

(2) the term "law enforcement party" means a person or entity authorized by law, or funded by the Government of the United States, to investigate or prosecute offenses against the United States.

### SEC. 3. PROHIBITED USE OF DRONES.

Except as provided in section 4, a person or entity acting under the authority, or funded in whole or in part by, the Government of the United States shall not use a drone to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute or regulation except to the extent authorized in a warrant that satisfies the requirements of the Fourth Amendment to the Constitution of the United States.

### SEC. 4. EXCEPTIONS.

This Act does not prohibit any of the following:

(1) **PATROL OF BORDERS.**—The use of a drone to patrol national borders to prevent or deter illegal entry of any persons or illegal substances.

(2) **EXIGENT CIRCUMSTANCES.**—The use of a drone by a law enforcement party when exigent circumstances exist. For the purposes of this paragraph, exigent circumstances exist when the law enforcement party possesses reasonable suspicion that under particular circumstances, swift action to prevent imminent danger to the life of an individual is necessary.

(3) **HIGH RISK.**—The use of a drone to counter a high risk of a terrorist attack by a specific individual or organization, when the Secretary of Homeland Security determines credible intelligence indicates there is such a risk.

### SEC. 5. REMEDIES FOR VIOLATION.

Any aggrieved party may in a civil action obtain all appropriate relief to prevent or remedy a violation of this Act.

### SEC. 6. PROHIBITION ON USE OF EVIDENCE.

No evidence obtained or collected in violation of this Act may be admissible as evidence in a criminal prosecution in any court of law in the United States.

## NOTICE OF HEARING

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. WYDEN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting has been scheduled before the Senate Committee on Energy and Natural Resources on Thursday, December 19, 2013, at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the business meeting is to consider pending calendar business.

For further information, please contact Sam Fowler at (202) 224-7571 or Abigail Campbell at (202) 224-4905.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON ARMED SERVICES

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on December 16, 2013, at 5:30 p.m.

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

## PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Colin Goldfinch, a fellow on the Finance Committee, and Stephen Jenkins and Kevin McNellis, interns on the Finance Committee, be granted floor privileges for Tuesday, December 17, 2013.

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

## AUTHORIZING THE PRINTING OF A COLLECTION OF THE RULES OF THE COMMITTEES OF THE SENATE

Mr. REID. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 322.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant bill clerk read as follows:

A resolution (S. Res. 322) to authorize printing of a collection of the rules of the committees of the Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid on the table, and that there be no intervening action or debate.

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

The resolution (S. Res. 322) was agreed to.

(The resolution is printed in today's RECORD under "Submitted Resolutions.")

## APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106-398, as amended by Public Law 108-7, and upon the recommendation of the majority leader, in consultation with the Chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, reappoints the following individuals to the United States-China Economic Security Review Commission: William A. Reinsch of Maryland for a term beginning January 1, 2014 and expiring December 31, 2015, and The Honorable Carte P. Goodwin of West Virginia for a term beginning January 1, 2014 and expiring December 31, 2015.

## ORDERS FOR TUESDAY, DECEMBER 17, 2013

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until tomorrow morning at 9 a.m.; that is, December 17, 2013; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day.

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

## PROGRAM

Mr. REID. Mr. President, the first vote will be at 10 a.m. on the motion to invoke cloture on the motion to concur with respect to the budget agreement.

## ORDER FOR ADJOURNMENT

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate adjourn following the remarks of the Senator from Alabama, Mr. SESSIONS.

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

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

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

## NOMINATION OF JEH JOHNSON

Mr. SESSIONS. Mr. President, I spoke a bit earlier in relation to the nomination of Jeh Johnson to be Secretary of Homeland Security.

It is an important department with 240,000 employees, and includes the Coast Guard, the Secret Service, TSA airport personnel, and ICE officers who enforce immigration laws, our Border Patrol officers who patrol the border, the Citizenship and Immigration Service which evaluates and approves or disapproves people who apply for admission to the United States, and agency after agency.

I have watched many of these complex departments and do not believe they have been brought together to the degree they ought to be, and it hasn't had the kind of strong leadership it needs to have to be effective for the American people.

In addition to that, we have the difficulty that this administration has basically told the immigration component of Homeland Security—one of its largest components—that they shouldn't do their job. They have been blocked and instructed not to enforce the law to a degree that Professor Turley said represents an unacceptable alteration of the Madisonian understanding of the separation of powers.

In other words, the President is charged with the duty to enforce law, to see that the laws of the United States are faithfully enforced. He is not given the power to flatly direct his officers not to enforce laws of the Congress.

I am sure Mr. Johnson has many abilities. He is apparently a Wall Street lawyer, a big political campaigner, has raised a bunch of money

and gave money to President Obama. He is a close confidant of President Obama, was made the legal counsel for the Department of Defense—about which he said he was President Obama's man at the Department of Defense.

But he has not had any real leadership and management experience. He shows no interest in or desire to seize control of this Department, to make it better, and to honor the officers who are a part of it and who serve their country often at risk every day, only to find that high political appointees in that Department undermine their ability to enforce the law and place their lives at risk.

You say: JEFF, that is an exaggeration. I am going to talk tonight in some detail about some of the things this administration has done to undermine, block, and frustrate the ability of the fine law enforcement officers—ICE officers, customs enforcement officers, Border Patrol officers—who serve our country on a daily basis at risk to themselves, and it is not good.

A lot of people might not know that I was a Federal prosecutor and Attorney General of Alabama. Back in the mid-1990s when I was traveling the State, I would meet the law enforcement officers and I would ask them: What happens when you apprehend somebody in Alabama whom you identify as illegally in the country?

Their answer was: Nothing. We let them go. We are told by the Federal officials—who are the only ones that can deport anybody: If you don't apprehend at least 15, don't bother to call us. So we just don't do it.

People are shocked at that. I would have town meetings and I would ask people: What happens if your local police officer or local sheriff apprehends somebody? They think they turn them over to the Federal Government for deportation, and that did not happen. It hasn't happened in a long time. But it has gotten worse than that.

The argument was: What we would do is enforce the workplace and we would keep people from getting a job. If they don't have a job, they won't come to America. We are going to enforce that. That has never been effectively enforced. That is just talk. It is not happening. At a time of extraordinarily high unemployment, at a time when wages for working Americans are sliding downward and not going up, and when every month that goes by we see large numbers of people hired part time rather than full time, all of this is happening while we are totally unwilling to take any action which would stop illegal workers from getting jobs that Americans need.

We have American people that are hurting. We have American people unemployed. We have children and grandchildren and grandparents and mothers and fathers unemployed or only in part-time jobs. Over the last 5 or 6 years, the number of people who have gotten jobs in America is about 1.9 mil-

lion over that period. That is how many immigrant workers entered the country. So the net improvement in employment in a mathematic sense has all gone to foreign workers who come to America—legally or illegally.

So we need to be serious about this. We need to ask ourselves: Don't we have an obligation to the American people to faithfully enforce the laws, and to end the lawlessness and create a good immigration system which serves the interests of America and of American workers? I think we do. I think that is what the American people want. I think they are entitled to that, and I want to show tonight how far away from that we are today.

The reason I am talking about this is we just confirmed Jeh Johnson as the Secretary of Homeland Security. He is the political confidant of the President, and the President has no intention of enforcing the laws and has created a circumstance which is not good for this country.

Mr. Johnson, in my brief conversation with him, seemed like a nice enough gentleman. But I asked him: Why do you want this job, Mr. Johnson? You say you believe in law and you believe the laws ought to be enforced. If you take this job, you are not going to be allowed to enforce the laws. You just need to know that.

I asked him, was he going to be willing to confront the President and tell him: You can't do this. I am a sworn officer here. I have thousands of law enforcement officers working for me out there on the streets, out there dealing directly with people in violation of American law, and I can't keep telling them not to do what they are required to do. I don't have the ability to deny them the right to enforce the laws of the United States.

This issue was defined early in the Obama administration.

President Bush was slow. But President Bush, after comprehensive reform in 2006 and 2007 failed, seemed to get it. So he called out the National Guard, which made a positive difference. He stepped up enforcement. We finally began to build fencing, and he began to have a pretty good bit of workplace enforcement. They raided some chicken plants in Georgia, and they found hundreds of people working here illegally.

What happened in Georgia was they had to raise pay to get legal immigrants to come to work. What is wrong with that? Pay is too low in America. We need higher wages.

So the people during the campaign who had been interfacing with the Obama administration obviously had a deal. They were told they were going to stop these kinds of enforcement and they weren't going to do them anymore. The Immigration and Customs Enforcement raid in Washington State was a completely justified enforcement action. But pro-amnesty groups complained. As a result, the Secretary of Homeland Security Janet Napolitano—who Mr. JOHNSON will replace—vowed

that she would get to the bottom of this problem.

An article in the Washington Times quoted a Homeland Security official as saying: The Secretary is "not happy about it." Instead of enforcing the law, the Secretary investigated the law officers who were simply doing their duty—apparently in response to some demands of advocacy groups who had been pushing them during the campaign.

Then Esther Olavarria, Deputy Assistant Secretary of Homeland Security, said on a phone call with employers and pro-amnesty groups: We are not doing raids or audits under this administration.

This statement symbolized the end of workplace enforcement in America, and it is in violation of law. Workers are not entitled to work illegally in American factories or plants. Where did this come from? How did it ever get to be the idea that Americans can have their jobs taken by people illegally in the country, and you can't ever do an investigation or enforcement action and remove people who are illegally here and not authorized to work?

Then, in 2010, the administration began implementing its plan to dismantle the immigration law enforcement system as we know it.

On May 19, 2010, in an interview with the Chicago Tribune, then-Director of ICE John Morton announced that ICE may not even process or accept the transfer of illegal aliens to the agency's custody by Arizona officials. Arizona, of course, was facing a very serious problem.

Mr. President, on May 27, 2010, an internal ICE email revealed that top officials declared that the low-risk immigration detainees would be able to have far greater visitation rights, with visitors staying an unlimited amount of time during a 12-hour window—which can really make maintaining order at a detention facility difficult—and also that they, the detainees, would be given access to unmonitored phone lines. The mayor of your town, who is in jail over tax evasion, doesn't get unmonitored phone line use, but apparently illegal aliens do. They get email, free Internet calling, movie nights, bingo, arts and crafts, dance and cooking classes, tutoring and computer training. All of these are for people who have been apprehended while illegally in the country. It really should be on a fast turnaround to be returned to the country from which they came.

On June 25, 2010, the National ICE Council, which is the union that represents more than 7,000 fine ICE officers, cast a unanimous vote. They voted "no confidence" in their Director, John Morton. According to the union, the vote reflected "the growing dissatisfaction among ICE employees and union leaders that Director Morton

had abandoned the agency's core mission of enforcing United States immigration laws and enforcing public safety and has instead directed their attention to campaigning for programs and policies relating to amnesty."

I have been here in the Senate now for going on 17 years and I am not aware of a major governmental employee union voting "no confidence" in its boss, particularly when it deals with the simple policies of law and enforcement, not even relating to some workplace rule or complaint.

In August 2010 top ICE officials began circulating a draft policy that would significantly limit the circumstances under which ICE could detain illegal aliens. In effect, ICE agents were no longer authorized to pick up an illegal alien for illegally entering the country or for possessing false identification documents. False documents? You go to the bank or you go to get on an airplane and you use a false document, somebody is going to prosecute you. But if you are, apparently, a noncitizen who entered the country illegally, you are given immunity by the administration. Why? Because they do not want to see the law enforced. That is the reason. They basically have made that decision. Under the new policy, illegal aliens could only be detained if other law enforcement agencies made an arrest for a specific criminal violation. This was the beginning of what would become known as administrative amnesty.

Then in December 2010 a Washington Post article on internal ICE emails and communications reported that ICE had padded its deportation statistics. Many of you have heard that the administration claims they deported far more people than before; therefore, they should be applauded for being effective law enforcement officers. But it is a fact that those numbers were padded and exaggerated. According to the Washington Post article, ICE included 19,422 removals in fiscal year 2010 that were actually removals from fiscal year 2009.

We have had a problem in this country. There is a growing concern about this administration not telling the truth. Their philosophy seems to be, we say whatever is convenient at the time, and when we get caught we do not worry about it, we just keep right on going and our friendly press will ignore it. But it is beginning to bite now. People are getting tired of this.

This is a deliberate—by 19,000—misrepresentation of the number of removals.

The article also described how ICE extended a Mexican repatriation program beyond its normal operation date, adding 6,500 to the final removal numbers—again, making them look better than they were.

In a March 2, 2011 memo, ICE Director Morton outlined new enforcement priorities and encouraged agents not to enforce the law against most illegal aliens and to only take action against those who meet certain priorities.

On July 17, 2011, ICE Director Morton issued a second memorandum further directing ICE agents to refrain from enforcing the law against certain segments of the illegal alien population—criteria similar to that under the DREAM Act—despite having no legal or congressional authority to do so and despite the fact that Congress had explicitly rejected the DREAM Act three times. This is a matter of serious constitutional import.

On June 17, 2011, ICE Director Morton issued a third memo instructing ICE personnel to consider refraining from enforcing the law against individuals engaged in a protected activity related to civil or other rights. So if you are in the country illegally and, for example, union organizing or complaining to authorities about employment discrimination or housing conditions, you can be protected from being deported. Anybody who is in a nonfrivolous dispute with an employer, landlord, or contractor seems to be eligible to avoid the consequences of being in the country illegally.

On June 23, 2011, the ICE Agents and Officers' Union again expressed outrage over Director Morton's actions, noting that since the administration was "unable to pass its immigration agenda through legislation, it is now implementing it through agency policy." That is exactly what they did. Everybody who knows enough about what is going on knows that is what they did. But somehow, like the frog in the ever-warming water, we are oblivious to the consequences when an executive branch declares and directs a law to be enforced and carried out that was never passed and in fact was rejected in recent years three separate times.

The ICE officers association accused the appointees of working hand in hand with the open borders lobby—they see this on a daily basis—while excluding its officers, the ICE officers, from the policy development process.

In effect, ICE officers allege that the political appointees at ICE were advancing the agenda of those here illegally and maneuvering against their own law enforcement officers trying to do their duty—to enforce the law and end the illegality in America. That is exactly what they said was happening, and that is exactly what is happening, colleagues.

On June 27, 2011, an internal memorandum revealed that ICE officers attempted to publicly distance themselves from the administrative amnesty policies and deny that they ever existed after the Houston Chronicle exposed the Department of Homeland Security directive to review and dismiss valid deportation cases then in process.

On August 1, 2011, the Justice Department filed a lawsuit in Federal court to stop Alabama's law that was designed to assist the Federal Government in identifying and bringing forth to the Federal officials people in the country illegally.

On August 18, 2011, Secretary Napolitano announced that DHS was review-

ing all pending and incoming deportation cases to stop proceedings against those illegal aliens who were not DHS priorities.

On September 28, of 2011, at a roundtable with amnesty advocates, President Obama admitted that his deportation statistics were misleading. He said:

The statistics are actually a little deceptive because what we've been doing is . . . apprehending folks at the borders and sending them back. That is counted as a deportation even though they may have only been held for a day or 48 hours.

That is pretty interesting. So the President is meeting with amnesty advocates, and he is admitting this to them but not to the American people. He told the American people they had an enhanced number of deportations. But when he met with the amnesty people to assuage their complaints that too many people were being deported, he said the numbers were not correct.

We need the President of the United States to look the group in the eye and say: If you come to America illegally, expect to be deported if we apprehend you. What else should he say? He is the chief law enforcement of America. He is charged with ensuring that the laws of the United States are faithfully executed.

On October 12, in testimony before the House Judiciary Committee, Director Morton admits that Cecilia Munoz, a former senior vice president of the National Council of La Raza and now assistant to the President and Director of the White House Domestic Policy Council, assisted in the preparation of the administrative amnesty memorandum.

La Raza has been awfully aggressive on these issues. They have every right to be aggressive, but I have to tell you their positions are nowhere near anything that comes close to being an advocate for a lawful system of immigration in America. They want the lawlessness to continue.

On October 18, 2011, ICE refused to take any action after the Santa Clara County, CA, Board of Supervisors voted to stop using county funds to honor ICE detainees except in limited circumstances.

Let me tell you about this. I have been an attorney general and a U.S. attorney. A detainer is a very useful law enforcement tool that is critical for harmonious relationships between various agencies. If somebody arrests somebody and they are serving time for drug dealing or burglary and another jurisdiction has a charge against him, they place a detainer against him at that jail. As soon as they finish their term, they are not released; they are turned over to the agency that has another charge pending against them.

So the Santa Clara County Board of Supervisors voted not to allow the Federal Government to place detainees on people in their jail who were here in the country illegally and voted, in effect, not to turn them over, as all law

enforcement officers do and have done for decades.

So ICE didn't do anything about it. They still send them Federal money for law enforcement. They have things that they could do. They just went along with it because I guess they don't care.

On October 19, ICE refused to act after the mayor of District of Columbia, Vincent Gray, issued an order to prevent the DC police from enforcing U.S. immigration law. Among other things, the order prohibits all public safety agencies from inquiring about an individual's immigration status—they can't even inquire about it—or from contacting ICE if there is no nexus to a direct criminal investigation other than immigration.

The District of Columbia knows better than that. ICE says their officers can't even inquire to see if somebody is illegally in the country? That is a stretch. That is unacceptable. We ought to cut off funds for cities that refuse to at least conduct minimal cooperation with Federal law enforcement.

October 31, 2011, the Justice Department filed a suit against South Carolina to block their immigration law designed to help the Federal Government enforce immigration laws. They had plenty of time to sue States and other entities who want to help them enforce the laws. They had plenty of time also to meet with amnesty groups but no time whatsoever to meet with these law officers and find out what their concerns are or to draft policies that would help us to be more effective.

On November 7, 2011, USCIS issued a memo stating that USCIS will no longer issue "notices to appear" in immigration court to illegal aliens who do not meet administration priorities. That is a major step backward.

On November 22, the Justice Department filed suit against Utah's immigration enforcement system. They have plenty of time to sue Utah, which would like them to help enforce the law.

On November 22, ICE refused to act after Mayor Michael Bloomberg signed a measure ordering all New York City jails to ignore certain ICE detainers issued to deport illegal aliens from those jails. So the mayor of New York issues an order not to honor the detainers placed there by the Federal Government—the U.S. government.

Mr. Bloomberg is spending millions of dollars of his billion-dollar wealth to lobby the House to pass an amnesty bill. It is his money; I guess he can spend it where he wants to. But just because he has made \$1 billion, I don't think it suggests to me that he has any better idea about how to run the immigration system of the United States than I do, since I spent 14 years dealing with Federal law enforcement.

On December 15, 2011, DHS rescinded Maricopa County, Arizona's 287(g) agreement, a cooperative agreement whereby local law enforcement re-

ceived training in identifying and apprehending illegal aliens and handling them in a way preferably consistent with law—being very careful in how we treat people who are detained in a decent and very fine way. The 287(g) Program is a very fine program. It really is good. And it is a great disappointment to me that this administration has basically killed it.

I remember Alabama was the first State in the Nation that participated in the 287(g) Program. A certain number of officers—not a huge number—came to a training center for several weeks and were trained on how to be of valuable assistance to the Federal officers to maximize their ability to be effective. This has been canceled. It basically ended under this administration.

Director Morton told a Maricopa County attorney that ICE will no longer respond to calls from Maricopa County sheriff's officers involving traffic stops, civil infractions, or other minor offenses. DHS's legal reasoning is unclear given that Federal law requires the Federal Government to respond to inquiries by law enforcement agencies to verify immigration status. In other words, local officers apprehend somebody and they make an inquiry as to whether this person is lawfully in the country and they have a right to be responded to. Apparently, they have chosen not to respond to that basic law enforcement request.

On December 29, 2011, ICE announced the creation of a 24-hour hotline for illegal alien detainees to be staffed by the Law Enforcement Support Center—the same organization that ICE had already stated was understaffed as far as keeping up with the immigration status check requests for State and local law enforcement. They were getting lots of requests for statuses on people, about whether they were legally or illegally here, from local law enforcement. They don't have enough time to do that, but now these officers have been given the extra duty of having a 24-hour hotline for illegal alien detainees. Who are we serving here?

ICE then revised its detainer form to include a new provision which states ICE should consider this request for a detainer operative "only upon the subject's conviction" of an offense. It completely ignores the fact that presence in the United States of America illegally is a violation of federal law.

On January 3, 2012, there was a report by the inspector general that revealed that USCIS officials or top political officials pressured the employees to approve applications that should have been denied and that employees believed they did not have enough time to complete the interviews of applicants, "leaving ample opportunity for critical information to be overlooked." The 911 Commission said people should be interviewed face-to-face, but that idea has completely collapsed today.

On January 10, 2012, the President promoted Cecelia Munoz to be the new Director of his Domestic Policy Coun-

cil. She previously served as senior vice president of La Raza. We need an objective person in that position, not an advocate for undermining the law. I am not saying she is a bad person. She is perfectly legitimate to be an advocate for amnesty or open borders. It is a free country. But she ought not to be put in a top position where the duty is to enforce the law.

On January 17, 2012, DHS stopped the rollout of the Secure Communities Act in Alabama, according to a DHS email, because the administration disagrees with Alabama's immigration law. They just quit cooperating.

In January 2012, ICE attorneys in Denver and in Baltimore recommended that the agency voluntarily close 1,667 removal cases, resulting in the release of illegal aliens already in proceedings without consequence of their violation of immigration law.

On January 19, 2012, the President issued an Executive order waiving certain screening safeguards, allowing those applying for nonimmigrant visas—people who come here to work only—to obtain them more easily from China and Brazil. On the same day, the State Department announced it will waive the longstanding statutory requirement of in-person interviews by a consular officer.

On February 7, 2012, ICE announced the creation of a public advocate who is to serve as a point of contact for aliens in removal proceedings, community advocacy groups, and others who have concerns, questions, and recommendations they would like to raise about the enforcement of laws and amnesty efforts.

In February 2012, the President revealed in his budget a proposal to cut funding for ICE and the 287(g) Program, effectively gutting the program.

On April 17, 2012, the administration announced it would reduce National Guard troops stationed at the border from 1,200 to 300. Is this an action of an administration that seems to be interested in seeing that we have a lawful system of immigration we can be proud of, a legal system that promotes the interests of the United States of America? Are we at a point in time where we are undermining law?

I have about half of these done so far, and I could continue. It goes on and on and on. It is a consistent trend and agenda. It is basically, if you don't grant amnesty, Congress, I am not going to enforce the law. Just forget it. I am going to direct my officers to do what I want them to do, not what the law of the United States requires them to do. It is a deep and fundamental challenge to the very integrity of American constitutional order.

People say: JEFF, you are exaggerating.

Let me tell my colleagues about a recent House Judiciary hearing that was held on the President's constitutional duty to faithfully execute the laws. Chairman GOODLATTE summarized the reason for the hearing as follows:

The Obama administration has ignored the Constitution's carefully balanced separation of powers and unilaterally granted itself the extra constitutional authority to amend the laws and to waive or suspend their enforcement. This raw assertion of authority goes well beyond the executive power granted to the President and specifically violates the Constitution's command that the President is to take care that the laws be faithfully executed. The President's encroachment into Congress's sphere of power is not a transgression that should be taken lightly. As English historian Edward Gibbon famously observed regarding the fall of the Roman Empire, the principles of a free constitution are irrevocably lost when the legislative power is dominated by the executive.

From ObamaCare to immigration, the current administration is picking and choosing which laws to enforce. So this is correct. I believe Chairman GOODLATTE is discussing an important issue.

What about the testimony of the witnesses at that hearing? It was stunning. One witness, Professor Jonathan Turley, well known throughout the country, writes a lot in publications and legal journals. He is the Shapiro Professor of Public Interest Law at George Washington University Law School and is a nationally recognized constitutional scholar. He said he is a supporter of President Obama's policies and voted for him. But I want you to hear this, colleagues. Professor Turley, at the hearing, said this:

I believe the president has exceeded his brief. The president is required to faithfully execute the laws. He's not required to enforce all laws equally or commit the same resources to them. But I believe the president has crossed the constitutional line in some of these areas.

(Ms. WARREN assumed the Chair.)

Mr. SESSIONS. He goes on—this is a direct quote—

This goes to the very heart of what is the Madisonian system. If a president can unilaterally change the meaning of laws in substantial ways or refuse to enforce them, it takes offline that very thing that stabilizes our system.

He goes on:

I believe the members will loathe the day that they allow that to happen.

He is talking about Members of Congress. "I believe the members [of Congress] will loathe the day that they allow that to happen."

He goes on:

This will not be our last president. There will be more presidents who will claim the same authority.

When I teach constitutional law, I often ask my students, what is the limiting principle of your argument? When that question is presented to this White House, too often it's answered in the first person, that the president is the limiting principle or at least the limiting person. We can't rely on that type of assurance in our system.

That is what Professor Turley said, who voted for President Obama and is a well-known legal scholar. That is dramatic testimony and we need to listen to it. I am hearing it from my constituents daily. They think this administration is not telling the truth on a regular basis. They cannot imagine

how we can pass a health care law, and the President is just going and picking and choosing what parts of it he wants to go forward, what parts he wants to delay. How can this happen? Is this a legal system or not?

Mr. Turley goes on:

The problem of what the president is doing is that he is not simply posing a danger to the constitutional system; he is becoming the very danger the Constitution was designed to avoid: that is, the concentration of power in any single branch. This Newtonian orbit that the three branches exist in is a delicate one, but it is designed to prevent this type of concentration.

Wow. This is very strong. Then, when Professor Turley was asked whether the President has acted contrary to the Constitution, Professor Turley answered in the affirmative. He said further:

I really have great trepidation over where we are heading because we are creating a new system here, something that is not what was designed. We have this rising fourth branch in a system that's tripartite. The center of gravity is shifting, and that makes it unstable. And within that system you have the rise of an uber presidency. There could be no greater danger for individual liberty, and I really think that the framers would be horrified by that shift because everything they've dedicated themselves to was creating this orbital balance, and we've lost it. . . .

That makes the hair stand on the back of my neck. This goes to the core of our government. Are we a legal system or not? If we start eroding these classical principles of law, duty, and responsibility—the appropriate balance between the three branches of government—we have done something that is important. As Professor Turley said, we are undermining the orbital balance. Indeed, he said we have lost it—Professor Turley, not me.

Professor Turley goes on to say:

It's not prosecutorial discretion to go into a law and say an entire category of people will no longer be subject to the law. That's a legislative decision.

It is a legislative decision, not the President's decision. The legislature represents the people. Over a period of years, people are elected to this body and the House.

It goes on. Professor Turley said:

Prosecutorial discretion is a case-by-case decision that is made by the Department of Justice. When the Department of Justice starts to say, we're going to extend that to whole sections of law, then they are engaging in a legislative act, not an act of prosecutorial discretion. Wherever the line is drawn, it's got to be drawn somewhere from here. It can't include categorical rejections of the application of the law to millions of people. . . .

Great Scott. He is so correct. Prosecutors have discretion. They do not have to prosecute every case that comes before them. But the President does not have power just to eviscerate whole sections of law that affect millions of people. Professor Turley hit that exactly correct. He goes on to say:

Many of these questions are not close, in my view. The president is outside the line.

. . . And that's where we have the most serious constitutional crisis, I view, in my lifetime, and that is, this body is becoming less and less relevant.

He is talking to the House, the House of Representatives. You are becoming less and less relevant. He considers this to be "the most serious constitutional crisis . . . in my lifetime." We sit here oblivious to what has been happening. I have talked about it an awful lot, but I guess I have not been very effective. Professor Turley's arguments and remarks just hammer home how serious it is, this question we are dealing with.

So he goes on to say this:

I believe that [Congress] is facing a critical crossroads in terms of its continued relevance in this process. What this body cannot become is a debating society where it can issue rules and laws that are either complied with or not complied with by the president. I think that's where we are . . . [A] president cannot ignore an express statement on policy grounds. . . .

He says the President cannot ignore an express act, statement of law because he has a different policy view.

Now, does anybody contend that he can? I would like to see them send me a note on it. Any Member of this body who thinks the President of the United States can ignore an express statement of law because he just disagrees with it on policy grounds—I would like to hear them defend that issue or explain their position on it.

He goes on to say:

[I]n terms of the institutional issue . . . look around you. Is this truly the body that existed when it was formed?

He is talking to the House now.

Does it have the same gravitational pull and authority that was given to it by its framers? You're keepers of this authority. You took an oath to uphold it. And the framers assumed that you would have the institutional wherewithal and, frankly, ambition to defend the turf that is the legislative branch.

Isn't that true?

. . . the framers assumed that you would have the institutional wherewithal and, frankly, ambition to defend the turf that is the legislative branch.

We are sitting here, we had the majority leader stand before the Presiding Officer and break the rules of the Senate to amend the Senate rules just a few weeks ago. It was a stunning development. This is Third World stuff. This is not the United States of America, a constitutional Republic that I served as a prosecutor year after year.

We took so much pride, my staff and I, in trying to make sure nobody was given an advantage or disadvantage based on status or wealth or race, intelligence or background or whatever advantage they had: equal justice under the law. We enforced the law whether anybody would have voted for it or not had we been in Congress. It was passed by Congress, we enforced the law. At that same hearing, Nicholas Rosenkranz, a professor of law at Georgetown University Law Center and the author of the single most downloaded article about constitutional interpretation in the history of

the social science research network, also testified before the House Judiciary Committee.

He stated that the President's Constitutional duty to take care that the laws be faithfully executed "is not optional; it is mandatory," and that President Obama's "wholesale suspension of law . . . is the paradigm case of a 'take care' clause violation."

He further testified:

What's striking about this is the president's decision to enforce the immigration laws as though the DREAM Act had been enacted, when in fact it has not. . . . Rather than declining to comply with a duly enacted statute, the president is complying meticulously, but with a bill that never became law.

So they offered a bill. It was rejected by the Congress. The President is almost to the letter enforcing a bill rejected by the people's representatives. Professor Rosenkranz goes on to say:

Congress has repeatedly considered . . . the DREAM Act. The President favors this act. Congress has repeatedly declined to pass it. So the President simply announced that he would enforce the Immigration and Nationality Act as though it had been—as though the DREAM Act had been enacted. To put the point another way, the president's duty is to take care that the laws be faithfully executed, laws capital L, not those bills that fail to become law, like the DREAM Act.

I think this is a serious matter and I think Professor Rosenkranz hits it directly. Professor Rosenkranz was in agreement with Professor Turley that "prosecutorial discretion is one thing."

It is real.

But wholesale suspension of law is quite something else, and that is what has happened under ObamaCare. Likewise, in the immigration context, kind of case-by-case prosecutorial discretion is one thing, but a blanket policy that the immigration act will not apply to 1.8 million people, that's quite something different. This is a scale of decision-making that is not within the traditional conception of prosecutorial discretion.

That is certainly true. It is hard to believe we are here. I think we are here because in the great law schools of America and the top levels of our academic world in our new media and so forth, we have moved in sort of a postmodern world in which words do not have meaning. They are subject to being altered whenever they choose to fit the mood of a moment.

The President said, when he nominated people for the Supreme Court, he wanted nominees who would show empathy. What is empathy? It is not law. Is it politics? Is it bias? Is it personal opinion? Our system is based on law, not empathy, not bias, not politics, not ideology. This is a serious matter. Chairman GOODLATTE then interjected:

In fact the president has taken it a step further and has actually given legal documents to the people in that circumstance, well beyond simply deciding not to leave them there and not prosecute them, but to actually enable their violation of the law by giving them documents to help them evade the problems that ensue from living in the country that they're not lawfully present in.

Professor Rosenkranz replied, "Quite right." This matter is not going away. We

are going to deal with it. I truly believe the American people expect this government of theirs that works for them to produce an immigration system, a legal system that involves ObamaCare and other policies that is committed to law and not to the feelings of the chief executive and not to his policy preferences.

We avoid that or we have a serious matter in this country that goes to the heart of the strength of this Republic. You could sap that strength, erode the power of our legal system. The legal system, in my opinion, is the greatest strength this Nation has.

I yield the floor.

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#### ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow.

Thereupon, the Senate, at 8:16 p.m., adjourned until Tuesday, December 17, 2013, at 9 a.m.

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#### CONFIRMATIONS

Executive nominations confirmed by the Senate December 16, 2013:

##### DEPARTMENT OF STATE

ANNE W. PATTERSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER AMBASSADOR, TO BE AN ASSISTANT SECRETARY OF STATE (NEAR EASTERN AFFAIRS).

##### DEPARTMENT OF HOMELAND SECURITY

JEH CHARLES JOHNSON, OF NEW JERSEY, TO BE SECRETARY OF HOMELAND SECURITY.