

## EXECUTIVE SESSION

## EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of John B. King, of New York, to be Secretary of Education.

The PRESIDING OFFICER. Under the previous order, there will be 90 minutes of debate equally divided in the usual form.

The Senator from Oklahoma.

Mr. LANKFORD. I ask unanimous consent that all time during quorum calls between 4 p.m. and 5:30 p.m. today be equally divided in the usual form.

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

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ILLEGAL IMMIGRATION

Mr. COTTON. Madam President, last Thursday the Democratic candidates for President had a debate. They made several extremely irresponsible statements about immigration policy. I oppose their calls to reward mass illegal immigration with blanket amnesty, which would undermine the rule of law, cost Americans jobs, drive down wages for working Americans, and invite more illegal immigration.

But what must President Obama think? After all, he has attempted to grant amnesty by fiat to over 5 million illegal immigrants, although the courts have blocked most of those amnesties for now. Yet the Senator from Vermont and Hillary Clinton both insisted that the President hadn't gone far enough. They would expand on his actions and go even further. In fact, a debate moderator called President Obama "the deporter in chief," and Hillary Clinton tacitly accepted the characterization, saying she wouldn't deport nearly as many illegal immigrants as President Obama has—which of course isn't a terribly high bar to clear since deportations are down 42 percent since the start of President Obama's second term and last year deportations hit a 10-year low. Still, I can't imagine President Obama is too pleased with his would-be successor.

I also can't imagine a more opportunist and irresponsible position than the one taken by Hillary Clinton. As she panders for votes, she limited deportation priorities to violent criminals and terrorists. Apparently, Secretary Clinton will welcome con artists, identity thieves, and other non-violent criminal illegal immigrants with outstretched arms into our country.

Even more astonishing, she stated unequivocally, "I will not deport children. I would not deport children." As I stated, this is pure opportunism. For instance, I imagine this child shown in this poster would have liked Secretary Clinton's policy to have been in effect during her husband's administration. This is the famous picture of Elian Gonzalez, a 6-year-old Cuban boy who reached our shores despite his mother tragically dying at sea. Elian's U.S.-based family pleaded with the Clinton administration to grant him asylum, as was our common custom for refugees from communism, but President Clinton rejected those pleas, siding with the Castros. Federal agents stormed the private residence and apprehended Elian at gunpoint. Where was Secretary Clinton? I guess she didn't have a no-kids policy back then. But we don't have to guess. The then-First Lady was campaigning for Senate in New York. She opposed congressional action to protect Elian and advocated returning the boy to Cuba—contrary to a decades-long bipartisan consensus that we should grant safe harbor to refugees from totalitarian Communist states.

Yet, the sad story of Elian Gonzalez isn't the most recent or harmful example of her opportunism. Just two summers ago, our country faced a migrant crisis on our southern border. Nearly 140,000 people—about half of them unaccompanied kids—poured across our border. Notably, most did not flee from the Border Patrol or try to avoid capture; on the contrary, they ran to U.S. border agents.

Why would brandnew illegal immigrants, having successfully crossed our border, turn themselves in? The answer is simple: They have been led to believe they would be allowed to stay.

From the multiple administration memos instructing agents not to fully enforce immigration law to President Obama's unlawful Executive amnesties, to the Senate's own amnesty legislation, every signal from Washington said our political class lacked the willpower to secure our borders and enforce our immigration laws in the country's interior.

Some might say these policies and proposals wouldn't have covered the newly arrived immigrants; that they would have faced deportation. Perhaps, but what they signaled was a complete unwillingness to enforce our immigration laws, just as amnesty granted in 1986 invited another generation of illegal immigrants to migrate to our country and wait for the next amnesty.

These policies certainly gave the human traffickers who transported and abused these kids plenty of grounds to tell desperate parents: Send your kid north with me, and he will get a permiso. In the end, they weren't wrong. Nearly 2 years later, only a very tiny minority of unaccompanied children have been deported. In fact, more than 111,000 unaccompanied minors entered the United States illegally from 2011 to 2015, but only 6 percent have

been returned to their home countries. Yes, some may have received a deportation order from a court—usually after failing to appear for a hearing. Yet the Obama administration has made little to no effort to locate them.

Therefore, it is fair to say the human traffickers, the so-called coyotes, weren't wrong, and many Central American parents took an understandable risk. After all, a life in America in the shadows—as advocates for amnesty and open borders call it—may be preferable to poverty and violence back home. While these factors may have been the push factors in the migrant crisis, there can be no doubt that the pull factors of amnesty, deferred action, nonenforcement, economic opportunity, and safety were just as strong, if not stronger.

That is why even the Obama administration tried to address them. President Obama met with leaders of Honduras, Guatemala, and El Salvador to seek their assistance. Vice President BIDEN flew to Guatemala and publicly urged parents not to believe the coyotes' promises of amnesty. The Secretary of Homeland Security Jeh Johnson wrote an open letter to Central American parents, and, yes, Hillary Clinton got involved too. Secretary Clinton stated in 2014 that these children "should be sent back as soon as it can be determined who responsible adults in their families are." She insisted that "we have to send a clear message: Just because your child gets across the border, that doesn't mean the child gets to stay."

That was the right position then, and it is the right position now, even if real action didn't back up the Obama administration's words, but that was then, and this is now, in the middle of another flailing Presidential campaign. Secretary Clinton now says she would not deport children under any circumstances, not even those who just arrived or presumably those who arrive in the future.

We have come to expect such opportunism from the "House of Clinton," but even worse is the irresponsibility. Put yourself in the position of a desperate parent in Central America. You live in Third World conditions. Work is scarce. Food and water are a struggle. Power doesn't always come on with the flip of a switch. Gangs control many of the streets. Murder rates are some of the highest in the world. You have every reason to try to escape these conditions or at least get your kid out, but where to go?

You just got your answer. Hillary Clinton, one of the most famous people in the world—one of only six people likely to be the next President of the United States—just broadcast new hope to the world: You can come to the United States.

Of course, it is a peculiar kind of hope. She didn't say go to our Embassy and seek asylum. She certainly didn't say get on an airplane and fly safely to

the United States, nor will she ever take such massively unpopular positions. Indeed, she essentially invited you to take a life-or-death gamble: If you survive the trip, you can stay.

How is this moral? How is it compassionate to create incentives for such reckless behavior? Hillary Clinton just created a full employment opportunity for human traffickers. She helped oversell illicit tickets on this train, *The Beast*, a network of freight trains aboard which migrants from Central America cross Mexico to the United States.

*The Beast* has another name—*The Death Train*. It is called that because many who ride it don't survive or, if they do, they only escape with grievous injuries or after enduring physical and sexual abuse at the hands of criminal gangs. With her irresponsible pandering, Secretary Clinton's words will help contribute to untold suffering, pain, and death among American families.

Her words are equally irresponsible when looked at from the American perspective. Secretary Clinton's promise to deport only violent criminals and no children under any circumstances will badly harm struggling Americans. Decades of mass immigration has contributed to joblessness, stagnant wages, and communities stressed to the breaking point to provide education, housing, emergency services, public safety, and other basic government services.

The coming Clinton wave of illegal immigration will only make it harder to secure our borders, enforce our laws, and get immigration under control and working for Americans who are, after all, the people we are supposed to serve.

The world is full of violence, oppression, corruption, and injustice. We cannot turn a blind eye to this. It often has a way of arriving at our borders and on our shores. Similar to most Americans, my heart breaks when I imagine the plight of those desperate parents in Central America as they look upon their little ones. That is why I strongly support efforts to assist countries such as Guatemala, Honduras, and El Salvador to develop stronger institutions and improve living conditions there. Many dedicated professionals in the State Department, FBI, DEA, Southern Command, and other Federal agencies are there serving us—to do just that.

At the same time, we cannot solve all the world's ills and our foremost responsibility is to Americans, not foreigners. We can help reduce the push factors in foreign countries driving migrants to our borders, but we are not obligated to accept their citizens into our country. On the contrary, our obligation is to protect and serve Americans. To do so, we must eliminate the pull factors for these migrants here at home.

Like any country, we have a right, indeed, we have a duty to control who comes to our country and allow them

here only if it is in our national interests. America is a nation of immigrants, but we are also a nation of laws. Secretary Clinton has not only displayed contempt for our immigration laws but also encouraged foreigners to break those laws, to their own grave danger. We must say to these foreigners, loudly and clearly: Do not make this dangerous journey. Do not violate our laws. Do not come here illegally. It is the humane thing to do, and it is the right thing to do. Secretary Clinton should be ashamed of herself for doing otherwise.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

#### FILLING THE SUPREME COURT VACANCY

Mr. HATCH. Madam President, I rise to discuss the vacancy created by the death of Supreme Court Justice Antonin Scalia. Those of us who knew the late Justice well are still mourning the loss of a dear friend, and the Nation is feeling the loss of one of the greatest jurists in its history. We will never find a true replacement for Justice Scalia, only a successor to his legacy. We owe it to the late Justice's extraordinary legacy of service to ensure that we treat confirmation of his successor properly.

My friends in the Democratic minority have settled upon one mantra above all others in addressing this vacancy; that the Senate must "do its job." While I have no doubt this talking point has been poll tested and refined to serve as the most effective political attack possible, the truth is that this point is completely uncontroversial. I have not heard a single one of my Republican colleagues argue that the Senate should not do its job with respect to the Supreme Court vacancy. Where we have a legitimate difference of opinion is how the Senate can best do its job.

Article II, section 2 of the Constitution divides the appointment process into two—two—distinct roles: the power of the President to nominate and the power of the Senate to provide its advice and consent. Despite the wild claims of some of my Democratic friends to the contrary, the Constitution does not define how the Senate is to go about its duty to provide advice and consent. It does not dictate that the Senate must hold confirmation hearings or floor votes on the President's preferred timeline. After all, how could the Constitution provide such instruction if the Judiciary Committee did not come into existence until 27 years after the Senate first convened in 1789? Indeed, the Judiciary Committee only began holding confirmation hearings in the past century,

and nominees only began appearing before the committee regularly in the past 60 years.

In fact, the Constitution prescribes no specific structure or timeline for the confirmation process, and the Constitution's text and structure, as well as longstanding historical practice, confirm that the Senate has the authority to shape the confirmation process how it sees fit. In other words, the Senate's job is to determine the best way to exercise its advice and consent power in each unique situation.

Over the years, the Senate has considered nominations in different ways at different times, depending on the circumstances. Consider these precedents with great bearing on the current circumstances. The Senate has never confirmed a nominee to a Supreme Court vacancy that opened up this late in a term-limited President's time in office. This is only the third vacancy in nearly a century to occur after the American people had already started voting in a Presidential election. In the previous two instances, in 1956 and 1968, the Senate did not confirm the nominee until the following year. The only time the Senate has ever confirmed a nominee to fill a Supreme Court vacancy created after voting began in a Presidential election year was in 1916, and that vacancy only arose when Justice Charles Evans Hughes resigned his seat on the Court to run against incumbent President Woodrow Wilson.

Key Democrats have long expressed strong agreement with the decision to defer the confirmation process in these circumstances. For example, Senator CHUCK SCHUMER, the incoming Democratic leader, argued in July 2007—with a year and a half left in President George W. Bush's term and with no Supreme Court seat even vacant—that the Senate "should not confirm any Bush nominee to the Supreme Court except in extraordinary circumstances." Vice President JOE BIDEN argued in 1992, when he was Judiciary Committee chairman, that if a Supreme Court vacancy occurred in that Presidential election year, "the Senate Judiciary Committee should seriously consider not scheduling confirmation hearings on the nomination until after the political campaign season is over."

Past practice and the well documented past positions of key Democrats certainly support the notion that deferring the confirmation process is an option reasonably available to the Senate in certain circumstances. As for its appropriateness in the present situation, one need only consider how the confirmation process would be further poisoned by election-year politics.

As a member of the Judiciary Committee for nearly four decades, I have witnessed the judicial confirmation process become increasingly divisive and sometimes—oftentimes, as a matter of fact—downright nasty. First came the campaigns of character assassination waged against Robert Bork and Clarence Thomas. Then came the