

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES

Institute of International Studies
Department of North American Studies

Master's Thesis

2019

Bc. Hanh Bui Thuy

CHARLES UNIVERSITY
FACULTY OF SOCIAL SCIENCES

Institute of International Studies
Department of North American Studies

**Presidential Directives as Instrument of President's
Obama Policy-Making**

Master's thesis

Author: Bc. Hanh Bui Thuy

Study programme: International Area Studies

Specialization: North American Studies

Supervisor: Mgr. Jana Sehnálková

Year of the defence: 2019

Declaration

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague

Bc. Hanh Bui Thuy

References

BUI THUY, Hanh. *Presidential Directives as Instrument of President's Obama Policy-Makings*. Praha, 2019. 83 pages. Master's thesis (Mgr.). Charles University, Faculty of Social Sciences, Institute of International Studies. Department of North American Studies. Supervisor Mgr. Jana Sehnálková.

Length of the thesis: 148 019 characters with space

Abstract

The recent usage of presidential directives by President Barack Obama and President Donald Trump initiated debates around limits of presidential power. Research on the presidential power has shown lack of focus on the presidential directives, misinterpretation and wrong terminology which resulted in false accusations of presidential overreach and abuse of power. This thesis argues that the political gridlock and increasing passivity of Congress have contributed to a shift between the executive and legislative power of government. This thesis will trace the extent to which Congress has become resistant to pass two of the key priorities of President Obama's political agenda - immigration reform and gun regulation, after which the President had to act on the issues unilaterally. The main aim of the thesis is to show that presidential directives of President Obama were not issued in a vacuum and that there were debates, persuasion and negotiations preceding the executive actions in an attempt to advance President's agenda in a form of bipartisan legislation rather than unilateral presidential directive.

Abstrakt

Súčasnú používanie prezidentských dekrétov prezidentom Barackom Obamom a prezidentom Donaldom Trumpom vyvolalo debaty ohľadom limitov prezidentskej moci. Doterajší výskum problematiky ukázal nedostatočné zameranie na prezidentské dekréty, misinterpretáciu a nesprávnu terminológiu, ktoré majú za výsledok klamnú obvinenia o prekročení limitov prezidentskej moci a jej zneužívanie. Táto práca argumentuje, že politický gridlock a zvyšujúca sa pasivita Kongresu prispeli k posunu moci medzi výkonnou a zákonodarnou zložkou vlády. Práca sleduje rozsah, v ktorom Kongres odmietol prijať dve z Obamových kľúčových priorít – imigračnú reformu a reguláciu zbraní. V následnosti na to, prezident Obama musel konať unilaterálne. Hlavným cieľom práce je ukázať, že prezidentské dekréty prezidenta Obamu neboli vydané vo vákuu, a že im predchádzali debaty, presvedčania a dohadovania pre presadenie agendy prezidenta vo forme bipartizánskej legislatívy namiesto unilaterálneho prezidentského dekrétu.

Keywords

Presidential directives, executive orders, presidential power, presidency, Obama, immigration, gun regulation

Klíčová slova

Prezidentské dekrety, výkonná nařízení, prezidentská moc, prezidenství, Obama, imigrace, regulace zbraní

Kľúčové slová

Prezidentské dekréty, výkonné nariadenia, prezidentská moc, prezidentsvo, Obama, imigrácia, regulácia zbraní

Title

Presidential Directives as Instrument of President's Obama Policy-Making

Název práce

Využití výkonných nařízení jako nástroje tvorby politiky prezidenta Baracka Obamy

Acknowledgement

I would like to express my gratitude to Mgr. Jana Sehnálková for her expert advice and guidance during the preparation of this work. Furthermore, I would like to thank Mgr. Lucie Kýrová, Ph.D. for her insight on the methodology and framework of the thesis.

ZÁVĚREČNÉ TEZE MAGISTERSKÉ PRÁCE NMTS

Závěrečné teze student odevzdává ke konci Diplomního semináře III jako součást magisterské práce a tyto teze jsou spolu s odevzdáním magisterské práce do SIS předpokladem udělení zápočtu za tento seminář.

Jméno:

Hanh Bui Thuy

E-mail:

h.hanhbuihuy@gmail.com

Specializace (uved'te zkratkou)*:

KAS

Semestr a školní rok zahájení práce:

LS 2016/2017

Semestr a školní rok ukončení práce:

LS 2018/2019

Vedoucí diplomového semináře:

Mgr. Lucie Kýrová, Ph.D.

Vedoucí práce:

Mgr. Jana Sehnálková

Název práce:

Presidential Directives as Instrument of President's Obama Policy-Making

Charakteristika tématu práce (max 10 řádek):

Presidential directives' usage of President Barack Obama has started discussions about presidential powers and its expansion. As means of executive authority, which allows one person to unilaterally sign a directive with the force of law, they stand in contradiction to the U.S. Constitution which fully grants legislative power to the U.S. Congress. The status of a superpower, expansion of the executive office and increasing polarization in Congress in 20th Century allowed presidents to utilize instrument of presidential directives in their policy-making. The present thesis researches the case study of President Obama and the motives and conditions of the issuance of highly criticized executive actions on immigration reform and gun regulation. The thesis attempts to prove that the issuance of these executive actions was result of failed attempts of the President to advance his key priorities through Congress.

Vývoj tématu od zadání projektu do odevzdání práce (max. 10 řádek):

The research scope has significantly shrunk in comparison to initial project of the master thesis. The thesis was originally supposed to discuss the evolution of presidential power into the current form of

President Obama. However, proving an evolution would require detailed historical guide to presidential directives issuance and a comprehensive study of ten thousands of primary sources. Additionally, the research would be complicated by significant gaps and misinterpretations in current research of the issue. Such broad research would require a study of broader scope than one of a master thesis. Therefore, the researched area of the thesis has been limited to the usage of presidential directives by President Obama. More precisely, the focus of the thesis is on the most criticized executive actions Obama issued - immigration reform and gun regulation.

Struktura práce (hlavní kapitoly obsahu):

1. Introduction
2. Methodology
3. Expectations Gap
4. Brief Quantitative Research on the Unilateral Activity of Obama
5. Comprehensive Immigration Reform
6. Gun Regulations
7. Implications and Discussion
8. Conclusion

Hlavní výsledky práce (max. 10 řádek):

The present thesis proved that President Obama issuance of executive actions on immigration reform and gun regulation was a result of various circumstances, but mainly of opposition and passivity of Congress on both issues. To undermine the significance on this, the thesis found out Congress during presidential years of Obama was one of the most inactive in the past two decades. Additionally, the increased expectations on the President and priority the President put on both immigration reform and gun regulation added to the urgency to act unilaterally. Furthermore, the thesis suggested, that President purposely used executive actions instead of other presidential directives, which might have bigger authority and legal weight, but could also be easier to track and therefore legally challenged by courts. Considering controversy of the issue of immigration reform and gun regulation in American political debate, this seemed as a strategic move by the President.

Prameny a literatura (výběr nejpodstatnějších):

- Remarks of President Obama from Obama White House archive or American Presidency Project archive
- Library of Congress
- Congressional reports on presidential directives

- Neustadt, Richard E. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York, NY: Free Press, 1991.
- Howell, William G., and David Milton Brent. *Thinking about the Presidency: The Primacy of Power*. Princeton: Princeton University Press, 2015.
- Rossiter, Clinton Lawrence. *The American Presidency*. Toronto: New American Library, 1962.
- Dodds, Graham G. *Take up Your Pen: Unilateral Presidential Directives in American Politics*. Philadelphia: University of Pennsylvania Press, 2013.
- Moe, Terry M., and William G. Howell. "Unilateral Action and Presidential Power: A Theory." *Presidential Studies Quarterly* 29, no. 4 (1999): 850-73. doi:10.1111/1741-5705.00070.

Jazyk práce:

angličtina

Podpis studenta a datum

Schváleno	Datum	Podpis
Vedoucí práce		
Vedoucí diplomového semináře		
Vedoucí specializace		
Garant programu		

Table of Contents

1 INTRODUCTION	2
1.1 What Are Presidential Directives	4
1.2 Why Are There Presidential Directives	5
1.1.1 The Constitution.....	6
1.1.2 Increase of Presidential Responsibilities	8
1.1.3 The Supreme Court	11
1.1.4 Uniqueness of Presidential Directives in the U.S. Political System	13
1.3 Types of Presidential Directives	14
1.3.1 Executive Order.....	14
1.3.2 Presidential Proclamation.....	16
1.3.3 Presidential Memorandum	18
1.3.4 Executive Action	19
1.3.5 Executive Agreement	20
2 METHODOLOGY	22
2.1 Theoretical Framework - The American Presidency and the Source of Its Power	22
2.2 Methodology	29
3 EXPECTATIONS GAP	32
3.1 President Obama’s Political Agenda	32
3.1.1 Immigration as a Key Part of Obama’s Political Agenda.....	33
3.1.2 Gun Safety as a Key Part of Obama’s Political Agenda.....	36
3.2 Expectations on the Chief of Change	38
4 BRIEF QUANTITATIVE RESEARCH ON THE UNILATERAL ACTIVITY OF OBAMA ...	43
4.1 Obama’s Presidential Directives	43
4.2 Uncooperative Congress	45
5 A COMPREHENSIVE IMMIGRATION REFORM	48
5.1 The Dream Act of 2010	48
5.2 Border Security, Economic Opportunity, and Immigration Modernization Act of 2013	51
6 GUN REGULATIONS	55
6.1 Gun Regulation Proposals	55
6.2 Gun Regulation Reintroduction	60
7 INTERPRETATION AND DISCUSSION	62
8 CONCLUSION	67
SÚHRN	69
BIBLIOGRAPHY	70

1 Introduction

In recent years in the United States, usage of presidential directives, mainly led by executive orders, has spurred debates about imperial presidency and expansion of presidential power beyond the scope of constitutionally defined powers. This executive lawmaking authority, which allows one person to unilaterally sign a directive with the force of law, stands in contradiction to the U.S. Constitution which fully grants legislative power to the U.S. Congress. Moreover, the U.S. political culture can be defined by one significant feature - fear of a strong, unilateral authority vested in one person. Considering the Constitution was put together after years of bitter collisions with absolute monarch, values of a democratic republic with the means to oppose such power were embodied in the founding document. The system of checks and balances serves as a precaution to such absolute power and is one of the basic principles of the U.S. political system. Although the Constitution itself has not changed much throughout the years, the presidential practice of governing has changed from century to century and from president to president. This master thesis believes that presidential directives are products of this change and stand at the center of understanding the presidential power.

Whilst the research on presidential directives is heavily understudied, there is also inaccuracy in terminology which leads to misinterpretations and incorrect conclusions. The presented thesis aims to address this gap. It seeks to understand the roots of the development in the frequency and purpose of presidential directives and the justification for such expansion of presidential power, with focus on President Barack Obama. A recent presidency, while also one which is completed, can be evaluated within a certain scope and can serve as a case study of how the presidency has expanded to the current form as well as allowing us to assume implications for the future. More specifically, the proposed thesis will consider a broader scope of unilateral directives issuance. It will aim to prove the relationship between increased expectations on presidents, polarized and inactive Congress, and enhanced executive authority of presidents as a result of the previous two.

In the case study of President Obama and two key areas of his domestic policy – immigration and gun control – the thesis applies concepts of William Howell’s expectations gap expanding presidential power. The unchanging nature of the Constitution allowed the gap between the constitutionally expressed powers presidents can assert and the growing expectations on the leader of the only world’s superpower to widen with passing time. To

accommodate to this gap, presidents have enhanced their executive authority in various ways. There have been two theoretical approaches identified to explain this phenomenon of the ever-changing presidency – behaviorist led by Richard Neustadt, who considered source of presidential power to be persuasion and bargain, and institutionalist formed by Clinton Rossiter, who believed that rather than bargaining, presidents should focus on the power the institution of presidency holds. Applying these theories, the following main hypothesis is researched in the presented thesis: in order to comply with the promises of his presidential campaign and political agenda, President Obama had to use unilateral actions after being blocked by the legislative branch. Thus, proving that it is a strength of the American presidency and the inherent powers it holds in the form of presidential directives to rely on, when persuasion and bargain with the legislative branch fails.

The body of the thesis consists of seven main parts. The first chapter will look at and attempt to classify presidential directives. As the understanding of the presidential unilateral actions is understudied, and different terms are used interchangeably, it is important to define the terms used in the research. This chapter will also proceed to the historical implications on why such directives and tools exist uniquely in the American political system.

Second chapter is concerned with a broader study on presidential powers reviewing literature on the issue of the ever-changing and expanding limits on presidential power in subchapter 2.1. providing theoretical framework for the thesis. This chapter also describes methodology used in the thesis and breaks down the main hypothesis to four partial hypotheses which will be evaluated throughout the research. To prove our hypotheses, there were studied numerous primary sources. The most important were the official archives of the U.S. Congress, The American Presidency Project, the online source for presidential documents, and the Federal Register. Additionally, there were used statistics of executive agencies and definitions from congressional reports. Given that the thesis used process tracing of a quite recent topic, relevant media articles are also heavily relied on throughout the research.

The research part starts with a chapter identifying key issues of President's Obama domestic political agenda, with the focus on immigration reform and gun regulation. Next subchapter discusses great expectations placed onto the presidency of Obama not only by the public, but also by scholars and media.

Before moving to the legislative proposals, the thesis provides a brief quantitative summary of Obama's usage of presidential directives in comparison to his predecessors in chapter 4. The quantitative summary also includes number of legislations passed in Congress

during presidencies from George H.W. Bush to Barack Obama, and also number of legislations enacted in favor of president's position in the same time period. This summary should present context to the uncooperativeness, polarization and gridlock in Congress.

Failed legislative attempts are later examined in chapters 5 and 6, with the focus on the immigration reform and gun regulation respectively. Executive actions as reactions to the inability to move the agenda legislatively are also part of the process trace. It is necessary to mention that the thesis does not attempt to be a legislation guide of either immigration reform or gun legislation, nor does it try to evaluate the success and impact of Obama's policies. This master thesis is rather an analysis of political discourse on controversial issues and the seemingly expanding presidential authority in one of the most polarized political times in the United States.

The presented thesis is later concluded by the seventh chapter, which consists of final evaluation of the four formulated hypotheses. Furthermore, the chapter includes further discussion on the issue of the failed immigration reform and gun regulation legislations and provides implications for the future research.

1.1 What Are Presidential Directives

In order to construct a theoretical framework and set up methodology of the thesis, it is important to clearly define key terms that will be used throughout the work. As for the conceptualization of the terms, this thesis will heavily rely on the most recent congressional report prepared by Harold C. Relyea on presidential directives. There, the author identifies directives as tools or instruments of presidents to exercise executive power, "establishing new policy, decreeing the commencement or cessation of some action, or ordaining that notice be given to some declaration".¹ These policies can also have the force of law, though not necessarily. That depends on the President's authority to issue directives, whether they are in any conflict with constitutional or statutory provisions, and their promulgation is according to the said procedure.²

Indeed, presidential directives provide presidents with the means of governing their executive branch, but also unilaterally pursue their own agenda, sometimes even standing in the opposition to the legislative branch. As such, they belong to the grey zone of U.S. constitutionalism and can also be considered as a deficiency in the separation of powers and

¹ U.S. Library of Congress, Congressional Research Service, *Presidential Directives: Background and Overview*, by Harold C. Relyea, 98 611 GOV (2013), <https://fas.org/sgp/crs/misc/98-611.pdf>, 1.

² *Ibid*, 2.

the system of checks and balances. Yet, it is the very nature of the U.S. political system that has allowed presidential directives to become part of presidential governing. These aspects will be discussed in the next subchapter.

There are also multiple types of presidential directives. Relyea identifies 22 types which can all serve as the means of executing laws and directing activities of the executive branch. Given that presidential directives can vary in form, substance, as well as in legal authority, it is very hard to classify and clearly distinguish between them. Moreover, none of them are specified in the Constitution and as the next subchapter uncovers, the types tend to overlap. Despite this, many authors, committees and researchers have attempted to define these distinguishing lines, but admit that clear distinctions are impossible to make. Because of that, it would not make sense to focus the research of the thesis to only one specific type of presidential directive. The legal implications, legitimacy and controversy of each type spurs from the content of each individual one regardless of whether one is formally considered as an executive order or a presidential memorandum. Therefore, in the thesis, the cases evaluated have been chosen based on their substance, rather than form.

It is also important for the thesis to limit the types to only those presidential directives that stand on the line between the legislative and the executive branch. This argument would exclude the presidential directives whose area of jurisdiction can be fully claimed to presidents. Such examples are designations of officials, administrative orders, homeland security presidential directives, military orders and others. These orders are instruments for presidents to execute their expressed powers according to the Constitution's Article II Section 2 - being Commander in Chief of the Army and the Navy of the United States - and from the appointment powers given to the presidents.

1.2 Why Are There Presidential Directives

Few interrelated reasons can be identified when asking why such unprecedented usage of presidential directives exists in the United States. As presidential directives are not mentioned in the Constitution and cannot, therefore, be called expressed powers of presidents, the validity of presidential directives stems from the so-called inherent powers. These inherent powers are derived from the expressed powers which fully vest the executive power in presidents. Legitimacy of presidential directives lies in a fact, that they are means of executing this expressed power. This nature of the Constitution has allowed presidents to interpret the authority and competences written therein. As such, left to the interpretation of

individuals, presidency can take various forms. Next subchapter unfolds the issue in more depth.

Cronin and Genovese dedicate a whole book to this issue in their *The Paradoxes of the American Presidency* (2004).³ There they examined multiple real-life examples of how a presidency can be on one occasion strong and decisive and on another weak and passive. Similarly, they also showed how the relationship with Congress varies from president to president, and how courts can shut down a president's attempt to usurp power but can expand presidential powers in another situation.⁴ The whole premise lies in the flexibility of the Constitution and in how history has shaped the presidency outside of the initial frame set by the Founding Fathers. Presidential directives are also one of the paradoxes to be found outside of this frame. The next subchapters acknowledge this flexibility among other factors to consider when asking why presidential directives have such significant presence in U.S. political culture.

1.1.1 The Constitution

The Constitution of the United States is not only a document that provides a legal basis for governing bodies of the country. For Americans, it is also a symbol of unity and the embodiment of national values. Its principles have been injected to not only political, but also social life, and have become part of the American nature with separation of powers being one of the most important principles. The first three Articles of the Constitution provide each of the governmental branches a set of competences and responsibilities, where each branch should keep other two in check and prevent danger of tyranny, absolutism and abuse of power. And even though the nature of presidential directives stands in contradiction to this principle, its validity comes from two powerful sentences in Article II, Section 1 of the U.S. Constitution: "The executive Power shall be vested in a President of the United States of America", and Article II, Section 3, which states that the President "shall take Care that the Laws be faithfully executed".⁵ As mentioned in the introduction of this chapter, presidential directives serve as instruments for presidents to execute laws and to direct activities across the executive branch. And both of these purposes can be justified with the executive power vested in a president and obligation to implement laws.

³ Thomas E. Cronin, Michael A. Genovese, and Meenekshi Bose, *The Paradoxes of the American Presidency*, (New York: Oxford University Press, 2004).

⁴ Ibid, 220-221.

⁵ U.S. Constitution, art. 2, sec. 1, cl. 1, <https://www.archives.gov/founding-docs/constitution-transcript>.
U.S. Constitution, art. 2, sec. 3, cl. 5, <https://www.archives.gov/founding-docs/constitution-transcript>.

In light of this, there have been countless discussions about the validity of presidential directives filled with questions such as “what did the Founding Fathers really intend with the presidential office” or “how would the Founding Fathers react to such expansion of power”, be it on the supporting side or opposing one.⁶ The discrepancy of the defined limits of power for the legislative and the executive branch might imply that the Founding Fathers actually wanted a strong executive. That is why they kept Article II of the Constitution significantly shorter than Article I, which focuses on the legislative branch. The vagueness of specified presidential powers in Article II cannot be found in Article I, which provides a detailed description of the authority, competence and boundaries of powers of the legislative branch. The reason is simple: it is easier to put blame on one person than on a larger group in the case of abuse of power. Without clearly stated boundaries to its power, Congress could more easily extend the authority given to them by the Constitution. It is not only harder to find the “culprit”, but also to easily administer the “punishment” for trespassing constitutional authority among a group. In that regard, presidents would be more conscious of extending their powers as they would be the sole bearers of blame and complaints, rather than Congress as a collective organ. Particularly considering the fact, that presidents are in the spotlight in contrast with Congress. Thus, the Framers specified clear limits to the legislative power, but left limits of the executive authority open, so presidents can enhance inherent powers when necessary while also being conscious of consequences was this power used despotically.

One of the supporting lines from the *Federalist Papers* can be found in Federalist no. 70, where Alexander Hamilton calls for the energetic executive:

⁶ See for example:

John Boehner, “Boehner: We're Defending the Constitution,” USA Today, Gannett Satellite Information Network. July 27, 2014, <https://www.usatoday.com/story/opinion/2014/07/27/president-obama-house-speaker-john-boehner-executive-orders-editorials-debates/13244117/>.

Peter Barbour, “Executive Orders: What The Founding Fathers Wanted? - Independent Voter Network,” IVN.us, May 13, 2012, <https://ivn.us/2012/05/11/executive-orders-what-the-founding-fathers-wanted/>.

Trevor Burrus, “Why the Founders Limited Executive Power | Trevor Burrus,” FEE, Foundation for Economic Education, November 11, 2016, <https://fee.org/articles/why-the-founders-limited-executive-power/>.

Brianne Gorod, “The Framers Wanted a Strong President.” U.S. News & World Report. U.S. News & World Report, March 21, 2014, <https://www.usnews.com/debate-club/is-president-obama-abusing-executive-power/the-framers-wanted-a-strong-president>.

Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; ...the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.⁷

Hamilton later argued that this energy, as being founded on decision, activity, secrecy and dispatch, is best exercised single-handedly, rather than in a collective body. And presidential directives issued by a single person serve as the tools for this effective decision-making, active governing without necessarily involving too many people and with impact delivered quickly and efficiently. In the *Federalist Papers*, Hamilton further addresses the matter of rather vague identification of the executive power in Federalist no. 23. There he discussed the infeasibility of including all necessary needs presidents will require in the future saying: "...it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them."⁸ The Founding Fathers were aware of possible national emergencies or expansion of U.S. influence on the international scene, but also acknowledged that they could not predict the whole scale of such instances to be able to lay out all necessary means to act in these situations correspondingly. The Constitution then remained vague enough to let empirical experience expand the power when needed but built in a mechanism to restrain attempts of presidents to go over the constitutional boundaries.

1.1.2 Increase of Presidential Responsibilities

Whether the Founding Fathers had anticipated the United States becoming a world superpower or not, there is no doubt that the end of isolationism and the change of the U.S. position in international relations created the necessity for strong, agile, and decisive leadership in the beginning of the 20th century. Presidential power had to change along with it and rely on the inherent powers a little more.

This shift can be portrayed with the amount of executive orders issued. First President in the 20th century Theodore Roosevelt was also the first president to go over the threshold of one thousand executive orders. Less than a half-century later, FDR was the first

⁷Alexander Hamilton, "The Federalist Papers No. 70," n.d. Yale Law School, Lillian Goldman Law Library, Lillian Goldman Law Library, Accessed April 1, 2019, http://avalon.law.yale.edu/18th_century/fed70.asp.

⁸ Alexander Hamilton, "The Federalist Papers No. 23," n.d. Yale Law School, Lillian Goldman Law Library, Lillian Goldman Law Library, Accessed April 1, 2019, http://avalon.law.yale.edu/18th_century/fed23.asp.

one to move this threshold to over three thousand executive orders. Both presidents are considered to be stepping stones in terms of presidential power. The total amount of executive orders issued until Theodore Roosevelt is 1262. After him, presidents issued a total of 14 365 executive orders.⁹ This steep increase in the beginning of the 20th century can be partially explained by the aforementioned end of isolationism. In the case of FDR, the Great Economic Depression and World War II provided opportunities to expand executive influence even further. Even the other two government branches have acknowledged the necessity of power expansion in presidential authority throughout the 20th century. In 1974, Senate issued a report focusing on “strengthening the means of legal accountability of decisions made by the executive”. There, Senators recognized the unique position the president of the United States, being “the head of the most powerful executive in the world.”¹⁰ The “approval” of the judicial branch is described in more detail in the next subchapter. Of course, it cannot be applied generally to every presidential directive and should not imply the U.S. political system should become a tyranny. This should only serve as a proof that the inherent powers of presidents have been acknowledged as needed by both legislative and judicial branches in contrast with the original view of the Constitution.

Nonetheless, increase in usage of these inherent powers and broader interpretation of the Constitution faced and will face opposition. During FDR’s presidency, there were reactions such as “No Crown for Franklin” and “No Third Term-ites”.¹¹ Be it by breaking the tradition of maximum two terms in the White House, or by holding the record of most executive orders issued by a president, the accusations of authoritarianism in FDR’s presidency were in place.¹² Historians, academics and journalists consider FDR’s presidency as the start of the modern era of presidential power, comparing FDR to recent presidents, setting him as a measuring element when evaluating the presidents that followed. This cult of FDR and his impact on the presidency surely influenced the presidents after him.¹³ The most recent Democrat in office, Barack Obama, was also the target of multiple accusations

⁹ Data taken from the American Presidency Project on May 7, 2019.

Gerhard Peters and John T. Woolley, "Executive Orders," The American Presidency Project, Ed. John T. Woolley and Gerhard Peters, Santa Barbara, CA. 1999-2017.

¹⁰ U.S. Congress, Senate, Special Committee on National Emergencies and Delegated Emergency Powers, *Executive Orders in Times of War and National Emergency*, 93rd Cong., 2d sess., 1974, S. Rep. 26–555, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015082037311;view=1up;seq=3,1>.

¹¹ James T. Patterson, "The Rise of Presidential Power before World War II," *Law and Contemporary Problems* 40, no. 2 (1976): 54. doi:10.2307/1191370.

¹² Gerhard Peters and John T. Woolley, "Executive Orders," The American Presidency Project, 1999-2017.

¹³ William E. Leuchtenbug, *In the Shadow of FDR: From Harry Truman to Barack Obama*, (Ithaca, NY: Cornell University Press, 2009).

of abuse of power, imperialism, dictatorship or tyranny.¹⁴ The bipolar superpower system in international relations which followed FDR's presidency increased the sphere of activity, created even bigger pressure on the Leader of the Free World and endowed future presidents with greater competencies.

William G. Howell addresses this extension of presidential power in his publication. The main premise of *Thinking about the Presidency* is the great gap between expectations from the presidential office and the actual constitutional powers it yields.¹⁵ Not only the public, but also the political elite and international actors look for a strong, decisive government embodied in one person. The gap between these expectations and the actual powers presidents possess in order to meet those expectations creates a grey zone where one can either fall behind or capitalize on the opportunity to expand their powers beyond the constitutional framework.

Also, Jeffrey E. Cohen considers this paradox in presidential leadership – voters want a strong leader, yet disagree when the power is used unilaterally. The public considers a president to be successful when he shows signs of strength and decisiveness, but mainly when this strength is founded on his ability to work and cooperate with Congress.¹⁶ This concept was first coined by Richard E. Neustadt in his classic study on presidential power which since 1960 has influenced many scholars of the presidency.¹⁷ His theory of the president's ability to persuade – Congress, the public, his executive office – is what defines whether the president is strong or weak, successful or unsuccessful, popular or unpopular.¹⁸

On the other hand, going back to what Hamilton implied in the aforementioned cited Federalist no.70, the decisiveness and the most effective governing is made by a single person, rather than a group. Presidents are therefore faced with a dilemma – the public expect them to make effective, fast, and impactful decisions backed by Congress, yet this can

¹⁴ See for example:

Ginger Gibson and Seung Min Kim, "Republicans Say Obama Overstepped," POLITICO, January 29, 2014, <http://www.politico.com/story/2014/01/republicans-state-of-the-union-2014-barack-obama-102783>.

Bob Cesca, "A Reality Check on Executive Orders and the 'Dictator Obama' Myth," The Huffington Post, April 02, 2014, http://www.huffingtonpost.com/bob-cesca/obama-executive-orders_b_4705277.html.

David Weigl, "The Republicans Cry Tyranny at Obama's First Hint of an Executive Order." Slate Magazine, January 29, 2014,

http://www.slate.com/articles/news_and_politics/politics/2014/01/republican_party_s_response_to_obama_state_of_the_union_gop_leaders_are.html.

¹⁵ William G. Howell and David Milton Brent, *Thinking about the Presidency: The Primacy of Power*, (Princeton: Princeton University Press, 2015).

¹⁶ Jeffrey E. Cohen, *Presidential Leadership in Public Opinion: Causes and Consequences*, (Cambridge: Cambridge Univ. Press, 2015), 107.

¹⁷ Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*, (New York, NY: Free Press, 1991).

¹⁸ *Ibid*, 2-10.

sometimes hardly be done when urgency requires a quick decision or when Congress blocks it due to the strain of the polarization, political games or a gap between what public wants and what politicians are willing to support. Considering this difficulties, Clinton Rossiter published another comprehensive study on presidential power in 1960s.¹⁹ The solution for Rossiter to accommodate to the growing responsibilities and roles presidents acquired during the 20th century, was to rely on the strength the institution of presidency gives to presidents – expressed and inherent powers of the Constitution, thus enhancing presidential authority, e.g. to issue presidential directives. The presidential directives then serve as great instruments for presidents to fill the gap between those expectations and the authority given to the presidents by the Constitution. Both of these approaches - Neustadt’s behaviorism and Rossiter’s institutionalism - are later developer in subchapter 2.1

1.1.3 The Supreme Court

The U.S. legal culture heavily relies on precedents. If we look at U.S. history, the Supreme Court, henceforth the SCOTUS, tends to avoid questions related to presidential power, applying “political question” doctrine.²⁰ There are only few cases when the SCOTUS acted against a presidential decision, much less than when the SCOTUS upheld one.²¹ From those, one which questioned an executive order of the president and overruled it was *Youngstown Sheet and Tube Co. v. Sawyer* (1952). President Truman, feeling justified by the national emergency situation, seized steel companies before the planned strike.²² In this landmark case the SCOTUS, namely Justice Black, identified three main areas of presidential powers:

1. authority of the president is at maximum when he acts pursuant to Congress’ authorization
2. authority of the president acting in absence or expressed approval of Congress in the “zone of twilight” of concurrent authority and when the independent powers of president are welcome in e.g. practical matters
3. authority of the president when he had acted against Congress’ will is the lowest²³.

¹⁹ Clinton Lawrence Rossiter, *The American Presidency*, (Toronto: New American Library, 1962).

²⁰ Thomas E. Cronin, Michael A. Genovese, and Meenekshi Bose, *The Paradoxes of the American Presidency*, p. 234.

²¹ *Ibid*, 241.

²² *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), <https://supreme.justia.com/cases/federal/us/343/579/>.

²³ *Ibid*.

The SCOTUS of 1952 decided to consider the executive order as a case of the third category – there were no acts of Congress authorizing the seizure, nor had Congress left the area of seizure an open field for the president to decide. The executive order was proclaimed as not justified by the constitutional authority of the president and was, therefore, overruled. This was one of the few cases where the Supreme Court limited and opposed presidential power.²⁴ Why this case is not applicable to the controversial usage of presidential directives following the decision of overturning the executive order is explained by Erwin Chemerinsky in his thesis *Controlling Inherent Presidential Power: Providing a Framework for Juridical Review* (1983).²⁵ Judge Jackson didn't provide or identify an approach on how to deal with cases falling into the third category. Therefore, the precedent for ruling over controversial usage of presidential directives and expansion of presidential power was not set. The author also stated that the SCOTUS had been quite inconsistent in its ruling over inherent power of presidents. This has made it harder for lower courts to judge similar cases. Additionally, the process of decision-making in this case provided no guidance on how to rule similar future cases. Even more, it “significantly lessened judicial checks and controls on the Chief Executive”.²⁶

This point is supported by academics as well. A turning point happened in 1936, with the case *United States v. Curtiss-Wright* (1936). Constitutionalist Louis Fisher and political scientist Kimberly Fletcher, both independently, consider it as a landmark case and as a “Christmas gift for the presidents”.²⁷ It was a landmark case in that it was the first one installing absolute power over foreign affairs without obligation to spur from legislative delegation. Although the case is not relevant to the focus of this thesis, as it provides presidential authority in foreign issues, it creates an important argument on the inherent powers of the presidents and will be explained in the subchapter 1.2.1. The SCOTUS decided that, even though the validity of the inherent powers is not expressed in the Constitution, it is heavily implied from the executive authority vested in the President.²⁸ Fisher later argued

²⁴ It is worth mentioning that only few cases questioning presidential authority make it to the Supreme Court. A large part of opposition is dealt with on the level of Courts of Appeals or District Courts.

²⁵ Erwin Chemerinsky, "Controlling Inherent Presidential Power: Providing a Framework for Judicial Review," *Southern California Law Review* 56, no. 4 (1982): 863-912, <https://scholar.law.colorado.edu/articles/7>, 870.

²⁶ *Ibid*, 865.

²⁷ "Fisher on the Supreme Court's Expansion of Presidential Power," Just Security, December 14, 2017, <https://www.justsecurity.org/44564/fisher-supreme-courts-expansion-presidential-power/>.

Ronald-Collins, "Ask the Author: The Imperial Presidency and the Supreme Court," SCOTUSblog, February 20, 2019, <https://www.scotusblog.com/2018/10/ask-the-author-the-imperial-presidency-and-the-supreme-court/>.

²⁸ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), <https://supreme.justia.com/cases/federal/us/299/304/>.

that since 1936, the judicial support, or rather, non-opposition, had continued moving the boundaries of presidential power.²⁹

To summarize, the SCOTUS rarely rules to oppose cases on ground of an overarch of presidential power. Furthermore, it has not set an applicable precedent for cases concerning presidential directives that would guide lower courts or rulings of future similar cases. By these, the SCOTUS can be considered as one of the factors of U.S political culture which allowed the unilateral directives' practice of presidents to emerge.

1.1.4 Uniqueness of Presidential Directives in the U.S. Political System

Before categorizing U.S. presidential directives, we can look at the semi-presidential system in France to understand the uniqueness of presidential directives usage in the U.S. in comparison to other political systems. Presidential directives are anchored in the French constitution under Article 13, which says that the president can issue a legally-binding presidential decree, but only in emergencies and after formal agreement with the prime minister.³⁰ Why then, have there been only 16 presidential decrees issued since 1958 (and only on one occasion) in France, when this article became a part of the French constitution, in comparison with more than 3 500 executive orders issued by U.S. presidents in the same time period?³¹

Given that in the U.S. political system, the executive branch is embodied by one person, the most obvious difference between the presidential directives in the U.S. and in France is the need to consult with the prime minister, The other difference is the required prerequisite of an emergency situation before issuing a presidential directive in France. Considering presidential directives in the U.S., mainly those issued before the 20st century, were mostly administrative acts, they most certainly cannot be classified as directives only used in emergencies. However, the most significant difference, and the one that can be considered as essential to explaining the difference in frequency of usage, is its specification in the constitution. While the French constitution clearly includes presidential decrees, there is no mention of presidential directives in the U.S. Constitution.³²

²⁹ "Fisher on the Supreme Court's Expansion of Presidential Power," Just Security, December 14, 2017

³⁰ Michel Perottino, *Francouzský Politický Systém* (Praha: Slon, 2005), 72-75.

³¹ The decree was issued for 6 months during Algerian war to fasten the victory. See: John M. Carey, *Executive Decree Authority* (Cambridge: Cambridge Univ. Press, 1998), 233-237.

³² The French Constitution of October 4, 1958, art. 13, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

In light of that, the French constitution clearly specifies and divides competencies of the executive branch and the legislative branch, which makes it hard to trespass from one to other in comparison to the vagueness of the U.S. Constitution. Carey and Shugart have analyzed French presidential decrees in their publication. There they described the legal limits for using such a tool, where consent of the French Parliament is necessary in order to pass a decree by tradition, even though it is not legally required according to the French Constitution. The reason for that is a different kind of political culture. It is much more common in a plurality-voting system, such as the French one, that voters tend to sympathize with the opposition against the president. Presidents, therefore, avoid usage of such unilateral means for fear of losing their electorate and possible impeachment threats. The vagueness of the U.S. Constitution and the bipartisan political system are the main roots of why presidential directives have become a natural and essential part of the American presidency in contrast to another strong presidency such as the French one.

1.3 Types of Presidential Directives

The next section identifies five types of presidential directives which directly or indirectly interfere with legislative jurisdiction – executive orders, presidential proclamations, presidential memoranda, executive actions and executive agreements.

1.3.1 Executive Order

Although there is not much literature concerning executive orders, out of the unilateral tools of the American presidency, they are possibly the most known. Executive orders have been a part of presidential governing since the establishment of the United States. Presidents have used this tool throughout U.S. history to unilaterally promote their policy agenda all the way back to George Washington. However, the first obligation to document executive orders occurred with *Federal Register Act* of 1935, which states executive orders together with presidential proclamations as documents obliged to be published in the Federal Register.³³ Executive orders before 1935 can be found in the online database of presidential documents The American Presidency Project. It relies on the research of historian Clifford Lord published a collection of executive orders from 1789 to

³³ *Federal Register Act*, U.S. Code 44 (1935), § 1505, <https://www.archives.gov/federal-register/laws/federal-register/1505.html>.

1941, and provides a table of executive orders issued from the first president to the current one.³⁴

There are several definitions of executive orders across publications and official documents. The *American Political Dictionary* describes them as a “rule or regulation, issued by the President, a governor or some administrative authority, that has the effect of law.”³⁵ The House Committee Report from 1957 defines both executive orders and proclamations as “...directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law.”³⁶ Therefore, they are legally binding and as being in a written form, can also be challenged. This also means there can be a legal act directed against it in the form of a temporary restraining order, overturn, or lawsuit.

Executive orders have also an established form in which they are issued. As already mentioned, each bears a number. Every executive order also starts with stating the authority by which the order is being issued: “By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows”. What follows are the sections of the order, depending on how complex the order is, usually from 2 to 8 sections. In these, it is stated the purpose of the order, its justification, technicalities, and general provisions are stated – from and to what date the order is valid, although it is not obligatory for an order to have a termination date.

Some most notable examples of executive orders, and particularly those which have faced judicial challenges, are FDR’s Executive Order 9066, where he authorized changing some areas to military zones allowing the incarceration of Japanese-Americans,³⁷ Executive Order 10340 of Harry Truman federally seizing some steel companies in 1952,³⁸ or the latest

³⁴ "Federal Register," *National Archives*, accessed May 7, 2019, <https://www.archives.gov/federal-register/>. Gerhard Peters and John T. Woolley, "Executive Orders," The American Presidency Project.

³⁵ Jack Plano and Milton Greenberg, *The American Political Dictionary*, (Belmont, CA: Wadsworth/Thomson Learning, 2002), 190.

³⁶ U.S. Congress, House of Representatives, Committee on Government Operations, *Executive Orders and Proclamations: A Study of a Use of Presidential Powers*, 85th Cong., 1s sess., 1957, H. Rep. 89166, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015034716152>, 1.

³⁷ U.S. President, Executive Order, “Authorizing the Secretary of War to Prescribe Military Areas, Executive Order 9066,” *Federal Register* 7, no. 39 (February 24, 1942): 1531, <https://www.govinfo.gov/content/pkg/FR-1942-02-26/pdf/FR-1942-02-26.pdf>.

³⁸ U.S. President, Executive Order, “Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies, Executive Order 10340,” *Federal Register* 17, no. 71 (April 8, 1952): 3139, <https://www.govinfo.gov/content/pkg/FR-1952-04-10/pdf/FR-1952-04-10.pdf>.

travel ban issued by the current president Donald Trump as Executive Order 13769 and Executive order 13780.³⁹

1.3.2 Presidential Proclamation

Proclamations are another type specified in the Relyea's Congressional report. They are often bound in some other studies with executive orders.⁴⁰ These directives are issued in written form as well as stated in the Federal Register, since they are also subject to the *Federal Register Act* of 1935.⁴¹

Graham G. Dodds, trying to search for a definitive difference between executive orders and proclamations, provided multiple examples and decisions of authorities with one clear conclusion: There is no real difference between the two, though there are some distinguishing factors.⁴² Dodds provided one possibility, where the proclamations are used for foreign affairs and executive orders for domestic issues. Nonetheless, this distinction does not seem to work – looking only at the example of Barack Obama, there were 17 executive orders concerning foreign issues.⁴³

Relyea also used a functional argument, where he argued proclamations are used in honorary situations, whereas executive orders are meant for the more impactful ones. That would suggest that proclamations are used for administrative acts or commemorative occasions such as granting a presidential pardon,⁴⁴ celebrating special occasions,⁴⁵ etc. Executive orders, on the other hand, would deal with the real execution of acts such as creating committees, banning segregation or discrimination in federal agencies. For the past

³⁹ U.S. President, Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States, Executive Order 13759," *Federal Register* 82, no. 20 (January 27, 2017): 8977, <https://www.govinfo.gov/content/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

U.S. President, Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States, Executive Order 13780," *Federal Register* 82, no. 45 (March 6, 2017): 13209, <https://www.govinfo.gov/content/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

⁴⁰ U.S. Library of Congress, Congressional Research Service, *Presidential Directives: Background and Overview*, 14.

⁴¹ *Federal Register Act*, U.S. Code 44 (1935), § 1505.

⁴² Graham G. Dodds, *Take up Your Pen: Unilateral Presidential Directives in American Politics*, (Philadelphia: University of Pennsylvania Press, 2013), 6-9.

⁴³ See "Barack Obama Executive Orders Subjects," *National Archives*, accessed May 8, 2019, <https://www.archives.gov/federal-register/executive-orders/obama-subjects.html>.

⁴⁴ See for example: President Jimmy Carter pardoning Vietnam War draft evaders in Presidential Proclamation 4483 or President George W. Bush pardoning former advisor of Vice President Dick Cheney Lewis Libby's prison sentence for being indicted on five counts concerning the leak of the cover identity of a CIA officer in Presidential Proclamation 8159 in "Federal Register," *National Archives*, accessed May 7, 2019. <https://www.archives.gov/federal-register/>.

⁴⁵ See for example: President Obama declaring National Stalking Month and National Awareness Month with Presidential Proclamation 8769 and 8768 respectively in "Federal Register," *US Government Information*, accessed May 7, 2019. <https://www.govinfo.gov/app/collection>.

20 years it seems like a good distinction, according to the CRS report.⁴⁶ However, when we consider probably the most famous proclamation in U.S. history The Emancipation Proclamation issued by president Abraham Lincoln in 1863 legally prohibiting slavery, this differentiation cannot be proclaimed as definite either.⁴⁷ There are also some other examples, such as George Washington’s Neutrality Proclamation from 1793 or Richard Nixon’s New Economic Policy from 1971, which had a far bigger impact than just a ceremonial or honorary one.⁴⁸ Louis Fisher considers both executive orders and presidential proclamations as tools for administrative legislations and partial reasons for constitutional conflicts between the legislative and the executive branch. However, the argument of difference in strength was supported by him saying: “A more far-reaching argument for administrative legislation is the executive order”, implying a stronger nature of executive orders in comparison to proclamations.⁴⁹

The House Report also stated a possible difference in the binding effects of both, explaining why executive orders seem to have greater authority and validity than proclamations.

Executive orders are generally directed to, and govern actions by, Government officials and agencies. They usually affect private individuals only indirectly. Proclamations in most instances affect primarily the activities of private individuals. Since the President has no power or authority over individual citizens and their rights except where he is granted such power and authority by a provision in the Constitution or by statute, the President’s proclamations are not legally binding and are at best hortatory unless based on such grants of authority.⁵⁰

The Federal Register recognizes two types of proclamations: “ ‘ceremonial,’ which designate special observances, and ‘substantive,’ which usually relate to international trade, export controls, tariffs, or reservation of federal lands”.⁵¹ This definition supports the aforementioned divisions and it can be concluded that proclamations have legally less

⁴⁶ U.S. Library of Congress, Congressional Research Service, *Presidential Directives: Background and Overview*, 4.

⁴⁷ U.S. President, Presidential Proclamation, “Emancipation Proclamation, Presidential Proclamation 95,” *National Archives* (January 1, 1863), <https://catalog.archives.gov/id/299998?q=Emancipation%20Proclamation#>.

⁴⁸ U.S. President, Presidential Proclamation, “Proclamation of Neutrality, Presidential Proclamation,” *National Archives* (April 22, 1793), <https://founders.archives.gov/documents/Washington/05-12-02-0371>.

⁴⁹ Louis Fisher, *Constitutional Conflicts between Congress and the President*, (Princeton, N.J: Princeton University Press, 1985), 98.

⁵⁰ U.S. Congress, House of Representatives, Committee on Government Operations, *Executive Orders and Proclamations: A Study of a Use of Presidential Powers*, 1.

⁵¹ Amy Bunk, “Federal Register 101,” *Proceedings* 76, no. 1 (2010): 55-57, https://www.federalregister.gov/uploads/2011/01/fr_101.pdf, 56.

strength than executive orders and have been mostly, especially recently, used on ceremonial and hortative occasions. To be able to fully evaluate the authority and strength of either executive orders or proclamations, each case needs to be analyzed individually.

1.3.3 Presidential Memorandum

Like the two aforementioned instruments, a presidential memorandum can also be used to direct actions of governmental officials and agencies. A CRS report from 2014 groups presidential memoranda in with executive orders and proclamations – no legal difference, the distinction is more in the form than in substance.⁵² However, there is one significant difference in comparison to executive orders and presidential proclamations. A Senate report from 1974 says, that “if the document is not specifically designated as an “Executive Order” or as a “Presidential Proclamation”, the decision whether or not it will be published as a part of the public record is left to the discretion of the President and his advisers.”⁵³ There is no legal obligation to have presidential memoranda anchored in the Federal Register. Presidential memoranda are, therefore, harder to track.

Dodds, citing court decisions agreed with scholar Philip Copper that executive orders, presidential proclamations and presidential memoranda are legally interchangeable.⁵⁴ Consequence wise, as mentioned in the introduction chapter to presidential directives, the impact depends on authority president states upon issuance and accordance with constitutional or legislative provisions. It has been shown by historical practice that presidents tend to use executive orders in areas where they would welcome public awareness and media coverage, whereas memoranda have been used to carry out routine directives consistent with already passed laws.⁵⁵

As opposed to that, there is a recent study by political scientists John T. Wolley and Gerhard Peters, which says that in the past decades, memoranda have been substituting executive orders because they do not gather that much public and media attention. In their study, they used exclusion method. Anything that was labeled as executive order or

⁵² U.S. Library of Congress, Congressional Research Service, *Executive orders, Issuance, Modification and Revocation*, by Vivian S. Chu, and Todd Garvey. RS20846 (2014), https://proquest.libguides.com/ld.php?content_id=6434198, 1-2.

⁵³ U.S. Congress, Senate, Special Committee on National Emergencies and Delegated Emergency Powers, *Executive Orders in Times of War and National Emergency*, 3-4.

⁵⁴ Graham G. Dodds, *Take up Your Pen: Unilateral Presidential Directives in American Politics*, 8-9.

⁵⁵ U.S. Library of Congress, Congressional Research Service, *Executive orders, Issuance, Modification and Revocation*, 3.

proclamation was excluded. Also, distinctive phrases and language used in executive orders and proclamations were excluded. They came up with several conclusions:

- A) From 1977 to 2003, the share of memoranda published in the Federal Register in all presidential directives, jumped from 20% to nearly 90%. As memoranda do not need to be registered, the reason why they started to be included more in the Federal Register alongside executive orders and presidential proclamations can be found in the increase of usage of memoranda for more significant actions.
- B) Another trend is that while the number of executive orders is decreasing, the number of presidential memoranda is increasing.
- C) There is also a tendency to issue presidential memoranda on domestic issues, which are more controversial and to which the public may be more sensitive.⁵⁶

These would imply that presidents have found a way to unilaterally pursue their agenda without effective means to oppose it. Because memoranda are not numbered and are not usually published in the Federal Register, they are not easily legally attacked. They also do not gather that much focus. Among examples of presidential memoranda which quite impactfully shaped the political landscape, we can find George H.W. Bush's establishment of the de facto statehood of Puerto Rico⁵⁷ or Bill Clinton's funding of abortion hospitals.⁵⁸

1.3.4 Executive Action

In history books and academic studies concerning presidential power, executive orders are often simplified as executive action. Media also sometimes misuse the term "executive order" when it is actually only an executive action.⁵⁹ The need to find a definition

⁵⁶ John T. Woolley and Gerhard Peters, "The Contemporary Presidency: Do Presidential Memo Orders Substitute for Executive Orders? New Data," *Presidential Studies Quarterly* 47, no. 2 (2017): , doi:10.1111/psq.12374, 387-391.

⁵⁷ U.S. President, Presidential Memorandum, "Memorandum on the Commonwealth of Puerto Rico," *National Archives* (November 30, 1992), <https://www.govinfo.gov/content/pkg/PPP-1992-book2/pdf/PPP-1992-book2-doc-pg2171.pdf>.

⁵⁸ U.S. President, Presidential Memorandum, "Memorandum on the Title X Gag Rule," *National Archives* (January 22, 1993), <https://www.govinfo.gov/content/pkg/PPP-1993-book1/pdf/PPP-1993-book1-doc-pg10-2.pdf>.

⁵⁹ See for example: Peter W. Stevenson, "The Legal Drama over Obama's Executive Order on Immigration, Explained," *The Washington Post*, January 20, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/01/20/the-legal-drama-over-obamas-executive-order-on-immigration-explained-video/>. The Seattle Times Editorial Board, "Supreme Court Should Uphold Immigration Executive Order," *The Seattle Times*, March 25, 2016, <https://www.seattletimes.com/opinion/editorials/supreme-court-should-uphold-immigration-executive-order/>.

Leada Gore, "12 Republican Reactions to President Obama's Gun Control Executive Order," *Al.com*, January 05, 2016, http://www.al.com/news/index.ssf/2016/01/12_republican_reactions_to_pre.html.

and determine differences between executive orders and executive actions came with Obama's controversial initiatives issued in the form of executive actions.

Judge Andrew Napolitano explained the difference as follows. Whilst executive orders have the binding of law, executive actions are just resolutions the president set for his executive officers to act accordingly.⁶⁰ Online educational portal ThoughtCo provided another definition, which said that executive actions are proposals or moves of the president and can be described as any actions presidents direct to Congress or to his executive offices but often cannot carry any legal weight.⁶¹ Executive actions can also be used as an umbrella word for all presidential tools such as executive orders, proclamations, which do have legal weight. Their misinterpretation, therefore, creates a false belief, that presidents issue presidential directive with the force of law, when it is actually an executive action which does not carry such force.

The most criticized unilateral acts issued by Obama were, in fact, executive actions. Multiple gun rights executive actions, environmental actions, or immigration actions were labeled as executive order whilst of them were anchored in the Federal Register as executive orders should be. These actions also did not have an established form of an executive order specified in the subchapter 1.3.1 of this thesis. The legal counter-actions against executive actions are also harder to grasp as in the example of presidential memoranda. Not being published in the Federal Register and without legal binding, the legal merits of the cases are not so clear either. If we follow Woolley and Peter's excluding method, executive actions are therefore all presidential directives which are neither executive orders nor proclamations. Executive actions can be distinguished from presidential memoranda by not being signed by the President, rather by Secretaries of respective departments. Though this decreases the legal weight of such executive actions as they do not carry authority of the President, directed agencies can still act accordingly and implement said policies.

1.3.5 Executive Agreement

Executive agreement is the last type of presidential instrument which can serve as administrative legislation and stand in between legislative and executive authority. Executive agreements can be clearly differentiated from all of the presidential directives:

⁶⁰ Andrew P. Napolitano, "Judge Napolitano: Why Obama's Executive Action on Guns Is Unconstitutional," Fox News, January 05, 2016, <https://www.foxnews.com/opinion/judge-napolitano-why-obamas-executive-action-on-guns-is-unconstitutional>.

⁶¹ Tom Murse, "Executive Actions and Executive Orders Are Two Different Things," ThoughtCo, March 26, 2018, <https://www.thoughtco.com/executive-actions-versus-executive-orders-3367594>.

they are used to form agreements with international actors. According to Article II, Section 2, Clause 2 of the Constitution, the president is authorized to make international treaties with foreign actors; however he or she needs the consent of 2/3 of the Senate.⁶²

In the study of Krutz and Peake, the share of executive agreements among all international treaties rose from 31% in the time period of 1789-1839 to 94,3% in the period of 1939-1989.⁶³ Growing international presence of the United States created the necessity of making the process of agreements and treaties with international actors more effective and faster. The necessity can spring from failures of the past, for example refusal to ratify the League of Nations - a noble idea spurred from the initiative of the U.S. president's vision but was eventually blocked by the U.S. Senate. Additionally, the authority of executive agreements has been strengthened and supported by court decisions over the last century. That can also serve as one of the foundations to the rise of executive agreements' usage. Along with the *United States v. Curtiss-Wright* (1936) mentioned in subchapter 1.2.2. deciding the president to be a sole authority over foreign affairs, there are also cases *United States v. Belmont* (1937) and *Weinberger v. Rossi* (1982). The Supreme Court's decision justified executive agreement's validity to be the same as international treaties. While the force of executive agreements was claimed to be the same as of international treaties, the pre-conditions to create one were not.⁶⁴ The aforementioned treaty clause of Article II, where presidents need consent of Senate when issuing international treaties was ruled not to apply to executive agreements, presenting presidents with power to form international agreements unilaterally. Court decisions allowed presidents to use the more effective tool on international issues on significantly frequenter basis than before.

This creates another important differentiation to other presidential directives. The U.S. legal culture leans heavily on the Constitution, but also on legal precedents. When a decision is made on a certain case, the same decision will apply on future, similar legal conflicts. And executive agreements have been formally accepted as being as legitimate as international treaties by the SCOTUS. By that, the expressed authority of consenting international treaties given to the Senate by the Constitution have been undermined by the decision of the SCOTUS which allows presidents to act unilaterally. They can issue executive agreements which are equal to international treaties. None of the other

⁶² U.S. Constitution, art. 2, sec. 2, cl. 2, <https://www.archives.gov/founding-docs/constitution-transcript>.

⁶³ Glen S. Krutz and Jeffrey S. Peake, *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers* (Ann Arbor: University of Michigan Press, 2009), 42.

⁶⁴ *United States v. Belmont*, 301 U.S. 324 (1937), <https://supreme.justia.com/cases/federal/us/301/324/>.
Weinberger v. Rossi, 456 U.S. 25 (1982), <https://supreme.justia.com/cases/federal/us/456/25/>.

aforementioned presidential directives carry such a definite validity. The scale of the issues other presidential directives cover is so vast that even if there was a ruling claiming one executive order had the authority of a law, it would not mean that every executive order following would have the same privilege. It would be evaluated case by case, whereas executive agreements already have a very specific area of impact – foreign policy, treaty-making and international agreements.

However, when dealing with foreign actors, presidents need to rely a little more on the legislative branch than with other directives. From funding to implementing certain legislative actions to fulfill commitments made with another international actor, Congress needs to be on board with this unilateral instrument. Fisher analyzed the cases of such cooperation and confirmed the congressional leverage legislators have to avoid unilateral approach in international policy-making. He implies that even though presidents can and do issue executive agreements, they rarely do so when there is opposition of Congress to the matter.⁶⁵ That means that even though presidents issue executive agreements which do not require consent of legislative branch, there are negotiations and debates on the background to ensure there would be no opposition from Congress. The symbiotic relationship between both branches regarding their relatively high tolerance of executive agreements can further explained by the effectiveness and flexibility of the process, which is in the interest of both Congress and the president.

2 Methodology

2.1 Theoretical Framework - The American Presidency and the Source of Its Power

In regard to the study of presidential power, we can define two main concepts adopted by scholars. The typology of these concepts is based on the source of presidential power about which these scholars disagree. The first group of scholars represented by Neustadt's behavioral theory of the presidency claim that presidential power comes from the person who wields it. The second one follows on the work of Clinton Rossiter who published his complex study of the presidency in the same year that Neustadt's *Presidential Power and*

⁶⁵ Louis Fisher, *Constitutional Conflicts between Congress and the President*, (Princeton, N.J: Princeton University Press, 1985), 272-283.

*Modern Presidents*⁶⁶ came out. The *American Presidency*⁶⁷ focused on the strength of the institution given by the Constitution itself, rather than on the personal features presidents have. These two influential books published in the 1960s are believed to have changed the study of the American presidency.⁶⁸

More interpretatively than academically, in his now classic book, Rossiter analyzed the development of the institution of the presidency while not trying to hide his adoration for the presidential office and the strength the institution carries. Referring to the Constitution, and therefore to the expressed powers as the foundation of this strength, Rossiter continued with the developments of the second half of the 20th century which helped to expand presidents' authority and power. His main point of argument of why the institution of the presidency is strong acknowledged the many roles a president has, starting with the ones given by the Constitution - Chief of State, Chief Executive, Commander in Chief of Army and Navy, Chief Diplomat, Chief Legislator. He continued with the ones the 20th century showed to be necessary the United States became a superpower – Chief of Political Party, Voice of the People, Protector of the Peace, Manager of Prosperity, and World Leader. Rossiter referring to the evolving executive office, states: "...the most notable development in the Presidency in recent years is a change in structure rather than a growth in power, although the latter is certainly the first cause of this change."⁶⁹ Using legal and historical analysis as methods of institutionalism, his work did not meet much appraisal in the 1960s compared to Neustadt's study of the American presidency which analyzed the source of presidential power from the perspective of behaviorism. In the 1950s and 1960s, behaviorism started to replace institutionalism as one of the main concepts of American political theory.⁷⁰

Neustadt successfully delivered his concept of a weak presidency on the base of behaviorism. Similarly to Rossiter, Neustadt also focused on the presidential roles, but viewed them in a different way – more as limitations rather than strength. The more roles a president must fill, the more expectations there are to meet. The more expectations there are to meet, the more the president has to balance among Congress, his Cabinet, international actors, voters, special interest groups, etc. Neustadt found the solution in persuasion,

⁶⁶ Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (New York, NY: Free Press, 1991).

⁶⁷ Clinton Lawrence Rossiter, *The American Presidency*, (Toronto: New American Library, 1962).

⁶⁸ Used references from the prefaces and back covers of Rossiter's *The American Presidency* and Neustadt's *Presidential Power and the Modern Presidents*.

⁶⁹ Clinton Lawrence Rossiter, *The American Presidency*, 1-29, 113.

⁷⁰ Blanka Říhová, *Přehled Moderních Politologických Teorií* (Praha: Portál, 2014), 32-35.

constant discussion, door-to-door bargaining, and the charisma of the president himself. Charisma of a person appear to be a deal-breaker when using the power of persuasion: “Why does one man give himself the help he needs; why does the other man deny it to himself?”⁷¹ By this, Neustadt implied that some presidents are able to use such power and monopolize on their charisma by discussing, persuading, and manipulating Congress, interest groups, voters, media, etc., while others refuse or are unable to use such means. The reception of his book was more positive than Rossiter’s.⁷² Neustadt managed to overcome the boundaries and common approaches of historical and institutional theories of the presidency claiming: “Nothing has been harder in the writing of this book than the effort to escape from chiefs-of-this-and-that... But the effort must be made if we are to explore the power problem of the man on the top in our political system.”⁷³ Throughout the book, FDR was set as a referential example in measuring the power of the presidents after him. Neustadt himself admired FDR’s desire for power and called it a love affair: “No President in this century has had a sharper sense of personal power, a sense of what it is, where it comes from; none has had more hunger for it, few have had more use for it, and only one or two could match his faith in his own competence to use it.”⁷⁴ The sources of such power were identified by Neustadt in “his insights, his incentives and his confidence”⁷⁵ and his long tenure of making acquaintances on both national and international levels, through which “... FDR had more grasp of details that can help a man build power than most Presidents before or either President since.”⁷⁶

Both authors published their books with the effectiveness and strength of the presidency on their minds. However, what followed in the 1960s was the Vietnam War and Watergate, two major milestones which changed the way American people looked at the presidency from “being strong” to “being too strong”. This was reflected in the publications of the late 60s and 70s. Louis W. Koenig, in his 4th edition of *The Chief Executive* (1975)⁷⁷, named this a “diminishing presidency” as a direct consequence to the troublesome decade of the 1970s.⁷⁸ His almost encyclopedic study analyzed the presidency from the Founding

⁷¹ Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*, 135.

⁷² His book is mentioned in the introductions, or even analyzed in books or studies referenced here; Nelson in the preface of Rossiter’s presidency also claims the bigger impact Neustadt had.

⁷³ Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*, xxi.

⁷⁴ *Ibid*, 136.

⁷⁵ *Ibid*, 135.

⁷⁶ *Ibid*, 132.

⁷⁷ Louis W. Koenig, *The Chief Executive*, (New York: Harcourt Brace Jovanovich, 1975).

⁷⁸ *Ibid*, 2.

Fathers to Ronald Reagan, introducing the concept of cyclical presidency in the history of the United States – once there is an effective and strong presidency, it is followed by a weaker one. He claimed that presidential power did not stem from the powers given by the Constitution, but depended on the personality and strength of the person in the office saying: “The Founding Fathers, the Washington-Adams experience reveals, had created the presidency of both strength and weaknesses”.⁷⁹ He also suggested that in the era of a fractionalized Congress and the decline of the political parties, presidents can no longer find support in the party majority in Congress like both Roosevelts used to,⁸⁰ and face major oppositions to initiatives they bring to the table. The presidents should seek effectiveness, as he himself claimed: “The President does well to consult, but he does too ill to consult too much.”⁸¹ With this, he embraces both Neustadt’s power of persuasion and Rossiter’s power of command.

The danger of presidential power assumptions at the expense of Congress was later developed by the constitutional expert on the presidency Louis Fisher, who reviewed disputes between the executive and the legislative branch. In *Constitutional Conflicts Between Congress and The President (1985)*⁸², FDR was believed to have played a major role in several aspects of the transformation of presidency: he declared 39 emergencies in six years, began to resort to electronic surveillance, and created the president’s ability to negate part of appropriation acts.⁸³ The emphasis of the book was on the usage of executive orders. Legislative powers in general were the key area Fisher analyzed in terms of controversies between the president and Congress: this included creating executive agencies without Congressional approval of funding via executive orders, setting the precedent of antidiscrimination executive orders, or using them to seize private companies leading to Congress’ need to pass the War Labor Disputes Act providing statutory authority for such acts.⁸⁴ But as a constitutionalist, Fisher disagreed with the overuse of the unilateral tools such as executive orders: “The furious legislative pace of the FDR administration exacerbated an administrative system which was already strained and deficient. FDR, in his first fifteen months in office, issued 674 executive orders.”⁸⁵ When Fisher evaluated the constitutionality of the unilateral acts, he did not take into consideration World War II, the

⁷⁹ Ibid, 36.

⁸⁰ Ibid, 3.

⁸¹ Ibid, 370

⁸² Louis Fisher, *Constitutional Conflicts between Congress and the President*.

⁸³ Ibid, 156, 300, 302.

⁸⁴ Ibid, 33, 128, 129.

⁸⁵ Ibid, 113.

economic crisis, the increase in executive responsibilities regarding national security, or the bigger role of the United States in the world. The only thing he strictly considered was the Constitution and the law, and therefore, he rejected unilateral presidential power. In the conclusion, he called for initiative from Congress to stand up and oppose the president when the separation of powers and checks and balances are being violated.⁸⁶ No matter the circumstances, he said that the president should be challenged by the legislative branch while also implying that the legislative branch can sometimes be unrequitedly passive, unable to reach decisions and therefore allows presidents to act on their own.

The concept of ineffective decision-making by either Congress or presidents was later developed by Moe and Howell in their *Unilateral Action and Presidential Power: A Theory* (1999).⁸⁷ With the return of institutional analysis in the so-called new institutionalism, Moe and Howell tried to move the boundaries of constitutional institutionalism to unilateral actions with a single hypothesis: presidents tend to expand their powers beyond those expressed ones in the Constitution by acting unilaterally. By saying that “Presidents are obviously best off if they can take unilateral actions that do not require legislative appropriations, and they will have incentives to do just that,”⁸⁸ they implied the effectiveness of the presidents is higher when they are acting alone. Both authors based their theory on a dysfunctional Congress, which later developed into the need of a presidency-focused system rather than having Congress at its center, and abandoning traditional, descriptive approaches of the previous scholars - a new era research in the presidential power research emerged.⁸⁹

When Phillip Cooper published his book *By Order of the President: The Use & Abuse of Executive Direct Action* (2002)⁹⁰ Moe’s and Howell’s effort to bring studies of presidencies back to institutionalism was reignited in the beginning of the 21st century. The author provided a comprehensive study of unilateral tools of the President. The author described the unilateral “abuse” of presidential power by constitutional standards, signaling the return of legal and historical institutionalism after decades of behaviorism’s dominance. The most significant contribution was highlighting the unilateral usage of presidential

⁸⁶ Ibid, 326 - 334.

⁸⁷ Terry M. Moe and William G. Howell, "Unilateral Action and Presidential Power: A Theory."

⁸⁸ Ibid, 91.

⁸⁹ See their later works on the issue: Terry M. Moe, "The Revolution in Presidential Studies," *Presidential Studies Quarterly* 39, no. 4 (2009): , doi:10.1111/j.1741-5705.2009.03701.x.

William G. Howell, "Quantitative Approaches to Studying the Presidency," *Oxford Handbooks Online*, 2009, , doi:10.1093/oxfordhb/9780199238859.003.0002.

⁹⁰ Phillip J. Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action*, (Lawrence: University Press of Kansas, 2002).

directives in infamous events of American history – namely, the enormous amount of executive orders of Presidents Wilson in WWI and FDR in WWII, which could be considered as proof of unilateral actions as the most effective calls for action in time of war.

In the book of James P. Pfiffner *The Modern Presidency* (2011),⁹¹ the author went back to the institutional background of presidential power by adding the newest examples as “...President George W. Bush began to assert executive power in unprecedented ways”⁹². The author also reviewed the newly researched topic of abuse of power with Bush’s unilateral executive theory, developing Moe’s and Howell’s appeal.⁹³ The book was set in the 20th century, empirically analyzing different areas of presidential power case by case using the approach of historical institutionalism rather than behaviorism.

In the last two decades, there have been several trends occurring in the study of the highest office of the United States. Quantitative methods are probably the most significant ones. With the arrival of the imperial Bush administration and the revolutionary first African American President, the latest publications have tended to cover the concepts of the modern presidency.⁹⁴ The other trend is emphasizing the power-up of the modern presidents – closeness to the people, prestige, and media attention, as well as the more structural, bureaucratic apparatus of the Executive Office of the President. An excellent representative of these recent approaches was a publication edited by Lori Cox Han, *New Directions in the American Presidency* (2011),⁹⁵ which brought together several political scientists contributing to every important aspect of the presidency using graphs, job approvals, demographic surveys, number of presidential speeches, etc. to illustrate the arguments of the research. All these determinants arrived at one conclusion – presidential power now not only lies in the president himself, but heavily relies on the public opinion, media, voters, corporations and other actors outside of the government that could either increase the influence of the president or diminish it.

Along with the traditional quest for enforcing one’s policy-making and beliefs, presidential power now includes the complicated relations of the executive offices of the President, the Cabinet, Congress, non-state actors, the public, social media trends and opinions, and this needs to be reflected in the studies of their power. From Moe to Howell,

⁹¹ James P. Pfiffner, *The Modern Presidency*, (Boston, MA: Wadsworth Cengage Learning, 2011).

⁹² Ibid, 13.

⁹³ Ibid, 248.

⁹⁴ Modern presidency as a concept of multiple scholars, e.g. Neustadt and Pfiffner, when the presidency transformed from the intimate executive office to the national agency controlling hundreds of bureaucracies, shifting the center of governing from Congress to the president.

⁹⁵ Lori Cox Han, *New Directions in the American Presidency*.

through Cooper and other modern presidency publications, presidential directives, abuse of power and social media influence became a reality in the Obama administration. Barack Obama based his presidential campaign around the slogan “Yes, We Can”, implying to his voters that he would be the change they could believe in. However, as the years of polarization and gridlock embodied by the uncooperative and passive Congress had shown, Obama often found himself in situations where in fact, he was unable to “can”. Neustadt’s behaviorism ruled the second half of the 20th century in the studies of presidential power, but his main argument of persuasion and bargaining was disproven watching President Obama struggle to pass important initiatives of his agenda through Congress. Recent developments have shown that unilateral, direct and effective actions by the Executive Office seem to be the most effective tool for presidents in times of a polarized, fractionalized Congress unable to make decisions itself especially when presidential power consists of more than the institution of one man.

The expansion of presidential power with the source in the usage of presidential directives was finally researched by Graham D. Dodds in *Take up Your Pen: Unilateral Presidential Directives in American Politics* (2013).⁹⁶ Dodds has provided the most comprehensive study on the topic documenting and explaining the aforementioned development in presidential power so far. After classification of the types of presidential directives, Dodds presented a historical guide of unilateral directives’ usage throughout U.S. history from the early years until Obama. The author also furnished possible explanations for the decrease in the amount of executive orders issued since FDR. Presidents tend to use other presidential directives which are not obliged to be published in the Federal Register to advance their policies more “under cover”.⁹⁷ Yet, in the analytical part, the author named important executive orders presidents issued to prove development in the power while forgetting to look at the substantive character of other directives, which could have proved the argument further.

To sum up, studies of the presidency have been rather descriptive than normative. There is a lack of quantitative studies. Scholars tend to avoid quantitative methods as data, figures and variables in the research of presidential power cannot be quantified. For example, in the study of executive orders, one can quantitatively prove their increase. There is also the possibility to quantitatively find causality between the amount of executive orders and circumstances in which presidents find themselves, e.g. majority in Congress, war, economic

⁹⁶ Graham G. Dodds, *Take up Your Pen: Unilateral Presidential Directives in American Politics*.

⁹⁷ *Ibid*, 215-219.

crisis. However, in order to prove such causality, a deeper qualitative analysis of individual cases needs to be made. As mentioned in the previous chapter, presidential directives are often administrative, ceremonial or hortative acts which cannot be used to research development of presidential power. The research therefore needs to go deeper. On the one hand, it is necessary to qualitatively research the substance and impact of directives, not only the amount. On the other, it is also important not to focus on the executive orders or proclamations, which can be found in the Federal Register, but also on other presidential directives such as executive actions and presidential memoranda. The proposed thesis aims to provide a study which would cover both aforementioned points on the case study of President Obama.

2.2 Methodology

The main hypothesis researched throughout this thesis will be:

H: Due to the uncooperative Congress and increased expectations of the public, President Barack Obama had to use unilateral directives to advance the key points of his policy-making agenda – immigration reform and gun regulations.

This master thesis can be identified as a qualitative case study focusing on one specific instance limited to a certain period of time, which is the presidency of Barack Obama from 2009 to 2017. As we have first identified a certain pattern – which is the usage of presidential directives being instrumental to advancing a president’s agenda and only then applied it to a real example, the thesis falls into the category of instrumental case studies. Regarding the scope of the thesis, the thesis will focus on the presidential directives concerning domestic policy, more precisely immigration and gun safety. The reason for that is that the authority of presidents in questions of foreign areas has more or less been acknowledged throughout the 20th century (see chapter 1.2. Why there are presidential directives and 1.3.5. Executive agreement).

For the study of the presented thesis, the immigration reform and gun regulations initiatives have been chosen out of Obama’s domestic agenda. Firstly, both of them are the most vocally criticized unilateral actions of President Obama. Secondly, immigration and gun safety belong to the controversial issues along the political division lines between Republicans and Democrats. Therefore, they serve as a sufficient indicator in the study of

presidential power providing the necessity of using a unilateral approach when bipartisanship fails. Lastly, both issues belonged to the priorities of Obama's political agenda. As subchapter 3.1 uncovers, immigration was part of Obama's presidential campaign since the beginning of his candidacy, while gun regulations became one of the top priorities later in Obama's second term after the rise of deadly mass shootings during the first years of his presidency.

In terms of theorization, the thesis will lay its foundations on the concepts and definitions provided by two of the aforementioned works in the previous subchapter. Firstly, it will adopt Howell's concept from *Thinking about Presidency*. On the case study of Obama's presidency, it will show the gap between expectations and real powers presidents have at their disposal to meet these expectations. When Obama was sworn into office, many believed it was a major milestone in presidential history. Mostly minorities put great hope into Obama's administration with the belief that their fight for equal rights had then gained a powerful ally. Obama's presidency also started during the greatest economic depression since FDR. In this case, not only minorities but also the general public put their faith into Obama's hands and believed he would become a change they had been waiting for. Expectations are, however, subjective feelings of an individual and are therefore not measurable or quantifiable for the research. What can be taken into consideration is a comparison of the general opinions from the polls and reactions of media, pundits or political elite. It is also important to mention that the study will research the hypothesis based on the general expectations on the President, but also on the respective expectations on both immigration reform and gun regulations. The main reason for that is that Obama took office on a transformational platform of hope and change. This alone created an expectation for Obama to act and to be a "doer". This factor can be summed up by the partial hypothesis:

H1: After voting him into office, the public put great expectations on Obama to actively change and transform the political situation in the United States.

However, after being "burdened" by the expectations of many with few tools to work with effectively, Obama faced the reality of the passivity, or one can argue, even hostility of Congress. This concept can be found in Howell's earlier work with Hoe in the paper *Unilateral Action and Presidential Power: A Theory*. This factor will be evaluated firstly by analyzing the initiatives Obama identified as being important to him. The political agenda of a president can be identified mainly by the campaign pledges but can also be

supplemented by the situations and events arising with time. The former is the case of immigration reform, and the latter is the case of gun regulation. To understand the change of the President's political agenda, we can look into his annual State of the Union speeches where presidents outline their legislative agenda for the upcoming year. For that, primary sources found in the online database *The American Presidency Project* and in *National Archives* will be used.

Then the proposed thesis will study attempts of the President to pass these initiatives through Congress and the opposition he faced doing so. To do that, the thesis uses method of process tracing. Presidents themselves cannot initiate a bill in Congress; they usually do so through allies in the House or the Senate. Sometimes, the White House can write a bill but needs to find a Congressman or a Senator to propose the bill to Congress. The thesis will therefore study official records of the House and the Senate, but also press conferences and remarks of President Obama, as well as media coverage, to identify which legislative proposals Obama himself was involved in – either in the form of endorsement, expressing public support, or lobbying. These considerations formed into a hypothesis are as follows:

H2: Immigration reform and gun regulation were among the key issues of President's Obama policy agenda.

H3: President Obama tried to pass these key issues of his agenda through legislation in Congress.

The last aspect will study what were the steps that led to President Obama passing his agenda on immigration and gun safety through presidential directives. The next hypothesis should prove that the highly criticized usage of presidential directives by President Obama occurred only because he had been blocked by Congress. Facing great expectations from the public and simultaneously not being able to pass the laws important to his political stance, the President was left with no other choice. To prove this hypothesis, a deep study of the second partial hypothesis will be important which is whether Obama truly made steps to advance the key points of his agenda through Congress. This part will look into which presidential directives were issued and under which circumstances. The final partial hypothesis researched in the thesis will be:

H4: Only after he was met with passivity or opposition of the Congress in the areas of immigration and gun safety did he use presidential directives.

3 Expectations Gap

3.1 President Obama's Political Agenda

In this chapter, we will identify Obama's domestic political agenda. Before the chapter focuses on the two issues researched in the thesis - immigration reform and gun rights - the general domestic political agenda of Obama is laid out.

Throughout the final stretch of the 2008 campaign, the heavily accented areas found in every Obama speech were naturally tied to the economic situation – providing jobs, cutting taxes, but along with that also providing affordable health care, renewable energy and education.⁹⁸ Besides giving general remarks in the cities as part of his campaign tour, Obama made some public appearances at agenda-focused institutions, such as Convention of the American Federation of Teachers, Annual League of United American Citizens, National Urban League Conference, Women's Economic Security Town Hall, the Clinton Global Initiative, etc. Among the goals he set to achieve as president were an 80% reduction in greenhouse gas emission by 2050, cutting extreme poverty by half by 2015, and making immigration reform a top priority in his first year of presidency.⁹⁹ Considering that, additionally, environmental issues, equal rights, civil rights for minorities, and immigration reform can be identified as important parts of Obama's agenda.

To support the identified agenda, the top issues of Obama's administration were also summarized on the official webpage of Obama's White House. In the most important group, there were civil rights, climate change, economy, education, health care and immigration. In the group following, Obama listed disabilities, ethics, equal pay, reduction of gun violence,

⁹⁸ After Obama was elected as a Democratic nominee, his main points on his campaign tour in respective cities were mostly repetitive. For the purpose of this research, the author went over most of the 2008 campaign remarks but cites a representative - the closing remarks in Ohio.

Barack Obama, "Remarks in Canton, Ohio Presenting Presidential Campaign Closing Argument" (Remarks, Canton, Ohio, October 27, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-canton-ohio-presenting-presidential-campaign-closing-argument>

⁹⁹ Barack Obama, "Remarks at the 79th Annual League of United Latin American Citizens Convention in Washington, DC" (Remarks, Washington, DC, July 08, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-the-79th-annual-league-united-latin-american-citizens-convention-washington-dc>.

Barack Obama, "Remarks to the Clinton Global Initiative in New York City" (Remarks, New York City, New York, September 25, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-the-clinton-global-initiative-new-york-city>.

strengthening rural communities, engaging more Americans into service, seniors and social security, taxes, technology, trade, urban and economic mobility, veterans, and women.¹⁰⁰

In his campaign speeches, Obama did not put too much focus on controversial topics, as is only natural during a campaign tour. He did not want to lose potential voters which could have swayed in the opposite direction. Yet, during the Democratic National Convention, as he accepted his nomination, he included four controversial issues - same-sex marriage, gun regulation, abortion and immigration reform.

“We may not agree on abortion, but surely we can agree on reducing the number of unwanted pregnancies in this country. The reality of gun ownership may be different for hunters in rural Ohio than for those plagued by gang-violence in Cleveland, but don't tell me we can't uphold the Second Amendment while keeping AK-47s out of the hands of criminals. I know there are differences on same-sex marriage, but surely we can agree that our gay and lesbian brothers and sisters deserve to visit the person they love in the hospital and to live lives free of discrimination. Passions fly on immigration, but I don't know anyone who benefits when a mother is separated from her infant child or an employer undercuts American wages by hiring illegal workers.”¹⁰¹

These issues would then become parts of Obama's toughest fights with Congress, with two resulting in unilateral actions of great controversy. The resulting executive actions also became one of the main reasons for criticisms of Obama's power grabbing and overreaching his executive authority.

3.1.1 Immigration as a Key Part of Obama's Political Agenda

Immigration has been a divisive issue of the U.S. political spectrum for a long time. The developments in the discourse of immigration can be divided into two periods, according to the historian John Higham. The first one looks at immigration as something that has built the nation – the immigration of whites, Protestant and Catholic Europeans until 1803. From the 1820s, the immigrants coming were more diverse, Catholics, Jews, non-English speakers.¹⁰² This period lasted until the restriction of the 1920s when enemies from the outside world were limited from coming into the U.S. The *National Origins Formula* of

¹⁰⁰ *The White House President Obama*, <https://obamawhitehouse.archives.gov> (accessed May 7, 2019).

¹⁰¹ Barack Obama, "Address Accepting the Presidential Nomination at the Democratic National Convention in Denver: 'The American Promise'" (Speech, Denver, Colorado, August 28, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-democratic-national-convention-denver>.

¹⁰² Nicolaus Mills and Toni Morrison, *Arguing Immigration: The Debate over the Changing Face of America* (New York: Simon & Schuster, 1994), 13-15.

1924, which limited the number of immigrants to 160 000, was based on the proportions of the American population. Considering the fact that almost 90% of immigrants who lived in the U.S. in that period were from northern and western Europe, other nations were quite disadvantaged.¹⁰³ Moreover, as a reaction to the Great Depression, in the period known as “The Mexican Repatriation” of the late 1920s and 1930s, approximately 500 000 illegal Mexican immigrants were deported.¹⁰⁴

An impulse to change the discriminatory character of the Origins Formula came in the 1960s, both at home with the Civil Right Movements emerging, but also abroad with the Cold War heating up. The United States had to act, if it was willing to fight the Soviet Union in a clash of ideas as being the liberal, the democratic and the tolerant one of two. Additionally, the reputation of the United States was on the line due to the pressure from newly-independent nations, against whom the National Origins Formula directly discriminated. Not to mention their southern neighbors Mexico, along with Chile, Argentina, Cuba, Uruguay and Paraguay had removed race limitations from their laws already in the 1940s.¹⁰⁵

Whether the reasons were geopolitical or humanitarian, the 89th Congress passed the *Immigration and Nationality Act* of 1965, which created a preference system for relatives of U.S. citizens and professionals with specialized skills, rather than giving permission for permanent stay based on nationality. It also, for the first time, set a limitation to immigrants from the Western hemisphere. The bill was introduced by Senator Phillip A. Hart and sponsored by Representative Emanuel Celler, therefore bears the name of Hart-Celler Act.¹⁰⁶ President Johnson, while signing the bill, claimed: “This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives...”¹⁰⁷ Nonetheless, this law was indeed revolutionary contrary to what politicians then believed, or claimed. The number of immigrants in the nation has since quadrupled, with Hispanics doubling their share.¹⁰⁸

¹⁰³ Jürgen Heideking and Christof Mauch, *Dějiny USA* (Praha: Grada, 2012), 237.

¹⁰⁴ Kryštof Kozák, *Měkký Podbříšek Navěky: Důsledky Asymetrie Mezi Spojenými Státy a Mexikem* (Praha: Dokořán, 2010), 105.

¹⁰⁵ *Ibid*, 105.

¹⁰⁶ *Immigration and Nationality Act*, U.S. Code 8 (1965), §§ 1 et seq, <https://www.law.cornell.edu/uscode/text/8>.

¹⁰⁷ Lyndon B. Johnson, "Remarks at the Signing of the Immigration Bill" (Remarks, Liberty Island, New York, October 03, 1965), LBJ Presidential Library, <http://www.lbjlibrary.org/lyndon-baines-johnson/timeline/lbj-on-immigration>.

¹⁰⁸ See official statistics of the *Migration Policy Institute*: "Largest U.S. Immigrant Groups over Time, 1960-Present," [Migrationpolicy.org](https://www.migrationpolicy.org/programs/data-hub/charts/largest-immigrant-groups-over-time), accessed May 07, 2019. <https://www.migrationpolicy.org/programs/data-hub/charts/largest-immigrant-groups-over-time>.

The increasing number of Hispanic immigrants has resulted in tensions on the U.S.-Mexican border. The Hart-Celler Act allowed legal immigrants to come, which however was not enough to cover jobs where Mexican immigrants were needed – for example, seasonal farm workers.¹⁰⁹ Immigration increased because of the Mexican economic crisis in the 1970s and led to anti-immigrant rhetoric about lower wages for whites due to the cheap labor illegal Mexican immigrants provided. Border states such as California, Texas or Florida were the most affected. As a result, in California, in the 1990s a referendum was passed enabling illegal immigrants to use social services.¹¹⁰ The Mexican government also encouraged another wave of migration with the devaluation of the peso. Entering NAFTA, free trade emerged without Mexico being able to create enough job opportunities.¹¹¹ However, the U.S. government was rather reluctant to massively remove unauthorized immigrants as President Eisenhower once did in 1954. The increasing political consciousness of Mexican Americans embodied in various Hispanic organizations and movements provided a hindrance to such an “inhumane” and “impractical” act as they themselves described it.¹¹² Of course they would not want to anger Hispanic citizens and residents who now had a voice and the will to speak for themselves.

Obama promised to make immigration reform a top priority in his first year of presidency back in 2008 as a presidential candidate.¹¹³ He was not only aware of the increasing impact of incoming immigrants, be it legal or illegal, but also of the importance of Latino votes in both the 2008 and 2012 elections. During his campaign speech in New Mexico, he claimed: “Some of the closest contests this November will be in states like Florida, Colorado, Nevada, and here in New Mexico - states with large Hispanic populations.¹¹⁴” He ended up winning all four aforementioned states. To further undermine importance of immigration reform in Obama’s political agenda, comprehensive solution to millions of illegal immigrants was part of each of the seven State of Union speeches Obama delivered. The envisioned reform was supposed to fix a “broken immigration system,... and

¹⁰⁹ Kryštof Kozák, *Měkký Podbřišek Navěky: Důsledky Asymetrie Mezi Spojenými Státy a Mexikem*, 106.

¹¹⁰ Ibid, 107.

¹¹¹ Ibid, 108.

¹¹² Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2009), 240.

¹¹³ Barack Obama, "Remarks to the National Association of Latino Elected and Appointed Officials in Washington, DC" (Remarks, Washington, DC, July 28, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-the-national-association-latino-elected-and-appointed-officials-washington-dc>.

¹¹⁴ Barack Obama, "Remarks in Espanola, New Mexico" (Remarks, New York City, New York, September 18, 2008), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-espanola-new-mexico>.

ensure that everyone who plays by the rules can contribute to our economy and enrich our Nation.”¹¹⁵

3.1.2 Gun Safety as a Key Part of Obama’s Political Agenda

The legislative history of gun regulations is a more complex issue because of two reasons. Firstly, it is a sensitive issue as gun rights are protected by the 2nd amendment of the U.S. Constitution. Secondly, every state has its own gun laws and federal authority on the topic is not as strong as on immigration. But as this master thesis deals with the case study of the President’s attempt to pass federal gun laws, this brief background on gun regulations is limited to the scope of federal laws as well. The major federal gun regulations came as a reaction to events of significant gun violence. The first major gun regulation law is the *National Firearms Act* of 1934. The act imposed taxes on the production and transport of firearms as a response to increasing crime.¹¹⁶ The taxation came also with the obligation to register some types of guns. Four years later the *Federal Firearms Act* (1938) ruled that every manufacturer and dealer had to have a license. It also specified a group of individuals who were prohibited from bearing a gun.¹¹⁷ This also led to the obligation to keep records on the customers when selling them a gun. Following the assassinations of President John F. Kennedy, his brother Senator Robert Kennedy, and Doctor Martin Luther King Jr., the *Gun Control Act* of 1968 was passed with even stricter regulations which prohibited interstate gun transfer with the exception for licensed manufacturers, dealers or importers.¹¹⁸

With the increasing amount of mass shootings in the 1980s and 1990s, a controversial ten-year-long prohibition enacted by the *Public Safety and Recreational Firearms Use Protection Act* (1994) was enforced. The act made it unlawful for civilians “to manufacture, transfer or possess a transfer, or possess a semiautomatic assault weapon.”¹¹⁹ It can be argued how effective this ban was. During this period, ten mass shootings were registered, in comparison to 17 from 1984-1993. However, the amount of mass shootings increased after

¹¹⁵ Barack Obama, "Address Before a Joint Session of the Congress on the State of the Union" (Speech, Washington, DC, January 27, 2010), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-17>.

¹¹⁶ *National Firearms Act*, U.S. Code 26 (1934), <http://legisworks.org/sal/48/stats/STATUTE-48-Pg1236.pdf>.

¹¹⁷ *Federal Firearms Act*, U.S. Code 26 (1938), <http://legisworks.org/sal/52/stats/STATUTE-52-Pg1250.pdf>.

¹¹⁸ *Gun Control Act*, U.S. Code 18 (1968), <https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213.pdf>.

¹¹⁹ *Public Safety and Recreational Firearms Use Protection Act*, Public Law 103-322, U.S. Statutes at Large 108 (1994): 1996-2010, <http://www.legisworks.org/GPO/STATUTE-108-Pg1796.pdf>, 1996-1997.

the ban was lifted with the law’s expiration in 2004, and the following decade registered 37 mass shootings.¹²⁰

Gun regulations were not a center issue of Obama’s campaign platform. However, the President became more invested, especially emotionally, in the issue with the mass shootings that occurred during his presidency. As Table 1 demonstrates, since recording mass shootings, Obama is the president with the most registered mass shootings during his presidency in comparison to six other presidents.¹²¹

President	Amount of mass shootings during presidency
Barack Obama	37
George W. Bush	15
Bill Clinton	19
George H.W. Bush	8
Ronald Reagan	6

Table 1 – number of mass shootings during presidencies – data taken from Mother Jones

Gun safety became a part of his State of the Union address in 2013 after the Sandy Hook shootings where 20 children between the ages of six and seven fell victims to gun violence,¹²² which shook the U.S. in an unprecedented way.¹²³ During his speech on gun violence after this tragedy, Obama could not hold back tears.¹²⁴ On what he would later describe as the worst day of his presidency, the urgency and priority to provide significant change towards gun safety and gun regulations rose exponentially.¹²⁵ In addition to pledging change, he also vowed to use “whatever powers this office holds,” implying the possibility

¹²⁰ Mother Jones group defines mass shootings with four or more killed by a single attack according to the FBI definition. Obama’s administration then lowered the threshold to three or more killed, which Mother Jones incorporated in statistics from 2013 on.

Mark Folman, Gavin Aronsen, and Deanna Pan, "A Guide to Mass Shootings in America," Mother Jones, May 01, 2019, <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>.

¹²¹ Ibid.

¹²² Barack Obama, "Address Before a Joint Session of the Congress on the State of the Union" (Speech, Washington, DC, February 12, 2013), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-before-joint-session-congress-the-state-the-union-2>.

¹²³ See public opinion polls, for example: Becky Bowers, "Sen. Dianne Feinstein Says Every National Poll This Year Shows Support for Assault Weapons Ban," Politifact, April 22, 2013, <https://www.politifact.com/truth-o-meter/statements/2013/apr/22/dianne-feinstein/sen-dianne-feinstein-says-every-national-poll-year/>.

¹²⁴ "President Obama cries during gun violence speech," CNN, YouTube, January 05, 2016, <https://www.youtube.com/watch?v=ijFPMrptrwE>.

¹²⁵ Ariel Edwards-Levy, "Barack Obama: Are We 'Actually Shook Up Enough' By Sandy Hook?" HuffPost, December 31, 2012, https://www.huffpost.com/entry/barack-obama-newtown-shooting_n_2384525.

of using unilateral action.¹²⁶ On another occasion, when faced with a reporter's question about where he had been for the past four years on gun control, he answered that although he had been occupied with dozens of other priorities, gun regulations would have to become a center issue.¹²⁷

The magnitude of the effort put into the gun regulation legislation is later summarized by the opening sentence of *Politico*'s article concerning Obama's attempts to pass the law on gun regulations, labeling it as the "Obama's biggest loss": "Never before had President Barack Obama put the moral force and political muscle of his presidency behind an issue quite this big — and lost quite this badly."¹²⁸ To underline the significance of gun regulations in Obama's political agenda, he himself claimed that his biggest regret and frustration of his presidency was his inability to push legislation of gun control through Congress.¹²⁹

In his final State of Union speech in 2016, Obama addressed the issues of immigration reform and gun safety as a continuing effort he would not give up on: "And I will keep pushing for progress on the work that I believe still needs to be done: fixing a broken immigration system, protecting our kids from gun violence,..."¹³⁰

3.2 Expectations on the Chief of Change

When Barack Obama won the presidential elections in 2008, millions of people from around the world witnessed a historical event. Being the first African American President to hold the most influential office in the United States, combined with his fresh, charismatic rhetoric, he became the Chief of Change to redeem the country from a frustrating situation. The biggest economic depression since 1932, a general disenchantment over Bush's imperialism, wars in Afghanistan and Iraq, polarization, racial and minority intolerance or

¹²⁶ Barack Obama, "Remarks by the President at Sandy Hook Interfaith Prayer Vigil" (Remarks, Newtown, Connecticut, December 16, 2012), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2012/12/16/remarks-president-sandy-hook-interfaith-prayer-vigil>.

¹²⁷ Jake Tapper, "Where Have You Been on Gun Violence? Today's Q for O - 12/19/12," ABC News, December 19, 2012, <https://abcnews.go.com/blogs/politics/2012/12/where-have-you-been-on-gun-violence-todays-q-for-o-121912/>.

¹²⁸ Glenn Thrush and Reid J. Epstein, "Obama's Biggest Loss," *POLITICO*, April 18, 2013, <https://www.politico.com/story/2013/04/gun-control-vote-obamas-biggest-loss-090244>.

¹²⁹ "Obama: US gun control laws 'greatest frustration of my presidency' - BBC News," BBC News, YouTube, July 23, 2015, <https://www.youtube.com/watch?v=IOFOFZxfiDc>.

¹³⁰ Barack Obama, "Address Before a Joint Session of the Congress on the State of the Union" (Speech, Washington, DC, January 12, 2016), The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-19>.

the ever-widening gap between rich and poor- these were the challenges everyone expected Obama to work on.

This thesis does not try to suggest that Obama faced an unprecedented amount of pressure from the public. Every newly sworn president faces a challenge to change, to improve and to differentiate themselves from their predecessors. Every president is thus met with the expectations of not only his voters, but the whole public, even moreso when society finds itself in unpleasant circumstances as mentioned above. Looking at the similarity of conditions when the presidents were sworn to the office, many believed and expected Obama to lead the nation back to prosperity as FDR once did.¹³¹ Both were charismatic Democratic leaders entering the presidential office during an economic crisis and remaining bitterness from their predecessors' unpopular political performances. Obama was not only compared to FDR, who is considered to be one of the best presidents in U.S. history by the American public, but was also expected to provide decisive results in the same way the once great FDR did.

The transformational character of Obama's politics, which would bring a significant change and would become a fresh turn of the deteriorating state of public affairs in the U.S., was first laid down four years before he had been elected to the presidential office.¹³² He did so as a candidate for the U.S. Senate with the keynote address at the Democratic National Convention in 2004. "The speech that made Obama"¹³³ included his short biography, his ideology and endorsement for then presidential candidate John Kerry, but there was one concept resonating throughout the whole speech - unity. And although he was very well aware that society is polarized, that it had been in "this long political darkness", it was with this speech that he became a symbol of change. The repeatedly cited "...there is not a liberal America and a conservative America - there is the United States of America. There is not a Black America and a White America and Latino America and Asian America - there's the

¹³¹ See for example: William E. Leuchtenburg, *In the Shadow of FDR: From Harry Truman to Barack Obama* (Ithaca, NY: Cornell University Press, 2009), 299-319.

Edward Ashbee, "The Obama Administration, the Left and Narratives of Failure," *The Political Quarterly* 83, no. 3 (2012): doi:10.1111/j.1467-923x.2012.02337.x.

Paul Krugman, "What Obama Must Do," *Rolling Stone*, no. 1070 (2009): 44-49, <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,shib&db=asn&AN=36088069&lang=cs&site=eds-live&scope=site>.

¹³² Magdalena Firtová, Jan Hornát and Jana Sehnálková (eds.), *Prezidentství Baracka Obamy: naplnění vize?*, (Prague: Charles University in Prague, Karolinum Press, 2017), 10-12.

¹³³ Mark Leibovich, "The Speech That Made Obama," *The New York Times*, July 27, 2016, <https://www.nytimes.com/2016/07/27/magazine/the-speech-that-made-obama.html>.

United States of America”¹³⁴ is a very straightforward embodiment of that. Unity to Obama also meant that society should care about that child not having proper education, or that old man not having health care or where society is not divided by the pundits, not “divided into Red and Blue states.”¹³⁵ He made people have the “audacity to hope”¹³⁶ and laid down the foundations of his future presidential campaign based on concepts of change, transformation and hope.

Subsequently, it was only natural for his voters, but also the general public, to have high expectations. As a Gallup poll surveying 1,010 respondents right before the 2008 elections found out, expectations on improving the economic situation were not significantly higher than on Obama’s predecessors. On the other hand, on improving the conditions of minorities and the poor, Obama exceeded previous presidents.¹³⁷ In polls following the election and researching the confidence that respondents placed in Obama, the public remained confident and proud about Obama’s election. Not only liberals, but also moderates and conservatives placed hope and optimistic expectations on the newly elected president.¹³⁸ Historical highs since George H.W. Bush were confident in Obama and believed the country would be better off during his term than it had before.¹³⁹ The united confidence across the spectrum was also seen in the results of a Pew Research poll.¹⁴⁰ There, again, groups such as the poor, black and young people believed to gain the most in comparison to George W. Bush but also Bill Clinton. In the question of whether respondents felt they would gain influence under Obama’s presidency, 47% voted yes in comparison to 36% of respondents eight years before in 2000 after the election of George W. Bush.¹⁴¹

¹³⁴ "Senator Barack Obama 2004 Democratic National Convention Keynote Speech," C-SPAN, January 27, 2004, <https://www.c-span.org/video/?182718-3/senator-barack-obama-2004-democratic-national-convention-keynote-speech>.

¹³⁵ Ibid.

¹³⁶ The term is first publicly used in the 2004 speech and later served as a title to Obama’s book published 2 years later: Barack Obama, *Odvaha Doufat: Úvahy O Vzkříšení Amerického Snu* (Voznice: Leda, 2010).

¹³⁷ Improving conditions of minorities - 36% of respondents in comparison to 20% on Bill Clinton and 24% on George H.W.Bush and the poor - 80% of respondents in comparison to 44%, 68% and 39% for George W.Bush, Bill Clinton and George H.W.Bush respectively

Source: Alec Gallup and Frank Newport, *The Gallup Poll: Public Opinion 2008* (Lanham, MD: Rowman & Littlefield Publishers, 2009), 387.

¹³⁸ Ibid, p. 389, 405,

¹³⁹ Obama had confidence of 72% respondents in comparison to 46% of respondents’ confidence in George W.Bush in the beginning of his presidency and 51% of respondents’ confidence in Bill Clinton.

"Optimism Abounds as Power Changes Hands in Washington," Gallup.com, January 20, 2009, <https://news.gallup.com/poll/113890/Optimism-Abounds-Power-Changes-Hands-Washington.aspx>.

¹⁴⁰ "Strong Confidence in Obama - Country Seen as Less Politically Divided," Pew Research Center for the People and the Press, January 14, 2013, <https://www.people-press.org/2009/01/15/strong-confidence-in-obama-country-seen-as-less-politically-divided/>.

¹⁴¹ Tom Rosentiel, "Who Expects To Gain -- And Lose -- Under Obama," Pew Research Center, November 27, 2012, <https://www.pewresearch.org/2009/01/21/who-expects-to-gain-and-lose-under-obama/>.

Obama's director of presidential correspondence Mike Kelleher described the overwhelming range of expectations on the President in the form of one hundred thousand emails, ten thousand thesis letters, three thousand phone calls, and one thousand faxes every day.¹⁴² If we look closely at the expectations on the researched issues of immigration reform, in all aforementioned general polls, there was a significant part of the Hispanic minority among those expecting changes and feeling confident in the newly elected president. As for immigration reform itself, only a third of the asked Hispanics marked it as a top priority in the survey of Pew Research Center after Obama had been elected to office.¹⁴³ It is important to note that Hispanics are not the only group concerned about immigration but are the group most affected by potential immigration reform. In 2007, more than a half of respondents were afraid a family member, close relative or a friend could be deported. Additionally, two-thirds believed that the failure of Congress to pass comprehensive immigration reform was making life difficult for all Latinos, including difficulty to find jobs, being asked to provide documents proving their legal status, etc.¹⁴⁴ Furthermore, Obama's vow to deal with the issue concerning millions of nationally affiliated immigrants also created an affiliation with the candidate himself.

Hispanics played a crucial role in Obama's reelection in 2012. Voter turnout in the general elections was 12 million, which was 10% of the whole electorate. And 73% of this tenth voted for Obama, which accounted to 13% of the votes for him.¹⁴⁵ Accordingly, Obama had a need to act on the immigration reform he had been promising to deliver during both campaign cycles. The eventual collapse of the bill and the unfulfilled promise of comprehensive immigration reform left bitterness in the Hispanic political elite and voters who complained about Obama "completely failing them"¹⁴⁶

On the topic of gun regulations, they were not one of the priorities for Obama in neither his campaign nor his first term in office. However, there were still higher expectations on Obama on some solutions of greater gun safety and stronger gun checks. They were undermined by negative anticipation from the side of gun owners. Some feared

¹⁴² William G. Howell and David Milton Brent, *Thinking about the Presidency: The Primacy of Power*, 41.

¹⁴³ "Hispanics and the New Administration," Pew Research Center's Hispanic Trends Project, February 23, 2016, <https://www.pewhispanic.org/2009/01/15/hispanics-and-the-new-administration/>.

¹⁴⁴ "2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill," Pew Research Center's Hispanic Trends Project, February 23, 2016, <https://www.pewhispanic.org/2007/12/13/2007-national-survey-of-latinos-as-illegal-immigration-issue-heats-up-hispanics-feel-a-chill/>.

¹⁴⁵ William H. Frey, "Minority Turnout Determined the 2012 Election," Brookings, August 24, 2016, <http://www.brookings.edu/research/papers/2013/05/10-election-2012-minority-voter-turnout-frey>.

¹⁴⁶ Nicole Duran and David J. Ake, "Latino Activists: Obama 'completely Failed Us'," Washington Examiner, September 02, 2016, <https://www.washingtonexaminer.com/latino-activists-obama-completely-failed-us>.

Obama's election would result in gun restrictions and the sale of guns immediately surged after his election out of panic.¹⁴⁷ Even though Obama hadn't specified any concrete policies in his campaign and it was not one of the issues Obama campaigned on, his liberal and transformational stance on the issue made people believe he would act on controversial gun violence. Fear that Obama would truly start fighting for gun regulations was the result of the National Rifle Association's (NRA) campaign against Obama. The NRA boldly stated: "never in NRA's history have we faced a presidential candidate — and hundreds of candidates running for other offices — with such a deep-rooted hatred of firearm freedoms."¹⁴⁸ Similar comments came four years later during the reelection campaign. Wayne La Pierre, then executive vice-president of the NRA, continued with the accusation that "Obama has spent his entire political career engaged in a stealthy assault on your right to keep and bear arms,"¹⁴⁹ even though during Obama's first term, he hadn't even touched on the issue on gun checks or gun rights limitations.

On the other side of spectrum, the gun control group The Brady Campaign, which had endorsed Obama as a presidential candidate, assumed there would be more active initiatives towards gun control.¹⁵⁰ When Obama was inactive on the regard during the first term of his presidency, he was condemned by the Brady Group's president Paul Helmke. He claimed to be very disappointed, especially after the promises he campaigned on.¹⁵¹ Expectations from different gun control groups to actually enact stricter rules and limit gun owners or buyers rose after the Newtown mass shooting in the Sandy Hook elementary school – a horrible act of violence, which moved the whole population. When Obama vowed to do everything he could to the families who had lost their children, the pressure on the

¹⁴⁷ German Lopez, "Study: President Obama's Election Scared Americans into Buying More Guns," Vox, January 21, 2016, <https://www.vox.com/2016/1/21/10801664/obama-gun-sales>.

¹⁴⁸ Ben Smith, "NRA: Obama Most Anti-gun Candidate Ever, Will Ban Guns," POLITICO, August 06, 2008, <https://www.politico.com/blogs/ben-smith/2008/08/nra-obama-most-anti-gun-candidate-ever-will-ban-guns-010821>.

¹⁴⁹ Ed Pilkington, "NRA Fired up to Campaign against Obama as Annual Meeting Kicks off," The Guardian, April 13, 2012, <https://www.theguardian.com/world/2012/apr/13/national-rifle-association-annual-meeting-obama>.

¹⁵⁰ Bob Cusack, "Despite Promises, Obama, Dem Congress Have Been Gun-friendly," The Hill, February 03, 2016, <https://thehill.com/homenews/administration/115953-despite-promises-obama-dem-congress-have-been-gun-friendly>.

¹⁵¹ Michael O'Brien, "Gun Control Group Gives Obama failing Grade; Says It's Been Disappointing Year," The Hill, February 04, 2016, <https://thehill.com/blogs/blog-briefing-room/news/76593-leading-gun-control-group-has-harsh-words-for-obama>.

President to truly act was imminent. When he failed to do so, the disappointment of gun activists served as proof of higher expectations on the President to act on the issue.¹⁵²

Obama was truly a candidate people expected things from. The simple fact that he was the first African-American president elected to the office created enormous anticipation. Such a historic turning point had to have transformational character. During the unpleasant conditions the American public found itself in the time of Obama's election, Obama rode the wave with the platform of change and hope and encouraged expectations of people to grow. As a result, there were constant comparisons to one of the greatest presidents in U.S. history, an unprecedented public interest in national politics, and significant confidence across the political spectrum in the newly elected president. All of these added to the high expectations and the public watched closely how the President would meet them.

4 Brief Quantitative Research on the Unilateral Activity of Obama

4.1 Obama's Presidential Directives

In the following chapter, the thesis briefly analyzes and summarizes Obama's enhancement of executive authority in the form of presidential directives issuance. As Obama's opposition, media, and some scholars believe, Obama's usage of presidential directives was an unprecedented overreach of presidential authority. While the number of issued presidential directives, which are written in the Federal Register and can thus be tracked, do not imply that would be the case, quantitative analysis would be insufficient in determining whether Obama pushed the boundaries of his presidential power too far.

Obama issued the least number of presidential directives since Theodore Roosevelt with the exception of three presidents – John F. Kennedy, Gerald Ford and George H.W. Bush. Given that none of these three presidents served two terms as Obama did, number-wise he fared excellently in the race for the most moderate unilateral tools' usage. However, including presidential memoranda and proclamations, Obama had the highest amount of issued registered presidential directives since Ronald Reagan as seen in Table 2.

¹⁵² Meghan Keneally, "4 Years After Sandy Hook, Obama Leaves a Legacy of Little Progress on Gun Laws," ABC News, December 14, 2016, <https://abcnews.go.com/Politics/years-sandy-hook-obama-leaves-legacy-progress-gun/story?id=44163755>.

	<i>Executive orders</i>	<i>Presidential proclamations</i>	<i>Presidential memoranda*</i>	<i>Total</i>
<i>Ronald Reagan</i>	381	1119	228	1728
<i>George H.W. Bush</i>	166	591	107	864
<i>Bill Clinton</i>	364	865	348	1577
<i>George W. Bush</i>	291	952	217	1460
<i>Barack Obama</i>	276	1220	332	1828

Table 2 – amount of executive orders, presidential proclamations and presidential memoranda issued by the presidents Reagan-Obama - data taken processed manually from The American Presidency Project¹⁵³

*NOTE: Presidential memoranda do not have the obligation to be registered in the Federal Register. The real number of memoranda issued by the presidents is probably higher.

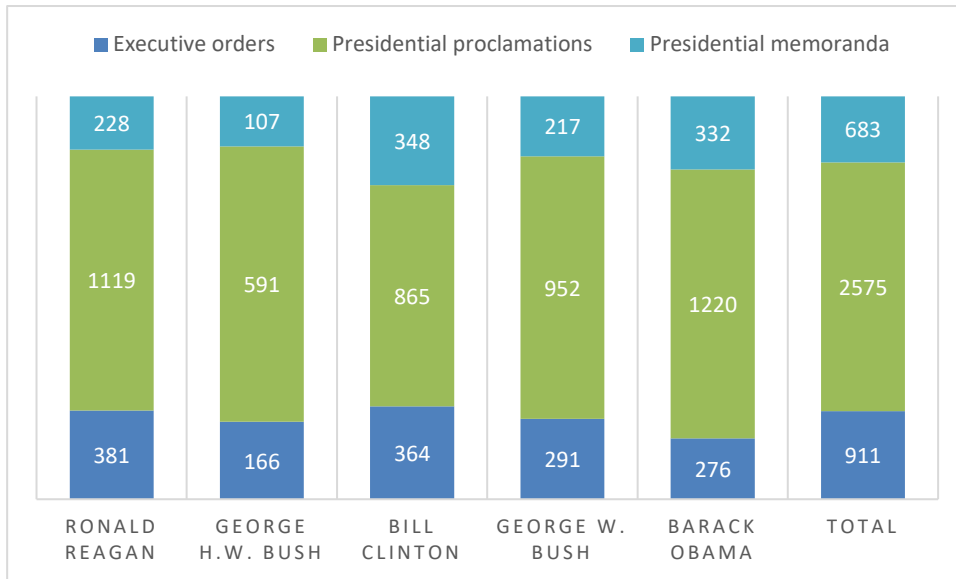
The data in Table 2 corresponds with Woolley and Peters’ findings that the share of presidential memoranda has been increasing in recent decades. As Graph 1 below demonstrates, Obama’s share of executive orders issued was the lowest out of the analyzed presidents except George H.W. Bush, while the share of presidential proclamations in the total amount of directives issued was the highest. Similarly, with the presidential memoranda he came in at the second highest share of usage. *USA Today* and *Forbes* have compared Obama’s usage of executive orders and memoranda and implied that Obama was only using a different name for his controversial unilateral policy-making.¹⁵⁴ A *Forbes* study compared the official actions written in the Federal Register with the White House Press register of executive actions. And while there were 361 officially registered presidential decrees until 2015, *Forbes* counted 476 on the White House Press webpage.¹⁵⁵ This difference illustrates how many presidential directives can “slip out” of official registers and why it can be a powerful tool to advance agendas without being in the spotlight of media and critics.

¹⁵³ Gerhard Peters and John T. Woolley, "Executive Orders," The American Presidency Project. "Proclamations," *The American Presidency Project*, accessed May 8, 2019, <https://www.presidency.ucsb.edu/documents/app-categories/written-presidential-orders/proclamations>. "Memoranda," *The American Presidency Project*, accessed May 8, 2019, <https://www.presidency.ucsb.edu/documents/app-categories/written-presidential-orders/memoranda>.

¹⁵⁴Gregory Korte, "Obama Issues 'executive Orders by Another Name'," *USA Today*, December 17, 2014, <https://eu.usatoday.com/story/news/politics/2014/12/16/obama-presidential-memoranda-executive-orders/20191805/>.

Glenn Kessler, "Claims regarding Obama's Use of Executive Orders and Presidential Memoranda," *The Washington Post*, December 31, 2014, https://www.washingtonpost.com/news/fact-checker/wp/2014/12/31/claims-regarding-obamas-use-of-executive-orders-and-presidential-memoranda/?noredirect=on&utm_term=.2ada190b5dad.

¹⁵⁵ Clyde Wayne Crews Jr., "Obama's Legacy: An Abundance of Executive Actions," *Forbes*, January 11, 2016, <https://www.forbes.com/sites/waynecrews/2016/01/10/this-inventory-of-obamas-dozens-of-executive-actions-frames-his-final-state-of-the-union-address/#591514b575f5>.



Graph 1 – share of executive orders, presidential proclamations and presidential memoranda on the total usage of registered presidential directives - data manually processed from *The American Presidency Project*¹⁵⁶

4.2 Uncooperative Congress

Obama’s critics of his unilateral power overreach cannot deny that in almost every speech during his 2008 campaign, Obama underlined the importance of bipartisanship and rejected political divisions in the times when nation needed the government to act. One factor is the cautiousness in a campaign rally, the other is that as a pragmatist, he understood the importance of uniting both ends of the political spectrum, even moreso when it came to politically and socially controversial issues such as immigration reform and gun regulations. A bipartisan approach might have been in Obama’s political identity, but was also a necessary approach for a president to advance agenda legislatively. As shown in Table 3, two out of his eight years as president, Democrats found themselves in a congressional minority in at least one of the houses.

	<i>House of Representatives</i>		<i>Senate</i>	
	Dems	Reps	Dems+Independents in caucus	Reps
<i>111th Congress 2009</i>	257	178	59	41
<i>112th Congress 2011</i>	193	242	53	47
<i>113th Congress 2013</i>	201	234	55	45
<i>114th Congress</i>	188	247	46	54

¹⁵⁶ See note 153.

Table 3 – party divisions in Congress during the Obama presidency – data taken from the United States Senate and History, Arts & Archives United States House of Representatives¹⁵⁷

Additionally, the Congress Obama worked with during the eight years of his presidency was one of the most passive and unproductive in recent years. Table 4 proves the massive difference in the amount of laws enacted by the respective Congresses during the Obama presidency in comparison to his predecessors. Even George H.W. Bush, serving for one term only, saw more laws enacted in four years than Obama in eight. Not to mention there is unavailable data for the time when Ronald Reagan held the office. As Table 4 demonstrates, in 2 years of Reagan's presidency, the 110th Congress enacted 228 bills, which is more than half of the bills enacted by the Congresses during the entire Obama administration.

<i>President</i>	<i>Congress</i>	<i>Ceremonial</i>	<i>Substantive</i>	<i>Total</i>	<i>Total per president</i>
<i>Ronald Reagan</i>	100th - 1987	109	119	228	228*
<i>George H.W. Bush</i>	101st - 1989	108	132	240	583
	102nd - 1991	100	143	243	
<i>Bill Clinton</i>	103rd - 1993	64	146	210	621
	104th - 1995	14	74	88	
	105th - 1995	23	120	153	
	106th - 1999	33	137	170	
<i>George W. Bush</i>	107th - 2001	27	81	108	642
	109th - 2005	54	144	198	
	110th - 2007	37	124	161	
	111th - 2009	78	97	175	
<i>Barack Obama</i>	112th - 2011	48	79	125	409

¹⁵⁷ "Party Divisions of the House of Representatives, 1789 to Present," *History, Art & Archives United States House of Representatives*, accessed May 7, 2019, <https://history.house.gov/Institution/Party-Divisions/Party-Divisions/>.

"Party Division," *United States Senate*, accessed May 7, 2019, <https://www.senate.gov/history/partydiv.html/>.

113th - 2013	11	61	72
114th - 2015	26	89	115
115th - 2017	14	83	97

Table 4 – amount of legislation passed in Congress from 1987-2017 divided into ceremonial and substantive ones – data taken from Pew Research Center¹⁵⁸

*NOTE: No data present for President Reagan’s remaining years of presidency outside of the 100th Congress.

Another factor to consider was the polarization. “It’s been 150 years since the U.S. was this politically polarized”– these were the words describing the results of the Pew Research Centre survey from 2014.¹⁵⁹ The survey implied that the last time the American nation was that polarized was during the Civil War.¹⁶⁰ The frustration caused by an uncooperative and dysfunctional Congress was not identified only by Obama. Media coverage addressed the issue demonstrated with filibusters,¹⁶¹ the low amount of passed laws,¹⁶² and historically low Congressional approval.¹⁶³

On numerous occasions, Congress had blocked the President on his priorities such as health care, immigration reform, and gun regulations. Obama could not wait anymore. In 2012, after the Senate blocked a jobs bill, he launched his initiative “We Can’t Wait”: “...we can’t wait for an increasingly dysfunctional Congress to do its job. Where they won’t act, I will.”¹⁶⁴ He went even further with his rhetoric in the State of Union 2014 after unsuccessful attempts to create more jobs and improve working conditions: “So wherever and whenever I can take steps without legislation to expand opportunity for more American families, that’s what I’m going to do.”¹⁶⁵ The uncooperativeness of Congress and the obvious frustration of

¹⁵⁸ "Three Decades of Congressional Productivity, 1987-2017," Pew Research Center, January 11, 2018, https://www.pewresearch.org/fact-tank/2019/01/25/a-productivity-scorecard-for-115th-congress/ft_18-01-09_congressproductivity/.

¹⁵⁹ Mark Strauss, "The Top Think Tanks Aren't Thinking About Science," Io9, December 16, 2015, <https://io9.gizmodo.com/the-top-think-tanks-arent-thinking-about-science-1665107428>.

¹⁶⁰ Richard A. Posner, "Bad News," The New York Times, July 31, 2005, <https://www.nytimes.com/2005/07/31/books/review/bad-news.html>.

¹⁶¹ See for example: Garrett Epps, "How the Senate Filibuster Went Out-of-Control-and Who Can Rein It In," The Atlantic, December 27, 2012, <https://www.theatlantic.com/national/archive/2012/12/how-the-senate-filibuster-went-out-of-control-and-who-can-rein-it-in/266645/>.

¹⁶² See for example: Jonathan Allen and John Bresnahan, "Congress 'worse than It's Ever Been?'" POLITICO, June 30, 2011, <https://www.politico.com/story/2011/06/congress-worse-than-its-ever-been-058076>.

¹⁶³ See for example: Peter Barbour, “Executive Orders: What the Founding Fathers Wanted? - Independent Voter Network,” IVN.us, May 13, 2012, <https://ivn.us/2012/05/11/executive-orders-what-the-founding-fathers-wanted/>.

¹⁶⁴ Barack Obama, "Remarks by the President on the Economy and Housing," (Remarks, Las Vegas, Nevada, October 24, 2011), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2011/10/24/remarks-president-economy-and-housing>.

¹⁶⁵ Barack Obama, "Address Before a Joint Session of the Congress on the State of the Union" (Speech, Washington, DC, January 28, 2014), The American Presidency Project,

the President can also be demonstrated by Table 5. It shows the significantly lowest percent average of votes in support of Obama’s political positions.

	<i>House of Representatives</i>		<i>Senate</i>		<i>Total</i>
	Dems	Reps	Dems	Reps	
<i>Ronald Reagan</i>	39	68	49	79	59
<i>George H.W. Bush</i>	36	72	47	79	58
<i>Bill Clinton</i>	73	32	85	41	58
<i>George W. Bush</i>	25	83	48	88	61
<i>Barack Obama</i>	43	19	47	51	40

Table 5 – percent average of Congressional voting in support of the president’s position – data taken from Brookings¹⁶⁶

This chapter has shortly summarized the conditions under which President Obama tried to advance his policy agenda during his presidency. Data shown imply that while he issued in total more unilateral directives than his predecessors until Reagan, he also faced unprecedented passivity and obstruction of agenda from Congress. In the following two chapters, these findings are examined on the issues of immigration reform and gun regulations.

5 A Comprehensive Immigration Reform

5.1 The Dream Act of 2010

The increasing urge to solve the immigration issue with more than 12 million illegal immigrants had been lurking within the U.S. public and political discourse for decades. Given the importance of the Hispanic vote in the general elections, Obama in his campaign rallies pledged to solve the immigration issue and to make it one of his top priorities. Although immigration reform was not the center of his focus as he was most vocal on the economic crisis, education and health care, there were occasions he promised to improve the dire situation of undocumented workers, separation of families, and border security.¹⁶⁷ Since the beginning of his presidency, Obama demonstrated hints of acting on the issue by

<https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-21>.

¹⁶⁶ "Vital Statistics on Congress," Brookings, April 10, 2019, <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/#datatables>.

¹⁶⁷ Barack Obama, "Remarks at the 79th Annual League of United Latin American Citizens Convention in Washington, DC" (Remarks, Washington, DC, July 08, 2008).

including an immigration policy working group as one of the nine established policy groups his White House administration.¹⁶⁸ However, in the first years of his presidency, Obama centered his focus on another big domestic policy – health care. Health care, alongside the economic recession and energy independence, was a top domestic priority for Obama. Given that the proposed immigration reform would have allowed some undocumented workers to legally acquire jobs when thousands of Americans suffered from unemployment, it was smarter to deal with immigration reform only after the economic recession in the U.S. was dealt with.¹⁶⁹ Understandably, this delay on the promise faced consequences as some Hispanic media didn't hold back their disenchantment and criticism on the unfulfilled promise of delivering immigration reform in his first year in office.¹⁷⁰

The aforementioned importance of Hispanic voters for Democrats came into place before the midterm elections in 2010. In April 2010, Senator Richard Durbin, key sponsor of the Dream Act, which were to be drafter later in the year, urged Obama to use his executive authority to grant deferred action to young students.¹⁷¹ However, Obama continued with legislative efforts to bring a comprehensive platform for immigration reform, rather than issuing a presidential directive to solve it partially.

The first initiative of the Obama administration to pass at least partial immigration reform was the *Dream Act*.

Removal Clarification Act (2010) (amended version of Dream Act)

The bill would have granted legal status for certain undocumented immigrants between ages 12 and 35, provided they had been living in the U.S. for at least four years, entered the U.S. being younger than 18 years old, had no criminal records, and graduated from high school or were admitted to an institute of higher education.¹⁷²

The *Dream Act* was reintroduced as a continuation of the Bush administration's attempts to pass the Act in 2005 and later in 2007.¹⁷³ The Obama Administration described

¹⁶⁸ Adalberto Aguirre, "Immigration on the Public Mind: Immigration Reform in the Obama Administration," *Social Justice* 35, no. 4 (114) (2008): 4-11, <http://www.jstor.org/stable/29768511>, 5-7.

¹⁶⁹ Magdalena Fiřtová, Jan Hornát and Jana Sehnáľková (eds.), *Prezidentství Baracka Obamy*, 54.

¹⁷⁰ Carrie Budoff Brown, "Hispanic Media Take on Obama," *POLITICO*, August 11, 2010, <https://www.politico.com/story/2010/08/hispanic-media-take-on-obama-040927>.

¹⁷¹ Julia Preston and John H. Cushman, "Obama to Permit Young Migrants to Remain in U.S." *The New York Times*, June 15, 2012, <https://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html>.

¹⁷² U.S. Congress, House, *Removal Clarification Act of 2010*, H.R.5281, 111th Cong., 2nd sess., Introduced in House May 12, 2010, <https://www.congress.gov/bill/111th-congress/house-bill/5281>.

¹⁷³ *Ibid.*

it as “Good for our economy, good for our security, good for our nation” and as a common-sense bipartisan effort to “allow only the best and the brightest young people to earn the legal status.”¹⁷⁴ The effort Obama put into passing the legislation included enlisting six secretaries to lobby Senators and House Representatives, highlighting the economic advantage of providing thousands of illegal immigrants the opportunity to acquire citizenship.¹⁷⁵ The 2010 Act was passed in the House 216-198 – eight Republicans voted for it and thirty-eight against.¹⁷⁶

To break a filibuster, the proposal needed to gain 60 votes in the Senate. As some centrist Democrats, such as Claire McCaskill, Blanche Lincoln, Ben Nelson, and Mark Pryor, were seeking reelection in states with a small proportion of Hispanic voters, their support of the bill was uncertain. Therefore, Obama reached out to Republicans Scott Brown and Lindsey Graham, who were working on bipartisan immigration reform with Democrat Charles Schumer.¹⁷⁷ Unfortunately, Graham was hesitant because of the lack of support of other Republican Senators.

Although three Republican senators voted for the bill, there were five Democratic senators voting against it. With the pro-against vote 55-41, the bill died in the Senate.¹⁷⁸ Among those who had voted against were Senator Lindsey Graham, one of the leading figures in the initial versions of the Dream Act of the Bush administration, and Senator John McCain. McCain’s reasoning was that securing the nation’s borders took priority and therefore could not support the law paving the way to citizenship for illegal immigrants.¹⁷⁹

After the midterm elections, Obama lost his Democratic majority in the House and missed the chance to pass immigration law, to the dismay of many. In his reelection campaign, Obama put his focus again towards the Hispanic electorate. After a term of frustration over the inactive Congress, Obama launched the aforementioned initiative *We Can’t Wait* in 2011. The aggressive approach in enhancing executive authority applied to immigration as well. As he had lost the majority in the House and there were no initiatives to reintroduce the *Dream Act*, he listened to the aforementioned urges of Senator Durbin and

¹⁷⁴ Luis Miranda, "Get the Facts On The DREAM Act," National Archives and Records Administration, December 01, 2010, <https://obamawhitehouse.archives.gov/blog/2010/12/01/get-facts-dream-act>.

¹⁷⁵ Scott Wong and Shira Toeplitz, "DREAM Act Dies in Senate," POLITICO, December 20, 2010, <https://www.politico.com/story/2010/12/dream-act-dies-in-senate-046573>.

¹⁷⁶ U.S. Congress, House, *Removal Clarification Act of 2010*, H.R.5281, 111th Cong., 2nd sess.

¹⁷⁷ John D. Graham, *Obama on the Home Front: Domestic Policy Triumphs and Setback*, (Bloomington; Indianapolis: Indiana University Press, 2016), 279.

¹⁷⁸ U.S. Congress, House, *Removal Clarification Act of 2010*, H.R.5281, 111th Cong., 2nd sess.

¹⁷⁹ Julia Preston, "Illegal Immigrant Students Protest at McCain Office," The New York Times, May 18, 2010, <https://www.nytimes.com/2010/05/18/us/18dream.html>.

decided to act on the pressing issue of illegal immigration. In June 2012, the Department of Homeland Security announced new actions that the Obama administration would take in order to grant some illegal young immigrants temporary relief from deportation and the opportunity to apply for work authorization.¹⁸⁰ This executive action, referred to as DACA – *Deferred Action for Childhood Arrivals*, was neither amnesty nor immunity and was limited to those who had come to the U.S. under the age of 16, were under age 30, had no criminal records, studied, and had been living in the U.S. for at least five years.¹⁸¹ The executive action had no substantive rights to change the statuses of immigration nor would it have created a pathway to citizenship, as Secretary of Homeland Security Janet Napolitano herself recognized: “Only Congress, through its legislative authority, can confer these rights.”¹⁸² Senator McCain accused the action of being a mere “power grab” that did not bring a comprehensive solution, but rather a confusion in immigration policies; however, Hispanic leaders welcomed the action positively.¹⁸³ The effort was rewarded in the reelection of Obama as president, as the aforementioned Hispanic electorate made up 10% of the votes Obama received.

5.2 Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

Encouraged by this win in the elections, Obama’s administration attempted to pursue yet another legislative reform on immigration. The electoral loss of Mitt Romney with his aggressive stand on immigration on the far right appealed to Republicans to be open towards immigration related issues.¹⁸⁴ Obama didn’t wait too long and on January 29, 2013, he introduced his legislative platform on immigration for 2013 in Nevada. There, he urged action on comprehensive immigration as a common-sense issue recognized across the country and the political spectrum.¹⁸⁵ A truly bipartisan effort was carried out in the so called

¹⁸⁰ Barack Obama, "Remarks by the President on Immigration" (Remarks, Washington, DC, June 15, 2012), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

¹⁸¹ U.S. Secretary of Homeland Security, Memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” U.S Department of Homeland Security (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>, 1-2.

¹⁸² Ibid.

¹⁸³ Elise Foley, "Obama Makes Bold Move On Immigration," HuffPost, June 15, 2012, https://www.huffpost.com/entry/obama-immigration-order-deportation-dream-act_n_1599658.

¹⁸⁴ John D. Graham, *Obama on the Home Front: Domestic Policy Triumphs and Setback*, 285.

¹⁸⁵ Barack Obama, "Remarks by the President on Comprehensive Immigration Reform" (Remarks, Las Vegas, Nevada, January 29, 2013), The White House President Obama,

Gang of Eight, a group of four Democrats and four Republicans formed to draft and sponsor the newly proposed bill for immigration reform. It consisted of Senators Michael Bennet (Dem.), Dick Durbin (Dem.), Jeff Flake (Rep.), Lindsey Graham (Rep.), John McCain (Rep.), Robert Menendez (Dem.), Marco Rubio (Rep.) and Chuck Schumer (Dem.) – Senators who had been involved in the proposals of bills on the issue before and/or were from states with a large Hispanic majority and illegal immigrants.¹⁸⁶

The proposed *Border Security, Economic Opportunity, and Immigration Modernization Act* of 2013 was a more complex reform of broken immigration policy in the U.S. than the *Dream Act* of 2010. The bill covered every problematic area of immigration in the U.S. – border security, illegal immigrants, especially children and their legal status, and reform of the rules for entering the country.

Border Security, Economic Opportunity, and Immigration Modernization Act (2013)

The *Dream Act* was also included in this new proposal together with altering visa allocations for entering the U.S.¹⁸⁷ Additionally, the proposed bill would provide illegal immigrants a 13 year long pathway to citizenship, but only to those who had resided in the U.S. before December 31, 2011. In order to do so, immigrants would need to pay owed taxes, have no criminal records, and would also need to pay a fine and fees. This would make them eligible to apply for Registered Provisional Immigrant status, from which they could apply for permanent resident status, but only after the Department of Homeland Security submitted the new border security plan. This clause was included as a compromise for Senator John McCain stance against the *Dream Act*, when he refused to vote for the Act because he considered border security to be more pressing issue.

The shared effort of the Gang of Eight and Obama's lobbying for the bill was met on 27 June 2013, when the proposal was passed in the Senate 68-32.¹⁸⁸ This bill was however

<https://obamawhitehouse.archives.gov/the-press-office/2013/01/29/remarks-president-comprehensive-immigration-reform>

¹⁸⁶ Rachel Weiner, "Immigration's Gang of 8: Who Are They?" The Washington Post, January 28, 2013, https://www.washingtonpost.com/news/the-fix/wp/2013/01/28/immigrations-gang-of-8-who-are-they/?utm_term=.058076e3f67d.

¹⁸⁷ U.S. Congress, Senate, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013*, S.744, 113th Cong., 1st sess., Introduced in Senate April 16, 2013,

<https://www.congress.gov/bill/113th-congress/senate-bill/744/>.

¹⁸⁸ Ibid.

never taken up in the House. Speaker of the House John Boehner played a crucial role in the failure. If a bill passed in the Senate, John Boehner had to be on board with the bill if it were to be introduced in the House. After the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, he declared that he would block any vote on the immigration issue which did not have majority support of the Republicans in the House. Additionally, he expressed that the House would work on its own immigration reform proposal that would represent a true majority and the will of the public.¹⁸⁹ The bipartisanship spirit slowly faltered, as with the upcoming midterm elections of 2014 some Republicans backed off in fear of losing conservative votes. The shocking loss of Congressman Eric Cantor in the reelection primaries prior to the midterm elections served as a warning signal not only for Republicans, but also for the Democrats seeking reelection, to be cautious on the immigration issue before elections to avoid the shocking loss of a House majority leader. Cantor, although not supporting the Senate's proposal for the reform, was himself working with other Congressmen and Congresswomen to draft a plan that would be passed in the House.¹⁹⁰ In January 2014 Boehner stated, "There's widespread doubt about whether this administration can be trusted to enforce our laws. And it's going to be difficult to move any immigration legislation until that changes."¹⁹¹ The distrust was partially caused by Obama's mishandling of the children-refugee crisis which broke out in the last quarter of 2013.¹⁹² Obama's great efforts to pass immigration reform failed on the games of individual politicians seeking reelection, the same way it failed in 2010.

Boehner's warning to Obama not to act unilaterally on the issue, or he would make sure no immigration reform would pass during Obama's presidency, didn't have much impact.¹⁹³ With the Democratic loss in the midterm elections and thus only a small chance to pass immigration reform legislatively, and the reluctant stance on such reform in the House, Obama didn't hesitate and issued another presidential directive expanding the executive action DACA into DAPA, *Deferred Action for Parents of Americans and Legal Residents*. In addition to illegal immigrants protected under DACA, the 2014 executive

¹⁸⁹ Ashley Parker and Jonathan Martin, "Senate, 68 to 32, Passes Overhaul for Immigration," *The New York Times*, June 27, 2013, <https://www.nytimes.com/2013/06/28/us/politics/immigration-bill-clears-final-hurdle-to-senate-approval.html>.

¹⁹⁰ John D. Graham, *Obama on the Home Front: Domestic Policy Triumphs and Setback*, 296.

¹⁹¹ Wesley Lowery, "Boehner: 'Difficult' to Move on Immigration Reform in 2014," *The Washington Post*, February 06, 2014, https://www.washingtonpost.com/news/post-politics/wp/2014/02/06/boehner-difficult-to-move-on-immigration-reform-in-2014/?utm_term=.6def33bdc541.

¹⁹² See: John D. Graham, *Obama on the Home Front: Domestic Policy Triumphs and Setback*, 297-301.

¹⁹³ Jake Sherman, "Boehner Warns Obama on Immigration," *POLITICO*, November 13, 2014, <https://www.politico.com/story/2014/11/john-boehner-obama-immigration-112861>.

action on immigration concerned protection from deportation for parents of the U.S. citizens or those with permanent residency.¹⁹⁴ This executive action was again issued as an executive memorandum of the Secretary of Homeland Security. Obama defended his actions as needed in the broken immigration system especially after a year and a half gridlock in Congress due to Boehner's refusal to call for the House vote on the *Border Security, Economic Opportunity, and Immigration Modernization Act* passed by Senate in 2013. His executive authority to issue such actions was justified by him referring to his predecessors, saying they had been issued by "every single Republican President and every single Democratic President for the past half century."¹⁹⁵

The opposition to broader executive action was significantly higher than in 2012. A few days before Obama enhanced his executive authority, Boehner warned him that Republicans were going to fight any executive action he might take on the issue.¹⁹⁶ After Obama issued the executive directive, Republican leaders didn't hold back in their criticisms. The action was seen unconstitutional and as an overreach of presidential authority.¹⁹⁷ Furthermore, the opposition resulted in judicial action. Texas, along with 25 other states, asked for relief against the action with the request to judicially review its legitimacy.¹⁹⁸ As a result, federal judge Andrew S. Hanen put a preliminary injunction on the DAPA and expansion of DACA on the ground of no law giving the executive branch power to "give 4,3 million removable aliens label as 'legal presence' ".¹⁹⁹ A year later, the

¹⁹⁴ U.S. Secretary of Homeland Security, Memorandum, "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," U.S. Department of Homeland Security (June 15, 2012), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action_1.pdf.

U.S. Secretary of Homeland Security, Memorandum, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," U.S. Department of Homeland Security (November 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

¹⁹⁵ Barack Obama, "Remarks by the President in Address to the Nation on Immigration" (Remarks, Washington, DC, November 20, 2014), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

¹⁹⁶ Jake Sherman, "Boehner Warns Obama on Immigration," POLITICO, November 13, 2014.

¹⁹⁷ Everett Rosenfeld, "Politicians and Industry Respond to Obama's Immigration Announcement," CNBC, November 21, 2014, <https://www.cnbc.com/2014/11/20/politicians-and-industry-respond-to-obamas-immigration-announcement.html>.

"Republicans Savage Obama Immigration Executive Action," BBC News, November 21, 2014, <https://www.bbc.com/news/world-us-canada-30150391>.

Scott Wong, "Boehner: House Will Act to Stop Obama," The Hill, February 02, 2016, <https://thehill.com/homenews/house/224982-boehner-house-will-act-to-stop-obama>.

¹⁹⁸ Complaint at District Court for The Southern District of Texas Brownsville Division, *Texas, et al. v. United States, et al.*, (T.X.S.D. 2014), <https://web.archive.org/web/20150402104146/https://www.texasattorneygeneral.gov/files/epress/files/20141203Multi-stateImmigrationOrderLawsuit%281%29.pdf>.

¹⁹⁹ *Texas, et al. v. United States, et al.*, 86 F.3d 591, 591-593 (5th Cir. 2015), <https://www.leagle.com/decision/infcco20150217f96>.

case was granted certiorari by the Supreme Court but with the decision 4-4, the Supreme Court affirmed the injunction by the appeals court on the ground of likely violating the *Administrative Procedure Act* of 1946, which set up rules for federal agencies to establish regulations.²⁰⁰ As the case went from the Supreme Court back to the federal district court which put the injunction blocking the action, DAPA was never implemented.

On the other hand, later studies found that DACA had a truly positive impact. It led to more than a 15% increase in high school graduation among students who were eligible for DACA and a 45% decrease in teen pregnancy. That is reasoned by the fact that students were more motivated to try in high school without fear of being deported before being able to graduate.²⁰¹ For the same reason, the attendance rate for college increased by 25% for young women eligible for DACA.

6 Gun Regulations

6.1 Gun Regulation Proposals

U.S. politicians have always been cautious towards gun rights/gun control issues considering the difference of opinion among the U.S. public and political elite. More importantly, the lobbying power of gun rights, notably the National Rifle Association, complicates any bipartisan efforts towards gun control law proposals. There is also a belief, that federal government should not be involved in gun issues and that it should be in the authority of individual states. The campaign for passing gun regulation in Congress was, therefore, an emotional ride. Not only was President Obama personally devoted to the issue, as briefly shown in subchapter 4.1.2, but also the families who mourned their children lost in the Sandy Hook shooting, were petitioning for gun safety reforms and joined the campaign to reduce gun violence. The Newtown mass shooting in December 2012 in an elementary school killed 20 children, all age six and seven.²⁰² On January 16, 2013 as a direct and decisive response to the Newtown tragedy Obama issued 20 executive actions and three presidential memoranda.²⁰³ In the sense of urgency, Obama wanted to act quickly and

²⁰⁰ *United States v. Texas*, 579 U.S. ____ (2016), <https://supreme.justia.com/cases/federal/us/579/15-674/>

²⁰¹ Matthew Yglesias, "Study: DACA Increased Immigrants' Education, Labor Force Participation, and Productivity," *Vox*, February 14, 2018, <https://www.vox.com/2018/2/14/17003484/daca-kuka-shenhav-shih>.

²⁰² Mark Folman, Gavin Aronsen, and Deanna Pan, "A Guide to Mass Shootings in America," *Mother Jones*.

²⁰³ Coleen Curtis, "President Obama Announces New Measures to Prevent Gun Violence," *National Archives and Records Administration*, January 16, 2016, <https://obamawhitehouse.archives.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

declare a high priority on the issue. It is very important to mention, that these actions did not have any effect on individual gun owners or future gun buyers. The controversial tighter background checks were only guiding Congress on crafting the bill. Yet there were Republicans condemning Obama's repetitive overreach of authority, defiance of the Constitution, and attempt to strip citizens of the constitutional rights to bear arms.²⁰⁴ While far too many mistake them as executive orders, with the exception of three presidential memoranda these actions were never signed by the President, nor were they issued in the Federal Register. Specifically, these three presidential memoranda directed federal agencies to share information with the national background check system, to trace guns recovered in criminal investigations, and directed the *Centers for Disease Control* to research gun violence.²⁰⁵

These actions served as a manifesto to put the administration's focus on the reduction of gun violence which additionally included enforcing punishments or starting a national campaign to increase awareness on responsible gun ownership. Additionally, the proposal to Congress was named *Now is the Time*.²⁰⁶ The bill propose a stronger ban on assault weapons, strengthening background checks which would be required for all gun sales, making schools safer with new officers. The draft of the bill also touched upon the issue of mental health and provision of quality treatment.²⁰⁷

Out of the initiative *Now is the Time*, the 113th Congress dealt with legislative proposals in these three areas: universal background checks, stricter penalization of gun trafficking, and reinstating the federal ban on semiautomatic assault weapons.²⁰⁸ In alignment with Obama's plan, there were four legal initiatives that passed the Senate Judiciary Committee in March 2013 which allowed them to be vote on in Senate as a bipartisan effort towards increased gun safety.²⁰⁹

1. *Stop Illegal Trafficking in Firearms Act* (2013)

²⁰⁴ Charlie Savage, "Prominent Republicans Criticize Obama's Executive Actions," *The New York Times*, January 16, 2013, <https://thecaucus.blogs.nytimes.com/2013/01/16/prominent-republicans-criticize-obamas-executive-actions/>.

²⁰⁵ Ibid.

²⁰⁶ "Now is the Time to Do Something About Gun Violence," *The White House President Obama*, accessed May 7, 2019, <https://obamawhitehouse.archives.gov/issues/preventing-gun-violence>.

²⁰⁷ Ibid.

²⁰⁸ U.S. Library of Congress, Congressional Research Service, *Gun Control Legislation in the 113th Congress*, by William J. Krouse, R42987 (2015), <https://fas.org/sgp/crs/misc/R42987.pdf>, 4-6.

²⁰⁹ Ibid.

The bill would make it illegal to buy a gun for another person, and would also make it a crime to organize illegal gun trafficking. Moreover, it would also prohibit transferring a gun to a person they know or believe should not have a gun, but also to a person that could eventually transfer that gun to persons the original sender knows or believes should not have a gun.²¹⁰

2. *Fix Gun Checks Act (2013)*

The proposed bill would ensure the register of all individuals who should be prohibited from buying a gun in the *National Instant Criminal Background Check System*. These individuals would be the ones with criminal record punishable by indictment of more than one year or unlawful usage or addiction to a controlled substance. The bill would also make background checks required for every firearm sale.²¹¹

3. *School and Campus Safety Enhancements Act (2013)*

The proposal served as a financial support bill for the *Secure Our Schools* program that would establish surveillance systems in schools.²¹²

4. *Assault Weapons Ban of 2013*

The Assault Weapons Ban was sponsored by Senator Dianne Feinstein, with similar effect as the *Public Safety and Recreational Firearms Use Protection Act* of 1994 banning “import, sale, manufacture, transfer, or possession of a semiautomatic assault weapon”.²¹³

The Senate then introduced the bill *Safe Communities, Safe Schools Act*, which included all aforementioned initiatives except the Assault Weapons Ban (served as an amendment). As the matter is a continuous debate in political history and considered as filibuster, the proposal required a 60-vote majority.²¹⁴ Together with that, there were another

²¹⁰ U.S. Congress, Senate, *Stop Illegal Trafficking in Firearms Act of 2013*, S.54, 113th Cong., 1st sess., Introduced in Senate January 22, 2013, <https://www.congress.gov/bill/113th-congress/senate-bill/54/>.

²¹¹ U.S. Congress, Senate, *Fix Gun Checks Act of 2013*, S.374, 113th Cong., 1st sess., Introduced in Senate February 25, 2013, <https://www.congress.gov/bill/113th-congress/senate-bill/374/>.

²¹² U.S. Congress, Senate, *School and Campus Safety Enhancement Act of 2013*, S.146, 113th Cong., 1st sess., Introduced in Senate January 24, 2013, <https://www.congress.gov/bill/113th-congress/senate-bill/146/>.

²¹³ U.S. Congress, Senate, *Assault Weapon Ban of 2013*, S.150, 113th Cong., 1st sess., Introduced in Senate January 24, 2013, <https://www.congress.gov/bill/113th-congress/senate-bill/150/>.

²¹⁴ U.S. Congress, Senate, *Safe Communities, Safe School Act of 2013*, S.649, 113th Cong., 1st sess., Introduced in Senate March 21, 2013, <https://www.congress.gov/bill/113th-congress/senate-bill/649/>.

nine amendments to the bill. One of the most important amendments was introduced by Democratic Senator Joe Manchin and Republican Senator Patrick Toomey, both 2nd Amendment defenders and according to NRA A+ politicians.²¹⁵ They proposed so-called *Public Safety and Second Amendment Rights Protection Act* (2013) aka Manchin - Toomey Background Checks Proposal. The bill served as a symbol of bipartisanship in the pressing issue of gun violence. The very fact that A+ supporters of the 2nd Amendment not only supported, but sponsored a gun regulation bill served also as proof that the proposal was a moderate compromise founded on bipartisan ground. The amendment would bring significant changes in background checks requiring checks for intrastate transfers for unlicensed buyers and if sold in a public event (exhibits, internet, etc.), to avoid the sale of guns to criminals or the mentally ill.²¹⁶

President Obama, together with his Vice-President Joe Biden, who had been politically active in terms of gun regulations even before the 2013 initiative, put their effort into passing the bill by lobbying for enactment in the circles of community leaders.²¹⁷ Congresswoman Carolyn McCarthy rightfully claimed that such a long shot bill would not be passed if the president was not “out there selling it”.²¹⁸ McCarthy implied that, given the controversy of gun regulation and strong lobbying presence of the NRA and other gun rights organizations, the president had to try hard to promote the bill and persuade legislators to vote for it. However, the Feinstein’s amendment was defeated in the Senate by a large margin of yea-nay vote 40-60.²¹⁹

Manchin’s and Toomey’s Amendment had far better chances to be passed as it did not prohibit semiautomatic assault weapon sale and possession, rather would only apply stricter background checks. This amendment was however also defeated in Senate. Although 54 Senators voted for passing the bill, there were six votes missing to overcome a filibuster.²²⁰ Five Democrats decided to vote against the amendment. As coming from rural states with strong endorsement of gun rights, Max Baucus from Montana, Mark Begich from Alaska, Heidi Heitkamp from North Dakota and Mark Pryor from Arkansas are believed to

²¹⁵ The NRA ranks politicians in Washington based on their activities and protection of the 2nd amendment gun rights. See: Nra-Pvf, "PVF | Grades and Endorsements," NRA, Accessed May 02, 2019, <https://www.nrapvf.org/grades/>.

²¹⁶ U.S. Congress, Senate, *S.Amdt. 715*, S.649, 113th Cong., 1st sess., Proposed in Senate April 11, 2013, <https://www.congress.gov/amendment/113th-congress/senate-amendment/715/>.

²¹⁷ Jamelle Bouie, "Congress Takes Up Gun Violence," *The New York Times*, January 30, 2013, <https://www.nytimes.com/2013/01/30/opinion/congress-takes-up-gun-violence.html>.

²¹⁸ *Ibid.*

²¹⁹ U.S. Congress, Senate, *Safe Communities, Safe School Act of 2013*, <https://www.congress.gov/bill/113th-congress/senate-bill/649/all-actions?overview=closed#tabs/>.

²²⁰ *Ibid.*

vote against the bill in the wave of reelection campaign for difficult elections in 2014. Senate Majority Leader Harry Reid voted yea, but changed his vote to nay as he saw the bill wouldn't get desired majority. He did so for procedural reasons, so he could reintroduce the bill in the future.²²¹

President Obama did not hide his disenchantment over the failed effort. In the statement after the vote, on "a pretty shameful day for Washington", he expressed disbelief over the lack of support for a bipartisan effort in achieving legislative compromise which, he believed would not threaten the rights protected by the 2nd Amendment. He also rejected any other additional exaggerations his opposition used in their anti-campaign for the proposed bills.²²² And Obama was right. The opposition was unable to formulate a reasonable, cohesive argument against the bill. The failure of the bill was therefore due to both political games in fear of losing voters before midterm elections of 2014 and support of strong gun rights lobbyist organizations which decided. That is illustrated by the fact that both the NRA and the *National Association of Gun Rights* used a significant amount of financial means for lobbying that year.²²³

The initiatives of the White House towards stricter regulation did not meet much support in states either. Although there were some states that acted on passing some forms of gun sale or trafficking regulation,²²⁴ many believed gun regulation was the territory of states and even if Washington were to pass laws or issue executive actions, states could easily oppose them by not providing personnel or other resources needed to enact the directives.²²⁵ Nevertheless, Obama pledged to continue working towards the reform in the belief that he would eventually be able to pass legislation during his presidency.²²⁶

But since it was becoming apparent that Congress would not pursue any comprehensive gun regulations, even some individual states reacted to the passivity of

²²¹ Aaron Blake, "Manchin-Toomey Gun Amendment Fails," *The Washington Post*, April 17, 2013, https://www.washingtonpost.com/news/post-politics/wp/2013/04/17/manchin-toomey-gun-amendment-fails/?utm_term=.d699adf83f29.

²²² Barack Obama, "Statement by the President" (Statement, Washington, DC, April 17, 2013), *The White House President Obama*, <https://obamawhitehouse.archives.gov/the-press-office/2013/04/17/statement-president>.

²²³ Sarah Childress, "How the Gun-Rights Lobby Won After Newtown," *PBS*, December 10, 2013, <https://www.pbs.org/wgbh/frontline/article/how-the-gun-rights-lobby-won-after-newtown/>.

²²⁴ Meghan Keneally, "4 Years After Sandy Hook, Obama Leaves a Legacy of Little Progress on Gun Laws," *ABC News*, December 14, 2016.

²²⁵ Justin McDaniel, Robby Korth, and Jessica Boehm, "State Lawmakers Take Aim at Federal Gun Control – Center for Public Integrity," *Center for Public Integrity*, August 29, 2014, <https://publicintegrity.org/federal-politics/state-lawmakers-take-aim-at-federal-gun-control/>.

²²⁶ *Ibid.*

Congress by issuing state legislation on gun control on their own, with more than 100 bills restricting gun owners.²²⁷

As for the President, similarly to the case of Congress' inactivity on immigration reform, there were White House advisors, such as Valerie Jarrett, urging Obama to take executive action.²²⁸ As Obama's patience grew thinner with every emotions-filled address to the nation after yet another mass shooting, the first executive action came in January 2014. The White House Administration announced two new executive actions towards background checks. More specifically, they provided a definition and specifically listed persons prohibited from possessing a firearm under federal law and outlined procedures and best practices to ensure no relevant information on such persons is omitted from being listed in background checks.²²⁹ The actions were supposed to deal with ambiguity of some conditions prohibiting individuals for certain mental health issues and felons. Another aim was to minimize the delay in getting information on such individuals from states.²³⁰

6.2 Gun Regulation Reintroduction

The issue of stricter gun regulations was at a stalemate until October 2015, when the Senate reintroduced some gun regulation including the aforementioned "fated" Manchin-Toomey proposal from 2013.²³¹ The revitalized initiative came after a deadly Oregon shooting when nine were killed in open fire, following President Obama's appeal directed at legislators to act.²³² The new proposal was to deal with the loophole in gun legislation – the 72-hour rule which said if the background check could not be completed within 72 hours, the gun can be sold.²³³ Additionally, there was a proposal to ban selling guns to people on

²²⁷ Meghan Keneally, "4 Years After Sandy Hook, Obama Leaves a Legacy of Little Progress on Gun Laws," ABC News, December 14, 2016.

²²⁸ Michael D. Shear and Eric Lichtblau, "On Guns, Obama Cannot Easily Sidestep Congress," The New York Times, December 04, 2015, <https://www.nytimes.com/2015/12/05/us/politics/white-house-seeks-path-to-executive-action-on-gun-sales.html?module=inline>.

²²⁹ "FACT SHEET: Strengthening the Federal Background Check System to Keep Guns out of Potentially Dangerous Hands," National Archives and Records Administration, <https://obamawhitehouse.archives.gov/the-press-office/2014/01/03/fact-sheet-strengthening-federal-background-check-system-keep-guns-out-p>.

²³⁰ Ibid.

²³¹ David M. Herszenhorn, "Senate Democrats to Renew Push for Gun Control Measures," The New York Times, October 08, 2015, https://www.nytimes.com/2015/10/08/us/politics/senate-democrats-to-renew-push-for-gun-control-measures.html?_r=0.

²³² Barack Obama, "Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon" (Statement, Washington, DC, October 01, 2015), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon>.

²³³ U.S. Congress, House, *S.Amdt. 2908*, H.R.3762, 114th Cong., 1st sess., Introduced in House October 16, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/3762/text>.

the federal terrorist watch list which was sponsored by Feinstein.²³⁴ The day after another mass shooting in San Bernardino, which left 14 people dead, the vote on the amendments took place on December 3, 2015. Both bills were rejected: 45-54 on the prohibition to sell guns to known terrorists and 48-50 on background checks.²³⁵ The opposition of the bill believed it would restrict gun rights. Additionally, some Senators could not vote in good conscience because of the terrorist clause, as the federal terrorist watch list had vague definitions and could wrongly include individuals who were not terrorists.²³⁶

After this, Obama directed his advisors to find a way to move forward with gun control, unilaterally determined to do everything he possibly could to make the country safer.²³⁷ His executive actions came into place in January 2016, following Obama's emotional speech to the nation. It is worth mentioning that President Obama was aware of the fact that none of the actions would prevent mass shootings he had mourned, as the weapons of many of the attackers were acquired legally.²³⁸ However, as Obama quoted President Ronald Reagan, if there was a mandatory background check that could save lives, "it would be well worth it making it the law of the land."²³⁹ The executive action included augmenting the license requirements and background checks, hiring an increased 50% of federal agents for background checks, removing barriers preventing the FBI to access requested mental health records, investigations to determine trafficking patterns, guiding U.S. authorities to keep in check felons looking to buy guns, and introducing smart gun technology which could prevent it from being used by a child or an unauthorized user.²⁴⁰ Partially due to the presidential campaigns of candidates such as Donald Trump, Marco Rubio, and Ted Cruz, exaggerated accusations of unconstitutional overreach and obsession

²³⁴ U.S. Congress, House, *S.Amdt. 2910*, H.R.3762, 114th Cong., 1st sess., Introduced in House October 16, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/3762/text>.

²³⁵ U.S. Congress, House, *S.Amdt. 2910*, H.R.3762, 114th Cong., 1st sess., <https://www.congress.gov/amendment/114th-congress/senate-amendment/2908/actions>.

²³⁶ Burgess Everett, Seung Min Kim and Nick Gass, "Gun Measures Fail in Senate," *POLITICO*, December 03, 2015, <https://www.politico.com/story/2015/12/gun-amendment-democrats-216389>.

²³⁷ Michael D. Shear and Eric Lichtblau, "On Guns, Obama Cannot Easily Sidestep Congress," *The New York Times*, December 04, 2015.

²³⁸ Larry Buchanan, Josh Keller, Richard A. Oppel and Daniel Victor, "How They Got Their Guns," *The New York Times*, October 03, 2015, https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html?_r=0.

²³⁹ *Ibid.*

²⁴⁰ Barack Obama, "Remarks by the President on Common-Sense Gun Safety Reform" (Remarks, Washington, DC, January 5, 2016), The White House President Obama, <https://obamawhitehouse.archives.gov/the-press-office/2016/01/05/remarks-president-common-sense-gun-safety-reform>.

to act against the 2nd amendment of the Constitution filled the Republicans' Twitter accounts.²⁴¹

Regarding the impact of the executive actions issued by the President, gun sales actually increased during his presidency. People ran to buy guns because of the potential threat of not being able to easily acquire them if Congress passed the proposed legislation.²⁴² On a positive note, smart gun technology made some developments, including e.g. gun security devices using biometrics or functionality to pull the trigger only after a PIN code of the owner was set.²⁴³ During Obama's presidency, there was also an increase in firearms background checks from 12 million in 2008 to 23 million in 2016. In comparison, there were on average 8 million background checks a year during George W. Bush's presidency. On the other hand, the number of background checks started to decrease again when Donald Trump took office.²⁴⁴

No big legislative initiatives or executive actions took place for the remainder of Obama's presidency. Obama described the inability to pass the law on gun checks and thus reduce the increasing gun violence in the United States as the biggest regret and frustration of his presidency.²⁴⁵ On an important note and as mentioned in the beginning of the chapter, gun regulations were usually the subject of state laws. This factor could have played a role in the struggle to pass gun regulation legislation in comparison to immigration, which is believed to be in jurisdiction of federal government rather than individual states.

7 Interpretation and Discussion

After presenting the empirical data on the topic, this chapter will address the validity of the formulated hypotheses. Going back to the main premise of Clinton Rossiter's institutionalist approach towards the presidency, on which Howell based his expectations gap theory, in the eyes of public presidents became the sole bearers of responsibility for public affairs in the U.S. This became true even more so with Obama and the expectations put on him. *Hypothesis 1* concerning the expectations on President Obama applies Howell's

²⁴¹ Jennifer Hansler and Paola Chavez, "2016 Candidates React to Obama's Gun Control Measures," ABC News, January 05, 2016, <https://abcnews.go.com/Politics/2016-candidates-react-obamas-gun-control-measures/story?id=36097217>.

²⁴² Meghan Keneally, "4 Years After Sandy Hook, Obama Leaves a Legacy of Little Progress on Gun Laws," ABC News, December 14, 2016.

²⁴³ Aaron Smith, "Smart Guns, Fingertip Vaults and Steel Safes: Tech to Make Guns Safe," CNNMoney, January 09, 2016, <https://money.cnn.com/2016/01/07/technology/obama-gun-control-gun-tech/>.

²⁴⁴ See: "NICS Firearm Background Checks: Month/Year," *Federal Bureau of Investigation*, accessed May 7, 2019, https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view.

²⁴⁵ "Obama: US gun control laws 'greatest frustration of my presidency' - BBC News," BBC News, YouTube.

theory. This hypothesis is in fact the hardest to confirm. Expectations are not quantifiable, nor can they be clearly defined. The proposed thesis gathered public opinion polls expressing not only expectations, but also confidence in the newly sworn President. These would prove the proposed hypothesis as the public expected that the President would bring change. The polls were later supplemented by the negative reactions among the public and the political elite after unsuccessful attempts to pass the respective legislations. It can be concluded that the overall expectations on the president to bring change and transform the dire state of U.S. politics on gridlocked issues pressing American political discourse for decades were in place. This was supplemented by the public opinion polls, which showed that public had significantly bigger faith in President Obama improving state of the public affairs in the beginning of his presidency than it had in his predecessors in the beginnings of their first terms. Furthermore, there were expressed disappointments where only Obama was the main one to be blamed by the interest groups of Hispanics or gun regulation activists for the inability to pass the legislations. Even though it is Congress that enacts legislations, Obama, being expected to be the sole responsible for public affairs, was in a public eye also responsible for the failure of passing legislations.

Concerning *Hypothesis 2* of policy agenda, the research confirms that both immigration reform and gun regulation were key areas in Obama's policy making. Although Obama heavily focused on the economic recession, education, and health care, he identified immigration reform as a priority for his first year of presidency. It can also be argued that Obama's initiative to pass immigration reform was a political move to gain Hispanic votes. Although public surveys proved immigration reform to be a priority for only over half of Hispanics, identification with illegal immigrants and their struggle, sometimes having friends and relatives in a danger of being deported and increased awareness of the issue could activate Hispanics to go to the polls since they previously had generally low voter turnout. Furthermore, his initiative to grant some illegal immigrants' citizenship would also make them eligible to vote. More Hispanic voters in the future could only benefit the Democratic party, with which Latinos tend to identify more than with Republicans.

Contrary to immigration, gun regulation was not a key priority of Obama's policy agenda from the beginning of his presidential campaign. However, in this case, prioritization of the issue was due to his personal involvement. His deep emotional engagement on the gun regulation issues was demonstrated by Obama's multiple emotion-filled public remarks where he could not hold back tears remembering the victims of mass shootings, or by his frustration when gun control proposals were not passed in the Congress.

Hypothesis 3, which claims the President tried to propose the immigration reform and stricter gun regulation, can also be considered affirmative based on the empirical data. Obama made several attempts to pass legislation on both issues through Congress. He either created a policy working group, provided guidance and suggestions for proposals' drafts, personally lobbied for proposals with congressional leaders, and called for action on both topics multiple times. The thesis also provides examples of when Obama was urged and pressured from the advisors to issue executive action on both topics. Obama reluctantly waited for Congress to act, being aware of the vulnerability of the executive action and the necessity to enact the laws in Congress. In this regard, this master thesis rejects Neustadt's behavioral concept of presidential power lying in the power of presidents to persuade and bargain for their agenda. As shown in chapter 4, the Congress that the Obama administration worked with was one of the most passive and uncooperative in recent years. It successfully sustained gridlock in both agendas, despite the fact that at least one Republican was a drafter in the bipartisan legislative proposals. Obama implied the vote was a political game, rather than objective look at the proposed bills, which further deepened his frustration.

Hypothesis 4 can be argued. In the case of immigration reform, Obama only acted unilaterally after multiple attempts to pass the reform through Congress. Accepting Howell's theory on expectations put on president rather than on the whole government, the failure of the immigration reform was admitted more to Obama than on Congress who refused to vote on the reform. Being pressured by the disappointment of the Latino voters and political elite for his inability to pass any reform, he issued executive actions to achieve partial advances in the problematic of millions of illegal immigrants. In case of gun regulation, he issued 20 executive actions and three presidential memoranda before Congress debated the bill. However, as stated in subchapter 6.1, these actions did not affect individuals and served only as guidance to propose the bill which would later be introduced in the Senate. Obama himself stated that he could not act alone on this issue and urged Congress to proceed with legislative action. To sum up, our main *Hypotheses* that President Obama acted unilaterally only after Congress blocked his attempts to advance his agenda in the areas of immigration and gun safety, can be accepted. For the discrepancy on the gun regulation executive action rejecting *Hypothesis 4*, there is an explanation for his unilateral action being only administrative guidelines and calls for an initiative for legislative proposal with no real actions.

Further discussions could be made beyond the researched hypotheses from the findings on the issue. These discussions can be divided in two areas:

Possible Reasons for Inability to Pass Proposals

One of the most obvious reasons is that both immigration reform and gun regulations are two of the most divisive issues of American political debate. In the case of immigration such possible reasons are as follows:

- a) A political undertone to the issue of immigration is underlined with the potential gain of significant number of voters for Democrats at the expense of Republicans, as naturalized Hispanics generally tend to vote for Democrats. Republicans could therefore not back an immigration reform, which would create a pathway to citizenship, thus voting rights, to hundred-thousands of illegal immigrants.
- b) Voting for the reform could cause potential loss of white voters for both Republicans and Democrats. The white electorate, who could feel illegal immigrants were stealing their jobs in times of high unemployment, might not favor a candidate who voted for some of them to stay in the country and awarding them for violating the law.
- c) Obama's unilateral actions, which faced criticism from his opposition, might have erased any hope left in the bipartisan response through the Congress. As then Speaker of the House Boehner said, he vowed not to pass any immigration reform if the President acted unilaterally.

The case of gun regulation is a little more complex.

- a) As previously mentioned, gun regulation is usually subject to state laws. Multiple laws exist in different states, either strengthening gun rights or gun regulation. The custom of having states regulating their gun laws serves as an obstacle for the federal government to pass a comprehensive gun regulation law. Additionally, variety of levels of gun regulation also makes it hard to pass a unifying compromise each of the 50 states would be willing to implement.
- b) The right to bear arms is protected by the 2nd amendment of the Constitution. Even though the proposals were limiting this right, the opposition easily labelled any attempt for stricter background checks as being unconstitutional.
- c) There is a strong lobbyist presence in Congress from gun rights organizations.
- d) It can also be argued that Obama should have acted faster. The public was deeply moved by the Newtown mass shooting of elementary school kids. If Obama had pushed more for the legislation to be voted on earlier in January or February, rather

than in April, maybe the pressure of the public would have made the lawmakers pass the bill.

- e) Amendment on background checks could maybe pass the vote, had it not been voted on together with the assault weapons ban as the latter was believed to be more controversial and harder to pass.

Misinterpretation of Presidential Directives

The importance of the conceptualization of the terms is another implication of the thesis. On numerous occasions, executive actions issued by the President were referred to as executive orders. An executive order has much greater authority than executive actions, as described in subchapter 1.3 concerning types of presidential directives. Even though President Obama issued a public statement about the actions and they were also included in the official agenda on the White House website, none of them were signed by the President himself with the exception of three presidential memoranda on gun violence research, recovered guns from tracing criminal action, and directing federal agencies to share information for background checks. The actions were signed by the Secretaries of the respective Departments. Such documents therefore automatically lose authority in comparison to directives signed by the president with the validity spurring from the derived powers of the U.S. Constitution. The danger in this misinterpretation is that not only media, but also political opposition created a false discourse over abuse of presidential authority.

Speaking of authority, presidential directives may not have lasting effects and could not therefore be that effective in providing comprehensive reform to enacted laws. They can be revoked by successors' executive orders, or be stopped in court in the form of injunction or temporary restraining order. Congress can also enact laws that would revoke regulations issued in presidential directives, although it rarely does so. In the case of Obama, he dealt with both a court injunction on DAPA and revocation, or attempts to revoke DACA by President Donald Trump. The impact of the presidential directives Obama issued is also undermined by the fact, that he issued them as executive actions which do not have legal authority, as mentioned in subchapter 1.3.4. Due to their short-term effectiveness, Obama could not claim legacy on immigration reform, nor on gun regulation. On the other hand, he could unilaterally act and advance at least parts of his proposals with real impact as shown in chapters 5 and 6.

8 Conclusion

The proposed master thesis focused on the usage of presidential directives of President Obama. More specifically, the thesis aimed to prove that he only acted unilaterally due to being previously blocked on the researched issues of immigration reform and gun regulation in Congress. The unilateral decisions of the President were not made and decided on in the vacuum, rather they were a result of continuous political debate and process. The thesis applied the concepts and theory of William Howell of the increasing expectations on the U.S. presidents in contradiction to the unchanged character of the U.S. Constitution. As a result, presidents needed to expand their powers beyond the expressed authority given to them by the U.S. Constitution.

In regard to that, the thesis put into comparison two opposing theoretical approaches in the study of presidential power – Neustadt’s power of persuasion and Rossiter’s power of command. These concepts were tested in the case study of President Obama’s approach to two controversial, divisive issues – immigration and gun control. There the thesis looked whether president was successful with his bargaining power to persuade legislators to pass legislation on the issue as according to Neustadt, or rather he had to rely on the institutional powers in accordance to Rossiter. Adopting Rossiter’s theoretical approach on the case study of the Obama presidency led to the formulation of four hypotheses. The first dealt with the identification of high expectations on President Obama as a precondition for the President to act unilaterally. The second one assumed that the President would act unilaterally on issues important or key to his political agenda. In this hypothesis, immigration and gun safety were identified as priorities of Obama’s policymaking. In the third hypothesis, the thesis focused on the attempts of the President to advance this agenda through Congress. The fourth one then suggested that the President decided to act unilaterally on the chosen issues only when he was blocked in Congress.

The main hypothesis for the presented thesis expected a connection between these four hypotheses and summarized it in the assumption that the President acted unilaterally on immigration and gun control because the higher expectations on him from the public and political elite created a necessity for him to act in accordance with his political priorities. After these priorities failed to become laws, Obama issued unilateral directives to advance in the areas he had promised to reform. Data researched to confirm the hypotheses provided a summary of political discourse, presidential proposals and executive actions during Obama’s presidency on the issue of immigration and gun safety. Based on empirical data,

the thesis successfully confirmed all four hypotheses, thus accepting Rossiter's and Howell's institutionalist theory of presidential power.

As shown in chapter 4, there was evident decline in Congress' productivity during Obama's presidency. Providing the assumption that the already passive Congress would not act on controversial issues, President Obama expanded his executive authority. The thesis aimed to prove that his most criticized unilateral actions were a result of congressional gridlock and previous failed attempts to pass the legislation in Congress. Obama was advised numerous times to enhance his executive authority on the issues of both immigration and gun control. Yet, Obama persevered and waited for Congress to attempt to enact the laws in the constitutional order.

In other words, the highly criticized usage of presidential directives by President Obama were proven to be result of number of factors. Firstly, misinterpretation of presidential directives exaggerated the legal authority of executive actions by mistaking them with executive orders. That created a misleading discourse of the abuse of power by the President. Secondly, the President faced the preconditional disadvantage of higher expectations and closer observance of his political activities. The unpopular presidency of George W. Bush made it easier for voters to put higher anticipation on a fresh, charismatic, rhetorically skilled candidate who made voters believe in his political ability to improve the state of public affairs and who, just by being African American, represented the concept of transformation, change and hope. This factor caused pressure to make decisive and impactful decisions on the key areas of his policies. Thirdly, one of the most passive and uncooperative Congresses in U.S. history made it impossible to advance the political agenda of Obama on the issue of immigration and gun safety through congressional legislation. Gun rights lobbying, gridlock and political games played major roles in rejecting proposed legislation, which were in both cases bipartisan efforts towards solving pressing issues. Finally, feeling the pressure of expectations on making significant changes on the issues, combined with the frustrating resistance from Congress, President Obama issued presidential directives in the form of executive actions to make some, albeit partial, progress towards immigration reform and gun violence reduction.

Súhrn

Predložená diplomová práca mala za cieľ osvetliť motívy a podmienky používania prezidentských dekrétov prezidentom Barackom Obamom na konkrétnych prípadoch imigračnej reformy a regulácii zbraní. V úvode najprv predstavila problematiku prezidentských dekrétov a objasnila dôvody ich existencie a výnimočnosti v americkom politickom systéme. Ďalej sa pokúsila klasifikovať prezidentské dekréty, ich typológiu a rozličné implikácie, ktorý každý z týchto typov nesie. Týmto objasnením práca chcela predísť misinterpretáciám, ktorých sa dopúšťajú niekoľkí akademici, politická elita v USA a hlavne americké médiá.

Pred skúmaním samotnej prípadovej štúdie práca venuje kapitolu teoretickému základu a rešerši literatúry o problematike prezidentskej moci. Na základe toho práca popisuje adoptovaný teoretický prístup o medzere medzi zvyšujúcimi sa očakávaniami na prezidenta a skutočnou mocou, ktorou prezidenti disponujú na základe ústavy. Táto medzera slúži ako odôvodnenie používania prezidentských dekrétov. V metodológii sa diplomová práca snaží rovnako dokázať, že prezident Obama konal unilaterálne až potom, čo boli jeho pokusy o presadenie kľúčových priorít jeho politickej agendy – imigračná reforma a regulácia zbraní – v Kongrese blokované politickými hrami a gridlockom.

Analytická časť začína identifikovaním politickej agendy prezidenta Obamu aby dokázala, že imigračná reforma a regulácia zbraní boli skutočne prezidentské priority. Práca ďalej pokračuje upozornením na zvýšené očakávania na prezidenta. Tieto skutočnosti práca dáva do kontextu so stručným kvantitatívnym výskumom o používaní prezidentských dekrétov prezidentom Obamom v porovnaní s jeho predchodcami. Rovnako kvantifikuje nečinnosť, pasivitu a opozíciu Kongresu na počte presadených zákonov v súlade s pozíciou prezidentov od Ronalda Reagana po Baracka Obamu. Samostatné kapitoly o imigračnej reforme a regulácii zbraní sledujú proces navrhnutia zákonov pre obe zmieňované problematiky, ich eventuálne odmietnutie v Kongrese a vydaný prezidentský dekrét ako výsledok zlyhania presadenia prezidentskej agendy cez regulárny legislatívny proces.

Výsledky práce dokazujú, že prezident Obama skutočne konal unilaterálne vo veci imigračnej reformy a regulácii zbraní až potom, čo bol blokovaný v Kongrese a nepotvrdili, že by prezident konal nad rámec právomocí daných ústavou USA. Kongres počas prezidentských rokov Obamu rovnako patril k jedným z najnečinnnejších Kongresov za posledné dve dekády. Zvýšené očakávania na prezidenta a prioritá oboch problematík mohli prispieť k urgencii konať unilaterálne vo forme vydania prezidentských dekrétov.

Bibliography

Primary:

Legislative documents:

Federal Firearms Act, U.S. Code 26 (1938). <http://legisworks.org/sal/52/stats/STATUTE-52-Pg1250.pdf>.

Federal Register Act, U.S. Code 44 (1935). <https://www.archives.gov/federal-register/laws/federal-register/1505.html>.

Gun Control Act, U.S. Code 18 (1968). <https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213.pdf>.

Immigration and Nationality Act, U.S. Code 8 (1965). <https://www.law.cornell.edu/uscode/text/8>.

National Firearms Act, U.S. Code 26 (1934). <http://legisworks.org/sal/48/stats/STATUTE-48-Pg1236.pdf>.

Public Safety and Recreational Firearms Use Protection Act. Public Law 103-322. U.S. Statutes at Large 108 (1994): 1996-2010. <http://www.legisworks.org/GPO/STATUTE-108-Pg1796.pdf>, 1996-1997.

The French Constitution of October 4, 1958. https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

U.S. Congress. House. *Removal Clarification Act of 2010*. H.R.5281. 111th Cong., 2nd sess. Introduced in House May 12, 2010. <https://www.congress.gov/bill/111th-congress/house-bill/5281>.

U.S. Congress. House. *S.Amdt. 2908*. H.R.3762. 114th Cong., 1st sess. Introduced in House October 16, 2015. <https://www.congress.gov/bill/114th-congress/house-bill/3762/text>.

U.S. Congress. House. *S.Amdt. 2910*. H.R.3762. 114th Cong., 1st sess. Introduced in House October 16, 2015. <https://www.congress.gov/bill/114th-congress/house-bill/3762/text>.

U.S. Congress. Senate. *Assault Weapon Ban of 2013*. S.150. 113th Cong., 1st sess. Introduced in Senate January 24, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/150/>.

U.S. Congress. Senate. *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013*. S.744. 113th Cong., 1st sess. Introduced in Senate April 16, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/744/>.

U.S. Congress. Senate. *Fix Gun Checks Act of 2013*. S.374. 113th Cong., 1st sess. Introduced in Senate February 25, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/374/>.

U.S. Congress. Senate. *S.Amdt. 715*. S.649. 113th Cong., 1st sess. Proposed in Senate April 11, 2013. <https://www.congress.gov/amendment/113th-congress/senate-amendment/715/>.

U.S. Congress. Senate. *Safe Communities, Safe Schools Act of 2013*. S.649. 113th Cong., 1st sess. Introduced in Senate March 21, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/649/>.

U.S. Congress. Senate. *School and Campus Safety Enhancements Act of 2013*. S.146. 113th Cong., 1st sess. Introduced in Senate January 24, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/146/>.

U.S. Congress. Senate. *Stop Illegal Trafficking in Firearms Act of 2013*. S.54. 113th Cong., 1st sess. Introduced in Senate January 22, 2013. <https://www.congress.gov/bill/113th-congress/senate-bill/54/>.

U.S. Constitution. <https://www.archives.gov/founding-docs/constitution-transcript>.

Presidential Directives:

"Memoranda." *The American Presidency Project*. Accessed May 8, 2019. <https://www.presidency.ucsb.edu/documents/app-categories/written-presidential-orders/memoranda>.

"Proclamations." *The American Presidency Project*. Accessed May 8, 2019. <https://www.presidency.ucsb.edu/documents/app-categories/written-presidential-orders/proclamations>.

U.S. President. Executive Order. "Authorizing the Secretary of War to Prescribe Military Areas, Executive Order 9066." *Federal Register* 7, no. 39 (February 24, 1942): 1531. <https://www.govinfo.gov/content/pkg/FR-1942-02-26/pdf/FR-1942-02-26.pdf>.

U.S. President. Executive Order. "Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies, Executive Order 10340." *Federal Register* 17, no. 71 (April 8, 1952): 3139. <https://www.govinfo.gov/content/pkg/FR-1952-04-10/pdf/FR-1952-04-10.pdf>.

U.S. President. Executive Order. "Protecting the Nation From Foreign Terrorist Entry Into the United States, Executive Order 13769." *Federal Register* 82, no. 20 (January 27, 2017): 8977. <https://www.govinfo.gov/content/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

U.S. President. Executive Order. "Protecting the Nation From Foreign Terrorist Entry Into the United States, Executive Order 13780." *Federal Register* 82, no. 45 (March 6, 2017): 13209. <https://www.govinfo.gov/content/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

U.S. President. Presidential Memorandum. "Memorandum on the Commonwealth of Puerto Rico." *National Archives* (November 30, 1992). <https://www.govinfo.gov/content/pkg/PPP-1992-book2/pdf/PPP-1992-book2-doc-pg2171.pdf>.

U.S. President. Presidential Memorandum. "Memorandum on the Title X Gag Rule." *National Archives* (January 22, 1993). <https://www.govinfo.gov/content/pkg/PPP-1993-book1/pdf/PPP-1993-book1-doc-pg10-2.pdf>.

U.S. Secretary of Homeland Security. Memorandum. "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children." *U.S Department of Homeland Security* (June 15, 2012). <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

U.S. Secretary of Homeland Security. Memorandum. "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." *U.S Department of Homeland Security* (June 15, 2012). https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action_1.pdf.

U.S. Secretary of Homeland Security. Memorandum. "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." *U.S Department of Homeland Security* (November 20, 2014). https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

Court Decisions:

Complaint at District Court for The Southern District of Texas Brownsville Division. *Texas, et al. v. United States, et al.* (T.X.S.D. 2014). <https://web.archive.org/web/20150402104146/https://www.texasattorneygeneral.gov/files/epress/files/20141203Multi-stateImmigrationOrderLawsuit%281%29.pdf>.

Texas, et al. v. United States, et al. 86 F.3d 591 (5th Cir. 2015). <https://www.leagle.com/decision/infdco20150217f96>.

United States v. Belmont, 301 U.S. 324 (1937). <https://supreme.justia.com/cases/federal/us/301/324/>.

United States v. Curtiss-Wright Export Corp. 299 U.S. 304 (1936). <https://supreme.justia.com/cases/federal/us/299/304/>.

United States v. Texas, 579 U.S. ____ (2016). <https://supreme.justia.com/cases/federal/us/579/15-674/>

Weinberger v. Rossi, 456 U.S. 25 (1982). <https://supreme.justia.com/cases/federal/us/456/25/>.

Youngstown Sheet & Tube Co. v. Sawyer. 343 U.S. 579 (1952). <https://supreme.justia.com/cases/federal/us/343/579/>.

Other U.S. Government documents:

U.S. Congress. House of Representatives. Committee on Government Operations. *Executive Orders and Proclamations: A Study of a Use of Presidential Powers*. 85th Cong., 1s sess., 1957. H. Rep. 89166.
<https://babel.hathitrust.org/cgi/pt?id=mdp.39015034716152>.

U.S. Congress. Senate. Special Committee on National Emergencies and Delegated Emergency Powers. *Executive Orders in Times of War and National Emergency*. 93rd Cong., 2d sess., 1974. S. Rep. 26–555.
<https://babel.hathitrust.org/cgi/pt?id=mdp.39015082037311;view=1up;seq=3>.

U.S. Library of Congress. Congressional Research Service. *Executive orders, Issuance, Modification and Revocation*, by Vivian S. Chu, and Todd Garvey. RS20846. 2014.
https://proquest.libguides.com/ld.php?content_id=6434198.

U.S. Library of Congress. Congressional Research Service. *Gun Control Legislation in the 113th Congress*, by William J. Krouse. R42987. 2015.
<https://fas.org/sgp/crs/misc/R42987.pdf>.

U.S. Library of Congress. Congressional Research Service. *Presidential Directives: Background and Overview*, by Harold C. Relyea. 98 611 GOV. 2013.
<https://fas.org/sgp/crs/misc/98-611.pdf>.

"Party Division." *United States Senate*. Accessed May 7, 2019.
<https://www.senate.gov/history/partydiv.htm/>.

"Party Divisions of the House of Representatives, 1789 to Present." *History, Art & Archives United States House of Representatives*. Accessed May 7, 2019.
<https://history.house.gov/Institution/Party-Divisions/Party-Divisions/>.

Speeches and Remarks:

Johnson, Lyndon B. "Remarks at the Signing of the Immigration Bill." Remarks, Liberty Island, New York, October 03, 1965. LBJ Presidential Library.
<http://www.lbjlibrary.org/lyndon-baines-johnson/timeline/lbj-on-immigration>.

Hamilton, Alexander "The Federalist Thesiss No. 23." n.d. Yale Law School, Lillian Goldman Law Library. Lillian Goldman Law Library. Accessed April 01, 2019.
http://avalon.law.yale.edu/18th_century/fed23.asp.

Hamilton, Alexander "The Federalist Thesiss No. 70." n.d. Yale Law School, Lillian Goldman Law Library. Lillian Goldman Law Library. Accessed April 01, 2019.
http://avalon.law.yale.edu/18th_century/fed70.asp.

Obama, Barack. "Address Accepting the Presidential Nomination at the Democratic National Convention in Denver: 'The American Promise'." Speech, Denver, Colorado, August 28, 2008. The American Presidency Project.
<https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-democratic-national-convention-denver>.

Obama, Barack. "Address Before a Joint Session of the Congress on the State of the Union." Speech, Washington, DC, January 27, 2010. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-17>.

Obama, Barack. "Address Before a Joint Session of the Congress on the State of the Union." Speech, Washington, DC, February 12, 2013. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/address-before-joint-session-congress-the-state-the-union-2>.

Obama, Barack. "Address Before a Joint Session of the Congress on the State of the Union." Speech, Washington, DC, January 28, 2014. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-21>.

Obama, Barack. "Address Before a Joint Session of the Congress on the State of the Union." Speech, Washington, DC, January 12, 2016. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-19>.

Obama, Barack. "Remarks at the 79th Annual League of United Latin American Citizens Convention in Washington, DC." Remarks, Washington, DC, July 08, 2008. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/remarks-the-79th-annual-league-united-latin-american-citizens-convention-washington-dc>.

Obama, Barack. "Remarks by the President at Sandy Hook Interfaith Prayer Vigil." Remarks, Newtown, Connecticut, December 16, 2012. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2012/12/16/remarks-president-sandy-hook-interfaith-prayer-vigil>.

Obama, Barack. "Remarks by the President in Address to the Nation on Immigration." Remarks, Washington, DC, November 20, 2014. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

Obama, Barack. "Remarks by the President on Common-Sense Gun Safety Reform." Remarks, Washington, DC, January 5, 2016. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2016/01/05/remarks-president-common-sense-gun-safety-reform>.

Obama, Barack. "Remarks by the President on Comprehensive Immigration Reform." Remarks, Las Vegas, Nevada, January 29, 2013. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2013/01/29/remarks-president-comprehensive-immigration-reform>.

Obama, Barack. "Remarks by the President on Immigration." Remarks, Washington, DC, June 15, 2012. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

Obama, Barack. "Remarks by the President on the Economy and Housing." Remarks, Las Vegas, Nevada, October 24, 2011. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2011/10/24/remarks-president-economy-and-housing>.

Obama, Barack. "Remarks in Canton, Ohio Presenting Presidential Campaign "Closing Argument." Remarks, Canton, Ohio, October 27, 2008. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/remarks-canton-ohio-presenting-presidential-campaign-closing-argument>

Obama, Barack. "Remarks in Espanola, New Mexico." Remarks, New York City, New York, September 18, 2008. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/remarks-espanola-new-mexico>.

Obama, Barack. "Remarks to the Clinton Global Initiative in New York City." Remarks, New York City, New York, September 25, 2008. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/remarks-the-clinton-global-initiative-new-york-city>.

Obama, Barack. "Remarks to the National Association of Latino Elected and Appointed Officials in Washington, DC." Remarks, Washington, DC, July 28, 2008. The American Presidency Project. <https://www.presidency.ucsb.edu/documents/remarks-the-national-association-latino-elected-and-appointed-officials-washington-dc>.

Obama, Barack. "Statement by the President." Statement, Washington, DC, April 17, 2013. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2013/04/17/statement-president>.

Obama, Barack. "Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon." Statement, Washington, DC, October 01, 2015. The White House President Obama. <https://obamawhitehouse.archives.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon>.

Secondary:

Books:

Cohen, Jeffrey E. *Presidential Leadership in Public Opinion: Causes and Consequences*. Cambridge: Cambridge Univ. Press, 2015.

Cooper, Phillip J. *By Order of the President: The Use and Abuse of Executive Direct Action*. Lawrence: University Press of Kansas, 2002.

Cronin, Thomas E., Michael A. Genovese, and Meenekshi Bose. *The Paradoxes of the American Presidency*. New York: Oxford University Press, 2004.

Dodds, Graham G. *Take up Your Pen: Unilateral Presidential Directives in American Politics*. Philadelphia: University of Pennsylvania Press, 2013.

- Ellis, Richard J. *Judging Executive Power Sixteen Supreme Court Cases That Have Shaped the American Presidency*. Lanham: Rowman & Littlefield, 2009.
- Fírtová, Magdalena, Hornát, Jan, and Sehnálková, Jana (eds.). *Prezidentství Baracka Obamy: naplněné vize?*. Prague: Charles University in Prague, Karolinum Press, 2017.
- Fisher, Louis. *Constitutional Conflicts between Congress and the President*. Princeton, N.J: Princeton University Press, 1985.
- Gallup, Alec, and Frank Newport. *The Gallup Poll: Public Opinion 2008*. Lanham, MD: Rowman & Littlefield Publishers, 2009.
- Graham, John D. *Obama on the Home Front: Domestic Policy Triumphs and Setbacks*. Bloomington ; Indianapolis: Indiana University Press, 2016.
- Han, Lori Cox. *New Directions in the American Presidency*. New York, NY: Routledge, 2018
- Heideking, Jürgen, and Christof Mauch. *Dějiny USA*. Praha: Grada, 2012.
- Howell, William G., and David Milton Brent. *Thinking about the Presidency: The Primacy of Power*. Princeton: Princeton University Press, 2015.
- Koenig, Louis W. *The Chief Executive*. New York: Harcourt Brace Jovanovich, 1975.
- Kozák, Kryštof. *Měkký Podbříšek Navěky: Důsledky Asymetrie Mezi Spojenými Státy a Mexikem*. Praha: Dokořán, 2010.
- Krutz, Glen S., and Jeffrey S. Peake. *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers*. Ann Arbor: University of Michigan Press, 2009.
- Mills, Nicolaus, and Toni Morrison. *Arguing Immigration: The Debate over the Changing Face of America*. New York: Simon & Schuster, 1994.
- Neustadt, Richard E. *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. New York, NY: Free Press, 1991.
- Perottino, Michel. *Francouzský Politický Systém*. Praha: Slon, 2005.
- Pfiffner, James P. *The Modern Presidency*. Boston, MA: Wadsworth Cengage Learning, 2011.
- Plano, Jack C., and Milton Greenberg. *The American Political Dictionary*. Belmont, CA: Wadsworth/Thomson Learning, 2002.
- Rossiter, Clinton Lawrence. *The American Presidency*. Toronto: New American Library, 1962.
- Říchová, Blanka. *Přehled Moderních Politologických Teorií*. Praha: Portál, 2014.

Tichenor, Daniel J. *Dividing Lines: The Politics of Immigration Control in America*. Princeton: Princeton University Press, 2009.

Journal Articles:

Aguirre, Adalberto. "Immigration on the Public Mind: Immigration Reform in the Obama Administration." *Social Justice* 35, no. 4 (114) (2008): 4-11.
<http://www.jstor.org/stable/29768511>.

Ashbee, Edward. "The Obama Administration, the Left and Narratives of Failure." *The Political Quarterly* 83, no. 3 (2012): 567-75. doi:10.1111/j.1467-923x.2012.02337.x.

Bunk, Amy. "Federal Register 101." *Proceedings* 76, no. 1 (2010): 55-57.
https://www.federalregister.gov/uploads/2011/01/fr_101.pdf

Chemerinsky, Erwin. "Controlling Inherent Presidential Power: Providing a Framework for Judicial Review." *Southern California Law Review* 56, no. 4 (1982): 863-912.
<https://scholar.law.colorado.edu/articles/7>.

Moe, Terry M., and William G. Howell. "Unilateral Action and Presidential Power: A Theory." *Presidential Studies Quarterly* 29, no. 4 (1999): 850-73. doi:10.1111/1741-5705.00070.

Woolley, John T., and Gerhard Peters. "The Contemporary Presidency: Do Presidential Memo Orders Substitute for Executive Orders? New Data." *Presidential Studies Quarterly* 47, no. 2 (2017): 378-93. doi:10.1111/psq.12374.

Websites:

"2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill." Pew Research Center's Hispanic Trends Project. February 23, 2016.
<https://www.pewhispanic.org/2007/12/13/2007-national-survey-of-latinos-as-illegal-immigration-issue-heats-up-hispanics-feel-a-chill/>.

Berman, Russell. "What's the Answer to Political Polarization in the U.S.?" *The Atlantic*. March 10, 2016. <https://www.theatlantic.com/politics/archive/2016/03/whats-the-answer-to-political-polarization/470163/>.

Blake, Aaron. "Manchin-Toomey Gun Amendment Fails." *The Washington Post*. April 17, 2013. https://www.washingtonpost.com/news/post-politics/wp/2013/04/17/manchin-toomey-gun-amendment-fails/?utm_term=.d699adf83f29.

Bouie, Jamelle. "Congress Takes Up Gun Violence." *The New York Times*. January 30, 2013. <https://www.nytimes.com/2013/01/30/opinion/congress-takes-up-gun-violence.html>.

Brown, Carrie Budoff. "Hispanic Media Take on Obama." *POLITICO*. August 11, 2010.
<https://www.politico.com/story/2010/08/hispanic-media-take-on-obama-040927>.

Buchanan, Larry, Josh Keller, Richard A. Oppel, and Daniel Victor. "How They Got Their Guns." The New York Times. October 03, 2015. Accessed May 02, 2019. https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html?_r=0.

Childress, Sarah. "How the Gun-Rights Lobby Won After Newtown." PBS. December 10, 2013. <https://www.pbs.org/wgbh/frontline/article/how-the-gun-rights-lobby-won-after-newtown/>.

Crews Jr., Clyde Wayne. "Obama's Legacy: An Abundance Of Executive Actions." Forbes. January 11, 2016. <https://www.forbes.com/sites/waynecrews/2016/01/10/this-inventory-of-obamas-dozens-of-executive-actions-frames-his-final-state-of-the-union-address/#591514b575f5>.

Curtis, Coleen. "President Obama Announces New Measures to Prevent Gun Violence." National Archives and Records Administration. January 16, 2016. <https://obamawhitehouse.archives.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

Cusack, Bob. "Despite Promises, Obama, Dem Congress Have Been Gun-friendly." The Hill. February 03, 2016. <https://thehill.com/homenews/administration/115953-despite-promises-obama-dem-congress-have-been-gun-friendly>.

Duran, Nicole, and David J. Ake. "Latino Activists: Obama 'completely Failed Us'." Washington Examiner. September 02, 2016. <https://www.washingtonexaminer.com/latino-activists-obama-completely-failed-us>.

Edwards-Levy, Ariel. "Barack Obama: Are We 'Actually Shook Up Enough' By Sandy Hook?" HuffPost. December 31, 2012. https://www.huffpost.com/entry/barack-obama-newtown-shooting_n_2384525.

Everett, Burgess, Seung Min Kim, and Nick Gass. "Gun Measures Fail in Senate." POLITICO. December 03, 2015. <https://www.politico.com/story/2015/12/gun-amendment-democrats-216389>.

"FACT SHEET: Strengthening the Federal Background Check System to Keep Guns out of Potentially Dangerous Hands." National Archives and Records Administration. Accessed May 08, 2019. <https://obamawhitehouse.archives.gov/the-press-office/2014/01/03/fact-sheet-strengthening-federal-background-check-system-keep-guns-out-p>.

"Fisher on the Supreme Court's Expansion of Presidential Power." Just Security. December 14, 2017. <https://www.justsecurity.org/44564/fisher-supreme-courts-expansion-presidential-power/>.

Foley, Elise. "Obama Makes Bold Move On Immigration." HuffPost. June 15, 2012. https://www.huffpost.com/entry/obama-immigration-order-deportation-dream-act_n_1599658.

- Folman, Mark, Gavin Aronsen, and Deanna Pan. "A Guide to Mass Shootings in America." Mother Jones. May 01, 2019. <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>.
- Frey, William H. "Minority Turnout Determined the 2012 Election." Brookings. August 24, 2016. <http://www.brookings.edu/research/thesis/2013/05/10-election-2012-minority-voter-turnout-frey>.
- Hansler, Jennifer, and Paola Chavez. "2016 Candidates React to Obama's Gun Control Measures." ABC News. January 05, 2016. <https://abcnews.go.com/Politics/2016-candidates-react-obamas-gun-control-measures/story?id=36097217>.
- Herszenhorn, David M. "Senate Democrats to Renew Push for Gun Control Measures." The New York Times. October 08, 2015. https://www.nytimes.com/2015/10/08/us/politics/senate-democrats-to-renew-push-for-gun-control-measures.html?_r=0.
- "Hispanics and the New Administration." Pew Research Center's Hispanic Trends Project. February 23, 2016. <https://www.pewhispanic.org/2009/01/15/hispanics-and-the-new-administration/>.
- Keneally, Meghan. "4 Years After Sandy Hook, Obama Leaves a Legacy of Little Progress on Gun Laws." ABC News. December 14, 2016. <https://abcnews.go.com/Politics/years-sandy-hook-obama-leaves-legacy-progress-gun/story?id=44163755>.
- Kessler, Glenn. "Claims regarding Obama's Use of Executive Orders and Presidential Memoranda." The Washington Post. December 31, 2014. https://www.washingtonpost.com/news/fact-checker/wp/2014/12/31/claims-regarding-obamas-use-of-executive-orders-and-presidential-memoranda/?noredirect=on&utm_term=.2ada190b5dad.
- Korte, Gregory. "Obama Issues 'executive Orders by Another Name'." USA Today. December 17, 2014. <https://eu.usatoday.com/story/news/politics/2014/12/16/obama-presidential-memoranda-executive-orders/20191805/>.
- Leibovich, Mark. "The Speech That Made Obama." The New York Times. July 27, 2016. <https://www.nytimes.com/2016/07/27/magazine/the-speech-that-made-obama.html>.
- Lopez, German. "Study: President Obama's Election Scared Americans into Buying More Guns." Vox. January 21, 2016. <https://www.vox.com/2016/1/21/10801664/obama-gun-sales>.
- Lowery, Wesley. "Boehner: 'Difficult' to Move on Immigration Reform in 2014." The Washington Post. February 06, 2014. https://www.washingtonpost.com/news/post-politics/wp/2014/02/06/boehner-difficult-to-move-on-immigration-reform-in-2014/?utm_term=.6def33bdc541.
- McDaniel, Justin, Robby Korth, and Jessica Boehm. "State Lawmakers Take Aim at Federal Gun Control – Center for Public Integrity." Center for Public Integrity. August 29,

2014. <https://publicintegrity.org/federal-politics/state-lawmakers-take-aim-at-federal-gun-control/>.

Miranda, Luis. "Get the Facts On the DREAM Act." National Archives and Records Administration. December 01, 2010. <https://obamawhitehouse.archives.gov/blog/2010/12/01/get-facts-dream-act>.

Murse, Tom. "Executive Actions and Executive Orders Are Two Different Things." ThoughtCo. March 26, 2018. <https://www.thoughtco.com/executive-actions-versus-executive-orders-3367594>.

Napolitano, Andrew P. "Judge Napolitano: Why Obama's Executive Action on Guns Is Unconstitutional." Fox News. January 05, 2016. <https://www.foxnews.com/opinion/judge-napolitano-why-obamas-executive-action-on-guns-is-unconstitutional>.

"Now is the Time to Do Something About Gun Violence." *The White House President Obama*. Accessed May 7, 2019. <https://obamawhitehouse.archives.gov/issues/preventing-gun-violence>.

"Obama: US gun control laws 'greatest frustration of my presidency' - BBC News." BBC News. YouTube. July 23, 2015. <https://www.youtube.com/watch?v=IOFOFZxfiDc>.

O'Brien, Michael. "Gun Control Group Gives Obama failing Grade; Says It's Been Disappointing Year." The Hill. February 04, 2016. <https://thehill.com/blogs/blog-briefing-room/news/76593-leading-gun-control-group-has-harsh-words-for-obama>.

"Optimism Abounds as Power Changes Hands in Washington." Gallup.com. January 20, 2009. <https://news.gallup.com/poll/113890/Optimism-Abounds-Power-Changes-Hands-Washington.aspx>.

Parker, Ashley, and Jonathan Martin. "Senate, 68 to 32, Passes Overhaul for Immigration." The New York Times. June 27, 2013. <https://www.nytimes.com/2013/06/28/us/politics/immigration-bill-clears-final-hurdle-to-senate-approval.html>.

Patterson, James T. "The Rise of Presidential Power before World War II." *Law and Contemporary Problems* 40, no. 2 (1976): 39. doi:10.2307/1191370.

Peters, Gerhard and John T. Woolley. "Executive Orders." The American Presidency Project. Ed. John T. Woolley and Gerhard Peters. Santa Barbara, CA. 1999-2017.

Pilkington, Ed. "NRA Fired up to Campaign against Obama as Annual Meeting Kicks off." The Guardian. April 13, 2012. <https://www.theguardian.com/world/2012/apr/13/national-rifle-association-annual-meeting-obama>.

Posner, Richard A. "Bad News." The New York Times. July 31, 2005. <https://www.nytimes.com/2005/07/31/books/review/bad-news.html>.

Preston, Julia. "Illegal Immigrant Students Protest at McCain Office." The New York Times. May 18, 2010. <https://www.nytimes.com/2010/05/18/us/18dream.html>.

Preston, Julia, and John H. Cushman. "Obama to Permit Young Migrants to Remain in U.S." The New York Times. June 15, 2012. <https://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html>.

"President Obama cries during gun violence speech." CNN. YouTube. January 05, 2016. <https://www.youtube.com/watch?v=ijFPMrptrwE>.

"Republicans Savage Obama Immigration Executive Action." BBC News. November 21, 2014. <https://www.bbc.com/news/world-us-canada-30150391>.

Ronald-Collins. "Ask the Author: The Imperial Presidency and the Supreme Court." SCOTUSblog. February 20, 2019. <https://www.scotusblog.com/2018/10/ask-the-author-the-imperial-presidency-and-the-supreme-court/>.

Rosenfeld, Everett. "Politicians and Industry Respond to Obama's Immigration Announcement." CNBC. November 21, 2014. <https://www.cnbc.com/2014/11/20/politicians-and-industry-respond-to-obamas-immigration-announcement.html>.

Rosentiel, Tom. "Who Expects to Gain -- and Lose -- Under Obama." Pew Research Center. November 27, 2012. <https://www.pewresearch.org/2009/01/21/who-expects-to-gain-and-lose-under-obama/>.

Savage, Charlie. "Prominent Republicans Criticize Obama's Executive Actions." The New York Times. January 16, 2013. <https://thecaucus.blogs.nytimes.com/2013/01/16/prominent-republicans-criticize-obamas-executive-actions/>

"Senator Barack Obama 2004 Democratic National Convention Keynote Speech." C-SPAN. January 27, 2004. <https://www.c-span.org/video/?182718-3/senator-barack-obama-2004-democratic-national-convention-keynote-speech>.

Shear, Michael D., and Eric Lichtblau. "On Guns, Obama Cannot Easily Sidestep Congress." The New York Times. December 04, 2015. <https://www.nytimes.com/2015/12/05/us/politics/white-house-seeks-path-to-executive-action-on-gun-sales.html?module=inline>.

Sherman, Jake. "Boehner Warns Obama on Immigration." POLITICO. November 13, 2014. <https://www.politico.com/story/2014/11/john-boehner-obama-immigration-112861>.

Smith, Aaron. "Smart Guns, Fingertip Vaults and Steel Safes: Tech to Make Guns Safe." CNNMoney. January 09, 2016. <https://money.cnn.com/2016/01/07/technology/obama-gun-control-gun-tech/>.

Smith, Ben. "NRA: Obama Most Anti-gun Candidate Ever, Will Ban Guns." POLITICO. August 06, 2008. <https://www.politico.com/blogs/ben-smith/2008/08/nra-obama-most-anti-gun-candidate-ever-will-ban-guns-010821>.

Strauss, Mark. "The Top Think Tanks Aren't Thinking About Science." Io9. December 16, 2015. <https://io9.gizmodo.com/the-top-think-tanks-arent-thinking-about-science-1665107428>.

"Strong Confidence in Obama - Country Seen as Less Politically Divided." Pew Research Center for the People and the Press. January 14, 2013. <https://www.people-press.org/2009/01/15/strong-confidence-in-obama-country-seen-as-less-politically-divided/>.

Tapper, Jake. "Where Have You Been on Gun Violence? Today's Q for O - 12/19/12." ABC News. December 19, 2012. <https://abcnews.go.com/blogs/politics/2012/12/where-have-you-been-on-gun-violence-todays-q-for-o-121912/>.

"Three Decades of Congressional Productivity, 1987-2017." Pew Research Center. January 11, 2018. https://www.pewresearch.org/fact-tank/2019/01/25/a-productivity-scorecard-for-115th-congress/ft_18-01-09_congressproductivity/.

Thrush, Glenn, and Reid J. Epstein. "Obama's Biggest Loss." POLITICO. April 18, 2013. <https://www.politico.com/story/2013/04/gun-control-vote-obamas-biggest-loss-090244>.

"Vital Statistics on Congress." Brookings. April 10, 2019. <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/#datatables>.

Weiner, Rachel. "Immigration's Gang of 8: Who Are They?" The Washington Post. January 28, 2013. https://www.washingtonpost.com/news/the-fix/wp/2013/01/28/immigrations-gang-of-8-who-are-they/?utm_term=.058076e3f67d.

Wong, Scott. "Boehner: House Will Act to Stop Obama." The Hill. February 02, 2016. <https://thehill.com/homenews/house/224982-boehner-house-will-act-to-stop-obama>.

Wong, Scott, and Shira Toeplitz. "DREAM Act Dies in Senate." POLITICO. December 20, 2010. <https://www.politico.com/story/2010/12/dream-act-dies-in-senate-046573>.

Yglesias, Matthew. "Study: DACA Increased Immigrants' Education, Labor Force Participation, and Productivity." Vox. February 14, 2018. <https://www.vox.com/2018/2/14/17003484/daca-kuka-shenhav-shih>.