

just one Republican Senator could do to them, if one of them were to become President, what the Democrats have done to President Trump. It would be very difficult for the next Democratic President, if there were to be one, to form a government. We don't want that to happen. That diminishes the advice and consent role of the Senate. It fills up the government with appointees who are acting and whom we don't know, and they are not really accountable to us. That is not the way this place is supposed to work.

So I renew my invitation to my Democratic friends to work with me the way a number of us worked with them in 2011, in 2012, and in 2013. Let's change the rules in the right way. Let's basically adopt virtually the same rule we adopted in 2013 and allow this President and any President to get prompt consideration and up-or-down votes of their nominees.

I congratulate Mr. Ryder on his confirmation. I am grateful for his willingness to serve, and I am sorry he had to wait so long for the opportunity. The people of Tennessee and the seven State region will be much better off for his service within this important institution.

Mr. President, I ask unanimous consent that the confirmation of John Ryder, as a member of the Board of Directors of the Tennessee Valley Authority, occur at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is, Will the Senate advise and consent to the Ryder nomination?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

The Senator from Tennessee.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Tennessee.

DECLARATION OF NATIONAL EMERGENCY

Mr. ALEXANDER. Mr. President, President Trump has been in Vietnam this week, meeting with the North Korean leader, Kim Jong Un. I applaud the President for his efforts to improve the U.S. relationship with North Korea.

There is not a more difficult relationship anywhere in the world at this

time than that relationship. But I am glad he chose not to seek a deal just for the sake of a deal.

As he returns from his summit with the North Korean leader and turns his attention back home, I want to make a respectful suggestion, and that is this: that President Trump ask his lawyers to take a second look at existing funding authorities that the President has to consider construction of the 234 miles of border wall that do not require a formal declaration of a national emergency.

I support what the President wants to do on border security, but I do not support the way he has been advised to do it. It is unnecessary and unwise to turn a border crisis into a constitutional crisis about separation of powers when the President already has congressional funding authority to build the 234 miles of border wall that he requested in his January 6 letter to the Senate.

Mr. President, I ask unanimous consent to include in the RECORD following my remarks the text of the President's January 6 letter to the Senate Appropriations Committee.

Mr. President, there has never been an instance in which a President of the United States has asked for funding, Congress has refused it, and the President has then used the National Emergency Act to justify spending the money anyway.

If President Trump can build a wall when Congress has refused to provide the funding, then the next President can declare a national emergency and tear the wall down or declare climate change an emergency and stop oil exports and offshore drilling. There is no limit to the imagination of what the next leftwing President could do to harm our country with this precedent.

After an American revolution against a King, our Founders chose not to create a Chief Executive who could tax the people and spend their money any way he chose. The Constitution gave that responsibility exclusively to a Congress elected by the people, and every one of us U.S. Senators has taken an oath to support that Constitution.

Separation of powers is a crucial constitutional imperative that goes to the very heart of our freedom.

I don't know how the late Justice Antonin Scalia would have decided a case on this matter, but I do know what he said about separation of powers, and this was what Justice Scalia said:

Every tin horn dictator in the world today . . . has a Bill of Rights. That's not what makes us free. . . . What has made us free is our Constitution. . . . The word "constitution" . . . means structure. That's why . . . the framers debated not the Bill of Rights . . . but rather the structure of the federal government. The genius of the American constitutional system is the dispersal of power. Once power is centralized in one person, or one part [of our government], a Bill of Rights is just words on paper.

That was Justice Scalia.

The President can avoid this dangerous precedent completely. He can use the congressional funding authority he already has to build the 234 miles of wall that he asked Congress to approve in the January 6 letter that I submitted for the RECORD.

Here is how this would work. On January 6 of this year—last month—in his letter to the Senate Appropriations Committee, the President requested \$5.7 billion to build 234 miles of new physical barrier on the southern border.

Then, on February 14, a couple of weeks ago, Congress passed the Homeland Security appropriations bill, which provided \$1.375 billion to build 55 miles that the President had asked for.

On February 15, the day he signed the Homeland Security appropriations bill, President Trump announced that he would use two additional sources of funds that had already been approved by Congress, which could be used to fund the border wall.

The first was \$601 million from the Treasury Forfeiture Fund. The second was up to \$2.5 billion from the Department of Defense accounts to support counterdrug activities and to block drug-smuggling corridors across international boundaries.

The President is authorized to do this because of a provision in law that allows him to transfer up to \$4 billion among the accounts of the Department of Defense. That is \$4 billion in a Department of Defense budget of about \$600 billion.

These three sources of funding that I just mentioned add up to about \$4.5 billion or \$1.2 billion less than the \$5.7 billion that the President requested in his January 6 letter.

So where does he get the rest of the money? He can get it by transferring \$3.7 billion instead of \$2.5 billion from the Department of Defense accounts to support counterdrug activities. Then the President would be able to build the 234 miles of wall he requested on January 6, and he would not need to declare a national emergency.

To be specific, this means the President would use \$1.375 billion from the Homeland Security appropriations bill plus \$601 million from the Treasury Forfeiture Fund plus \$3.7 billion from the Department of Defense accounts to support counterdrug activities, which would add up to equal his full \$5.7 billion request to build 234 miles of border wall.

If my analysis is incorrect, I hope that the President's lawyers will tell me.

Using funds already approved by Congress avoids the constitutional crisis of separation of powers. Using funds already approved by Congress avoids establishing a dangerous precedent, which could be misused by subsequent Presidents. Using funds already approved by Congress avoids taking money from military construction projects specifically approved by Congress for such activities as military

barracks and hospitals. And using funds already approved by Congress avoids months or years of litigation, which could make it unlikely that the full 234 miles are ever built.

It may be a couple of weeks before the Senate votes on a resolution regarding the national emergency declaration, so we don't know yet exactly what we will be voting on. There is time for the President's lawyers to take another look and determine whether we can both build the 234 miles of border wall that the President has asked for and avoid this dangerous precedent. Then the Senate could both support the President's border request and be faithful to our oath to support a Constitution that creates separation of powers as a crucial check on Executive power that goes to the very heart of our freedom.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT
AND BUDGET,

Washington, DC, January 6, 2019.

Hon. RICHARD SHELBY,
Chairman, Committee on Appropriations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The President continues to stress the need to pass legislation that will both reopen the Federal Government and address the security and humanitarian crisis at our Nation's Southwest border. The Administration has previously transmitted budget proposals that would support his ongoing commitment to dramatically reduce the entry of illegal immigrants, criminals, and drugs; keep out terrorists, public safety threats, and those otherwise inadmissible under U.S. law; and ensure that those who do enter without legal permission can be promptly and safely returned home.

Appropriations bills for fiscal year (FY) 2019 that have already been considered by the current and previous Congresses are inadequate to fully address these critical issues. Any agreement for the current year should satisfy the following priorities:

—Border Wall, Customs and Border Protection (CBP): The President requests \$5.7 billion for construction of a steel barrier for the Southwest border. Central to any strategy to achieve operational control along the southern border is physical infrastructure to provide requisite impedance and denial. In short, a physical barrier—wall—creates an enduring capability that helps field personnel stop, slow down and/or contain illegal entries. In concert with the U.S. Army Corps of Engineers, CBP has increased its capacity to execute these funds. The Administration's full request would fund construction of a total of approximately 234 miles of new physical barrier and fully fund the top 10 priorities in CBP's Border Security Improvement Plan. This would require an increase of \$4.1 billion over the FY 2019 funding level in the Senate version of the bill.

—Immigration Judge Teams—Executive Office for Immigration Review (EOIR): The President requests at least \$563 million for 75 additional Immigration Judges and support staff to reduce the backlog of pending immigration cases. The Administration appreciates that the Senate's FY 2019 bill provides this level of funding, and looks forward to working with the Congress on further increases in this area to facilitate an expansion of in-country processing of asylum claims.

—Law Enforcement Personnel, Border Patrol Agent Hiring, CBP: The President requests \$211 million to hire 750 additional Border Patrol Agents in support of his promise to keep our borders safe and secure. While the Senate's FY 2019 bill supports some Border Patrol Agent hiring, fulfilling this request requires an increase of \$100 million over the FY 2019 funding level in the Senate version of the bill.

—Law Enforcement Personnel, Immigration and Customs Enforcement (ICE): The President requests \$571 million for 2,000 additional law enforcement personnel, as well as support staff, who enforce our U.S. immigration laws and help address gang violence, smuggling and trafficking, and the spread of drugs in our communities. This would require an increase of \$571 million over the FY 2019 funding level in the Senate version of the bill.

—Detention Beds, ICE: The President requests \$4.2 billion to support 52,000 detention beds. Given that in recent months, the number of people attempting to cross the border illegally has risen to 2,000 per day, providing additional resources for detention and transportation is essential. This would require an increase of \$798 million over the FY 2019 funding level in the Senate version of the bill.

—Humanitarian Needs: The President requests an additional \$800 million to address urgent humanitarian needs. This includes additional funding for enhanced medical support, transportation, consumable supplies appropriate for the population, and additional temporary facilities for processing and short-term custody of this vulnerable population, which are necessary to ensure the well-being of those taken into custody.

—Counter-narcotics/weapons Technology: Beyond these specific budgetary requests, the Administration looks forward to working with Congress to provide resources in other areas to address the unprecedented challenges we face along the Southwest border. Specifically, \$675 million would provide Non-Intrusive Inspection (NII) technology at inbound lanes at U.S. Southwest Border Land Ports of Entry (LPOE) would allow CBP to deter and detect more contraband, including narcotics, weapons, and other materials that pose nuclear and radiological threats. This would require an increase of \$631 million over the FY 2019 funding level in the Senate version of the bill.

In addition, to address the humanitarian crisis of unaccompanied alien children (UACs), Democrats have proposed in-country asylum processing for Central American Minors. This would require a statutory change, along with reallocation of State Department funds to establish in-country processing capacities at Northern Triangle consulates and embassies. Furthermore, for the new procedure to achieve the desired humanitarian result, a further corresponding statutory change would be required to ensure that those who circumvent the process and come to the United States without authorization can be promptly returned home. Without the latter change, in-country processing will not reduce the unauthorized flow or successfully mitigate the humanitarian crisis."

These upfront investments in physical barriers and technology, as well as legislation to close loopholes in our immigration system, will reduce illegal immigration, the flow of illicit drugs entering our country and reduce the long term costs for border and immigration enforcement activities.

The Administration looks forward to advancing these critical priorities as part of legislation to reopen the Government.

Sincerely,

RUSSELL T. VOUGHT,
Acting Director.

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I move to proceed to executive session to consider Calendar No. 15.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Allison Jones Rushing, of North Carolina, to be United States Circuit Judge for the Fourth Circuit.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Allison Jones Rushing, of North Carolina, to be United States Circuit Judge for the Fourth Circuit.

Mitch McConnell, David Perdue, Mike Crapo, Johnny Isakson, John Cornyn, Pat Roberts, James M. Inhofe, Thom Tillis, Roger F. Wicker, Lindsey Graham, Roy Blunt, John Thune, John Boozman, John Barrasso, James E. Risch, Richard Burr, John Hoeven.

LEGISLATIVE SESSION

Mr. MCCONNELL. Mr. President, I move to proceed to legislative session.

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

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I move to proceed to executive session to consider Calendar No. 17.

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

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Chad A. Readler, of Ohio, to be United States Circuit Judge for the Sixth Circuit.