

hike taxes on those very families to pay for it.

As I have said, none of these things Democrats have pulled off their far-left wish list have a chance of becoming law in 2019. A lot of it almost sounds like standup comedy, but the underlying philosophy that all of this represents is no laughing matter whatsoever.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DECLARATION OF NATIONAL EMERGENCY

Mr. CORNYN. Mr. President, despite what you hear inside the beltway, the challenges along our southwest border are real, and the people of Texas feel that impact every day along the 1,200-mile common border we have with Mexico.

Last week, for example, the Border Patrol in the Rio Grande Valley Sector arrested 1,300 illegal immigrants in a single day—the second time in 2 weeks they exceeded that number. In the same time period, the Laredo port of entry seized \$2.3 million worth of cocaine and marijuana. Sadly, a father and son traveling from Guatemala nearly drowned while attempting to cross the Rio Grande but were saved thanks to the efforts of the Border Patrol. In a small town just north of Eagle Pass, a group of 90 undocumented immigrants—many of whom were women and children between the ages of 1 and 17—were apprehended after crossing the Rio Grande River. That was all in Texas last week.

Last year alone, 400,000 people were detained coming across our southwestern border—400,000. Tens of thousands of unaccompanied children and family units were detained as well.

These stories have become so common, somehow we have become anesthetized to the human emergency and crisis occurring along the border. Frankly, I do not understand why our Democratic friends have become completely apathetic when it comes to border security or dealing with what President Obama himself called a humanitarian crisis.

A few weeks ago, we know President Trump declared a national emergency over this crisis, which would allow some funding to be shifted from other areas to support our Border Patrol missions. This decision was met with a great deal of pushback, some of which I believe is warranted and some of which I believe is not. I would like to explain what I think is warranted and what I think is not.

For those, like some of our colleagues across the Capitol, including some of the Texas Democratic delegation—they call this a fake emergency. I couldn't disagree more. Just ask the

folks who live along the border and deal with this each day. The scenes I describe are not isolated incidents; they are happening daily, weekly, monthly, and at a scale and volume that, frankly, are overwhelming the ability of officials and people along the border to deal with.

Let's rewind to 2014. I alluded to this a moment ago. When President Obama was President, we saw an unprecedented number of Central Americans coming across the border claiming asylum. That year, 68,000 family units were apprehended at the southern border—“family units” meaning at least one adult and at least one child. That is what President Obama called a humanitarian crisis.

Today, not much has changed except for the numbers, and it has gotten worse, not better. In the last 4 months alone, there have been nearly 100,000 family units apprehended at the border. These are people arriving en masse by the thousands, sometimes called a caravan. We know there are dangerous drugs that come in at the same time every day, young women and children are being trafficked into sex slavery, and migrants are being abandoned by coyotes and left to die in the desert.

So I don't see a lot of difference between what President Obama called a humanitarian crisis in 2014 and what President Trump in 2019 calls an emergency.

While I agree that there is a crisis at our border and that more needs to be done, I have been consistent in my concerns about the means by which this funding is being provided.

This whole episode is completely contrived by the fact that the Speaker of the House, Ms. PELOSI—despite the fact that we had bipartisan support for the Secure Fence Act in 2006 and 2008, she all of a sudden decided, because the politics suited her, that building any additional physical barrier was immoral. The Democratic leader here in the Senate said that not one dollar was going to be spent for physical barriers along the border. We saw an impasse that resulted in the Federal Government or at least 25 percent of the government being shut down for 35 days. This was completely unnecessary and contrived. This was all about politics and certainly not about trying to find solutions to the problem.

I have said before and I will say again that where we are now was not anybody's first choice—certainly not mine. We know that many legitimate concerns have been raised about the clear definitions of the role of the legislative and executive branches. It is clear under the separation of powers that Congress holds the checkbook. No matter who the President is or what they want funding for, it must be authorized by Congress. But when Democrats refuse to engage in a problem-solving process, as they have done over the last few months, it makes things much more complicated.

We heard the Speaker of the House, as I said, refuse to provide more than

one dollar for border security. The minority leader said that no additional money would be provided for barriers. The reason they made these statements isn't because Democrats are all of a sudden opposed to improved border security. As we have seen in the past, Democrats have supported those physical barriers. In 2006, the Democratic leader himself and a number of our current colleagues and then-colleagues, such as Hillary Clinton and Barack Obama, supported the Secure Fence Act, but today, somehow things are different.

Democrats refuse to come to the negotiating table, not because they are against border security, presumably, but because their political base dislikes the man sitting behind the Resolute Desk. This is not about the facts or the problem presented; this is about whether President Trump will be defeated in his attempts to get additional money for border security. As the President found out, it is pretty tough to find a compromise when your negotiating partners—the Speaker and the Democratic leader of the Senate—refuse to come to the table at all. So the President found himself negotiating against himself.

I believe the regular appropriations process should always be the approved method, but, of course, Congress—and this should be a wake-up call to each of us—Congress has approved emergency powers as an exception to the normal process by which money is appropriated.

While some are trying to make this seem like a constitutional crisis and some groundbreaking breach of power by President Trump, I don't believe that is true, because he is using the power that was delegated to the executive branch by Congress. In other words, he is not making this up out of whole cloth, like President Obama did when he provided deferred action for childhood arrivals. He said more than 20 times that he didn't have authority to do it, that there was no statute to authorize it, but he did it anyway. It continues to be litigated—now up to the Supreme Court of the United States.

Here is what I found when this controversy arose, when we did some research. We found that Congress has granted the Presidency emergency powers under 123 statutes. This marks the 60th time the emergency powers have been invoked under the National Emergencies Act since 1978. So Congress is responsible for providing this exception to the normal appropriations process. Congress has done that 123 times, and Presidents have used those powers 60 times. That ought to put what is happening today in some larger context. Previous Presidents have used them for things like prohibiting the importation of blood diamonds from Sierra Leone or prohibiting new investment in Burma.

Because the President's emergency declaration fits into the confines of the

authorities Congress has given him, this is not a constitutional crisis, in my view, as some people are painting it to be, but I am concerned about the process for a few reasons.

One, as a number of our colleagues have pointed out over the last few weeks, it does set a precedent. A use of these powers in circumstances under which a conference committee has already come up with a dollar amount for border security that was ultimately signed by the President and he declared a national emergency on top of that in order to gain access to additional money—I do worry that this sets a precedent whereby a future President could abuse this authority.

These 123 congressional grants of authority to Presidents—any President—are broad, and they cover everything from the military, to public health, to Federal pay schedules. Some are pretty unremarkable, such as the one that allows the Secretary of Transportation to waive vehicle weight limits on a stretch of Interstate 95 in Maine. That is one of the congressional delegations of authority. Others are more alarming, such as the one that would authorize the President to suspend a law prohibiting the testing of chemical and biological weapons on human subjects.

What I find most concerning is that the definition of an “emergency” is very vague and subjective, which means it is going to end up being the subject of litigation. Yes, lawsuits have already been filed in the Federal district court challenging this declaration of an emergency under these circumstances. This gets to my basic problem, which is that this is not a very productive way to actually accomplish the goal if you know that what you are going to do is going to be tied up in litigation for the next 6 months or a year.

But I have to ask the question: Under these broad grants of authority that Congress has previously given to a President or any President, what would stop a future President from declaring a national emergency over climate change or global warming? I am concerned that we are going to see these emergency powers used as a failsafe for policies favored by the Executive—one who takes it further for a purely ideological goal that in no way comes close to a crisis or emergency.

Yes, I also worry that some of the money that will be accessed under this declaration of national emergency is for military construction projects, many of which are located at military bases in Texas. This is not a case of, do we need border security, or do we need to provide the housing and infrastructure for our military—we need both. So the President and Congress should not try to rob from Peter to pay Paul.

I, along with my colleagues, have fought for these appropriations for military construction because they are important to the ability to recruit and retain men and women who volunteer for the military, and their families.

They are important for our national security. I have and I will continue to push the administration to not let these critical projects get caught in the crosshairs in this dispute over adequate border security funds.

Third and finally, I suggest that Congress needs to look in the mirror when it comes to the situation in which we find ourselves. The only reason President Trump had the authority to do what he did is because Congress delegated it to him, just like it is delegated to future Presidents and has been to past Presidents under these 123 separate grants of authority. I worry that Congress has delegated too much of its power to the executive branch.

In the 1944 case *Korematsu v. United States*, the Supreme Court upheld the internment of Japanese Americans—something unimaginable today, but in 1944, during the throes of the Second World War, it was something that was the official policy of the government. It went all the way to the Supreme Court of the United States. Justice Robert Jackson—one of the three dissenters—said that each emergency power “lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” I agree with Justice Jackson’s warning.

If our Democratic colleagues are concerned about how this President or any other President will utilize the powers this body has given him, perhaps we should reexamine those powers rather than fault the President for using authorities Congress has already given to him.

Despite these concerns, I believe the President is operating within the authority Congress has delegated to him. It is strictly because of the dysfunction in the Congress and our inability to work together to come up with solutions when it comes to border security or immigration that the President is desperate to find access to the funds he believes are necessary for the national security of our country.

As I said, I think this situation reflects more on the dysfunction in Washington these days and the inability of Congress to work with the President to find bipartisan, commonsense solutions. I think we ought to return to those bipartisan, commonsense solutions rather than engage in some of the drama associated with this particular declaration under these sets of circumstances.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. ERNST). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DECLARATION OF NATIONAL EMERGENCY

Mr. ALEXANDER. Madam President, on Thursday, I suggested that Presi-

dent Trump has sufficient congressional authority to spend the \$5.7 billion he asked for in his January 6 letter to the Senate Appropriations Committee chairman to build 234 miles of border wall without resort to a dangerous national emergency precedent that could upset the constitutional separation of powers that goes to the heart of our freedom.

I believe the President has clear authority to transfer up to \$4 billion among accounts within the over \$600 billion defense budget in order to counter drug activities and to block drug smuggling corridors across international borders.

On February 15, the President said that he plans to use \$2.5 billion of this same transfer authority to build the 234 miles of wall along the southern border that he asked for in his January 6 letter. If he increases the transfer from \$2.5 billion to \$3.7 billion, along with the other existing funding authority that he has, he will have the full \$5.7 billion that he said he needed.

William E. Nelson, of New York University School of Law—one of America’s foremost scholars of legal history—wrote an excellent op-ed last week that explained why it is so important that the President and the Congress should not, in Professor Nelson’s words, “invert the entire constitutional order where Congress appropriates and the President spends.”

I ask unanimous consent that Professor Nelson’s article be printed in the RECORD.

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

THE CONVERSATION: TRUMP VS. CONGRESS:
THE EMERGENCY DECLARATION SHOULD NOT
BE RESOLVED IN COURT

(Opened by: William E. Nelson, New York
University February 28, 2019)

President Donald Trump’s emergency declaration to build a border wall has provoked a constitutional confrontation with Congress.

Here is the background for understanding what’s at stake—beginning more than two centuries ago.

A major problem for the framers at the Constitutional Convention in 1787 was how to create a presidency powerful enough to protect the nation, yet constrained enough to prevent a president from becoming a dictator.

Ultimately, the president was given power to enforce the law, conduct foreign relations and command the armed forces. Congress retained most other key powers, including the power of the purse and the power to declare war.

The framers knew they could not predict all that the future would bring. So they left the precise boundaries between presidential and congressional power unclear. This imprecision in our checks and balances has served the nation well for 230 years because it provides the flexibility to govern while preventing tyranny.

As scholars of constitutional law and history, we believe that President Trump’s assertion of a national emergency to build a wall along the Mexican border and the lawsuits filed in response together threaten the very imprecision that has helped maintain constitutional checks and balances for more than two centuries.