

“Prosecutorial Discretion” Does Not Allow the President to “Change the Law”

Testimony of

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By John C. Eastman

Good afternoon, Chairman Leahy, Ranking member Grassley, Senator Hirono and the other members of the Senate Judiciary Committee. In the wake of the President’s announcement on November 20, 2014 that his administration would be unilaterally suspending deportation and granting work authorization to millions of illegal aliens, the critical issue before you is not what the best immigration policy should be—I happen to believe that our current immigration policy is both too restrictive and way too mired in bureaucratic red tape—but to which branch of government “We, the People” have delegated the authority to determine immigration policy. On that question, the Constitution could not be more clear. Absent some extraordinary foreign policy crisis that would trigger the President’s direct Article II powers over foreign affairs, the Constitution assigns plenary power over immigration and naturalization to the Congress, not to the President. *See* U.S. Const., Art. I, Sec. 8, cl. 3-4 (“The Congress shall have Power ... To regulate Commerce with foreign nations ... [and] To establish an uniform Rule of Naturalization”); *see also, e.g., Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 201 (1993) (“Congress ... has plenary power over immigration matters”); *INS v. Chadha*, 462 U.S. 919, 940-41 (1983) (“The plenary authority of Congress over aliens under Art. I, §8, cl. 4, is not open to question.”); *Boutilier v. INS*, 387 U.S. 118, 123 (1967) (“The Court without exception has sustained Congress’ ‘plenary power to make rules for the admission of aliens.’”).

There has nevertheless been a lot of talk about prosecutorial discretion in the weeks since President Obama announced on November 20, 2014 that he was unilaterally suspending deportation proceedings against millions of aliens who are unlawfully present in the United

States. Whether or not the concept of prosecutorial discretion can be stretched as far as the President has is itself an issue of first impression, the President's claim that his actions were simply "the kinds of actions taken by every single Republican president and every single Democratic President for the past half century" notwithstanding. But as serious as that issue is, it masks a much more fundamental constitutional question about executive power that needs to be addressed. For the President has not just declined to prosecute (or deport) those who have violated our nation's immigration laws. He has given to millions of illegal aliens a "lawful" permission to remain in the United States as well, and with that the ability to obtain work authorization, driver's licenses, and countless other benefits that are specifically barred to illegal immigrants by U.S. law. In other words, he has taken it upon himself to drastically re-write our immigration policy, the terms of which, by constitutional design, are expressly set by the Congress.

We should be clear, though. What the President announced on November 20, 2014 is simply a difference in degree, not a difference in kind, of the unconstitutional action his administration took back in 2012 when it announced, via a memo, the Deferred Action for Childhood Arrivals ("DACA") program. I intend to highlight in this testimony just what the DACA program (and its November 20 expansion) did, the statutory and constitutional authority the President has claimed for the actions, and the serious constitutional problems with those claims.

First, the DACA program. On June 15, 2012, by way of a memorandum from then-Secretary of Homeland Security Janet Napolitano to the heads of the three immigration agencies (David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection ("CBP"); Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services ("USCIS"); and John

Morton, Director, U.S. Immigration and Customs Enforcement (“ICE”)) (Attachment A), the Obama administration announced, purportedly in the “exercise of prosecutorial discretion,” that it would not investigate or commence removal proceedings, would halt removal proceedings already under way, and would decline to deport those whose removal proceedings had already resulted in a final order of removal for a broad category of individuals who met certain criteria set out in the memorandum. Specifically, the following individuals would, categorically, receive what the Napolitano memo characterized as “deferred action”: Those who 1) came to the United States under the age of sixteen; 2) have continuously resided in the United States for at least five years preceding the date of the memorandum and are currently residing in the United States; 3) are currently in school, have graduated from high school, have obtained a general education development certificate, or are an honorably discharged veteran of the U.S. Coast Guard or Armed Forces; 4) have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and 5) are not above the age of thirty. Although the memo repeatedly asserts that these decisions are to be made “on a case by case basis,” it is actually a directive to immigration officials to grant deferred action to anyone meeting the criteria. “With respect to individuals who meet the above criteria” and are not yet in removal proceedings, the memo orders that “ICE and CBP *should* immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.” (emphasis added). And “[w]ith respect to individuals who are in removal proceedings but not yet subject to a final order of removal, and who meet the above criteria,” “ICE *should* exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low

priority individuals from being removed from the United States.” (emphasis added). USCIS and ICE are directed to “establish a clear and efficient process” for implementing the directive, and that process “*shall* also be available to individuals subject to a final order of removal regardless of their age.” (emphasis added).

The notion that this memo allows for a true individualized determination rather than providing a categorical suspension of the law, as has been argued by current and former administration officials and other supporters of the DACA policy, is simply not credible. There is nothing in the memo to suggest that immigration officials can do anything other than grant deferred action to those meeting the defined eligibility criteria. Indeed, the overpowering tone of the memo is one of woe to line immigration officers who do not act as the memo tells them they “should,” a point that has been admitted by Department of Homeland Security officials in testimony before the House of Representatives. *See* Transcript, Hearing on *President Obama’s Executive Overreach on Immigration*, House of Representatives Judiciary Committee (Dec. 2, 2014) (Representative Goodblatt noting: “DHS has admitted to the Judiciary Committee that, if an alien applies and meets the DACA eligibility criteria, they will receive deferred action. In reality, immigration officials do not have discretion to deny DACA applications if applicants fulfill the criteria.”).

Nevertheless, by repeatedly regurgitating the phrase, “on a case by case basis,” Secretary Napolitano seemed to recognize the existing norm that prosecutorial discretion cannot be exercised categorically without crossing the line into unconstitutional suspension of the law—without, that is, violating the President’s constitutional obligation to “take care that the laws be faithfully executed.” *See, e.g., Heckler v. Cheney*, 470 U.S. 821, 832-33 n.4 (1985) (finding that judicial review of exercises of enforcement discretion could potentially be obtained in cases

where an agency has adopted a general policy that is an “abdication of its statutory responsibilities”); *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 613 (1838) (“To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible”). The recent opinion of the Office of Legal Counsel at the Department of Justice recognizes the need for individualized determinations for exercises of prosecutorial discretion to be constitutional. “[T]he Executive Branch ordinarily cannot . . . consciously and expressly adopt[] a general policy that is so extreme as to amount to an abdication of its statutory responsibilities,” the memo notes. Karl R. Thompson, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014), at p. 7 (quoting *Heckler*, 470 U.S. at 833 n.4, internal quotation marks omitted). “[A] general policy of non-enforcement that forecloses the exercise of case-by-case discretion poses ‘special risks’ that the agency has exceeded the bounds of its enforcement discretion.” *Id.* (quoting *Crowley Caribbean Transp., Inc. v. Pena*, 37 F.3d 671, 677 (D.C. Cir. 1994)). Indeed, among the charges leveled against King George III in the Declaration of Independence was that he had suspended the laws and had declared himself “invested with power to legislate for us in all cases whatsoever.” Moreover, the only federal court to have considered the issue in light of the DACA program held that the word “shall” in the relevant statutes mandated the initiation of removal for all unauthorized aliens, thus statutorily removing whatever prosecutorial discretion might otherwise exist. *Crane v. Napolitano*, 920 F. Supp. 2d 724, 740-41 (N.D. Tex. 2013);² *see* 8 U.S.C. §1225(b)(2)(A) (“if

² The Court subsequently ruled, however, that the claims in the case were within the exclusive jurisdiction of the Merit Systems Protection Board. *Crane*, No. 3:12-cv-03247-O, Order (N.D. Tex., July 31, 2013), available at http://www.crs.gov/analysis/legalsidebar/Documents/Crane_DenialofMotionforReconsideration.pdf.

the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a [removal] proceeding” (emphasis added)).

Even President Obama's Department of Homeland Security Secretary Jeh Johnson has admitted in testimony before the House of Representatives that there are limits to the power of prosecutorial discretion and that there comes a point when something amounts to a wholesale abandonment to enforce a dually enacted constitutional law that is beyond simple prosecutorial discretion.

Neither are the Administration’s actions—either the adoption of the DACA program in June 2012 or the massive recent expansion of it announced last month—simply an exercise of the kind of prosecutorial discretion that has been exercised by previous administrations. Much has been made of the Family Fairness Program implemented by President George H.W. Bush’s administration in February, 1990. But that program, which dealt with delayed voluntary departure rather than the current program’s deferred action, was specifically authorized by statute. Section 242(b) of the Immigration and National Act at the time provided, in pertinent part:

In the discretion of the Attorney General and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title is such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraphs (4) to (7), (11), (12), (14) to (17), (18), or (19) of section 1251(a) of this title.

8 U.S.C. § 1252(b), *cited in Perales v. Casillas*, 903 F.2d 1043, 1048 (5th Cir. 1990) (emphasis added). That specific statutory authority was largely superseded by the Temporary

Protected Status program established by the Immigration Act of 1990, which is available to nationals of designated foreign states affected by armed conflicts, environmental disasters, and other extraordinary conditions, 8 U.S.C. § 1254a, and subsequently limited to 120 days by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), *see* 8 U.S.C. § 1229c. In contrast, as even the OLC opinion acknowledges, “deferred action,” which is the asserted basis for the President’s recent actions, “developed without statutory authorization.” OLC Memo, at 13; *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (noting that deferred action “developed without express statutory authorization,” apparently in the exercise of discretionary response to international humanitarian crises that trigger the President’s separate foreign affairs authority of the sort now covered by the Temporary Protected Status Program). There are now specific statutes that authorize its use. *See, e.g.*, 8 U.S.C. § 1154(a)(1)(D)(i)(II), (IV) (providing that certain individuals are “eligible for deferred action”); USA PATRIOT ACT of 2001, Pub. L. No. 107-56, § 423(b), 115 Stat. 272, 361 (providing that certain immediate family members of Lawful Permanent Residents who were killed on 9/11 should be made “eligible for deferred action.”); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1703(c)-(d), 117 Stat. 1392, 1694, and other statutes that delegate to the Attorney General discretion to waive other provisions of the INA in specific circumstances, *see, e.g.*, 8 U.S.C. § 1182(a)(6)(E)(iii), (d)(11) (authorizing discretionary waiver of smuggler ineligibility for admission rule for smugglers who only assisted their own spouses, parents, or children); 8 U.S.C. § 1182(d)(13), (14) (authorizing, in certain specified circumstances, discretionary waiver of inadmissibility rules for recipients of “T” and “U” visas); *cf.* 8 U.S.C. § 1229b (authorizing the Attorney General to “cancel removal” and “adjust status” for up to four thousand aliens annually who are admitted for lawful permanent residence and

who meet certain specific statutory criteria). But none of these statutes authorize the broad use of deferred action for domestic purposes asserted by the June 2012 DACA program or its current expansion, and the fact that Congress deemed it necessary to include such statutory authorization for these specific domestic uses of deferred action is pretty compelling evidence that the Executive does not have unfettered discretion to give out deferred action whenever it chooses, and certainly not to deem such individuals as “lawfully present in the country for a period of time,” as Secretary Johnson claimed in his November 20, 2014 memo. Jeh Charles Johnson, Memorandum for Leon Rodriguez, *et al.*, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*, p. 2 (Nov. 20, 2014) (“Johnson Prosecutorial Discretion Memo”).

But even if that part of former Secretary Napolitano’s directive (and the expanded directive recently issued by Secretary Johnson) can properly be viewed as an exercise of prosecutorial discretion, Secretary Napolitano then went a significant step further. “For individuals who are granted deferred action by either ICE or USCIS,” she ordered that “USCIS *shall* accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.” Just how that determination should be made, Napolitano did not say, but the notion that prosecutorial discretion can be used not just to decline to prosecute (or deport), but to confer a lawful presence and work authorization as well, requires a distortion of the doctrine beyond recognition. The memo cites no legal authority whatsoever for this extraordinary claim, and it is directly contradicted by legal advice given by the INS’s general counsel during the Clinton Administration. *See* Bo Cooper, General Counsel, INS, *INS Exercise of Prosecutorial Discretion* (July 11, 2000) at 4, available at <http://niwaplibrary.wcl.american>.

edu/reference/additional-materials/immigration/enforcement-detention-and-criminaljustice/government-documents/Bo-Cooper-memo%20pros%20discretion7.11.2000.pdf (“The doctrine of prosecutorial discretion applies to enforcement decisions, not benefit decisions. For example, a decision to charge, or not to charge, an alien with a ground of deportability is clearly a prosecutorial enforcement decision. By contrast, the grant of an immigration benefit, such as naturalization or adjustment of status, is a benefit decision that is not a subject for prosecutorial discretion.”).

Following the issuance of the Napolitano memo, legal experts and academics tried to find a hook for the President’s asserted authority. Speculations centered on a particular federal regulation, 8 C.F.R. § 274a.12, which allows for work authorization for designated classes of aliens. Subsection (c)(14) allows for an application for work authorization by “An alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment.” But as any first year law student knows, and as the regulation itself acknowledges, those provisions allowing for work authorization must be grounded in statutory authority, and none of the statutes cited in support of the regulation provide the necessary authority.

The regulation cites four statutory provisions: 8 U.S.C. §§ 1101, 1103, and 1324a, and 48 U.S.C. § 1806. I think we can safely dispense with the latter, as it deals exclusively with a transition immigration program for the Northern Mariana Islands. Section 1103 of Title 8 sets out the general authority of the Secretary of Homeland Security to administer and enforce the immigration laws; nothing in that provision gives the Secretary the discretion to ignore those laws.

Section 1101 is the “definition” section of immigration law, but through it, many of the authorizations for legal status are made by way of definitional exemptions from the general rule. The term “alien,” for example, is defined in subsection (a)(3) as any person not a citizen or national of the United States. The term “immigrant” is, in turn, defined in subsection (a)(15) as every alien except an alien described in one of 22 separate statutory exemptions. This is where the “T” visa authority resides, so named because it is found in subsection (a)(15)(T). That provision very carefully delineates the authority to give a visa for lawful residence to victims of human trafficking who are cooperating with law enforcement’s investigation or prosecuting of the trafficking crimes. Beyond these carefully delineated exceptions, there is no authority in this statute for the Attorney General, the Secretary of Homeland Security, the President, or any other executive official to grant authorization for legal status.

Section 1324a, which deals with employment of illegal immigrants, is the final authority cited in the regulation. Like Section 1101, it provides for certain authorizations by way of exemption from the general rule that employing an unauthorized alien is illegal. Section (a)(1) specifically makes it unlawful to hire “an unauthorized alien (as defined in subsection (h)(3) of this section).” Subsection (h)(3) in turn defines “unauthorized alien” as any alien who is not “lawfully admitted for permanent residence” (that would be all those carefully wrought exemptions in Section 1101(a)(15), such as the “T” visa) or an alien “authorized to be so employed by this chapter *or by the Attorney General.*” (emphasis added).

That last phrase, “or by the Attorney General” (and by extension the Secretary of Homeland Security, because of another statute transferring immigration duties from the Attorney General to the Secretary), is the only statutory hook anyone defending the President’s actions in numerous debates I have had since the Napolitano memo was issued could point to. That’s a

pretty slim reed for all of the heavy lifting necessary to accept the President’s assertion of complete discretion not only to decline to prosecute and/or deport illegal immigrants, but to grant them a lawful residence status and work authorization as well. Never mind that with such absolute discretion, none of the pages and pages of carefully circumscribed statutory entitlements to exemption, and none of the carefully circumscribed statutory grants of discretion to the Attorney General [now Secretary] to issue exemptions in other circumstances, would be necessary. And never mind that the much more likely interpretation of that phrase is that it refers back to other specific exemptions in Section 1101 or Section 1324a that specify when the Attorney General might grant a visa for temporary lawful status, such as Section 1101(a)(15)(V), which allows the Attorney General to confer temporary lawful status on the close family members of lawful permanent residents who have petitioned the Attorney General for a nonimmigrant visa while an application for an immigrant visa is pending, or to specific statutory provisions that require or give discretion to the secretary to grant work authorization in specific circumstances, such as 8 U.S.C. § 1158(c)(1)(B) (aliens granted asylum); *id.* § 1226(a)(3) (otherwise work-eligible alien arrested and detained pending a removal decision); *id.* § 1231(a)(7) (permitting the Secretary to grant work authorization under certain narrow circumstances to aliens who have received final orders of removal).³ Here, then, is some text in

³ That view was implicitly espoused by a plurality of the Supreme Court when, in *Chamber of Commerce of U.S. v. Whiting*, 131 S. Ct. 1968, 1981 (2011), it summarized Section 1324a(h)(3) as defining an “unauthorized alien” to be “an alien not ‘lawfully admitted for permanent residence’ or not otherwise authorized by federal law to be employed.” *See also Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137, 147 (2002) (federal immigration law denies “employment to aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States,” citing Section 1324a(h)(3)); *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 518-19 (M.D. Pa. 2007), *aff’d in part, vacated in part*, 620 F.3d 170 (3d Cir. 2010), *cert. granted, judgment vacated sub nom. City of Hazleton, Pa. v. Lozano*, 131 S. Ct. 2958 (2011), and *aff’d in part, rev’d in part*, 724 F.3d 297 (3d Cir. 2013).

the statute that, taken out of context and ignoring all the elaborate web of requirements for eligibility for lawful status and employment authorization that had been carefully constructed by Congress over decades, purports to give the President, through his Attorney General, absolute discretion to ignore the lion's share of the nation's immigration laws.

And yet it is that slim reed, and that slim reed alone, which has now been confirmed as the only asserted source of authority. The same day (November 20, 2014) the President announced his expansion of the DACA program to cover millions of additional illegal immigrants, the current Secretary of Homeland Security issued a memo of his own, stating: "Each person who applies for deferred action pursuant to the criteria above shall also be eligible to apply for work authorization for the period of deferred action, *pursuant to my authority to grant such authorization reflected in section 274A(h)(3) of the Immigration and Nationality Act.*" *Johnson Prosecutorial Discretion Memo* at 4-5 (emphasis added). As the U.S. Customs and Immigration Service explains on its website, "An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period of deferred action is in effect." That's why hundreds of thousands of DACA applicants were deemed to have a "lawful presence," obtain work authorization, and also obtain driver's licenses (which were undoubtedly then used to open the door to a host of other benefits available only to citizens and those with lawful permanent residence). The new program will expand that number to millions, perhaps tens of millions. And it is a far cry from the exercise of "prosecutorial discretion" claimed by the President and his two Secretaries of Homeland Security.

The section of the immigration law that includes the brief phrase on which this entire edifice has been erected was added in 1986 as part of the Immigration Reform and Control Act.

The legislative record leading to the adoption of that monumental piece of legislation is extensive, but I have located no discussion whatsoever of the clause, much less any claim that by including that clause, Congress was conferring unfettered discretion on the Attorney General to issue lawful status and work authorization to anyone illegally present in the United States he chose, contrary to the finely wrought (and hotly contested) provisions providing for such lawful status only upon meeting very strict criteria.

Moreover, if the clause does provide the Attorney General (now Homeland Security Secretary) with such unfettered discretion, Congress has been wasting its time trying to put just such an authority into law. For more than a decade illegal immigration advocates have been pushing for Congress to enact the DREAM Act, the acronym for the Development, Relief, and Education for Alien Minors Act first introduced by Senators Dick Durbin and Orin Hatch as Senate Bill 1291 back in 2001. The bill would give lawful permanent residence status and work authorization to anyone who arrived in this country illegally as a minor, had been in the country illegally for at least five years, was in school or had graduated from high school or served in the military, and was not yet 35 years old (although that age requirement could be waived). The bill or some version of it has been reintroduced in each Congress since, but has usually kicked up such a firestorm of opposition by those who view its principal provisions as an “amnesty” for illegal immigrants that even its high-level bipartisan support has proved insufficient to get the bill adopted.

But no matter. The President (or more accurately in this case, his Secretary of Homeland Security) has a pen, and in 2012 he unilaterally gave effect to the DREAM Act as if it were law, and now has extended that “lawful” authorization to millions more. Who knew? If the President already had the power unilaterally to impose the DREAM Act and beyond, why all the angst in

Congress for over a decade of trying to get the bill passed? Heck, why did the President himself claim in 2011 that he had no such authority, when just a year later he claimed to have it?

This is not how our system of government is designed. Article I, Section 1 of the Constitution makes patently clear that “All legislative powers” granted to the federal government “shall be vested in” Congress, not the executive branch. And Article I, Section 8, Clause 4 makes clear that plenary power over naturalization is vested in Congress, not the President. . Congress cannot give that lawmaking power away.

The Court has allowed Congress to delegate a lot of regulatory authority to the executive to fill in the details of its law, but it can only do so if it provides an “intelligible principle” that directs the exercise of the executive’s rulemaking. An authorization to the Attorney General to give out work permits to illegal aliens whenever he chooses, as the President has claimed both with the 2012 DACA program and now its massive expansion, has no intelligible principle whatsoever.

Although this important non-delegation principal has been weakened to near death by the courts over the last three-quarters of a century, the absolute and unfettered discretion that results from the President’s interpretation of Section 1324a(h)(3) runs afoul of the non-delegation doctrine even in its moribund state. That cannot be the right answer in a Constitution devoted to the Rule of Law and not the raw exercise of power by men. The President’s constitutional duty is to “take Care that the Laws be faithfully executed,” U.S. Const. Art. II, § 3, not to rewrite them as he wishes, enforce them only when he wants, and otherwise render superfluous the great legislative body of the Congress, the immediate representatives of the ultimate sovereign authority in this country, “We the People.”

President Obama was right about one thing when, in his November 20, 2014 speech, he stated: “Only Congress can do that.” Indeed, there are few areas of constitutional authority that are more clearly vested in the Congress than determinations of immigration and naturalization policy. The Supreme Court has routinely described Congress’s power in this area as “plenary,” that is, an unqualified and absolute power. But the President went ahead and did it anyway, contradicting even his own express statements over the past four years that he did not have the constitutional authority to do this.

In sum, the 2012 DACA program and its recent expansion is a usurpation by the President of the lawmaking power that the Constitution vests in Congress, and it will set a dangerous precedent if left unanswered. The only question now is whether those currently serving in Congress, the other political branch of our Founders’ brilliant structural design where “ambition [was] made to counteract ambition” in order to preserve the very idea of limited government, will find it in themselves to do something about it. And as I said at the outset, that issue is a profoundly important one quite apart from the significant issues surrounding the debate about what our appropriate immigration policy should be. But one thing is clear: The competing sides in Congress simply cannot be expected to negotiate to a policy compromise when whatever law is adopted will, like the current ones, be subject to unilateral suspension by the President.