafficking in Persons from 2001 to 2003. She previously served as the U.S. Ambassador to Slovenia from 1998 to 2001.

q. Daniel P. Erikson served as Special Advisor for Western Hemisphere Affairs to the Vice President from 2015 to 2017, and as Senior Advisor for Western Hemisphere Affairs at the U.S. Department of State from 2010 to 2015.

r. John D. Feeley served as U.S. Ambassador to Panama from 2015 to 2018. He served as Principal Deputy Assistant Secretary for Western Hemisphere Affairs at the U.S. Department of State from 2012 to 2015.

s. Daniel F. Feldman served as Special Representative for Afghanistan and Pakistan at the U.S. Department of State from 2014 to 2015.

t. Jonathan Finer served as Chief of Staff to the Secretary of State from 2015 to 2017, and Director of the Policy Planning Staff at the U.S. Department of State from 2016 to 2017.

u. Jendayi Frazer served as Assistant Secretary of State for African Affairs from 2005 to 2009. She served as U.S. Ambassador to South Africa from 2004 to 2005.

v. Suzy George served as Executive Secretary and Chief of Staff of the National Security Council from 2014 to 2017.

w. Phil Gordon served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf from 2013 to 2015, and Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013.

x. Chuck Hagel served as Secretary of Defense from 2013 to 2015, and previously served as Co-Chair of the President's Intelligence Advisory Board. From 1997 to 2009, he served as U.S. Senator for Nebraska, and as a senior member of the Senate Foreign Relations and Intelligence Committees.

y. Avril D. Haines served as Deputy National Security Advisor to the President from 2015 to 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.

z. Luke Hartig served as Senior Director for Counterterrorism at the National Security Council from 2014 to 2016.

aa. Heather A. Higginbottom served as Deputy Secretary of State for Management and Resources from 2013 to 2017.

bb. Roberta Jacobson served as U.S. Ambassador to Mexico from 2016 to 2018. She previously served as Assistant Secretary of State for Western Hemisphere Affairs from 2011 to 2016.

cc. Gil Kerlikowske served as Commissioner of Customs and Border Protection from 2014 to 2017. He previously served as Director of the Office of National Drug Control Policy from 2009 to 2014.

dd. John F. Kerry served as Secretary of State from 2013 to 2017.

ee. Prem Kumar served as Senior Director for the Middle East and North Africa at the National Security Council from 2013 to 2015.

ff. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.

gg. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to 2017. Previously, she served as Assistant Attorney General for National Security from 2011 to 2013.

hh. Janet Napolitano served as Secretary of Homeland Security from 2009 to 2013. She

served as the Governor of Arizona from 2003 to 2009.

ii. James D. Nealon served as Assistant Secretary for International Engagement at the U.S. Department of Homeland Security from 2017 to 2018. He served as U.S. Ambassador to Honduras from 2014 to 2017.

jj. James C. O'Brien served as Special Presidential Envoy for Hostage Affairs from 2015 to 2017. He served in the U.S. Department of State from 1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.

kk. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.

ll. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.

mm. Anne W. Patterson served as Assistant Secretary of State for Near Eastern Affairs from 2013 to 2017. Previously, she served as the U.S. Ambassador to Egypt from 2011 to 2013, to Pakistan from 2007 to 2010, to Colombia from 2000 to 2003, and to El Salvador from 1997 to 2000.

nn. Thomas R. Pickering served as Under Secretary of State for Political Affairs from 1997 to 2000. He served as U.S. Permanent Representative to the United Nations from 1989 to 1992.

oo. Amy Pope served as Deputy Homeland Security Advisor and Deputy Assistant to the President from 2015 to 2017.

pp. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights at the National Security Council.

qq. Jeffrey Prescott served as Deputy National Security Advisor to the Vice President from 2013 to 2015, and as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.

rr. Nicholas Rasmussen served as Director of the National Counterterrorism Center from 2014 to 2017.

ss. Alan Charles Raul served as Vice Chairman of the Privacy and Civil Liberties Oversight Board from 2006 to 2008. He previously served as General Counsel of the U.S. Department of Agriculture from 1989 to 1993, General Counsel of the Office of Management and Budget in the Executive Office of the President from 1988 to 1989, and Associate Counsel to the President from 1986 to 1989.

tt. Dan Restrepo served as Special Assistant to the President and Senior Director for Western Hemisphere Affairs at the National Security Council from 2009 to 2012.

uu. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor to the President from 2013 to 2017.

vv. Anne C. Richard served as Assistant Secretary of State for Population, Refugees, and Migration from 2012 to 2017.

ww. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees, and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues at the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.

xx. Andrew J. Shapiro served as Assistant Secretary of State for Political-Military Affairs from 2009 to 2013.

yy. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

zz. Vikram Singh served as Deputy Special Representative for Afghanistan and Pakistan

from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.

aaa. Dana Shell Smith served as U.S. Ambassador to Qatar from 2014 to 2017. Previously, she served as Principal Deputy Assistant Secretary of Public Affairs.

bbb. Jeffrey H. Smith served as General Counsel of the Central Intelligence Agency from 1995 to 1996. He previously served as General Counsel of the Senate Armed Services Committee.

ccc. Jake Sullivan served as National Security Advisor to the Vice President from 2013 to 2014. He previously served as Director of Policy Planning at the U.S. Department of State from 2011 to 2013.

ddd. Strobe Talbott served as Deputy Secretary of State from 1994 to 2001.

eee. Linda Thomas-Greenfield served as Assistant Secretary for the Bureau of African Affairs from 2013 to 2017. She previously served as U.S. Ambassador to Liberia and Deputy Assistant Secretary for the Bureau of Population, Refugees, and Migration from 2004 to 2006.

fff. Arturo A. Valenzuela served as Assistant Secretary of State for Western Hemisphere Affairs from 2009 to 2011. He previously served as Special Assistant to the President and Senior Director for Inter-American Affairs at the National Security Council from 1999 to 2000, and as Deputy Assistant Secretary of State for Mexican Affairs from 1994 to 1996.

2. On February 15, 2019, the President declared a “national emergency” for the purpose of diverting appropriated funds from previously designated uses to build a wall along the southern border. We are aware of no emergency that remotely justifies such a step. The President’s actions are at odds with the overwhelming evidence in the public record, including the administration’s own data and estimates. We have lived and worked through national emergencies, and we support the President’s power to mobilize the Executive Branch to respond quickly in genuine national emergencies. But under no plausible assessment of the evidence is there a national emergency today that entitles the President to tap into funds appropriated for other purposes to build a wall at the southern border. To our knowledge, the President’s assertion of a national emergency here is unprecedented, in that he seeks to address a situation:

(1) that has been enduring, rather than one that has arisen suddenly;

(2) that in fact has improved over time rather than deteriorated;

(3) by reprogramming billions of dollars in funds in the face of clear congressional intent to the contrary; and

(4) with assertions that are rebutted not just by the public record, but by his agencies’ own official data, documents, and statements.

3. *Illegal border crossings are near forty-year lows.* At the outset, there is no evidence of a sudden or emergency increase in the number of people seeking to cross the southern border. According to the administration’s own data, the numbers of apprehensions and undetected illegal border crossings at the southern border are near forty-year lows. Although there was a modest increase in apprehensions in 2018, that figure is in keeping with the number of apprehensions only two years earlier, and the overall trend indicates a dramatic decline over the last fifteen years in particular. The administration also estimates that “undetected unlawful entries” at the southern border “fell from approximately 851,000 to nearly 62,000” between fiscal years 2006 to 2016, the most recent years for which data are available. The United States currently hosts what is estimated to

be the smallest number of undocumented immigrants since 2004. And in fact, in recent years, the majority of currently undocumented immigrants entered the United States legally, but overstayed their visas, a problem that will not be addressed by the declaration of an emergency along the southern border.

4. *There is no documented terrorist or national security emergency at the southern border.* There is no reason to believe that there is a terrorist or national security emergency at the southern border that could justify the President’s proclamation.

a. This administration’s own most recent Country Report on Terrorism, released only five months ago, found that “there was no credible evidence indicating that international terrorist groups have established bases in Mexico, worked with Mexican drug cartels, or sent operatives via Mexico into the United States.” Since 1975, there has been only one reported incident in which immigrants who had crossed the southern border illegally attempted to commit a terrorist act. That incident occurred more than twelve years ago, and involved three brothers from Macedonia who had been brought into the United States as children more than twenty years earlier.

b. Although the White House has claimed, as an argument favoring a wall at the southern border, that almost 4,000 known or suspected terrorists were intercepted at the southern border in a single year, this assertion has since been widely and consistently repudiated, including by this administration’s own Department of Homeland Security. The overwhelming majority of individuals on terrorism watchlists who were intercepted by U.S. Customs and Border Patrol were attempting to travel to the United States by air; of the individuals on the terrorist watchlist who were encountered while entering the United States during fiscal year 2017, only 13 percent traveled by land. And for those who have attempted to enter by land, only a small fraction do so at the southern border. Between October 2017 and March 2018, forty-one foreign immigrants on the terrorist watchlist were intercepted at the northern border. Only six such immigrants were intercepted at the southern border.”

5. *There is no emergency related to violent crime at the southern border.* Nor can the administration justify its actions on the grounds that the incidence of violent crime on the southern border constitutes a national emergency. Factual evidence consistently shows that unauthorized immigrants have no special proclivity to engage in criminal or violent behavior. According to a Cato Institute analysis of criminological data, undocumented immigrants are 44 percent *less likely* to be incarcerated nationwide than are native-born citizens. And in Texas, undocumented immigrants were found to have a first-time conviction rate 32 percent below that of native-born Americans; the conviction rates of unauthorized immigrants for violent crimes such as homicide and sex offenses were also below those of native-born Americans. Meanwhile, overall rates of violent crime in the United States have declined significantly over the past 25 years, falling 49 percent from 1993 to 2017. And violent crime rates in the country’s 30 largest cities have decreased on average by 2.7 percent in 2018 alone, further undermining any suggestion that recent crime trends currently warrant the declaration of a national emergency.

6. *There is no human or drug trafficking emergency that can be addressed by a wall at the southern border.* The administration has claimed that the presence of human and drug trafficking at the border justifies its emer-

gency declaration. But there is no evidence of any such sudden crisis at the southern border that necessitates a reprogramming of appropriations to build a border wall.

a. The overwhelming majority of opioids that enter the United States across a land border are carried through legal ports of entry in personal or commercial vehicles, not smuggled through unauthorized border crossings. A border wall would not stop these drugs from entering the United States. Nor would a wall stop drugs from entering via other routes, including smuggling tunnels, which circumvent such physical barriers as fences and walls, and international mail (which is how high-purity fentanyl, for example, is usually shipped from China directly to the United States).

b. Likewise, illegal crossings at the southern border are not the principal source of human trafficking victims. About two-thirds of human trafficking victims served by non-profit organizations that receive funding from the relevant Department of Justice office are U.S. citizens, and even among non-citizens, most trafficking victims usually arrive in the country on valid visas. None of these instances of trafficking could be addressed by a border wall. And the three states with the highest per capita trafficking reporting rates are not even located along the southern border.

7. *This proclamation will only exacerbate the humanitarian concerns that do exist at the southern border.* There are real humanitarian concerns at the border, but they largely result from the current administration’s own deliberate policies towards migrants. For example, the administration has used a “metering” policy to turn away families fleeing extreme violence and persecution in their home countries, forcing them to wait indefinitely at the border to present their asylum cases, and has adopted a number of other punitive steps to restrict those seeking asylum at the southern border. These actions have forced asylum-seekers to live on the streets or in makeshift shelters and tent cities with abysmal living conditions, and limited access to basic sanitation has caused outbreaks of disease and death. This state of affairs is a consequence of choices this administration has made, and erecting a wall will do nothing to ease the suffering of these people.

8. *Redirecting funds for the claimed “national emergency” will undermine U.S. national security and foreign policy interests.* In the face of a nonexistent threat, redirecting funds for the construction of a wall along the southern border will undermine national security by needlessly pulling resources from Department of Defense programs that are responsible for keeping our troops and our country safe and running effectively.

a. Repurposing funds from the defense construction budget will drain money from critical defense infrastructure projects, possibly including improvement of military hospitals, construction of roads, and renovation of on-base housing. And the proclamation will likely continue to divert those armed forces already deployed at the southern border from their usual training activities or missions, affecting troop readiness.

b. In addition, the administration’s unilateral, provocative actions are heightening tensions with our neighbors to the south, at a moment when we need their help to address a range of Western Hemisphere concerns. These actions are placing friendly governments to the south under impossible pressures and driving partners away. They have especially strained our diplomatic relationship with Mexico, a relationship that is vital to regional efforts ranging from critical intelligence and law enforcement partnerships to cooperative efforts to address the growing tensions with Venezuela. Additionally, the proclamation could well lead to the

degradation of the natural environment in a manner that could only contribute to long-term socioeconomic and security challenges.

c. Finally, by declaring a national emergency for domestic political reasons with no compelling reason or justification from his senior intelligence and law enforcement officials, the President has further eroded his credibility with foreign leaders, both friend and foe. Should a genuine foreign crisis erupt, this lack of credibility will materially weaken this administration's ability to marshal allies to support the United States, and will embolden adversaries to oppose us.

9. *The situation at the border does not require the use of the armed forces, and a wall is unnecessary to support the use of the armed forces.* We understand that the administration is also claiming that the situation at the southern border "requires use of the armed forces," and that a wall is "necessary to support such use" of the armed forces. These claims are implausible.

a. Historically, our country has deployed National Guard troops at the border solely to assist the Border Patrol when there was an extremely high number of apprehensions, together with a particularly low number of Border Patrol agents. But currently, even with retention and recruitment challenges, the Border Patrol is at historically high staffing and funding levels, and apprehensions—measured in both absolute and per-agent terms—are near historic lows.

b. Furthermore, the composition of southern border crossings has shifted such that families and unaccompanied minors now account for the majority of immigrants seeking entry at the southern border; these individuals do not present a threat that would need to be countered with military force.

c. Just last month, when asked what the military is doing at the border that couldn't be done by the Department of Homeland Security if it had the funding for it, a top-level defense official responded, "[n] one of the capabilities that we are providing [at the southern border] are combat capabilities. It's not a war zone along the border." Finally, it is implausible that hundreds of miles of wall across the southern border are somehow necessary to support the use of armed forces. We are aware of no military- or security-related rationale that could remotely justify such an endeavor.

10. *There is no basis for circumventing the appropriations process with a declaration of a national emergency at the southern border.* We do not deny that our nation faces real immigration and national security challenges. But as the foregoing demonstrates, these challenges demand a thoughtful, evidence-based strategy, not a manufactured crisis that rests on falsehoods and fearmongering. In a briefing before the Senate Intelligence Committee on January 29, 2019, less than one month before the Presidential Proclamation, the Directors of the CIA, DNI, FBI, and NSA testified about numerous serious current threats to U.S. national security, but none of the officials identified a security crisis at the U.S.-Mexico border. In a briefing before the House Armed Services Committee the next day, Pentagon officials acknowledged that the 2018 National Defense Strategy does not identify the southern border as a security threat. Leading legislators with access to classified information the President's own statements have strongly suggested, if not confirmed, that there is no evidence supporting the administration's claims of an emergency. And it is reported that the President made the decision to circumvent the appropriations process and reprogram money without the Acting Secretary of Defense having even started to consider where the funds might come from, suggesting an absence of consultation and internal delibera-

tions that in our experience are necessary and expected before taking a decision of this magnitude.

11. For all of the foregoing reasons, in our professional opinion, there is no factual basis for the declaration of a national emergency for the purpose of circumventing the appropriations process and reprogramming billions of dollars in funding to construct a wall at the southern border, as directed by the Presidential Proclamation of February 15, 2019.

Respectfully submitted,

Signed,

Madeleine K. Albright, Jeremy B. Bash, John B. Bellinger III, Daniel Benjamin, Antony Blinken, John O. Brennan, R. Nicholas Burns, William J. Burns, Johnnie Carson, James Clapper.

David S. Cohen, Eliot A. Cohen, Ryan Crocker, Thomas Donilon, Jen Easterly, Nancy Ely-Raphel, Daniel P. Erikson, John D. Feeley, Daniel F. Feldman, Jonathan Finer.

Jendayi Frazer, Suzy George, Phil Gordon, Chuck Hagel, Avril D. Haines, Luke Hartig, Heather A. Higginbottom, Roberta Jacobson, Gil Kerlikowske, John F. Kerry.

Prem Kumar, John E. McLaughlin, Lisa O. Monaco, Janet Napolitano, James D. Nealon, James C. O'Brien, Matthew G. Olsen, Leon E. Panetta, Anne W. Patterson, Thomas R. Pickering.

Amy Pope, Samantha J. Power, Jeffrey Prescott, Nicholas Rasmussen, Alan Charles Raul, Dan Restrepo, Susan E. Rice, Anne C. Richard, Eric P. Schwartz, Andrew J. Shapiro.

Wendy R. Sherman, Vikram Singh, Dana Shell Smith, Jeffrey H. Smith, Jake Sullivan, Strobe Talbott, Linda Thomas-Greenfield, Arturo A. Valenzuela.

Mr. LEAHY. Mr. President, the reality, of course, is that apprehensions at the southwest border have dropped 75 percent since 2000. The reality is that many of the southern border communities have violent crime rates that are lower than our national average. The reality is that the vast majority of the drugs that are apprehended at the border are seized at the ports of entry, and a wall would do nothing to stop this. The President is either out of touch with reality, willfully ignoring it, or not even reading the material he gets from his administration.

Presidents do have emergency powers, but they should be invoked only in true times of crises. It is an abuse of power to invoke these authorities simply as a political step to energize a President's base. It is an abuse of power to invoke these authorities to fulfill a cynical campaign promise he never should have made. The President knew he would never keep his word or the promise he had made that Mexico would pay for this border wall.

When Congress enacted the National Emergencies Act of 1976 to convey these powers to the President, it assumed whoever sat in the Oval Office would have enough respect for the office and the power being conveyed not to abuse it. President Trump has failed that test. Since 1976, Presidents of the United States—Republicans and Democrats alike—have upheld and passed the test. President Trump has failed the test. Look what he wants to do. The President wants to raid money

that is meant for military housing and military base improvements to pay for his wall. This is at a time when studies are coming out that show how our men and women in the military are being housed in inferior or dangerous conditions. Sometimes the buildings have mold and decay, and it affects their health. The buildings are rat infested and roach infested, but the President wants to take the money away from them to build a wall that we do not need. The President has repeatedly decried the amount of drugs coming across our border. But now he wants to raid money that Congress has appropriated for proven drug programs and counter-drug programs to pay for his wall.

Let me repeat that. In order to build a wall that would do very little to stop drugs from coming across our border, President Trump wants to take money away from law enforcement programs that actually prevent drugs from coming across our border or from programs that enhance military readiness. I wish I were making this up. It sounds like something you hear on a comedy program, but it is not comedy, it is reality, and I have to ask, what is going on?

In the days and weeks ahead, the President's emergency declaration—which amounts to an end run around both the Constitution and Congress—is going to be challenged, and it should be. Over the past 2 years, we have seen the erosion of our institutional checks and balances in the face of creeping authoritarianism. The time has come for Congress and members of the President's own party to take a stand. Are we a democracy, or are we an authoritarian government? It is a pretty basic question.

I have been here with every President since President Gerald Ford. They upheld the Constitution, Republicans and Democrats, and they believed in the separation of power. All of them did. We simply cannot afford to now remain silent in the face of such an unprecedented violation of the separation of powers.

It is interesting. As I sit here, I remember some of my Republican friends—and they are my friends—when President Obama was President. They shouted from every rooftop about the lurches of an imperial Presidency. In every Executive order, they saw a threat to Congress's power. In every speech, they surmised the machinations of a lawless strong man—a man Donald Trump claimed wasn't born in the United States. Now, when they are faced with a President who is literally using his Executive powers to fund what Congress specifically would not, my Republican friends should echo the same concerns.

I am glad that some in the Republican Party have begun expressing their reservations about President Trump's national emergency declaration. Certainly a number of Republicans who serve in national security positions who signed on to the material

I have put in the RECORD did. But fleeting comments to reporters in the hallway are meaningless unless they are willing to follow up their words with their votes.

Today, the House will vote to disapprove the President's declaration. I believe that joint resolution of disapproval will pass the House. In short order, the Senate will have to vote on it. That is going to be the true test. That will be the metric history uses to determine whether Republicans are willing to put our country, our Constitution, and Congress itself over party.

While the President's emergency declaration stumbles its way through the courts, I hope my Republican friends take a moment to take stock of where we are. President Trump will be just a blip in our Nation's history. But for the sake of appeasing a man who hundreds of times made a foolish campaign promise, never grounded in reality, will they forever change the course of the separation of powers in our country? For the sake of appeasing a President who detests any limits or checks on his authority, will they forever diminish the role of Congress as a coequal branch of government? We are the longest surviving democracy on Earth today because there are checks and balances.

I am reminded of words of caution written by George Washington, our Founding Father and our Nation's first President, in his Farewell Address. The words are as true today, and we read this Farewell Address every year on the floor of the Senate. Here is what President Washington wrote over 223 years ago:

It is important, likewise, that the habits of thinking in a free Country should inspire caution in those entrusted with its administration, to confine themselves within their respective Constitutional spheres; avoiding in the exercise of the Powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism. . . . If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

That is what George Washington said. He warned us against despots. Remember, this was a man who could have remained President for life, and he voluntarily stepped down after a second term. He was a man who did that because he wanted democracy to thrive.

He spoke of the three coequal branches of government—the executive, the legislative, and the judiciary—and he was reminding us that if you let one encroach upon the other, you start down the path of despotism. We don't need that in this country, especially in this age. We don't.

We know what despots are like. We see them around the world. We see them in South America today, in one country in particular. We see them in North Korea, where the despot had his uncle executed, his own brother murdered, and thousands of people are imprisoned, starved, and dying. A despot who continues to build nuclear weapons to keep himself in power even as his people die of starvation. In a democracy, that doesn't happen. We have checks and balances for a reason.

I am going to vote aye on this joint resolution of disapproval. I urge all Senators to do the same. Have checks and balances.

I remind the President to treat emergency declarations the same way they have been treated since 1976, the way—certainly in my experience—Presidents Ford, Carter, Reagan, both Bushes, Clinton, and Obama did. That preserved democracy. Was it frustrating to each of them at times? Of course it was. I remember long discussions with President Ford, President Carter, President Reagan, President George H. W. Bush, President George W. Bush, President Clinton, and President Obama. They would say: We want to do this. A number of us had to say: You don't have the authority to do that. And they realized that.

It is not the person who holds the office. It is not the Presiding Officer. It is not me. It is not the other 98 Members of this body. It is not the President of the United States. It is not the Members of the House. It is not the members of the courts. What rules this country is our Constitution. We are a democracy. We must keep it as a democracy. Look what happens in those countries where they ignore democracy and have despots. In Venezuela, people are going without food and medicine. In the Philippines, where there is a despot, there have been murders of people who are just under suspicion, encouraged by him. We have seen the deaths of thousands of people in North Korea because of a despot who does not care and has no sense of morality.

America is so much better. Follow our Constitution. Obey our Constitution. Realize there are checks and balances. Have both Republicans and Democrats stand up and join. Remember what George Washington said. It was good advice back then; it is good advice today.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCOTT of South Carolina. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

S. 311

Mr. SCOTT of South Carolina. Mr. President, I was necessarily absent from yesterday evening's vote on clo-

ture on the motion to proceed to S. 311, the Born-Alive Abortion Survivors Protection Act. On vote No. 27, had I been present, I would have been a yea vote on the motion to invoke cloture.

Let me say that a little differently. As I sat, waiting for my plane to leave Charleston, SC, to come to the Nation's Capital—a trip that typically takes about 63 minutes—3 hours later, I had not yet arrived in Washington, DC.

On a vote that, to me, should not be a vote at all—this should be common sense, but it certainly was not common sense, so we had to have a vote on an issue that is very near and dear to my heart.

I will say without any question that the frustration I felt at being late to that vote was one that was incredibly irritating and infuriating. I had planned to be on the floor of the Senate voting yes on a commonsense piece of legislation, the Born-Alive Abortion Survivors Protection Act, but was unable to make it because a 1-hour flight took more than 3 hours, and I arrived here about 4 minutes after the close of the vote, which also is quite frustrating.

But what is even more frustrating than that is that in a nation of good conscience, we would be debating and having a conversation about a child who is born, sitting there, alive, separated from her mother, that there would be a question of whether that child should be able to continue to live.

This is an issue that has been raised by people coming out of New York and more recently by people coming out of Virginia and by the Governor—who happens to be, from my understanding, a pediatric surgeon—who suggested it is OK to allow that child to die.

Whether you are pro-life, as I am, or pro-choice, as others, I cannot imagine that this would even be an issue of debate or discussion between the two sides. There is no side on this topic. There cannot be a side about life separated from the mother and whether that life should continue to live. This is common sense. This is human decency. This is not an issue of being pro-life or pro-choice. This is being pro-child, which we all should be.

So I find myself at a loss for words, standing on the floor of the U.S. Senate—where a vote yesterday failed by several votes—having to discuss what doesn't make sense.

I have recently spoken to a group in Charleston, SC, during Black History Month, where the GOP and African Americans were in the same room having a great conversation about the issues that are important to our Nation. We talked about so many of the powerful issues of economic opportunity and opportunity zones. There may have been some disagreement on whether we should have higher taxes or lower taxes, but there was no disagreement on the issue of infanticide. There was no disagreement whatsoever. In the room, whether you were to the left

or to the right, there was one thing that was common, and that was the value of life.

I traveled to Little Rock, AR, this weekend to speak at another Black History Month event, where Republicans and Democrats were coming together at the Governor's Mansion to have a conversation about moving this Nation forward and about reconciliation. In the room, we had conversations about the tragedies in Virginia, from the blackface tragedy to the issues with the three ranking members in the Commonwealth of Virginia. When I started talking about the value of human life, the intrinsic value of each human being, there was 100 percent support that we are a nation that should always value the life of a born-alive child. There was not a single dissent in a room of nearly 400 people.

To have to have a debate on the floor of the Senate about something that every American with whom I have spoken, in airports or at events, agrees there is nothing to debate, frustrates me. So while I am saddened and frustrated, I have been encouraged by my fellow Americans—from Arkansas to South Carolina, to Tennessee—who have all come to the same conclusion, and that is that a born-alive child deserves to live.

We may disagree on other points, but this is a place where there is universal agreement with the folks I have spoken to. These are folks who don't vote for Republicans or Democrats; they all vote for children. They all vote for life.

We are a nation that must continue to value life. For some reason, somehow, this body missed that opportunity to reinforce that value system before the American public, to say to each child born: No matter your State, no matter your challenges, you have intrinsic value.

I yield the floor.

The PRESIDING OFFICER (Mr. CRUZ). The Senator from Washington.

NOMINATION OF ERIC D. MILLER

Ms. CANTWELL. Mr. President, I rise in opposition to a nomination we are going to be vote on very soon—the confirmation of Eric Miller to serve on the U.S. Court of Appeals for the Ninth Circuit.

As a U.S. Senator, I take my obligation to advise and consent on judicial nominations very seriously, and I believe Mr. Miller's confirmation process has gone against longstanding Senate tradition and norms and limited our role to advise and consent on his nomination.

This nomination has proceeded over the objection of both myself and my colleague from Washington, Senator MURRAY. For more than 100 years, conferring with Senators and allowing them to advise and consent on judicial nominees in their home State has been our process.

Since 1936, only eight judges have been confirmed when one home State Senator objected. In every case, confirmed nominees have been supported

by at least one Senator from the nominee's State, and to this day no circuit court judge has ever been confirmed despite opposition from their home State Senators. All that would change if Mr. Miller is confirmed.

His confirmation hearing was held during a recess last Congress, when the vast majority of Senators were back in their States. In fact, only two Members of the U.S. Senate were present at the hearing, and neither one of them were Democrats. Mr. Miller was questioned for less than 5 minutes—5 minutes—and when the Judiciary Committee Democrats requested another hearing, that request was rejected.

Confirming Mr. Miller without a full vetting by both Democrats and Republicans is the wrong way to proceed on a lifetime appointment. Moreover, confirming Mr. Miller without approval from Senator MURRAY and I would set a damaging precedent.

I do have concerns about Eric Miller's record. He has spent much of his career fighting against the interests of Tribal governments and Tribal sovereignty. He has argued cases opposing Tribal fishing rights, challenging Tribal sovereignty, and fighting against the protection of Native American religious and traditional practices, so it is no surprise that organizations representing all 573 Tribal nations around the United States, including the National Congress of American Indians, oppose Mr. Miller's confirmation.

I urge my colleagues to stop this process and oppose Mr. Miller's confirmation to the Ninth Circuit Court of Appeals.

S. 47

Mr. President, I also want to comment on upcoming action in the House, where they are scheduled to take up S. 47, the Murkowski-Cantwell lands package later this afternoon, which received 92 votes in the Senate earlier this month.

It is my hope that the House will approve this bill with the same overwhelming that it received in the Senate, and send this legislation quickly to President Trump's desk.

I want to take a moment to emphasize four important provisions of this legislation as we prepare for this year's upcoming fire season.

This legislation includes four provisions that will help firefighters improve their safety and effectiveness and bring state-of-the-art technology to combating wildfires. These provisions will help firefighters and communities, and we need to do everything we can as we face longer fire seasons having more catastrophic events. We need to give communities and firefighters every tool possible.

First, this legislation allows for the use of drones to create real-time fire mapping, as well as GPS to track firefighter crews. These advances will help enable real-time tracking and location of both the fire and the firefighters.

Why is this so important? It is because our firefighters need real-time

data to do their job more safely and effectively. The combination of real-time mapping and GPS locaters has been referred to by the industry as the "Holy Grail of Wildland Firefighter Safety."

Last month's report on the devastating Mendocino Complex fire shows why this is the case. According to this report, one of the challenges frontline firefighters had to face was the fact that they weren't sure exactly where the fire was. The safety officers didn't always know where the firefighters are. In one case, no one knew where six entrapped firefighters were. The result was that all six suffered injuries because it took quite a while to locate and rescue them.

Under this legislation that will be voted on by the House today, we will have more drones orbiting high over the fires, constantly updating fire maps and doing it more than just once a day, which has been the standard until now. These drones employ infrared cameras that can penetrate through thick smoke and better identify hotspots. Air tankers will be able to more accurately drop their fuel retardants, and we can tell firefighters on the frontlines how to steer away from areas that are just too dangerous to tackle.

When I heard the stories of brave firefighters who battled fire that raged in many parts of my State, I knew we needed to do more to protect these unbelievable heroes. Whether it is in Eastern Washington or Central Washington—in the Okanagon and Wenatchee forests or around Spokane—we have to do more to help those communities and firefighters who are putting themselves on the line for us.

This legislation also allows the Forest Service to access NASA's mapping technology to help prevent mudslides that are all too common after these horrific fires. We all know erosion can happen shortly after the devastation of vegetation, and that creates more damage in the community. The fact that we will be getting NASA access, we will then be able to come up with strategies to prevent erosion, cutting the time significantly from where it is today.

The fourth provision is improving smoke forecasting by assigning meteorologists to every large fire. I know some people are thinking this probably has already been done. Believe me, we haven't given the Forest Service every tool it needs.

Over the last few years, summers in the Puget Sound region have suffered as fires have blanketed our normally pristine air with smoke and unhealthy air. We know this is becoming a new normal. As the Western United States continues to become hotter and drier, fires become more and more likely, and as the fuels get drier, the number of fires increase and get even bigger.

This isn't just an Eastern Washington problem. Our Washington State Department of Natural Resources responded to 1,800 fires last year, and 40