

The Democratic leadership wants to compare what is being threatened here to the Executive actions of past Presidents on immigration, but the actions of Presidents Reagan and Bush were merely tying up loose ends, carrying out a law Congress at that time had just passed. They established policies that were later put in the statute in 1990. President Obama is threatening to act directly against the wishes of Congress and on a far greater scope and scale. That is why I and 21 other Senators wrote to the President on April 24 to express our grave concerns about the lawfulness of what was reportedly under consideration, and apparently our warnings were not heeded.

Now, if the President acts after repeated calls by congressional leaders not to do so, it will severely damage his relationship with the new Congress elected by the American people.

But the core issue is this: Under our Constitution, the Congress makes the law. Under article II, section 3, the President is charged with taking care that these laws are faithfully executed. But if President Obama effectively legalizes people who are here unlawfully, no one will be able to reasonably argue that he is faithfully executing our laws. Once again, that doesn't pass the laugh test.

So, like the Government Accountability Office and the Supreme Court earlier this year, I say: President Obama, if you take this Executive action on immigration, you will be breaking the law, and even more than that, you will be violating the Constitution.

And the President knows this. Just a few years ago he conceded:

This notion that somehow I can just change the laws unilaterally is just not true. The fact of the matter is there are laws on the books that I have to enforce. And I think there's been a great disservice done to the cause of getting . . . comprehensive [immigration] legislation passed by perpetrating the notion that somehow, by myself, I can go and do these things. It's just not true. We live in a democracy. We have to pass bills through the legislature, and then I can sign it.

That is the end of a quote of the President that speaks to exactly what the responsibilities of a President happen to be and how they should be viewed and how he ought to be acting now. The President was right then, even if he doesn't want to live by his own words now. There are no shortcuts to following the Constitution.

Now what we are likely to hear from the administration is that this Executive action is simply a lawful exercise of enforcement discretion. It is not. It is simply not an exercise of enforcement discretion. Lawful enforcement discretion is exercised on an individual case-by-case basis. So whether enforcement action takes place is informed by a careful evaluation of the facts in a particular case as each case presents itself. Lawful enforcement discretion isn't selecting entire categories of individuals and telling them that going

forward the law won't be applied to them. That is what President Obama is threatening to do.

This shouldn't only concern constitutional scholars and lawyers. It is no exaggeration to say that the freedom of the American people is at stake. That is what the Framers believed. Listen to Federalist Paper 51. James Madison wrote that "separate and distinct exercise of different powers of government" is "essential to the preservation of liberty."

Moreover, in the Steel Seizure case I quoted, Justice Frankfurter warned that "the accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

President Obama's actions this year wreak of unchecked disregard for the restrictions of his authority. In his remarks after the recent elections, President Obama repeatedly emphasized that his Executive actions would be lawful, but, as this year has shown, he has repeatedly acted illegally even though the Department of Justice evidently had assured him otherwise. The Office of Legal Counsel doesn't appear to be providing independent legal advice to the President; it is simply rubberstamping whatever he wants to do. So it is cold comfort for the President to assure us that anything he will do is legal.

Let's go back to the bedrock principles of our country's Founders. The Framers of the Constitution knew an abusive Executive when they saw one. They sent the Declaration of Independence to a King who had ignored and abused their legislatures and laws. The Framers would also have recognized the specific kinds of Executive abuses as reflected in President Obama's mass amnesty. They would have referred to them as the royal suspending and dispensing powers. But George III didn't even try to abuse colonists with these powers. Why? Because Parliament had denied them to the King 100 years before the American Revolution.

You see, the Kings of England had traditionally asserted the power to suspend the operation of certain laws or to grant dispensations prospectively excusing particular individuals from compliance. But as deference to the King's authorities eroded, these powers became more controversial.

As part of the Glorious Revolution in the late 17th century, these royal powers were terminated. The first two articles in the English Bill of Rights of 1689 made it illegal for the King to exercise the "pretended power of suspending the laws and dispensing with the laws." This happened a century before our own Constitutional Convention. So when the Framers met in Philadelphia, these were abuses long since remedied in England. Instead, the Framers charged the President with the constitutional duty to take care that the laws are faithfully executed.

With his talk now of mass amnesty, President Obama is threatening to abandon his constitutional duty. He is threatening to reassert royal powers that even the Framers thought were long abolished. He is threatening to take our country backward a century before the American Revolution.

When talking about immigration policy, the President has acknowledged that he isn't a King, so common sense tells me he shouldn't act like one.

During the President's remaining 2 years in office, how should the Senate respond to his illegal Executive action on immigration or any other Executive abuses? In some cases we can use the power of the purse to defund them. In other cases we may use our congressional oversight tools to expose them. In still other cases, we may be able to pass legislation to do away with them completely. These tools have been available to the Senate since President Obama was elected. It should come as no surprise that the Democrats in the majority didn't use them to confront his abuses of power. So in the 114th Congress, we Republicans intend to use that.

The best course of action for the President is this: Learn from President Clinton. He lost control of the Congress 2 years after he became President. He decided to show leadership and work with the Congress of the United States. Great things happened with a Republican Congress and a Democratic President. We had welfare reform. We had 40 percent of the people leave the welfare rolls. We had tax reform. We had budgets that were balanced and paid down \$568 billion on the national debt. There are things we can do together very early.

The President wants patent trolling and corporate tax reform. There are a lot of things we can work on together.

I have been led to believe that the President is very much a free trade person, and I believe he is. We could pass trade promotion authority. We could work together with the President in the early months of next year and we could gain credibility. Under his leadership, we could reform an immigration system that needs reform. But, no, I think the President is going to take another route and retard the cooperation that is potentially available to him just as it was when President Clinton was President.

I hope the President will rethink what he wants to do and show the same leadership that President Clinton did so we can get off to a very good start next year.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER (Mr. HEINRICH). Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 7:11 p.m., adjourned until Thursday, November 20, 2014, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

MARK R. ROSEKIND, OF CALIFORNIA, TO BE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, VICE DAVID L. STRICKLAND, RESIGNED.

ELECTION ASSISTANCE COMMISSION

MATTHEW STUART BUTLER, OF OHIO, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM EXPIRING DECEMBER 12, 2015, VICE ROSEMARY E. RODRIGUEZ, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. JAMES J. BURKS

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. SCOTT H. SWIFT

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

JAY E. CLASING

CONFIRMATIONS

Executive nominations confirmed by the Senate November 19, 2014:

DEPARTMENT OF AGRICULTURE

JON M. HOLLADAY, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE.

DEPARTMENT OF STATE

MAUREEN ELIZABETH CORMACK, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BOSNIA AND HERZEGOVINA.

ALLAN P. MUSTARD, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO TURKMENISTAN.

MICHELE JEANNE SISON, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE THE DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, AND THE DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA IN THE SECURITY COUNCIL OF THE UNITED NATIONS.

MICHELE JEANNE SISON, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS, DURING HER TENURE OF SERVICE AS DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS.

EARL ROBERT MILLER, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BOTSWANA.

JUDITH BETH CEFKIN, OF COLORADO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF FIJI, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF KIRIBATI, THE REPUBLIC OF NAURU, THE KINGDOM OF TONGA, AND TUVALU.

ROBERT T. YAMATE, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MADAGASCAR, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNION OF THE COMOROS.

WITHDRAWAL

Executive message transmitted by the President to the Senate on November 19, 2014 withdrawing from further Senate consideration the following nomination:

MYRNA PEREZ, OF TEXAS, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM EXPIRING DECEMBER 12, 2015, VICE ROSEMARY E. RODRIGUEZ, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON JANUARY 6, 2014.