

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. I ask unanimous consent to speak for such time as I may consume, but it will probably be in the neighborhood of 20 or 25 minutes.

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

CONGRESSIONAL OVERSIGHT

Mr. GRASSLEY. Mr. President, today I wish to take a few moments to talk about the importance of the oversight work of the Congress. It is a very critical function of Congress. As one of the three branches of government, Congress is a very important pillar of our government. Our system provides for checks and balances between the three branches of government. Not only do we in the Congress legislate, but we must make sure the other two branches are not overstepping their power, and that is the function of oversight.

I have been conducting oversight of the executive branch since I first came to the Senate. I take oversight very seriously. It is often an overlooked function for Members of Congress. It is not a glamorous function. It is a lot of hard work.

Some people have said recently that my oversight work is political. Quite honestly, people who say that are the ones who are, in fact, political or may be ignorant of what I do because I happen to be an equal opportunity overseer. I do not care if it is a Democrat or a Republican occupying the White House; if something needs to be investigated, I am going to investigate it.

In 2008, I was glad to hear the President-elect talk about the most transparent government ever that he was going to institute under his administration. Unfortunately, up to this point, this administration has been far from transparent—at least far from transparent in the way he said he was going to be so transparent. If any of us thought it was bad before, it is worse now.

But my message about oversight is combined with a very important reminder about the rule of law, a philosophy upon which our country was founded. So I would like to talk about this administration's evasive and disappointing response to Congress about two different policies: first, the immigration policy and administrative enforcement of that, and second, Operation Fast and Furious. I will first discuss immigration.

Since the founding of our country, our immigration laws have been a source of discussion. We were born a nation of immigrants and still are wel-

coming to people coming to our country legally. We have welcomed men and women from diverse countries and provided protection to many who flee from persecution. We have been generous, and we will continue to be generous. Yet we have seen our country face many challenges and have attempted to restrict immigration levels. The first immigration law of 1790 tried to limit citizenship to certain individuals and institute what is called the "good moral character" requirement. We created quotas in the 1920s, to only do away with those quotas 45 years later. We even provided amnesty to millions of undocumented and hard-working people in the last big immigration law to pass Congress in 1986. Today, we are faced with another challenge of how to deal with more than 10 million undocumented persons.

Congress struggles with this challenge on a yearly basis. It is important for lawmakers to bear in mind that the policies we make should benefit our country in the long term and that they must be fair to current as well as future generations.

People in foreign lands yearn to be free. They go to great lengths to be a part of our great country. It is a privilege that people love our country and want to become Americans. At the same time, however, we must not forget the great principle upon which our country was founded, and that great principle is the rule of law. We want to welcome new Americans, but we need to live by the rules we have set. We cannot let our welcome mat be trampled on, and we cannot allow our system of laws to be undermined.

As a Senator, like all of my colleagues, I took an oath of office to honor the Constitution. I bear a fundamental allegiance to uphold the rule of law. That is why I am deeply concerned about the immigration policies that are coming from this White House. The President's policies may be an impermissible intrusion on Congress's plenary authority over immigration law. They are pushing the envelope, and there is little transparency into their actions at a time when transparency was promised by this administration at the time they were sworn in.

As many of you know, last summer I exposed an internal homeland security memo that outlines ways President Obama could circumvent Congress and grant legal status to millions of undocumented individuals. So this is where oversight becomes very important—whether or not this memo is an intent to get around a law Congress passes which the President of the United States, under his oath of office, has pledged to faithfully enforce. This memo was entitled "Administrative Alternatives to Comprehensive Immigration Reform." That title in and of itself kind of signifies efforts to get around law, to get around what Congress intended. Its purpose was, in their words, "to reduce the threat of removal of certain individuals present

in the United States without authorization." Now why, if you are enforcing and faithfully executing the laws of the United States, would you want to "reduce the threat of removal of certain individuals present in the United States without authorization"? Aren't those words, "without authorization" in and of themselves an indication that people might be here illegally?

The memo outlined more than a dozen ways to keep individuals in the country and to provide them with benefits or protections. I, along with my colleagues in the Congress, have asked repeatedly for assurances that those options were not being explored. But, you know what. Our concerns have not been addressed. The President and the Secretary of Homeland Security have only said they do not plan to provide such benefits to the entire population of undocumented individuals. They claim they will use their discretionary authority and pursue relief on a limited and case-by-case basis. To the extent to which it is limited and it is case-by-case, I confess, the law probably provides for some administrative discretion because if you are going to have people come to this country, Congress is not going to be able to write a law that is going to take every instance into consideration. But I go back to that title: "Administrative Alternatives to Comprehensive Immigration Reform." So there is a need to change the laws on immigration, update them. So if everybody admits there is that need, why do you need administrative alternatives, unless you are trying to get around what Congress intended?

So we are asking these questions, and yet we have no idea if it is true that they want to do it strictly on a case-by-case and very limited basis because we have reason to believe we are talking about hundreds of thousands of people because we have no idea how many people are truly receiving the benefits and what standards are being used when determining that an individual is granted parole or deferred action. These are the questions that, in our oversight capacity, we are asking, but we are not getting very many answers, as I am going to show you here.

Again quoting the title, "Administrative Alternatives to Comprehensive Immigration Reform," this memo from last summer also included a proposal to lessen the "extreme hardship standard." Under current law, aliens are inadmissible for 3 to 10 years if they have been unlawfully present in the United States for 180 days in the case of a 3-year inadmissibility or 1 year in case of 10 years of inadmissibility. The Department has discretion to waive the grounds for inadmissibility if it would result in an extreme hardship. Again, I am willing to grant that there is some leeway in the law here.

The amnesty memo states: "To increase the number of individuals applying for waivers and improve their chances of receiving them, Citizenship

and Immigration Services could issue guidance or a regulation specifying a lower evidentiary standard for extreme hardship.” Now, “extreme hardship” ought to mean the same from administration to administration, not some special definition of “extreme hardship” because we have a President who maybe wants to find some way of getting around the immigration laws because he does not want to work hard enough to get immigration reform passed through the Congress.

Proponents argue that this redefinition of “extreme hardship” is needed for family unity and that the 3-year and 10-year bars are overly burdensome. Well, Congress did not consider the 3- and 10-year bars to be overly burdensome or we would not have put them in the law in the first place. If this standard is lessened, an untold number of undocumented individuals will be able to bypass the 3-year and 10-year bars that are clearly laid out in the Immigration and Nationality Act. My concern is that this policy, if implemented, is a blatant way to circumvent Congress and the law to keep as many undocumented aliens in the United States as possible.

It is difficult to ascertain if this change or any other proposal from the amnesty memo is being considered by the Secretary, so I asked the Secretary about this very proposal when she testified before the Judiciary Committee about 2 weeks ago. She admitted that existing immigration law is difficult, but the Secretary would not deny that discussions about changing the standards are even taking place.

Well, what about the memo to which I referred? Frankly, she refused to comment about the proposal during the hearing. Indeed, she said she was focused on exercising enforcement functions, which gets me to my next issue.

A year after the 2010 amnesty memo circulated, we learned that the head of Immigration and Customs Enforcement—and we use the acronym “ICE” for that—which is the agency responsible for enforcing the law, apprehending and deporting undocumented people in this country, directed his agents to use “prosecutorial discretion” on those with whom they come in contact. What does this mean? In June of this year, Assistant Secretary Morton released a memo directing ICE officers to exercise prosecutorial discretion and to consider the alien’s length of presence in the United States, the circumstances of the alien’s arrival in the United States, particularly if the alien came as a young child. Also, take into consideration the alien’s criminal history, the alien’s age, whether there was service in the military, and whether they came here to pursue education in the United States.

On August 19 of this year, Secretary Napolitano announced an initiative to establish a working group to sort through an untold number of cases currently pending before the immigration

review office and also before the Federal courts to determine if they can be “administratively closed.” This gets into big numbers. There are more than 300,000 cases pending before the Executive Office of Immigration Review. The Secretary claims this process will allow them to direct resources at higher priority cases.

This memo and initiative outlined by the Secretary are concerning, especially to those of us who said our country is based on the rule of law. These policies seem to contradict that very important philosophy underlying our whole system of law.

On September 26 of this year, I led 18 of my Senate colleagues in sending a letter to President Obama expressing dissatisfaction with these prosecutorial discretion policies. We said this administration was encouraging undocumented aliens to come forward in hopes of relief. This letter to the President is part of our constitutional responsibility of oversight. It is going to the President of the United States, who said he was going to have the most transparent administration ever in the history of the country. So wouldn’t you think we would get a lot of answers?

We asked the President to rescind the June memo and end the initiative outlined in August, and requested that he make the Secretary available to all Members of the Senate to explain how his immigration policies are consistent with the rule of law. It is a very simple process: Have one of your Cabinet people come here and explain it all to us.

Do you know what the President did? He asked a bureaucrat from the Department to respond to us on his behalf. The letter from this bureaucrat didn’t address any points we made in our letter and shows a complete disregard for the concerns we raised. I tell a lot of people in both Republican administrations and Democratic administrations that I am overseeing—doing my constitutional responsibility of oversight. The longer you stonewall, when the truth comes out, the more egg you are going to have on your face. That is going to be true in this instance as well.

This is what we expect from the administration. We have many unanswered questions about this prosecutorial discretion initiative. For example, how many cases will the working group sort through? You can quantify that pretty easily. What standards will be used for adjudicating cases? In the rule of law, you ought to be able to tell us what the process is and what the standard is. Will those already ordered removed be considered for relief? In other words, if somebody has already figured out you ought to be removed from this country, is someone going to step in and say, no, maybe you don’t have to be removed? Will those with a criminal conviction be eliminated from consideration for discretion? We ought to know if you commit a crime in this country, besides coming here illegally, will you be removed or will you be

given some discretion—what you call prosecutorial discretion? How much in taxpayer money will be expended for this effort, and when will the working group finish its work? Will the Department of Homeland Security keep the committee apprised and provide detailed information on who is granted a benefit, including work authorization? What will happen to individuals who have their cases “administratively closed”?

Congress passes the laws, the President takes an oath to faithfully execute those laws, and we have a constitutional responsibility to make sure that what Congress intended is carried out. We are not saying that maybe Congress’s intent isn’t being carried out. We want questions answered to determine whether they are being carried out. These are pretty simple questions to the President. We ask for the Secretary to come and answer these questions, and that doesn’t happen. We get a letter back from some low-level bureaucrat who doesn’t even answer the question.

How far can you go, and be morally and ethically correct, as President of the United States, saying at the time you were sworn in that you are going to have the most transparent administration this country has ever seen, and then you stonewall Congress on simple questions such as this policy that you want to carry out, called prosecutorial discretion?

We await answers and can only hope they will be more transparent about these policies than on the amnesty memo—assuming we get answers to our questions.

The future of our country hinges, in part, on the policies this administration is making behind our backs. Congress has a role to play. That is not my position; that is the position of our Constitution.

We need more sunshine in our government in Washington on amnesty and numerous other issues, including one of my oversight investigations that involves a Federal law enforcement operation that went critically wrong.

I am now turning to Fast and Furious. This program was a multiagency effort, run by Federal prosecutors in Arizona and supervised by officials in the Justice Department headquarters here in Washington, DC.

The Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF, encouraged U.S. gun dealers—federally licensed gun dealers—to keep selling guns to people known to be transferring weapons to third parties. These buyers are called “straw purchasers.” There were lots of reasons for the gun dealers—federally licensed gun dealers—to be suspicious of this operation. The straw buyers were purchasing the kind of assault rifles preferred by the Mexican drug cartels. They repeatedly bought dozens of weapons at a time, and then returned days or weeks later to buy dozens more. They paid with paper bags full of tens of thousands of

dollars in cash and bought very expensive, high-powered .50 caliber sniper rifles.

All of this was plenty of cause for the dealers to report the sales to the ATF as suspicious, and then stop making the sales in the future. But the ATF had even more reason to be suspicious than the gun dealers had.

The Drug Enforcement Administration, or DEA, had tipped off the ATF about the activity of the ringleader, using information from a wiretap in a related drug trafficking case. The ATF knew that some of the straw buyers were on food stamps, or unemployed, so a legitimate explanation for all the cash was very unlikely.

Most important, the ATF knew that the straw buyers' guns ended up at crime scenes in Mexico just days or weeks after being bought in the United States. ATF knew all this information from the beginning of the investigation in late 2009.

As early as January of 2010, the DEA wiretaps had even collected detailed information about who the ringleader was selling guns to, and that information was available to the ATF. Yet our government allowed the ring of straw buyers to grow and operate freely for about a year.

Starting in late 2009, agents who later blew the whistle on the mis-handling of the case were ordered to merely watch and record what the straw buyers were doing but not arrest them. The agents were not allowed to stop the straw buyers or even to question them. The agents were not even allowed to continue following the guns once they were transferred to unknown third parties or stash houses. Surveillance was simply abandoned.

These details were apparently not provided to gun dealers, even though these gun dealers cooperated with the ATF from the very beginning. The government installed hidden cameras in at least one store, and dealers notified ATF each time one of the straw buyers came in for another purchase of guns.

By March of 2010, the ATF had gathered evidence that the intent of the straw buyers was to transfer these weapons to criminals and to Mexican drug cartels. The ATF applied for wiretap authority and supplied all the necessary details to the Justice Department in Washington. Yet it was not until December 15, 2010, that a single one of the straw buyers was arrested.

Was it just by coincidence or was it for some other reason that the day of the first arrest was the day that U.S. Border Patrol Agent Brian Terry was murdered? Two of the weapons bought right under the ATF's nose nearly a year earlier turned up at the murder scene.

Within a day, the straw buyers of those two guns were finally arrested. The other straw buyers were indicted a few weeks later, in January 2011.

ATF agents who knew the ugly truth blew the whistle. The whistleblowers made sure that Congress and the Terry family were fully informed.

I started asking questions, and I have been asking questions ever since. But getting answers out of a Justice Department which is stonewalling is like pulling teeth. At first, the Department explicitly denied the allegations in writing, and officials implied it was all hogwash, in a widely attended briefing for Senate Judiciary Committee staff.

But then the evidence started coming out. Document by document, witness by witness, the truth became so clear that it was no longer deniable. An internal briefing paper explicitly said that the strategy of the case was to "allow the transfer of firearms to continue to take place."

E-mails proved that a gun dealer had prophetically worried that the operation could lead to the death of a Border Patrol agent. But ATF and Department of Justice officials reassured the dealers that cooperation was still necessary. They falsely assured the dealer that there were secret methods of stopping the guns before they went south.

The House Oversight Committee issued subpoenas and held two hearings. My staff worked with them on two staff reports detailing the testimony and the documents we have gathered. The Justice Department stepped in and tried to control the flow of information, but we continued to receive documents and information from confidential sources.

The Justice Department provided documents from the ATF files, but until yesterday very few documents from the Department of Justice files. The Department waited to deliver them until Halloween, to produce the first substantial batches of documents from the Department of Justice, even though we asked for documents at the beginning of the summer.

They also waited until the night before the head of the Criminal Division, Lanny Breuer, was set to testify before the Judiciary Committee to provide 652 pages of documents. Mr. Breuer also admitted to knowing all about gunwalking in what is referred to as Operation Wide Receiver as far back as April 2010. We have to go through these new documents to see what they contain. The first smaller batch of documents included several memos to Attorney General Holder that appeared to contradict the Attorney General's earlier claim that he had never heard of Fast and Furious until sometime in April of this year.

The documents also show that Attorney General Holder's current chief of staff received a detailed briefing 18 months ago, in March of 2010. He was the Acting Deputy Attorney General at the time, so, obviously, the No. 2 person in the Justice Department.

The Deputy Attorney General even took detailed handwritten notes on the presentation. However, Attorney General Holder says he didn't know anything about it until after the controversy became public. That is also what Mr. Breuer said today as well.

I know the Attorney General was at least aware of the whistleblower alle-

gations on January 31 of this year because I personally handed him two letters about the issues in my office on that very day. As for exactly what else he knew and when, his statements will have to be tested against the rest of the evidence as we continue to investigate.

Included in the documents released recently were e-mails between senior Justice Department officials that explicitly talked about "gun walking," and these memos were dated October 2010. "Gun walking" is a term the whistleblowers use for sitting by and not stopping the guns, even though the guns could have been stopped and people arrested. These senior Justice Department officials were discussing whether the head of their criminal division should attend upcoming press conferences on Fast and Furious and Wide Receiver.

That second case is the one Mr. Breuer admitted to knowing about yesterday, where ATF had walked guns even before Fast and Furious. Their concern was over how tricky the press conference could become because of the guns that were walked.

You know, it is kind of common sense. If you can't talk about it in a press conference, you probably shouldn't be doing it in the first place.

So these memos will show they clearly anticipated the controversy even 2 months before Agent Terry was murdered and before the whistleblowers came to me about it. This makes the initial false denials even more outrageous.

Some have seized on the reference to a case from the previous administration that suggests that gun walking was nothing new and that our investigation is partisan. Now, let me be clear: There is nothing—absolutely nothing—partisan about my desire to get to the bottom of Fast and Furious. My motivation is to make sure nothing like this ever happens again, that the Terry family gets the truth about their son's murder, and also the untold number of Mexican citizens who may have been victims of this operation as well ought to be righted.

During my testimony before the House committee, I asked the Members to put aside politics and just listen to the Terry family because they were going to testify later on, and also to listen to the whistleblowers as they testified that very day. But some people see everything through the lens of their own politics. Rather than listen to the evidence, they want to blame the second amendment for Agent Terry's death. Whoever pulled the trigger is the one to blame, not the second amendment. That is the person who should be brought to justice. The straw buyers who illegally bought the guns and the government officials who stood by and watched them do it all need to be held accountable.

So that is the story of Fast and Furious so far. But what does it tell us about the rule of law in this great

country we call America? When we talk about the rule of law, we are usually referring to the idea that government should make decisions consistently and those decisions be made according to law. Those decisions should be based upon some neutral principle rather than on someone's personal whims or bias. Those decisions should apply to everyone equally without allowing a lot of discretion for government officials to pursue their own agendas. In short, we should be ruled by laws, not men.

Our government gets its authority from the consent of the governed. Representatives elected by the people write the laws, and the executive branch enforces them. However, over the years, our government has grown so big and so complex it is hard to hold government officials accountable for how they apply the law. In Fast and Furious it has taken us months to sort out responsibility because of this problem. There are dozens of bureaucrats pointing fingers and shifting blame. There are dozens of lawyers parsing words and shuffling paper.

At the end of the day, what we know is that several people in government decided not to enforce the law—the law they took an oath to faithfully execute. These people believe it was within their discretion to allow straw purchasers to operate, despite all the evidence the law was being broken. In most other field offices, obvious straw buyers were stopped, questioned, and arrested but not in Phoenix, AZ.

As one of the whistleblowers put it: Operation Fast and Furious represented a “colossal failure of leadership” at every level that was aware of it.

Just what each official knew at each level in each agency is something that needs to be clear before our investigation is complete. For the rule of law to function properly, there needs to be supervision, accountability, and consistency. Remember the transparency the President promised? Transparency leads to accountability. Government officials must know their discretion to play around in gray areas of the law has limits. It is the job of elected leaders to enforce those limits on behalf of the people who elect them. But there are so many officials and so many decisions that accountability seems hard to impose.

The President himself recognized this in the context of Fast and Furious back in March of this year. When the President was first asked about Fast and Furious on Spanish-language television, he was pressed about how he could not have known about it—kind of the very same questions we are asking the Attorney General. He was asked: How could you not have known about it? The free press in America asked the President how he could not have known about Fast and Furious, and by then it was 3 months after a Border Patrol agent had been murdered and illegally sold guns had appeared at the scene of the murder.

This is how the President responded on Spanish-language television.

This is a pretty big government, the United States Government. I've got a lot of moving parts.

Mr. President, exactly. That is the problem. Government needs to be limited, government needs to be focused, and government needs to be constrained by the rule of law.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

EXTENSION OF MORNING BUSINESS

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent that the period for morning business be extended until 6:45 p.m. with Senators permitted to speak for up to 10 minutes each.

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

CONSUMER PRODUCT SAFETY COMMISSION

Mr. BROWN of Ohio. Mr. President, yesterday, in Cleveland—the largest metropolitan area and the second largest city in my State—I was part of, for want of a better term, a celebration of a public health victory for our country. I met on Halloween with Jeff Weidenhamer, chairman of Ashland University's chemistry department and a leader in consumer safety issues.

That name may ring a bell with some of my colleagues because I have mentioned his work on the floor of the Senate in addressing the very real public health disaster, in some cases, afflicting our children because of lead-based paint on many imported toys, especially those imported from China.

Back in the fall of 2007 and the spring of 2008, Dr. Weidenhamer identified a number of products that were highly contaminated with lead paint. As part of an Ashland University freshman chemistry class project, he sent some of his students to Dollar Stores to buy inexpensive plastic Halloween toys in the fall of 2007 and inexpensive Easter toys and ornaments in the spring of 2008.

Of the 97 products he tested, 12 of them were highly contaminated with lead paint—or about one in seven. These were products such as candy buckets, drinking cups, and fake teeth. Some of those plastic teeth the children, obviously, put in their mouths. It is what they are made for, I guess. The levels of lead contamination in them were much too high. And there were other Halloween props. Many were products bought at leading national retailers.

It was clear that our trading system, our regulatory system, and our corporations failed basic consumer and public safety standards. We think nothing, and our companies, apparently, thought nothing of what might be in the products they were buying from

China that were inexpensive, that looked good in terms of Halloween and Easter, and that our children would use.

Dr. Weidenhamer, after collecting these products, went to work, and so did we. I commend especially Senator PRYOR, who worked tirelessly in 2008 on legislation to, if you will, revamp the Consumer Product Safety Commission through the Consumer Product Safety Improvement Act to ensure the CPSC had the resources and funding necessary to carry out its critical mandate.

Mr. President, how many times have we heard in the body of this Chamber, in the House of Representatives, during a Republican Presidential debate that government is too big; that we have to get government out of our lives and that government can't do anything right? Well, this was a case with the Consumer Product Safety Commission—and with this legislation, the Consumer Product Safety Improvement Act—where the government's involvement, the regulatory process, actually got it right.

This year—not long ago—Dr. Weidenhamer sent out his students again. Obviously, this hasn't undergone rigorous scientific analysis, but it tells us how things are moving. I believe they tested some 75 products this year, and they found not one containing lead.

We know what lead does to a child if that child chews on a piece of old crumbling wood containing lead-based paint—found particularly in old homes that are beginning to decay, and particularly inner-city kids and Appalachian kids. We know that lead in children's bloodstreams arrests their brain development. Children who ingest lead—and these are mostly low-income children or children exposed to these Halloween kinds of toys—can often suffer retardation or their brains do not develop as quickly as they should.

So this was a huge victory. Again, this legislation hasn't done everything we want, but I hear so often people dismissing any regulation as job killing. When we hear a conservative politician—usually enthralled to corporate America—talking about regulation to the largest corporations that outsource jobs, we can bet the term before it is “job killing.” How about putting the term “lifesaving” before regulation, such as lifesaving regulation that makes a difference in a child ingesting lead?

How about lifesaving regulation that has cleaned up our air and cleaned our drinking water? How about lifesaving regulation when it is the prohibition on child labor worker safety rule? Instead, it is job-killing regulation every time. Clearly, that is not the way it has often worked. But then we see, after my Republican colleagues too often want to weaken these safety rules, as they have tried to do, House Republicans have tried to cut more