

IMPEACHMENT OF ALEJANDRO N.  
MAYORKAS, SECRETARY OF THE  
DEPARTMENT OF HOMELAND SECURITY

---

R E P O R T

OF THE

COMMITTEE ON HOMELAND  
SECURITY HOUSE OF  
REPRESENTATIVES

together with

DISSENTING VIEWS

TO ACCOMPANY

H. RES. 863



**IMPEACHMENT OF ALEJANDRO N. MAYORKAS, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY**

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H. RES. 863



February 3, 2024.—Referred to the House Calendar and ordered to be printed

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IMPEACHING ALEJANDRO NICHOLAS MAYORKAS, SECRETARY OF  
HOMELAND SECURITY, FOR HIGH CRIMES AND MISDEMEANORS

FEBRUARY --, 2024.—Referred to the House Calendar and ordered to be printed

Mr. GREEN of Tennessee, from the Committee on Homeland  
Security, submitted the following

R E P O R T

together with

\_\_\_\_ VIEWS

[To accompany H. Res. 863]

~~[Including cost estimate of the Congressional Budget Office]~~

The Committee on Homeland Security, to whom was referred the resolution (H. Res. 863) impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors, having considered the same, reports favorably thereon with an amendment and recommends that the resolution as amended be agreed to.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That Alejandro Nicholas Mayorkas, Secretary of Homeland Security of the United States of America, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against Alejandro N. Mayorkas, Secretary of Homeland Security of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I: WILLFUL AND SYSTEMIC REFUSAL TO COMPLY WITH THE LAW

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that civil Officers of the United States, including the Secretary of Homeland Security, “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”. In his conduct while Secretary of Homeland Security, Alejandro N. Mayorkas, in violation of his oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, to bear true faith and allegiance to the same, and

to well and faithfully discharge the duties of his office, has willfully and systematically refused to comply with Federal immigration laws, in that:

Throughout his tenure as Secretary of Homeland Security, Alejandro N. Mayorkas has repeatedly violated laws enacted by Congress regarding immigration and border security. In large part because of his unlawful conduct, millions of aliens have illegally entered the United States on an annual basis with many unlawfully remaining in the United States. His refusal to obey the law is not only an offense against the separation of powers in the Constitution of the United States, it also threatens our national security and has had a dire impact on communities across the country. Despite clear evidence that his willful and systemic refusal to comply with the law has significantly contributed to unprecedented levels of illegal entrants, the increased control of the Southwest border by drug cartels, and the imposition of enormous costs on States and localities affected by the influx of aliens, Alejandro N. Mayorkas has continued in his refusal to comply with the law, and thereby acted to the grave detriment of the interests of the United States.

Alejandro N. Mayorkas engaged in this scheme or course of conduct through the following means:

(1) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 235(b)(2)(A) of the Immigration and Nationality Act, requiring that all applicants for admission who are “not clearly and beyond a doubt entitled to be admitted...shall be detained for a [removal] proceeding...”. Instead of complying with this requirement, Alejandro N. Mayorkas implemented a catch and release scheme, whereby such aliens are unlawfully released, even without effective mechanisms to ensure appearances before the immigration courts for removal proceedings or to ensure removal in the case of aliens ordered removed.

(2) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 235(b)(1)(B)(ii) of such Act, requiring that an alien who is placed into expedited removal proceedings and determined to have a credible fear of persecution “shall be detained for further consideration of the application for asylum”. Instead of complying with this requirement, Alejandro N. Mayorkas implemented a catch and release scheme, whereby such aliens are unlawfully released, even without effective mechanisms to ensure appearances before the immigration courts for removal proceedings or to ensure removal in the case of aliens ordered removed.

(3) Alejandro N. Mayorkas willfully refused to comply with the detention set forth in section 235(b)(1)(B)(iii)(IV) of such Act, requiring that an alien who is placed into expedited removal proceedings and determined not to have a credible fear of persecution “shall be detained...until removed”. Instead of complying with this requirement, Alejandro N. Mayorkas has implemented a catch and release scheme, whereby such aliens are unlawfully released, even without effective mechanisms to ensure appearances before the immigration courts for removal proceedings or to ensure removal in the case of aliens ordered removed.

(4) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 236(c) of such Act, requiring that a criminal alien who is inadmissible or deportable on certain criminal and terrorism-related grounds “shall [be] take[n] into custody” when the alien is released from law enforcement custody. Instead of complying with this requirement, Alejandro N. Mayorkas issued “Guidelines for the Enforcement of Civil Immigration Laws”, which instructs Department of Homeland Security (hereinafter referred to as “DHS”) officials that the “fact an individual is a removable noncitizen...should not alone be the basis of an enforcement action against them” and that DHS “personnel should not rely on the fact of conviction...alone”, even with respect to aliens subject to mandatory arrest and detention pursuant to section 236(c) of such Act, to take them into custody. In *Texas v. United States*, 40 F.4th 205 (2022), the United States Court of Appeals for the Fifth Circuit concluded that these guidelines had “every indication of being ‘a general policy that is so extreme as to amount to an abdication of...statutory responsibilities’” and that its “replacement of Congress’s statutory mandates with concerns of equity and race is extralegal...[and] plainly outside the bounds of the power conferred by the INA”.

(5) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 241(a)(2) of such Act, requiring that an alien ordered removed “shall [be] detain[ed]” during “the removal period”. Instead of complying with this mandate, Alejandro N. Mayorkas issued “Guidelines for the Enforcement of Civil Immigration Laws”, which instructs DHS officials that the

“fact an individual is a removable noncitizen...should not alone be the basis of an enforcement action against them” and that DHS “personnel should not rely on the fact of conviction...alone”, even with respect to aliens subject to mandatory detention and removal pursuant to section 241(a) of such Act.

(6) Alejandro N. Mayorkas willfully exceeded his parole authority set forth in section 212(d)(5)(A) of such Act that permits parole to be granted “only on a case-by-case basis”, temporarily, and “for urgent humanitarian reasons or significant public benefit”, in that:

(A) Alejandro N. Mayorkas paroled aliens *en masse* in order to release them from mandatory detention, despite the fact that, as the United States Court of Appeals for the Fifth Circuit concluded in *Texas v. Biden*, 20 F.4th 928 (2021), “paroll[ing] every alien [DHS] cannot detain is the opposite of the ‘case-by-case basis’ determinations required by law” and “DHS’s pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power [is] not *nonenforcement*; it’s *misenforcement*, suspension of the INA, or both”.

(B) Alejandro N. Mayorkas created, re-opened, or expanded a series of categorical parole programs never authorized by Congress for foreign nationals outside of the United States, including for certain Central American minors, Ukrainians, Venezuelans, Cubans, Haitians, Nicaraguans, Colombians, Salvadorans, Guatemalans, and Hondurans, which enabled hundreds of thousands of inadmissible aliens to enter the United States in violation of the laws enacted by Congress.

(7) Alejandro N. Mayorkas willfully exceeded his release authority set forth in section 236(a) of such Act that permits, in certain circumstances, the release of aliens arrested on an administrative warrant, in that Alejandro N. Mayorkas released aliens arrested without a warrant despite their being subject to a separate applicable mandatory detention requirement set forth in section 235(b)(2) of such Act. Alejandro N. Mayorkas released such aliens by retroactively issuing administrative warrants in an attempt to circumvent section 235(b)(2) of such Act. In *Florida v. United States*, No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023), the United States District Court of the Northern District of Florida noted that “[t]his sleight of hand – using an ‘arrest’ warrant as a *de facto* ‘release’ warrant – is administrative sophistry at its worst”. In addition, the court concluded that “what makes DHS’s application of [236(a)] in this manner unlawful...is that [235(b)(2)], not [236(a)], governs the detention of applicants for admission whom DHS places in...removal proceedings after inspection”.

Alejandro N. Mayorkas’s willful and systemic refusal to comply with the law has had calamitous consequences for the Nation and the people of the United States, including:

(1) During fiscal years 2017 through 2020, an average of about 590,000 aliens each fiscal year were encountered as inadmissible aliens at ports of entry on the Southwest border or apprehended between ports of entry. Thereafter, during Alejandro N. Mayorkas’s tenure in office, that number skyrocketed to over 1,400,000 in fiscal year 2021, over 2,300,000 in fiscal year 2022, and over 2,400,000 in fiscal year 2023. Similarly, during fiscal years 2017 through 2020, an average of 130,000 persons who were not turned back or apprehended after making an illegal entry were observed along the border each fiscal year. During Alejandro N. Mayorkas’s tenure in office, that number more than trebled to 400,000 in fiscal year 2021, 600,000 in fiscal year 2022, and 750,000 in fiscal year 2023.

(2) American communities both along the Southwest border and across the United States have been devastated by the dramatic growth in illegal entries, the number of aliens unlawfully present, and substantial rise in the number of aliens unlawfully granted parole, creating a fiscal and humanitarian crisis and dramatically degrading the quality of life of the residents of those communities. For instance, since 2022, more than 150,000 migrants have gone through New York City’s shelter intake system. Indeed, the Mayor of New York City has said that “we are past our breaking point” and that “[t]his issue will destroy New York City”. In fiscal year 2023, New York City spent \$1,450,000,000 addressing Alejandro N. Mayorkas’s migrant crisis, and city officials fear it will spend another \$12,000,000,000 over the following three fiscal years, causing painful budget cuts to important city services.

(3) Alejandro N. Mayorkas’s unlawful mass release of apprehended aliens and unlawful mass grant of categorical parole to aliens have enticed an increasing number of aliens to make the dangerous journey to our Southwest border. Con-

sequently, according to the United Nations's International Organization for Migration, the number of migrants intending to illegally cross our border who have perished along the way, either en route to the United States or at the border, almost doubled during the tenure of Alejandro N. Mayorkas as Secretary of Homeland Security, from an average of about 700 a year during the fiscal years 2017 through 2020, to an average of about 1,300 a year during the fiscal years 2021 through 2023.

(4) Alien smuggling organizations have gained tremendous wealth during Alejandro N. Mayorkas's tenure as Secretary of Homeland Security, with their estimated revenues rising from about \$500,000,000 in 2018 to approximately \$13,000,000,000 in 2022.

(5) During Alejandro N. Mayorkas's tenure as Secretary of Homeland Security, the immigration court backlog has more than doubled from about 1,300,000 cases to over 3,000,000 cases. The exploding backlog is destroying the courts' ability to administer justice and provide appropriate relief in a timeframe that does not run into years or even decades. As Alejandro N. Mayorkas acknowledged, "those who have a valid claim to asylum...often wait years for a...decision; likewise, noncitizens who will ultimately be found ineligible for asylum or other protection—which occurs in the majority of cases—often have spent many years in the United States prior to being ordered removed". He noted that of aliens placed in expedited removal proceedings and found to have a credible fear of persecution, and thus referred to immigration judges for removal proceedings, "significantly fewer than 20 percent...were ultimately granted asylum" and only "28 percent of cases decided on their merits are grants of relief". Alejandro N. Mayorkas also admitted that "the fact that migrants can wait in the United States for years before being issued a final order denying relief, and that many such individuals are never actually removed, likely incentivizes migrants to make the journey north".

(6) During Alejandro N. Mayorkas's tenure as Secretary of Homeland Security, approximately 450,000 unaccompanied alien children have been encountered at the Southwest border, and the vast majority have been released into the United States. As a result, there has been a dramatic upsurge in migrant children being employed in dangerous and exploitative jobs in the United States.

(7) Alejandro N. Mayorkas's failure to enforce the law, drawing millions of illegal aliens to the Southwest border, has led to the reassignment of U.S. Border Patrol agents from protecting the border from illicit drug trafficking to processing illegal aliens for release. As a result, during Alejandro N. Mayorkas's tenure as Secretary of Homeland Security, the flow of fentanyl across the border and other dangerous drugs, both at and between ports of entry, has increased dramatically. U.S. Customs and Border Protection seized approximately 4,800 pounds of fentanyl in fiscal year 2020, approximately 11,200 pounds in fiscal year 2021, approximately 14,700 pounds in fiscal year 2022, and approximately 27,000 pounds in fiscal year 2023. Over 70,000 Americans died from fentanyl poisoning in 2022, and fentanyl is now the number one killer of Americans between the ages of 18 and 45.

(8) Alejandro N. Mayorkas has degraded public safety by leaving wide swaths of the border effectively unpatrolled as U.S. Border Patrol agents are diverted from guarding the border to processing for unlawful release the heightening waves of apprehended aliens (many who now seek out agents for the purpose of surrendering with the now reasonable expectation of being released and granted work authorization), and Federal Air Marshals are diverted from protecting the flying public to assist in such processing.

(9) During Alejandro N. Mayorkas's tenure as Secretary of Homeland Security, the U.S. Border Patrol has encountered an increasing number of aliens on the terrorist watch list. In fiscal years 2017 through 2020 combined, 11 noncitizens on the terrorist watchlist were caught attempting to cross the Southwest border between ports of entry. That number increased to 15 in fiscal year 2021, 98 in fiscal year 2022, 169 in fiscal year 2023, and 49 so far in fiscal year 2024.

Additionally, in *United States v. Texas*, 599 U.S. 670 (2023), the United States Supreme Court heard a case involving Alejandro N. Mayorkas's refusal to comply with certain Federal immigration laws that are at issue in this impeachment. The Supreme Court held that States have no standing to seek judicial relief to compel Alejandro N. Mayorkas to comply with certain legal requirements contained in the Immigration and Nationality Act. However, the Supreme Court held that "even though the federal courts lack Article III jurisdiction over this suit, other forums

remain open for examining the Executive Branch's enforcement policies. For example, Congress possesses an array of tools to analyze and influence those policies [and] those are political checks for the political process". One such critical tool for Congress to influence the Executive Branch to comply with the immigration laws of the United States is impeachment. The dissenting Justice noted, "The Court holds Texas lacks standing to challenge a federal policy that inflicts substantial harm on the State and its residents by releasing illegal aliens with criminal convictions for serious crimes. In order to reach this conclusion, the Court...holds that the only limit on the power of a President to disobey a law like the important provision at issue is Congress' power to employ the weapons of inter-branch warfare...". As the dissenting Justice explained, "Congress may wield what the Solicitor General described as 'political...tools'—which presumably means such things as...impeachment and removal". Indeed, during oral argument, the Justice who authored the majority opinion stated to the Solicitor General, "I think your position is, instead of judicial review, Congress has to resort to shutting down the government or impeachment or dramatic steps...". Here, in light of the inability of injured parties to seek judicial relief to remedy the refusal of Alejandro N. Mayorkas to comply with Federal immigration laws, impeachment is Congress's only viable option.

In all of this, Alejandro N. Mayorkas willfully and systemically refused to comply with the immigration laws, failed to control the border to the detriment of national security, compromised public safety, and violated the rule of law and separation of powers in the Constitution, to the manifest injury of the people of the United States.

Wherefore Alejandro N. Mayorkas, by such conduct, has demonstrated that he will remain a threat to national and border security, the safety of the United States people, and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with his duties and the rule of law. Alejandro N. Mayorkas thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

#### ARTICLE II: BREACH OF PUBLIC TRUST

The Constitution provides that the House of Representatives "shall have the sole Power of Impeachment" and that civil Officers of the United States, including the Secretary of Homeland Security, "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors". In his conduct while Secretary of Homeland Security, Alejandro N. Mayorkas, in violation of his oath to well and faithfully discharge the duties of his office, has breached the public trust, in that:

Alejandro N. Mayorkas has knowingly made false statements, and knowingly obstructed lawful oversight of the Department of Homeland Security (hereinafter referred to as "DHS"), principally to obfuscate the results of his willful and systemic refusal to comply with the law. Alejandro N. Mayorkas engaged in this scheme or course of conduct through the following means:

(1) Alejandro N. Mayorkas knowingly made false statements to Congress that the border is "secure", that the border is "no less secure than it was previously", that the border is "closed", and that DHS has "operational control" of the border (as that term is defined in the Secure Fence Act of 2006).

(2) Alejandro N. Mayorkas knowingly made false statements to Congress regarding the scope and adequacy of the vetting of the thousands of Afghans who were airlifted to the United States and then granted parole following the Taliban takeover of Afghanistan after President Biden's precipitous withdrawal of United States forces.

(3) Alejandro N. Mayorkas knowingly made false statements that apprehended aliens with no legal basis to remain in the United States were being quickly removed.

(4) Alejandro N. Mayorkas knowingly made false statements supporting the false narrative that U.S. Border Patrol agents maliciously whipped illegal aliens.

(5) Alejandro N. Mayorkas failed to comply with multiple subpoenas issued by congressional committees.

(6) Alejandro N. Mayorkas delayed or denied access of DHS Office of Inspector General (hereinafter referred to as "OIG") to DHS records and information, hampering OIG's ability to effectively perform its vital investigations, audits, inspections, and other reviews of agency programs and operations to satisfy the OIG's obligations under section 402(b) of title 5, United States Code, in part, to Congress.

Additionally, in his conduct while Secretary of Homeland Security, Alejandro N. Mayorkas has breached the public trust by his willful refusal to fulfill his statutory “duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens” as set forth in section 103(a)(5) of the Immigration and Nationality Act. Alejandro N. Mayorkas inherited what his first Chief of the U.S. Border Patrol called, “arguably the most effective border security in our nation’s history”. Alejandro N. Mayorkas, however, proceeded to abandon effective border security initiatives without engaging in adequate alternative efforts that would enable DHS to maintain control of the border and guard against illegal entry, and despite clear evidence of the devastating consequences of his actions, he failed to take action to fulfill his statutory duty to control the border. According to his first Chief of the U.S. Border Patrol, Alejandro N. Mayorkas “summarily rejected” the “multiple options to reduce the illegal entries...through proven programs and consequences” provided by civil service staff at DHS. Despite clear evidence of the devastating consequences of his actions, he failed to take action to fulfill his statutory duty to control the border, in that, among other things:

(1) Alejandro N. Mayorkas terminated the Migrant Protection Protocols (hereinafter referred to as “MPP”). In *Texas v. Biden*, 20 F.4th 928 (2021), the United States Court of Appeals for the Fifth Circuit explained that “[t]he district court...pointed to evidence that ‘the termination of MPP has contributed to the current border surge’...(citing DHS’s own previous determinations that MPP had curbed the rate of illegal entries)”. The district court had also “pointed out that the number of ‘enforcement encounters’—that is, instances where immigration officials encounter immigrants attempting to cross the southern border without documentation—had ‘skyrocketed’ since MPP’s termination”.

(2) Alejandro N. Mayorkas terminated contracts for border wall construction.

(3) Alejandro N. Mayorkas terminated asylum cooperative agreements that would have equitably shared the burden of complying with international asylum accords.

In all of this, Alejandro N. Mayorkas breached the public trust by knowingly making false statements to Congress and the American people and avoiding lawful oversight in order to obscure the devastating consequences of his willful and systemic refusal to comply with the law and carry out his statutory duties. He has also breached the public trust by willfully refusing to carry out his statutory duty to control the border and guard against illegal entry, notwithstanding the calamitous consequences of his abdication of that duty.

Wherefore Alejandro N. Mayorkas, by such conduct, has demonstrated that he will remain a threat to national and border security, the safety of the American people, and to the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with his duties and the rule of law. Alejandro N. Mayorkas thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

## Introduction

The House Committee on Homeland Security has completed the consideration of two articles of impeachment against Secretary of Homeland Security Alejandro N. Mayorkas. The first article charges that Secretary Mayorkas willfully and systemically refused to comply with the law. Secretary Mayorkas created a scheme in which he willfully refused to comply with detention mandates and willfully exceeded his release authority in the Immigration and Nationality Act (“INA”), resulting in devastating consequences to the American people. The second article charges that Secretary Mayorkas breached the public trust. Secretary Mayorkas knowingly made false statements to Congress and obstructed lawful oversight of the U.S. Department of Homeland Security (“DHS”). Accordingly, Secretary Mayorkas should be impeached and removed from office.

This report proceeds in four parts.

The first part addresses the procedural and investigative history by which the Committee recommended that the House impeach Secretary Mayorkas. The Committee conducted a nearly year-long investigation into the crisis at the Southwest border, divided into five phases. During that investigation, the Committee held 21 hearings, submitted 51 related letters to DHS for documents and information, conducted 11 transcribed interviews, visited the Southwest border twice, and released approximately 400 pages of findings through five interim reports and an additional joint report with the House Committee on Oversight and Accountability.

The impeachment process was fully authorized by House rules. Secretary Mayorkas was provided ample due process protections and invited by the Committee multiple times to participate. Secretary Mayorkas declined to testify during the impeachment proceedings, merely providing a six-page letter the morning of the Committee’s markup of the two articles of impeachment against him. Nearly one-third of Secretary Mayorkas’ letter focused on his previous job titles irrelevant to the impeachment charges. Additionally, the Minority was afforded full and adequate procedural rights.

The second part of the report examines the constitutional history and precedents for impeachment. Records from the Constitutional Convention make clear the Framers’ inclusion of much broader concepts of abuse of power, breach of public trust, and injury to the nation for offenses by public officials to constitute “high Crimes and Misdemeanors.” The Framers intended impeachment as a constitutional remedy to hold officials accountable for actions that jeopardize the public interest beyond indictable crimes or minor criminal offenses.

The third part of the report discusses Article I of the impeachment resolution for willful and systemic refusal to comply with the law. First, this part describes the relevant constitutional history and precedents regarding the article and explains how Secretary Mayorkas’ neglect of duty and refusal to follow the law are paradigmatic impeachable offenses. This part of the report also addresses the basis for the charges in Article I, which include Secretary Mayorkas’ refusal to comply with seven specific sections of the INA related to statutory detention mandates and parole

authority for aliens. Article I also describes the calamitous consequences of Secretary Mayorkas' refusal to comply with the law.

The fourth part of the report describes Article II of the impeachment resolution against Secretary Mayorkas for his breach of public trust. First, it describes the relevant constitutional history and precedents regarding the article and demonstrates that breach of public trust was also considered a paradigmatic impeachable offense. Next, this part of the report discusses the basis for the charges in Article II. Secretary Mayorkas knowingly made false statements about the results of his willful and systemic refusal to comply with the law. Secretary Mayorkas also breached the public trust by violating his oath to well and faithfully discharge the duties of his office and his statutory duty to control and guard the border of the United States. He knowingly abandoned successful border enforcement initiatives and refused to replace those initiatives with viable alternatives that would enable DHS to control and guard the border. Finally, Secretary Mayorkas obstructed, delayed, or denied access to Congress or the DHS Office of Inspector General to effectively perform vital oversight, investigations, audits, inspections, and other reviews of DHS programs and operations. Secretary Mayorkas' obstruction of lawful oversight necessitated the issuance of several congressional subpoenas by multiple House committees, which remain unsatisfied.

The remainder of the report includes four appendices, including relevant Committee documents and information request letters to Secretary Mayorkas, DHS and its components, interview transcripts conducted by the Committee, related transcripts and records of congressional hearings, and pertinent reports from the Committee, Government Accountability Office ("GAO"), and the DHS Office of Inspector General.

The Committee now transmits these articles of impeachment to the full House. By willfully and systemically refusing to comply with the law and by breaching the public trust, Secretary Mayorkas betrayed his office. His high crimes and misdemeanors undermine the Constitution. His conduct continues to jeopardize national and border security, public safety, and the lives of countless Americans, presenting great urgency for the House to act. His actions warrant his impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

## **I. Impeachment Proceedings**

### **A. Introduction**

During an ongoing humanitarian and border crisis, the House of Representatives conducted a fair, thorough, and transparent investigation and impeachment process against Secretary Mayorkas. For the first time in history, the Committee on Homeland Security investigated whether sufficient grounds existed for the House to exercise its constitutional power to impeach a Cabinet secretary. For nearly a year, the Committee collected evidence through numerous congressional hearings, requests to DHS for documents and information, transcribed interviews of relevant witnesses, and congressional delegation fact-finding visits to the Southwest border. In addition to this investigation, the Committee reviewed publicly available information about Secretary Mayorkas' decisions, court documents, GAO reports, the DHS Office of Inspector General, and related hearings, letters, and reports from other congressional committees. Throughout the

investigation, the Committee publicly released five interim reports on its findings in addition to a joint report with the Committee on Oversight and Accountability.

Throughout 2023, the Committee investigated Secretary Mayorkas' action and inaction related to the border crisis. The Committee collected evidence that Secretary Mayorkas failed to heed warnings from career DHS employees about the consequences that would occur by removing effective border security measures. Despite his knowledge of these warnings, Secretary Mayorkas decided to end these measures and implement new policies that were incongruent with immigration laws and created a crisis at the Southwest border that has spread across the country. Additionally, the Committee compiled and presented evidence of nationwide devastation caused by Secretary Mayorkas' refusal to comply with the law, resulting in an increase in human trafficking, a flood of fentanyl, countless deaths of American citizens and migrants, and greater opportunities for cartels to profit and expand their criminal influence. Secretary Mayorkas, on multiple occasions, has made false or misleading statements that the border is secure, that DHS has operational control of the border, and that DHS is adequately screening and vetting individuals entering the country. Finally, the Committee presented evidence that Secretary Mayorkas' actions have unnecessarily increased the financial strain on states and cities that have been forced to bear the consequences of his refusal to enforce U.S. immigration laws. The Committee also presented evidence that Secretary Mayorkas remains a risk to public safety and national security, and if left in office or allowed to hold office in the future, would continue to undermine the rule of law and the safety of the American people.

Consistent with Committee precedent, Minority Members or staff of the Committee were provided the opportunity to collect, receive, and review evidence and facts. Committee Minority Members or staff were permitted equal time to question witnesses, participate in transcribed interviews, and visit the border. Additionally, the Minority Committee Members had the opportunity to invite witnesses of their choosing to testify at hearings. In addition to previously available hearing transcripts, this report also publicly releases transcripts of all transcribed interviews.

The Committee, consistent with House precedent, afforded ample opportunity for Secretary Mayorkas to participate in its investigation and impeachment proceedings. Additionally, the procedural privileges that the Committee afforded to the Secretary were consistent with or greater than those privileges provided during the impeachment proceedings of Presidents Nixon, Clinton, and Trump. The Committee has conducted fair, thorough, and transparent impeachment proceedings.

## B. Background: Conduct of the House's Impeachment Proceedings and Privileges Affording to Secretary Mayorkas

### 1. Proceedings Leading to House Resolution 863 being Referred to the Committee

In early 2023, the Committee initiated an investigation into the causes, costs, and consequences of the border crisis under Secretary Mayorkas. The Committee conducted its investigation in five phases focusing on Secretary Mayorkas' dereliction of duty, cartel control of

the border, the human costs of the border crisis, the financial costs of the border crisis, and Secretary Mayorkas' enabling of waste and abuse of resources. Throughout the investigation, the Committee held hearings, requested documents and information from DHS, released interim reports, conducted transcribed interviews with U.S. Border Patrol ("USBP") Chief Patrol Agents and previous administration officials, visited the Southwest border, and reviewed publicly available information, including information from other congressional committees. Despite Secretary Mayorkas' commitment to work with the House and Senate, "[a]s [their] partner," and proclaiming that "the Department must be collaborative, open and transparent, and at all times forthright with [Congress]-even in times of disagreement," he has failed to live up to his commitment.<sup>1</sup> Throughout the investigation, the Committee gathered overwhelming evidence proving Secretary Mayorkas' willful and systematic refusal to comply with the law and breach of the public trust.

## 2. Committee Hearings

On January 30, 2023, the Committee began its investigation of the border crisis with a letter to DHS requesting documents and information on the Biden administration's decision to terminate border barrier contracts along the Southwest border.<sup>2</sup> On February 28, 2023, the Committee held a hearing titled, "Every State is a Border State: Examining Secretary Mayorkas' Border Crisis," in which the Committee received testimony from witnesses about how DHS policies that encourage illegal immigration place migrants in undue harm, increase the flow of deadly synthetic opioids such as fentanyl into the United States, and strain the American healthcare system.<sup>3</sup> Over the next ten months, the Committee continued its investigation, holding 19 more hearings related to the border crisis.

On March 15, 2023, the Committee held a field hearing in McAllen, Texas titled, "Failure by Design: Examining Secretary Mayorkas' Border Crisis," which featured testimony from then-USBP Chief Raul Ortiz.<sup>4</sup> During the hearing, Chairman Mark Green questioned Chief Ortiz if DHS had operational control of the border.<sup>5</sup> Chief Ortiz answered that DHS did not have operational control,<sup>6</sup> contradicting Secretary Mayorkas' testimony in an April 2022 House Judiciary Committee hearing where he affirmed that DHS had operational control of the Southwest border.<sup>7</sup>

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<sup>1</sup> *Nomination of Hon. Alejandro N. Mayorkas: Hearing Before the S. Comm. on Homeland Sec. and Gov't Affairs*, 117th Cong. (Jan. 19, 2021) (Statement of Alejandro Mayorkas, Nominee for Sec'y of the U.S. Dep't of Homeland Sec.).

<sup>2</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec'y. Dep't of Homeland Sec. (Jan. 30, 2023).

<sup>3</sup> *Every State is a Border State: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Feb. 28, 2023). (Statements of Mark Lamb, Sheriff, Pinal County).

<sup>4</sup> *Failure by Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023).

<sup>5</sup> *Failure by Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023).

<sup>6</sup> *Failure by Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023) (Statement by Raul Ortiz, Chief Patrol Agent, U.S. Border Patrol).

<sup>7</sup> *Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary*, 117th Cong. (Apr. 28, 2022) (Statement of Hon. Alejandro Mayorkas, Sec'y of Homeland Sec.).

On March 23, 2023, the Committee’s Subcommittee on Transportation and Maritime Security held a hearing titled, “Securing America’s Maritime Border: Challenges and Solutions for the U.S. National Security,” which included testimony about the significant threat of maritime drug smugglers. In one case, smugglers killed a U.S. Customs and Border Protection (“CBP”) Air and Marine Operations (“AMO”) agent during a shootout off the Puerto Rican coast.<sup>8</sup> In the hearing, Representative Carlos Gimenez highlighted the record levels of fentanyl poisoning America resulting from Secretary Mayorkas’ actions and inactions.<sup>9</sup>

On March 28, 2023, the Committee’s Subcommittee on Oversight, Investigations, and Accountability held a hearing titled, “Biden’s Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border,” featuring testimony on the impacts of illegal immigration at the Northern border.<sup>10</sup> Brandon Judd, President of the National Border Patrol Council, a union that represents thousands of USBP agents, outlined how the Administrations prioritization of release had become a “magnet” that attracted inadmissible aliens to the border, diverting Border Patrol agents to process aliens rather than securing the border, and leaving them unable to properly protect the American people.<sup>11</sup>

On April 18, 2023, the Committee’s Subcommittee on Counterterrorism, Law Enforcement, and Intelligence held a hearing titled, “The Homeland Security Cost of the Biden Administration’s Catastrophic Withdrawal from Afghanistan,” which featured testimony about the disastrous withdrawal from Afghanistan and the resulting national security consequences to the homeland.<sup>12</sup> Ambassador Nathan Sales, former Under Secretary of State for Civilian Security, Democracy, and Human Rights, and Special Presidential Envoy to the Global Coalition to Defeat ISIS, testified that the standards DHS used to vet Afghan migrants after August 2021 were insufficient and presented a threat to homeland security,<sup>13</sup> contradicting Secretary Mayorkas’ September 2021 statement that such standards were robust.<sup>14</sup>

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<sup>8</sup> *Securing America’s Maritime Border: Challenges and Solutions for the U.S. National Security: Hearing Before the Subcomm. on Transportation and Maritime Sec. of the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 23, 2023).

<sup>9</sup> *Securing America’s Maritime Border: Challenges and Solutions for the U.S. National Security: Hearing Before Subcomm. on Transportation and Maritime Sec. of the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 23, 2023) (Statement by Rep. Carlos Gimenez).

<sup>10</sup> *Biden’s Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border: Hearing Before the Subcomm. on Oversight, Investigations, and Accountability of the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 28, 2023).

<sup>11</sup> *Biden’s Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border: Hearing Before Subcomm. on Oversight, Investigations, and Accountability of the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 28, 2023) (Statement of Brandon Judd, President of the Nat’l Border Patrol Council).

<sup>12</sup> *The Homeland Security Cost of the Biden Administration’s Catastrophic Withdrawal from Afghanistan: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec.*, 118th Cong. (Apr. 18, 2023).

<sup>13</sup> *The Homeland Security Cost of the Biden Administration’s Catastrophic Withdrawal from Afghanistan: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec.*, 118th Cong. (Apr. 18, 2023) (Statement of Hon. Nathan Sales, Former Ambassador-at-Large and Coordinator for Counterterrorism).

<sup>14</sup> Press Release, U.S. Dep’t of Homeland Sec., Sec’y Mayorkas Delivers Remarks on Operation Allies Welcome (Sept. 3, 2021) (on file with author).

On April 19, 2023, the Committee held a hearing titled, “A Review of the Fiscal Year 2024 Budget Request for the Department of Homeland Security,” which received testimony from Secretary Mayorkas on his priorities for the FY 2024 DHS budget request.<sup>15</sup> During this hearing, Majority members confronted Secretary Mayorkas about his contradictory testimony on operational control, violations of his obligation to enforce federal statutes, and his role in advising President Biden to remove effective border security policies.<sup>16</sup>

On May 16, 2023, the Committee’s Subcommittee on Counterterrorism, Law Enforcement, and Intelligence and the Subcommittee on Emergency Management and Technology held a joint hearing titled, “Protecting the Homeland: An Examination of Federal Efforts to Support State and Local Law Enforcement,” which heard testimony about the challenges facing state and local law enforcement officers and the need for greater federal cooperation with states.<sup>17</sup> In his written statement, Sheriff Don Barnes of Orange County, California explained how U.S. Immigration and Customs Enforcement’s (“ICE”) refusal to accept detained migrants for removal had burdened his local department and jeopardized the safety of the community he protected.<sup>18</sup>

On June 6, 2023, the Committee’s Subcommittee on Border Security and Enforcement held a hearing titled, “Examining DHS’ Failure to Prepare for the Termination of Title 42,” which featured testimony about the policies implemented to obscure the actual numbers of illegal aliens entering the United States.<sup>19</sup> Representative Clay Higgins also confronted DHS officials on how DHS’ use of the CBP One application may incentivize illegal migration and mislead Americans by obfuscating the number of illegal aliens entering the country.<sup>20</sup>

On June 7, 2023, the Committee’s Subcommittee on Counterterrorism, Law Enforcement, and Intelligence held a hearing titled “Transnational Criminal Organizations: The Menacing Threat to the U.S. Homeland,” which heard testimony on the threat posed to U.S. national security by transnational criminal organizations (“TCOs”) such as drug cartels.<sup>21</sup> Douglas Farah, founder and president of IBI Consultants, an advisory firm that provides investigations into and training to combat TCOs, testified that the Biden Administration has not been using every tool at its disposal to combat rising cartel territorial control in Latin America which has contributed to greater cartel

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<sup>15</sup> *A Review of the Fiscal Year 2024 Budget Request for DHS: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Apr. 19, 2023).

<sup>16</sup> *A Review of the Fiscal Year 2024 Budget Request for DHS: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Apr. 19, 2023).

<sup>17</sup> *Protecting the Homeland: An Examination of Federal Efforts to Support State and Local Law Enforcement: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence and Subcomm. on Emergency Management and Technology of the H. Comm. on Homeland Sec.*, 118th Cong. (May 16, 2023).

<sup>18</sup> *Protecting the Homeland: An Examination of Federal Efforts to Support State and Local Law Enforcement: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence and Subcomm. on Emergency Management and Technology of the H. Comm. on Homeland Sec.*, 118th Cong. (May 16, 2023) (Statement of Sheriff Don Barnes, Orange County, California).

<sup>19</sup> *Examining DHS’ Failure to Prepare for the Termination of Title 42: Hearing Before the Subcomm. on Border Security and Enf’t of the H. Comm. on Homeland Sec.*, 118th Cong. (June 6, 2023). The Dep’t of Homeland Sec. refused to provide a senior ICE official as a witness for the hearing.

<sup>20</sup> *Examining DHS’ Failure to Prepare for the Termination of Title 42: Hearing Before the Subcomm. on Border Sec. and Enf’t of the H. Comm. on Homeland Sec.*, 118th Cong. (June 6, 2023).

<sup>21</sup> *Transnational Criminal Organizations: The Menacing Threat to the U.S. Homeland: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec.*, 118th Cong. (June 7, 2023).

control and thereby influence from foreign powers such as China, Russia, and Iran at the Southwest border.<sup>22</sup>

On June 14, 2023, the Committee held a hearing titled “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” which featured testimony about Secretary Mayorkas’ failure to follow the law, reversal of effective immigration policies, and false and misleading statements concerning the border crisis.<sup>23</sup> At the hearing, former USBP Chief Patrol Agent Rodney Scott testified that USBP officials advised Secretary Mayorkas at the beginning of the Biden administration that his policies would precipitate the extreme migration surge.<sup>24</sup>

On June 21, 2023, the Committee’s Subcommittee on Counterterrorism, Law Enforcement, and Intelligence held a hearing titled “Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security,” where Members spoke and received testimony about both rising encounters with foreign nationals from the People’s Republic of China (“PRC”), Russia, Cuba, and Venezuela,<sup>25</sup> and the threat of hostile foreign nations, such as the PRC, Russia, and Iran, using assets in Latin America to threaten U.S. national and economic security.<sup>26</sup> In response to a question from Representative Anthony D’esposito, Christopher Hernandez Roy, Deputy Director and Senior Fellow of the Americas Program at the Center for Strategic and International Studies, stated that programs such as Secretary Mayorkas’ categorical Cubans, Haitians, Nicaraguans, and Venezuelans (“CHNV”) parole program present an ample opportunity for hostile nations and TCOs to hide foreign threats and cartel associates within larger populations.<sup>27</sup>

On July 12, 2023, the Committee’s Subcommittee on Border Security and Enforcement held a hearing titled, “Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border,” and received testimony about the efforts of CBP frontline agents to prevent fentanyl smuggling into the <sup>28</sup> The hearing made clear that Secretary Mayorkas’ failure to enter

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<sup>22</sup> *Transnational Criminal Organizations: The Menacing Threat to the U.S. Homeland: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec., 118th Cong.* (June 7, 2023) (Statement of Douglas Farah, founder and president of IBI Consultants).

<sup>23</sup> *Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis: Hearing Before H. Comm. on Homeland Sec., 118th Cong.* (June 14, 2023).

<sup>24</sup> *Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis: Hearing Before H. Comm. on Homeland Sec., 118th Cong.* (June 14, 2023) (Statement by Rodney S. Scott, Senior Distinguished Fellow for Border Security, Texas Public Policy Foundation).

<sup>25</sup> *Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec., 118th Cong.* (June 21, 2023).

<sup>26</sup> *Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security: Hearing Before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec., 118th Cong.* (June 21, 2023).

<sup>27</sup> *Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security: Hearing before the Subcomm. on Counterterrorism, Law Enf’t, and Intelligence of the H. Comm. on Homeland Sec., 118th Cong.* (June 21, 2023) (Testimony by Christopher Hernandez-Roy, Deputy Director and Senior Fellow, Center for Strategic and International Studies).

<sup>28</sup> *Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border: Hearing Before Subcomm. on Border Sec. and Enf’t of the H. Comm. on Homeland Sec., 118th Cong.* (July 12, 2023).

hundreds of migrants directly into removal proceedings tied USBP agents' hands and diverted them from their law enforcement duties.<sup>29</sup>

On July 18, 2023, the Committee's Subcommittee on Border Security and Enforcement and the Subcommittee on Oversight, Investigations, and Accountability held a joint hearing titled, "Opening the Flood Gates: Biden's Broken Border Barrier,"<sup>30</sup> which examined the effectiveness of the border barrier system and the financial, legal, and national security consequences of the Biden administration's decision to terminate border barrier contracts.<sup>31</sup>

On July 19, 2023, the Committee held a hearing titled, "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," which reviewed Secretary Mayorkas' refusal to detain inadmissible aliens and the resulting encouragement to illegal aliens to surge the border, creating an unprecedented profit opportunity for cartel-affiliated human smugglers and endangering U.S. communities.<sup>32</sup>

On July 26, 2023, the Committee's Subcommittee on Border Security and Enforcement and the Subcommittee on Counterterrorism, Law Enforcement, and Intelligence held a joint hearing titled, "The Real Cost of an Open Border: How Americans are Paying the Price," which featured testimony about how Secretary Mayorkas' willful refusal to remove inadmissible aliens created significant backlogs in the American immigration system and placed lives and livelihoods in danger by encouraging greater illegal immigration.<sup>33</sup>

On September 13, 2023, the Committee held a hearing titled, "An Unbearable Price: The Devastating Human Costs of the Biden-Mayorkas Border Crisis," which heard testimony on how Secretary Mayorkas' catch-and-release policies led to a surge of migrants at the border, growing human trafficking and drug smuggling operations by cartels and placing a significant strain on already overwhelmed USBP agents.<sup>34</sup>

On September 20, 2023, the Committee held a hearing titled, "The Financial Costs of Mayorkas' Open Border," which heard testimony on the financial consequences of illegal

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<sup>29</sup> *Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border: Hearing Before Subcomm. on Border Sec. and Enf't of the H. Comm. on Homeland Sec.*, 118th Cong. (July 12, 2023).

<sup>30</sup> *Opening the Flood Gates: Biden's Broken Border Barrier: Hearing before Subcomm. on Border Sec. and Enf't and Subcomm. on Oversight, Accountability, and Investigations of the H. Comm. on Homeland Sec.*, 118th Cong. (July 18, 2023).

<sup>31</sup> *Opening the Flood Gates: Biden's Broken Border Barrier: Hearing before Subcomm. on Border Sec. and Enf't and Subcomm. on Oversight, Accountability, and Investigations of the H. Comm. on Homeland Sec.*, 118th Cong. (July 18, 2023) (Statements of Ron Vitiello, former Chief Patrol Agent, U.S. Border Patrol and Jim De Sotle, Interim CEO, LoneStar Pipeline Contractors).

<sup>32</sup> *Biden and Mayorkas' Open Border: Advancing Cartel Crime in America: Hearing Before the H. Comm. On Homeland Sec.*, 118th Cong. (July 19, 2023) (Statements by Jaeson Jones, former Captain of Intelligence and Counterterrorism, Texas Department of Public Safety, and Jessica Vaughan, Director of Policy Studies, Center for Immigration Studies).

<sup>33</sup> *The Real Cost of an Open Border: How Americans are Paying the Price: Hearing Before the Subcomm. Of Border Security and Enf't and the Subcommittee on Counterterrorism, Law Enf't, and Intelligence of the H. Comm. on Homeland Sec.*, 118th Cong. (July 26, 2023) (Statement of Todd Bensman, Senior National Security Fellow, Center for Immigration Studies and Javier Ramirez III, Private Citizen).

<sup>34</sup> *An Unbearable Price: The Devastating Human Costs of the Biden-Mayorkas Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Sept. 13, 2023) (Statement of Tim Ballard, Private Citizen).

immigration on states and local communities, the burden on limited state and local law enforcement resources, and the damage caused by illegal aliens to private property.<sup>35</sup>

On November 14, 2023, the Committee's Subcommittee on Border Security and Enforcement and the Subcommittee on Emergency Management and Technology held a joint hearing titled, "The Broken Path: How Transnational Criminal Organizations Profit from Human Trafficking at the Southwest Border," which examined human trafficking trends and tactics of cartel smugglers.<sup>36</sup> In the hearing, Representative Anthony D'Esposito highlighted how surges of migration overwhelmed interior U.S. communities such as New York City while also expanding profits of cartels and TCOs.<sup>37</sup>

On November 15, 2023, the Committee held a hearing titled, "Worldwide Threats to the Homeland," where Federal Bureau of Investigation Director Christopher Wray confirmed that the nearly two million known gotaways at the Southwest border of the United States presented a national security concern and that the threats present at the border impact every state in America.<sup>38</sup>

On December 5, 2023, the Committee's Subcommittee on Emergency Management and Technology held a hearing titled, "Protecting our Preparedness: Assessing the Impact of the Border Crisis on Emergency Management," which heard testimony on the impact to first responders' ability to help their communities and the growing challenges facing America due to skyrocketing illegal migration.<sup>39</sup>

Additionally, on December 6, 2023, the Committee held a Member Day hearing which included testimony from more than ten Members about the border crisis, the impact of illegal aliens to Members' districts, and Secretary Mayorkas' failure of leadership.<sup>40</sup> The Committee, at both the Full Committee and Subcommittee level, conducted 21 hearings related to the border, associated public safety and national security concerns, and Secretary Mayorkas' failed leadership. During those hearings, the Committee heard from 90 witnesses, including 31 government witnesses from the Biden administration. Over the nearly year-long investigation, the Committee collected evidence from witnesses consistently pointing to Secretary Mayorkas' high crimes and misdemeanors.

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<sup>35</sup> *The Financial Costs of Mayorkas' Open Border: Hearing Before the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Sept. 20, 2023) (Statements of Jonathan W. Lines, Yuma County Supervisor, and Joseph C. Borelli, Council Member, New York City Council).

<sup>36</sup> *The Broken Path: How Transnational Criminal Organization Profit from Human Trafficking at the Southwest Border: Hearing Before the Subcomm. on Border Sec. and Enf't and the Subcomm. on Emergency Management and Technology of the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Nov. 14, 2023).

<sup>37</sup> *The Broken Path: How Transnational Criminal Organization Profit from Human Trafficking at the Southwest Border: Hearing Before the Subcomm. on Border Sec. and Enf't and the Subcomm. on Emergency Management and Technology of the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Nov. 14, 2023).

<sup>38</sup> *Worldwide Threats to the Homeland: Hearing Before the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Nov. 15, 2023) (Statements of Hon. Christopher Wray, Director, Fed. Bureau of Intelligence).

<sup>39</sup> *Protecting our Preparedness: Assessing the Impact of the Border Crisis on Emergency Management: Hearing Before the Subcomm. on Emergency Management and Technology of the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Dec. 5, 2023) (Statements of Bruce Blakeman, County Executive, Nassau County).

<sup>40</sup> *Member Day: Hearing Before the H. Comm. on Homeland Sec.*, 118<sup>th</sup> Cong. (Dec. 6, 2023).

### 3. Committee Letters

Since the beginning of the 118th Congress, the Committee has sent DHS and its components over 51 letters requesting important documents and information to assist the Committee's legislative and oversight efforts.<sup>41</sup> Among other topics, the Committee sent letters related to the canceled border wall contracts, the administration's use of sole source contracts for migrant housing, Secretary Mayorkas' unlawful abuse of parole authority, and CBP encounters with aliens on the Terrorist Screening Database.<sup>42</sup> The Committee made publicly available as much of the information received from DHS or its components as appropriate. DHS, however, failed to fully produce most of the information requested by the Committee.

On January 17, 2024, the Committee sent a letter to Secretary Mayorkas detailing its outstanding requests.<sup>43</sup> The letter reiterated to DHS the Committee's outstanding requests from 41 select letters that remain either partially or entirely unsatisfied, totaling 173 requested items. The Committee requested that Secretary Mayorkas produce the outstanding requests by January 24, 2024. Secretary Mayorkas has failed to produce any additional outstanding documents. Instead, on January 29, 2024, after the deadline lapsed, DHS attempted to justify their delay and created ambiguity about which documents were produced.<sup>44</sup> Rather than providing the documents requested, DHS expended resources preparing a letter to justify the delay, after the deadline.

Over the past year, the Committee repeatedly made efforts to engage with DHS to no avail. Instead, DHS and its components have continued to obstruct the Committee's oversight and investigations. Secretary Mayorkas' actions are clear; he has no desire to work with Congress, this Committee, or to follow the law.

### 4. Interim Phase Reports

In the spirit of transparency, the Committee publicly released five interim majority reports throughout its five-phased investigation into Secretary Mayorkas – totaling nearly 400 pages of evidence. Each report provides substantial evidence of Secretary Mayorkas' failures over the last three years, including his refusal to follow the law and making false or misleading claims; the expansion of the cartels' power; the devastating human cost to migrants and Americans; the historic dollar cost to American taxpayers; the massive waste and abuse enabled by the Secretary; and information obtained from transcribed interviews with USBP Chief Patrol Agents.

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<sup>41</sup> Congress has the power to obtain information from the executive necessary for legislation. *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020). The “power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” *Watkins v. United States*, 354 U.S. 178, 187, 77 S. Ct. 1173, 1179 (1957).

<sup>42</sup> See Appendix A.

<sup>43</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec'y, U.S. Dep't of Homeland Sec. (Jan. 17, 2024).

<sup>44</sup> Letter from Zephrahanie Buetow, Assistant Sec'y for Legis. Aff., Dep't of Homeland Sec., to Hon. Mark Green, Chairman, H. Comm. On Homeland Sec. (Jan. 29, 2024).

On July 19, 2023, the Committee Majority released the first phase interim report, “DHS Secretary Alejandro Mayorkas’ Dereliction of Duty,”<sup>45</sup> which highlighted Secretary Mayorkas’ refusal to enforce the Nation’s laws, failure to discharge the duties of his office, reckless open-border policies, and misleading or false statements.

On September 7, 2023, the Committee Majority released the phase two interim report, “DHS Secretary Alejandro Mayorkas has Emboldened Cartels, Criminals, and America’s Enemies,” which focused on how Secretary Mayorkas’ actions and decisions have empowered the cartels and undermined national security.<sup>46</sup>

On October 10, 2023, the Committee Majority released the phase three interim report, “The Devastating Human Costs of DHS Secretary Alejandro Mayorkas’ Open-Border Policies,” which focused on the human costs to Americans and migrants stemming from the border crisis.<sup>47</sup>

On November 13, 2023, the Committee Majority released the phase four interim report, “The Historic Dollar Costs of DHS Secretary Alejandro Mayorkas’ Open-Border Policies,” which focused on the skyrocketing dollar costs for states and local communities as a direct result of the ongoing border crisis.<sup>48</sup>

On December 21, 2023, the Committee Majority released the phase five interim report, “The Massive Waste and Abuse Enabled by DHS Secretary Alejandro Mayorkas,” along with an appendix containing information from the transcribed interviews with chief patrol agents from USBP sectors on the Southwest border.<sup>49</sup>

The Committee prioritized thoroughness and transparency to provide accountability for the American people. Accordingly, the Committee made evidence of its investigation into Secretary Mayorkas available for the American people to review as the investigation proceeded.

## 5. Transcribed Interviews

On March 15, 2023, the Committee held a field hearing in McAllen, Texas, to examine the crisis at the Southwest border and impacts of Secretary Mayorkas’ refusal to enforce U.S.

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<sup>45</sup> DHS SECRETARY ALEJANDRO MAYORKAS’ DERELICTION OF DUTY PHASE 1 INTERIM REPORT, H. COMM. ON HOMELAND SEC., (July 19, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/07/Phase-One-Report.pdf>.

<sup>46</sup> DHS SECRETARY ALEJANDRO MAYORKAS HAS EMBOLDENED CARTELS, CRIMINALS PHASE 2 INTERIM REPORT, AND AMERICA’S ENEMIES, H. COMM. ON HOMELAND SEC. (Sept. 7, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/09/09.07-Phase-2-Final.pdf>.

<sup>47</sup> THE DEVASTATING HUMAN COSTS OF DHS SECRETARY ALEJANDRO MAYORKAS’ OPEN-BORDER POLICIES PHASE 3 INTERIM REPORT, H. COMM. ON HOMELAND SEC. (Oct. 10, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/10/Phase-3-Report.pdf>.

<sup>48</sup> THE HISTORIC DOLLAR COSTS OF DHS SECRETARY MAYORKAS’ OPEN-BORDER POLICIES PHASE 4 INTERIM REPORT, H. COMM. ON HOMELAND SEC. (Nov. 13, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/11/Phase4Report.pdf>.

<sup>49</sup> THE MASSIVE WASTE AND ABUSE ENABLED BY DHS SECRETARY ALEJANDRO MAYORKAS PHASE 5 INTERIM REPORT, H. COMM. ON HOMELAND SEC. (Dec. 21, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/12/Phase-5.pdf>.

immigration laws.<sup>50</sup> Following that hearing, the Committee sent a letter to Acting CBP Commissioner Troy A. Miller requesting that each Southwest border sector Chief Patrol Agent be made available for transcribed interviews.<sup>51</sup> On March 24, 2023, the Committee and the Committee on Oversight and Accountability received a response from DHS Assistant Secretary for Legislative Affairs mischaracterizing the committees' respective discussions with CBP.<sup>52</sup> On March 31, 2023, the Committee and Committee on Oversight and Accountability sent a joint follow-up letter, and DHS agreed to schedule transcribed interviews with nine sector representatives.<sup>53</sup> The Committee and the Committee on Oversight and Accountability held transcribed interviews on the following dates with USBP Chief Patrol Agents:

- April 25, 2023, Sean McGoffin, USBP Chief Patrol Agent, Big Bend Sector;
- May 5, 2023, Jason Owens, Chief Patrol Agent, Del Rio Sector;
- May 9, 2023, Aaron Heitke, Chief Patrol Agent, San Diego Sector;
- June 1, 2023, Joel Martinez, Chief Patrol Agent, Laredo Sector;
- June 29, 2023, Anthony "Scott" Good, Chief Patrol Agent, El Paso Sector;
- July 12, 2023, Gregory Bovino, Chief Patrol Agent, El Centro Sector;
- July 26, 2023, John Modlin, Chief Patrol Agent, Tucson Sector;
- September 26, 2023, Gloria Chavez, Chief Patrol Agent, Rio Grande Valley Sector;
- September 28, 2023, Dustin Caudle, Deputy Chief Patrol Agent, Yuma Sector.

On January 22, 2024, the Committee conducted transcribed interviews with former Acting Commissioner of CBP Mark Morgan and former USBP Chief Rodney Scott to seek their expertise on questions specifically related to Secretary Mayorkas' handling of the border crisis.

During Mr. Morgan's interview, the Committee heard testimony confirming that Secretary Mayorkas was warned by career border security officials about the consequences of refusing to enforce the laws. The testimony confirmed that Secretary Mayorkas' failure to follow the law significantly contributed to the border crisis, and that he knowingly made false statements about the crisis to Congress and the American people. During the interview, Mr. Morgan stated:

We agree impeachment was not designed to settle political scores or policy differences. It's reserved for holding public officials accountable when they violate the law, abuse the power of the office, abandon their oath, and are dishonest with the American people and Congress. Secretary Mayorkas is a proven liar who has repeatedly refused to enforce the law and intentionally unleashed a wave of death and suffering while jeopardizing every aspect of our country's safety, health, and national security."<sup>54</sup>

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<sup>50</sup> *Failure By Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023).

<sup>51</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Troy A. Miller, Acting Comm'r, U.S. Customs and Border Protection (Mar. 17, 2023).

<sup>52</sup> Letter from Zephrahanie Buetow, Assistant Sec'y. for Legis. Aff., Dep't. of Homeland Sec. to Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability and Rep. Mark Green, Chairman, H. Comm. on Homeland Sec. (March 24, 2023).

<sup>53</sup> Letter from Hon. James Comer, Chairman, H. Comm. on Oversight and Accountability & Hon. Mark Green, Chairman, H. Comm. on Homeland Sec. to Hon. Troy A. Miller, Acting Comm'r, U.S. Customs and Border Protection (March 31, 2023).

<sup>54</sup> H. Comm. on Homeland Sec., Transcribed Interview of Mark Morgan, at 13 (Jan. 22, 2024).

The Committee also interviewed Mr. Scott. In his interview, Mr. Scott had revealed his conversations and interactions with Secretary Mayorkas during his service as USBP Chief. In these conversations, he made Secretary Mayorkas fully aware that decreasing deterrence and consequences for illegal entry while increasing releases of aliens into the United States would increase the number of aliens coming to the country.<sup>55</sup>

The transcribed interviews were conducted consistent with the Rules of the House and as agreed upon by the committees and DHS staff. All Members of both committees were permitted to attend these transcribed interviews. Members and counsel for both the Majority and Minority were permitted equal time for questioning witnesses. Transcripts of the interviews were available to Members and staff for both the Majority and Minority. Finally, DHS counsel was present for each interview with USBP Chief Patrol Agents and accepted the opportunity to review the transcript of each interview.

On January 16, 2024, the committees released a joint staff report detailing the interviews with the Chief Patrol Agents.<sup>56</sup> The report detailed the necessity of sufficient consequences for illegal entry as a primary component of any effective deterrent strategy; the benefits of the border barrier system; how the increased surge of migrants contributed to the increase in known gotaways; the concerns with the increase in migrants from “nontraditional” countries; and how TCOs have facilitated and benefitted from the increased flow of illegal border crossers.

## 6. Southwest Border Visits

In 2023 and 2024, the Committee held a field hearing at the Southwest border and deployed a congressional delegation to hear firsthand accounts from frontline USBP agents. Most recently, in January 2024, Speaker Mike Johnson led a congressional delegation of more than 60 House Republicans to the Del Rio Sector to meet with CBP and tour a USBP processing facility in Eagle Pass, Texas. During that visit, Members were informed that the agency sought to ensure that what the congressional delegation witnessed would “pale in comparison to the migrant surge and grossly overcrowded facilities experienced during the month of December.”<sup>57</sup> During the visit, CBP forbade Members of Congress from taking photographs of the facility but allowed journalists from CBS to take photographs and video.<sup>58</sup> Members were also briefed by agents about the impacts of the border crisis due to the failed leadership of Secretary Mayorkas.

Additionally, the Committee reviewed publicly available information to supplement the investigation. DHS has continued to obstruct the Committee’s investigation. The Committee

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<sup>55</sup> H. Comm. on Homeland Sec., Transcribed Interview of Rodney Scott, at 13 (Jan. 22, 2024).

<sup>56</sup> CRISIS AT THE BORDER: REPORTS FROM THE FRONTLINE, H. COMM. ON HOMELAND SEC. AND H. COMM. ON OVERSIGHT & ACCOUNTABILITY (Jan. 16, 2024), *available at* <https://oversight.house.gov/wp-content/uploads/2024/01/Joint-CPA-Transcribed-Interviews-Report-01-16-2024-FINAL-pdf.pdf>.

<sup>57</sup> Randy Clark, *Potemkin Village: Biden Admin ‘Cleans Up Border’ Ahead of Congressional Visit, Says Source*, BREITBART NEWS, Jan. 3, 2024, <https://www.breitbart.com/border/2024/01/03/potemkin-village-biden-admin-cleansup-border-ahead-of-congressional-visit-says-source/>.

<sup>58</sup> Letter from Hon. Mike Johnson, Speaker, U.S. House of Rep., Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, & Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Jan. 11, 2024).

reviewed and considered documents and reports from the DHS Office of Inspector General, GAO reports.

### C. House Resolution 863 and Subsequent Proceedings

On November 13, 2023, Representative Marjorie Taylor Greene (R-GA), introduced H. Res. 863, impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and Misdemeanors.<sup>59</sup> That same day, the House voted to refer the motion to the Committee on Homeland Security, with 201 Democrats supporting the motion, which included 13 minority Members of the Committee.<sup>60</sup>

On November 30, 2023, Chairman Green released a statement that “[t]his Committee has been diligently investigating Secretary Mayorkas’ intentional border crisis for most of this year. We are nearing the conclusion, and will – as I’ve said all along – go where the facts lead us.”<sup>61</sup>

The Committee continued its investigation of Secretary Mayorkas, DHS, and its components. On December 21, 2023, the Majority released the fifth and final interim report, specifically focusing on Secretary Mayorkas’ waste and abuse of taxpayer resources amid the border crisis.<sup>62</sup> On January 3, 2024, following the completion of the five phases of the Committee’s investigation, Chairman Green announced the first of the impeachment hearings against Secretary Mayorkas.<sup>63</sup>

On January 10, 2024, the Committee held a hearing titled, “Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States.” The Committee heard testimony from Attorneys General Austin Knudsen from Montana, Gentner Drummond from Oklahoma, and Andrew Bailey from Missouri. The attorneys general outlined the impacts of the devastating homeland security crisis in their states and testified about Secretary Mayorkas’ failure to uphold his oath of office and his abuse of authority. The attorneys general also expressed their concerns about Secretary Mayorkas’ repeated disregard for laws enacted by Congress, and ultimately recommended his impeachment. The Minority’s witness was a University of Missouri law professor, Mr. Frank O. Bowman, III. Mr. Bowman is the author of a book titled, “High Crime and Misdemeanors: A History of Impeachment for the Age of Trump.”<sup>64</sup> Notably, Mr. Bowman

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<sup>59</sup> H. Res. 863, 118<sup>th</sup> Cong. (2023).

<sup>60</sup> “Impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors: Roll Vote No. 645.” *Congressional Record* 169: 187 (Nov. 13, 2023).

<sup>61</sup> Press Release, H. Comm. on Homeland Sec., Chairman Green: House Committee on Homeland Security Will “Go Where the Facts Lead Us” on Holding Mayorkas Accountable (Nov. 30, 2023) (on file with author) *available at* <https://homeland.house.gov/2023/11/30/chairman-green-house-committee-on-homeland-security-will-go-where-the-facts-lead-us-on-holding-mayorkas-accountable/>.

<sup>62</sup> THE MASSIVE WASTE AND ABUSE ENABLED BY DHS SECRETARY ALEJANDRO MAYORKAS PHASE 5 INTERIM REPORT, H. COMM. ON HOMELAND SEC. (Dec. 21, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/12/Phase-5.pdf>.

<sup>63</sup> Press Release, H. Comm. on Homeland Sec., Chairman Green Announces First Hearing As Part of Impeachment Proceedings Against DHS Secretary Mayorkas (Jan. 3, 2024) (on file with author) *available at* <https://homeland.house.gov/2024/01/03/media-advisory-chairman-green-announces-first-hearing-as-part-of-impeachment-proceedings-against-dhs-secretary-mayorkas/>.

<sup>64</sup> FRANK O. BOWMAN, III, HIGH CRIMES AND MISDEMEANORS: A HISTORY OF IMPEACHMENT FOR THE AGE OF TRUMP (2nd ed. 2023).

wrote in his book that the power of the House to impeach cabinet secretaries “remains important . . . as a signal of legislative displeasure with administration personnel and policy.”<sup>65</sup> This, of course, is a bar far lower than what the Committee seeks to impeach Secretary Mayorkas for today.

On January 18, 2024, the Committee held a second hearing as part of the impeachment proceedings titled, “Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis.” The Committee received emotional testimony from Ms. Tammy Nobles, the mother of Kayla Hamilton, who was sexually assaulted and murdered in July 2022 by a then-16-year-old illegal alien and member of the MS-13 gang from El Salvador. The illegal alien was permitted to remain in the United States after he was apprehended for illegally crossing the U.S.-Mexico border in March 2022. Ms. Josephine Dunn also testified about the tragic consequences of open borders and the loss of her daughter, Ashley Marie Dunn, to fentanyl poisoning in May 2021. The Minority witness was Ms. Deborah Pearlstein, a visiting professor in Law and Public Affairs at Princeton University. In remarks made on a public radio broadcast in 2019, Ms. Pearlstein made clear her view on impeachment standards relating to indictable or criminal offenses. When asked about her views about a then-congressional hearing on impeachment, Ms. Pearlstein stated:

Professors were reasonably uniform in recognizing that it doesn’t have to be a crime, that is to say an impeachable offense doesn’t have to be a crime as currently embodied in the federal criminal code as enacted by Congress. The existing criminal laws didn’t exist when the Framers wrote the Constitution and indeed crimes as such weren’t what the Framers had in mind when they put impeachment into the Constitution. What they were thinking about with the impeachment remedy were serious offenses against the public trust . . .<sup>66</sup>

On January 30, 2024, the Committee held a markup of H. Res. 863, impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors.<sup>67</sup> The Committee began debate the morning of January 30, with a final vote on an amendment in the nature of a substitute taken in the early morning of January 31.<sup>68</sup> On January 31, 2024, the Committee voted to report the resolution, as amended, favorably to the House.<sup>69</sup>

#### D. The Proceedings Were Fully Authorized by House Rules

The Committee’s impeachment proceedings were fully consistent with the Constitution and rules of the House. Pursuant to Rule X, the Committee maintains jurisdiction to conduct oversight and investigate DHS. Congress’ power to obtain information from the executive necessary for legislation is well established.<sup>70</sup> Additionally, the “power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries

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<sup>65</sup> *Id.* at 123.

<sup>66</sup> *The House is Almost Ready to Impeach: Here’s What You Need to Know*, N. Y. Public Radio (Dec. 12, 2019) available at <https://www.wnycstudios.org/podcasts/impeachment-daily-podcast/episodes/house-almost-ready-impeach-heres-what-you-need-know>.

<sup>67</sup> *Full Committee Markup of Articles of Impeachment Against DHS Secretary Mayorkas: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Jan. 30, 2024).

<sup>68</sup> *Id.*

<sup>69</sup> H. Res. 863, 118th Cong. (2023).

<sup>70</sup> *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020).

concerning the administration of existing laws as well as proposed or possibly needed statutes.”<sup>71</sup> Despite DHS’ efforts to obstruct the Committee’s work, the Committee has conducted thorough oversight and investigations into Secretary Mayorkas, DHS, and its component agencies.

The House’s autonomy to structure its own processes for impeachment proceedings is rooted in two provisions of Article I of the Constitution. First, Article I vests the House with the “sole Power of Impeachment.”<sup>72</sup> It contains no other requirements as to how the House must carry out that responsibility. Second, Article I further states that the House is empowered to “determine the Rules of its Proceedings.”<sup>73</sup> Thus, the Constitution gives the House the sole discretion to determine the process and grounds for impeachment. As noted in the impeachment of President Trump,” House precedent confirms that the House may proceed directly to consideration of articles of impeachment on the House Floor. As *Jefferson’s Manual* notes, “[i]n the House various events have been credited with setting an impeachment in motion,” including charges made on the floor, resolutions introduced by Members, or “facts developed and reported by an investigating committee of the House.”<sup>74</sup>

House rules do not provide any specific requirements for committees conducting impeachment inquiries. Although the House Committee on the Judiciary has been primarily responsible for investigating and recommending articles of impeachment, that has not always been the case, nor has the Judiciary Committee always been the exclusive fact-finding body. The first impeachment in the House occurred prior to the formation of the Judiciary Committee and the investigation preceding the investigation of Secretary Belknap was considered before the House Committee on Expenditures in the War Department before they were considered on the House floor. In recent decades, in four of the five judicial impeachment investigations, the Judiciary Committee used information provided from another outside investigation.<sup>75</sup> In the impeachment of President Bill Clinton, an independent counsel investigated the President, and his associates delivered a report to the House with the findings and recommendations.<sup>76</sup> While the Committee on Homeland Security did make use of publicly available information, including information obtained by other congressional committees, the Committee conducted its own fact-finding investigation over the preceding year.

The Committee has been investigating Secretary Mayorkas since January 2023,. The Committee has produced five interim reports with nearly 400 pages of evidence, held 20 hearings with 91 witnesses, wrote more than 50 letters, most of which remain partially or completely unsatisfied, held 11 transcribed interviews, and provided Secretary Mayorkas an opportunity to testify during the investigation, impeachment proceedings, and to submit written testimony.

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<sup>71</sup> *Watkins v. United States*, 354 U.S. 178, 187, 77 S. Ct. 1173, 1179 (1957).

<sup>72</sup> U.S. CONST. art I, § 2, cl. 5.

<sup>73</sup> U.S. CONST. art I, § 5, cl. 2.

<sup>74</sup> H. Rept. 117-2, *Providing for Consideration of the Resolution (H. Res. 24) Impeaching Donald John Trump, President of the United States, For High Crimes and Misdemeanors*, 117th Cong. (Jan. 12, 2021) at 21. See *Constitution, Jefferson’s Manual Rules of the House of Representatives of the United States*, H. Doc. No. 115-177 § 603 (2019 ed.).

<sup>75</sup> ELIZABETH RYBICKI & MICHAEL GREENE, CONG. RESEARCH SERV., R45769, THE IMPEACHMENT PROCESS IN THE HOUSE OF REPRESENTATIVES 7 (2024), available at <https://crsreports.congress.gov/product/pdf/R/R45769>.

<sup>76</sup> JARED P. COLE & TODD GARVEY, CONG. RESEARCH SERV., R46013, IMPEACHMENT AND THE CONSTITUTION (2023) available at <https://crsreports.congress.gov/product/pdf/R/R46013>.

Despite claims by the Minority that the impeachment of Secretary Mayorkas is based on policy differences, the constitutional history is clear that impeachment is warranted when executive branch officials refuse to comply with the law and breach the public trust. The Secretary's egregious disregard of his duty to enforce the law is a matter of significant constitutional magnitude.

As Harvard Professor Raoul Berger wrote in his seminal book on impeachment:

One thing is clear: in the impeachment debate the Convention was almost exclusively concerned with the President ... But the Founders were also fearful of the ministers and favorites whom Kings had refused to remove, and they dwelt repeatedly on the need of power to oust corrupt or oppressive ministers whom the President might seek to shelter.<sup>77</sup>

And James Madison, during a debate in the first Congress, said:

Perhaps the greatest danger ... of abuse in the executive power lies in the improper continuance of bad men in office. But ... if an unworthy man be continued in office by an unworthy President, the House of Representatives can impeach him and the Senate can remove him whether the President chooses to or not.<sup>78</sup>

The Committee conducted its investigation of Secretary Mayorkas in accordance with the Constitution, the rules of the House, and House precedent. While articles of impeachment have traditionally been marked up by the Judiciary Committee, the House has the sole discretion to determine the impeachment process.

#### E. Secretary Mayorkas Received Ample Procedural Protection

##### 1. General Principles of Impeachment and Processes Used in Modern Impeachments

The Constitution provides the basic framework for American impeachments but does not address all the issues that may arise, including procedural questions.<sup>79</sup> As Chairman Rodino observed during the Judiciary Committee's impeachment proceedings against President Nixon, "It is not a right but a privilege or a courtesy" for the President to participate through counsel in House

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<sup>77</sup> RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973) at 100-101 and n.228 (citations omitted). Harvard Law School professor Lawrence Tribe echoes Professor Berger's understanding. *See* LAWRENCE TRIBE & JOSHUA MATZ, *TO END A PRESIDENCY: THE POWER OF IMPEACHMENT* (2019) ("The Pardon Clause further supports this interpretation. Under that clause, presidents have the "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." The categorical exception for impeachment is crucial to preserving checks and balances. If the president's top advisors commit evil deeds at his behest, he can save them from criminal punishment -- but not from impeachment and removal. On that question, Congress always has the final word. This ensures that dangerous officials can at least be removed from positions of public trust.").

<sup>78</sup> 4 Elliot's Debates, 375, *available at* <https://www.govinfo.gov/content/pkg/GPO-HPREC-CANNONS-V6/html/GPO-HPREC-CANNONS-V6-46.htm>.

<sup>79</sup> CONG. RESEARCH SERV. 98-186, *IMPEACHMENT: AN OVERVIEW OF CONSTITUTIONAL PROVISIONS, PROCEDURE, AND PRACTICE* (Dec. 9, 2010), *available at* [https://www.everycrsreport.com/files/20101209\\_98-186\\_6c2d42c338d4a6f6fb1ec94821fbdac7d3ee5960.pdf](https://www.everycrsreport.com/files/20101209_98-186_6c2d42c338d4a6f6fb1ec94821fbdac7d3ee5960.pdf).

impeachment proceedings.<sup>80</sup> The House is not beholden to the procedural standards required at a trial; instead, Representative Powers argued during the Judiciary Committee’s consideration of the impeachment of Judge Charles Swaine in 1904 that the House’s role in impeachment falls under a lower standard of proof:

This House has no constitutional power to pass upon the question of the guilt or the innocent of the respondent. He is not on trial before us. We have no right to take from him the presumption of innocence which he enjoys under the law. All we have the right to do is to say whether there has been made out such probable cause of guilt as to entitle the American people to the right to have the case tried before the Senate of the United States.<sup>81</sup>

This Committee has the duty to determine whether the American people should have the right to hear the case tried before the Senate of the United States.

The House has typically afforded some level of transparency and procedural privileges to the subjects of impeachment. The privileges have generally balanced the public interest in transparency and impeachment subjects’ interest in being heard.<sup>82</sup> In past impeachment inquires generally, principal evidence relied upon by the Judiciary Committee was disclosed to the impeachment subjects and the public. Presidents have typically been afforded an opportunity to participate in the proceedings stage (not always) and present their own evidence.<sup>83</sup> The present situation is no different. Procedures employed by the House were tailored to provide the Secretary with ample procedural protections and privileges.

## 2. The Procedural Protections Afforded to Secretary Mayorkas

### i. The House’s Impeachment Proceedings were Conducted with Full Transparency.

The House’s impeachment proceedings provided to Secretary Mayorkas with procedural protections that were consistent with, and in some instances exceeded, those afforded to Presidents Nixon, Clinton, and Trump. The House’s proceedings were transparent. The Committee publicly released five interim reports totaling nearly 400 pages; the Minority and DHS counsel were present for all transcribed interviews with USBP agents; the Committee held over 20 public hearings and heard from 90 witnesses, including 31 government witnesses; and the Committee held two public impeachment hearings and a markup as part of the impeachment proceedings.

### ii. The Secretary Was Afforded Meaningful Opportunity to Participate and Provide Documents

The Committee on Homeland Security afforded Secretary Mayorkas meaningful opportunity to participate in the Committee’s investigation and impeachment proceedings. This

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<sup>80</sup> H.R. Rep No. 116-346, at 16 (2019); see *Impeachment Inquiry: Hearings Before the H. Comm. on the Judiciary*, 93d Cong. 497 (1974).

<sup>81</sup> JARED P. COLE AND TODD GARVEY, CONG. RESEARCH SERV., R46013, IMPEACHMENT AND THE CONSTITUTION (2023) available at <https://crsreports.congress.gov/product/pdf/R/R46013>.; See 39 Cong. Rec. 244 (Dec. 13, 1904).

<sup>82</sup> H.R. Rep No. 116-346 at 17-25 (2019).

<sup>83</sup> *Id.*

opportunity to participate was far more than President Trump was afforded; the 2021 impeachment report noted, “the House neither needs nor can it afford to resort to a lengthy impeachment proceeding. To the contrary, it is entirely with the power of the House under the Constitution to act quickly.”<sup>84</sup> The Committee wanted to conduct a thorough investigation and give Secretary Mayorkas every opportunity to explain his decisions to Congress and the American people.

Nevertheless, the Secretary made it clear throughout the investigation that he and DHS would not participate and would continue to obstruct the Committee’s investigations. Over the past year, DHS has failed to confirm receipts of letters; failed to provide substantive responses to letters; provided wholly redacted or illegible documents; ignored requests for prioritization discussions; refused to provide reasonable production timelines; and even allegedly failed to forward a Committee letter to the appropriate component. Throughout the investigation, the Committee sent the Secretary over 50 letters requesting information, memos, emails, documents, and communications. Most of the letters remain partly or completely unsatisfied. The Secretary’s actions indicate little desire to cooperate with the Committee’s investigation and oversight responsibilities. Consequently, the Committee had no recourse but to issue two different subpoenas to obtain information. To date, DHS has failed to fully satisfy either of the two subpoenas.

The Secretary, his staff, and DHS components have had substantial opportunities to participate in the Committee’s investigation.<sup>85</sup> Secretary Mayorkas has been invited on multiple occasions to testify before the Committee on the border crisis and his failure to enforce federal law. On August 16, 2023, Chairman Green sent a letter inviting Secretary Mayorkas to testify in a public hearing.<sup>86</sup> On September 18, 2023, more than two months later, Chairman Green sent a follow-up letter reiterating his request to have Secretary Mayorkas testify.<sup>87</sup> The Secretary again failed to confirm a date to testify.

On January 5, 2024, Chairman Green invited Secretary Mayorkas to testify as part of the impeachment proceedings at a hearing on January 18, 2024.<sup>88</sup> However, Secretary Mayorkas declined to appear. On January 17, 2024, Chairman Green invited Secretary Mayorkas to submit written testimony for the hearing.<sup>89</sup> The official hearing record was held open for 10 days following the conclusion of the hearing. At 4:48 a.m. on January 30, 2024, Secretary Mayorkas submitted a letter to Chairman Green in response to the request to submit written testimony.<sup>90</sup> The letter incorrectly claimed “substantial cooperation” with the Committee’s request, peculiarly focused on

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<sup>84</sup> H. Rept. 117-2, *Providing for Consideration of the Resolution (H. Res. 24) Impeaching Donald John Trump, President of the United States, For High Crimes and Misdemeanors*, 117th Cong. (Jan. 12, 2021) at 21. available at <https://www.congress.gov/117/crpt/hrpt2/CRPT-117hrpt2.pdf>.

<sup>85</sup> On June 6, 2023, the Homeland Security Subcommittee on Border Security and Enforcement held a hearing on “Examining DHS’ Failure to Prepare for the Termination of Title 42,” and DHS failed to provide a witness.

<sup>86</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Aug. 16, 2023).

<sup>87</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 18, 2023).

<sup>88</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Jan. 5, 2024).

<sup>89</sup> Letter from Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Jan. 17, 2024).

<sup>90</sup> Letter from Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., (Jan. 30, 2024).

his accolades as a federal prosecutor which have no bearing on the Committee’s investigation, and failed to address his past false statements made to Congress.<sup>91</sup> Secretary Mayorkas' repeated failure to testify in person at an impeachment hearing leads the Committee to conclude that he remains uninterested in complying with congressional oversight nor providing transparency to the American people

#### F. The Minority Was Afforded Full and Adequate Procedural Rights

Members of the Minority have contended that they were entitled to a separate hearing pursuant to House Rule XI.2(j)(1), which entitles the Minority, upon request to the Chair, “to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.”<sup>92</sup> As noted in the Trump impeachment report, the rule does not require the Chairman to schedule a hearing on a particular day or to schedule a hearing as a condition precedent to taking up any legislative action.<sup>93</sup> Specifically, then-Chairman Jerrold Nadler ruled on the matter in President Trump’s impeachment hearings and stated, in part: “[T]here is no precedent for the use of minority days to delay committee legislative or impeachment proceedings . . . The minority day rule was made part of the House rules in 1971, but it was not invoked in either the Nixon or Clinton impeachments.”<sup>94</sup>

The Minority was afforded full and adequate procedural rights. They were afforded a witness at both hearings on the impeachment proceedings. On January 10, 2024, the Committee held a hearing titled, “Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States,” and the Minority invited a University of Missouri law professor, Mr. Bowman.<sup>95</sup> On January 18, 2024, the Committee held a hearing titled “Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis.” The Minority invited witness was Ms. Pearlstein, a visiting professor in Law and Public Affairs at Princeton University.<sup>96</sup>

The Minority contended that the proceedings were inadequate because Secretary Mayorkas failed to testify in person. Secretary Mayorkas, however, was offered several opportunities to testify in person about his handling of the border crisis but refused to appear. The Committee provided Secretary Mayorkas an additional opportunity to defend his record or rebut the allegations against him by submitting written testimony. Instead, Secretary Mayorkas chose to submit a mere six-page letter the morning of the Committee’s markup of the two articles of impeachment against him. Nearly one-third of Secretary Mayorkas’ letter focused on his previous job titles irrelevant to the impeachment charges against him.<sup>97</sup>

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<sup>91</sup> Letter from Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., (Jan. 30, 2024).

<sup>92</sup> House Rule XI.2(j)(1) (118th Cong.).

<sup>93</sup> H.R. Rep No. 116-346, at 27 (2019).

<sup>94</sup> *H. Res. 755, Articles of Impeachment Against President Donald J. Trump, Volume I, Markup Before the H. Comm. On the Judiciary*, 116<sup>th</sup> Cong. (Dec. 11, 2019).

<sup>95</sup> *Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Jan. 10, 2024).

<sup>96</sup> *Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Jan. 18, 2024).

<sup>97</sup> Letter from Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Hon. Mark Green, Chairman, H. Comm. on Homeland Sec., (Jan. 30, 2024).

## G. Conclusion

The House conducted a complete, transparent, and fair investigation of Secretary Mayorkas' misconduct, despite his obstruction and refusal to appear. The Committee on Homeland Security conducted a nearly yearlong investigation which included more than 20 hearings, over 50 letters requesting the production of information and communications, held 11 transcribed interviews, visited the Southwest border multiple times, and released five interim reports, totaling nearly 400 pages of evidence, including a joint report with the Committee on Oversight and Accountability. The overwhelming and indisputable evidence shows that Secretary Mayorkas' willful and systemic refusal to comply with the law, and in violation of his oath to well and faithfully discharge the duties of his office, has breached the public trust. By these actions, Secretary Mayorkas left the Committee with no choice but to pursue the dramatic step of impeachment. Allowing Secretary Mayorkas to continue in office would create a Constitutional crisis and sustain a clear and present danger to public safety and homeland security.

Consistent with the Constitution, House Rules, and historical practice, the Committee thoroughly investigated Secretary Mayorkas and collected an abundance of evidence before considering articles of impeachment. The Committee then evaluated the evidence in a process that afforded Secretary Mayorkas the same or more privileges than past Presidential impeachment proceedings. Due to the unique circumstances of an impeachment proceeding of a cabinet secretary, the Committee made every attempt to provide as much transparency and privileges to Secretary Mayorkas as possible. Secretary Mayorkas' refusal to participate or comply with these proceedings confirmed his intent to deny Congress information about his actions and avoid testifying to Congress under oath about the charges set forth in the Committee's approved articles of impeachment. Secretary Mayorkas' actions confirm the House's concerns that he refuses to follow the law and, absent his removal, will continue to obstruct Congress in its oversight and constitutional functions.

## II. Constitutional Grounds for Impeachment

### A. Introduction

An essential part of the American idea is its emphasis on the importance of the rule of law, as ultimately embodied in the world's oldest written Constitution.

In 1783, George Washington, in a letter to members of the Volunteer Association of Ireland, wrote:

The bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations And Religions; whom we shall welcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.<sup>98</sup>

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<sup>98</sup> Washington to Members of the Volunteer Association of Ireland" (December 2, 1783) in Writings of George Washington, John C. Fitzpatrick, ed. (Government Printing Office 1931-44) 27:254. Washington expressed similar

Indeed, America’s first naturalization law required that a person seeking naturalization “mak[e] proof to the satisfaction of [a] Court that he is a person of good character, and tak[e] the oath or affirmation prescribed by law, to support the constitution of the United States.”<sup>99</sup> During the inaugural Congress of 1790, James Madison expressed support for the provisions of the first naturalization statute, saying “They should induce the worthy of mankind to come,” though warning that it is “necessary to guard against abuses.”<sup>100</sup>

The founding documents testify to an original understanding that America welcomes people of all origins and ethnicities who demonstrate respect for the Constitution of the United States. As the Supreme Court made clear, “the formulation of [immigration] policies is entrusted exclusively to Congress” and that understanding “has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.”<sup>101</sup>

When citizens freely join together in a government in which laws are made by duly elected representatives of the people, the Constitution requires that those laws be followed. The terms of the national contract defining rules of membership in American society must be adhered to by both the people and the government officials charged with enforcing the immigration laws. As Governor Morris observed at the Constitutional Convention of 1787, “every society from a great nation down to a club ha[s] the right of declaring the conditions on which new members should be admitted.”<sup>102</sup> These conditions are the immigration laws enacted by duly elected representatives. Congressional statutes that define who can and cannot legally be in America defines America itself. By ignoring the laws enacted by duly elected representatives, Secretary Mayorkas is unconstitutionally redefining America.

Article II, Section 4 of the Constitution provides that “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>103</sup> When high executive branch officials charged with enforcing the federal immigration laws willfully choose to suspend essential, mandatory parts of those laws, they unconstitutionally take legislative power from the people’s duly elected representatives. This breaks the covenant that defines the rule of law and America itself, warranting impeachment and removal from office.

As Harvard professor Raoul Berger wrote in his seminal book on impeachment:

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sentiments to the Hebrew Congregation in Newport, Rhode Island, in 1790, writing that “For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens. . . .” George Washington to the Hebrew Congregation in Newport, Rhode Island (August 18, 1790), in *The Papers of George Washington*, Presidential Series, vol. 6, 1 July 1790–30 November 1790 (ed. Mark A. Mastromarino. Charlottesville: University Press of Virginia, 1996) at 284–286.

<sup>99</sup> An act to establish a uniform Rule of Naturalization (March 26, 1790), in 6 *Legislative Histories* 1516 (Charlene B. Bickford et al., eds. John Hopkins University Press 1986).

<sup>100</sup> *The Legislative History of Naturalization in the United States* (1906 reprint, New York: Arno 1969) at 40, 23.

<sup>101</sup> *Galvan v. Press*, 347 U.S. 522, 531 (1954).

<sup>102</sup> 2 *The Records of the Federal Convention of 1787* (Max Farrand ed., 1911), at 238.

<sup>103</sup> U.S. Const. art. II, § 4.

One thing is clear: in the impeachment debate the Convention was almost exclusively concerned with the President. . . . But the Founders were also fearful of the ministers and favorites whom Kings had refused to remove, and they dwelt repeatedly on the need of power to oust corrupt or oppressive ministers whom the President might seek to shelter. . . . The Founders' concern with removal of "favorites" emerges most clearly in the First Congress. [James] Madison stated: "It is very possible that an officer who may not incur the displeasure of the President may be guilty of actions that ought to forfeit his place. The power of this House may reach him by means of an impeachment, and he may be removed even against the will of the President." . . . Abraham Baldwin, also a Framers, put the matter more sharply: a "bad man" "can be got out in spite of the President. We can impeach him and drag him from his place." "It is this clause," said Elias Boudinot, "which guards the rights of the House, and enables them to pull down an improper officer, although he should be supported by all the power of the Executive." Similar remarks were made by Egbert Benson, Samuel Livermore, John Lawrence, and Benjamin Goodhue. The nagging fear of "favorites" testifies that the Founders had studied the lessons of the 17th century experience [in England].<sup>104</sup>

James Madison, during the debate in the first Congress on a bill to establish a department of foreign affairs, said:

Perhaps the great danger . . . of abuse in the executive power lies in the improper continuance of bad men in office. But . . . if an unworthy man be continued in office by an unworthy President, the House of Representatives can impeach him and the Senate can remove him whether the President chooses or not."<sup>105</sup>

Secretary Mayorkas, a civil officer of the United States under the Constitution, has proven to be what Madison feared: a high official unworthy of his charge as the chief enforcer of federal immigration laws, and one whom the president will not remove. This report explains why Secretary Mayorkas' impeachment by the House of Representatives and removal by the Senate is necessary to preserve the Constitution's rule of law.

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<sup>104</sup> Berger, *supra* note 77, at 100-101 and n.228 (citations omitted) (citing, regarding Madison, *The Papers of James Madison*, vol. 12, 2 March 1789–20 January 1790 and supplement 24 October 1775–24 January 1789 (ed. Charles F. Hobson and Robert A. Rutland, Charlottesville: University Press of Virginia, 1979) at 170–174). Harvard Law School professor Lawrence Tribe echoes professor Berger's understanding. *See* Tribe and Matz, *supra* note 77 ("The Pardon Clause further supports this interpretation. Under that clause, presidents have the 'Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.' The categorical exception for impeachment is crucial to preserving checks and balances. If the president's top advisors commit evil deeds at his behest, he can save them from criminal punishment -- but not from impeachment and removal. On that question, Congress always has the final word. This ensures that dangerous officials can at least be removed from positions of public trust."). Also, and relevant to the failure to enforce federal immigration laws, Professor Tribe writes that "In creating the impeachment power, the Framers worried most of all about . . . foreign intrusion." *Id.*

<sup>105</sup> *The Papers of James Madison*, vol. 12, 2 March 1789–20 January 1790 and supplement 24 October 1775–24 January 1789 (ed. Charles F. Hobson and Robert A. Rutland, Charlottesville: University Press of Virginia, 1979) at 232–239.

## B. Relevant Constitutional History<sup>106</sup>

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<sup>106</sup> During impeachment inquiries and proceedings, we must endeavor to objectively discern the original understanding of the meaning and purpose of the Impeachment Clause of the Constitution, without bobbing and weaving based on partisan politics. The minority invited a law professor, Frank O. Bowman, III, to the Committee on Homeland Security’s January 10, 2024, hearing entitled “Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States,” which addressed the question of Secretary Mayorkas’ impeachment. Putting the understanding of the Framers of the Constitution aside and looking only at the writings of Professor Bowman, we note that in his written testimony he stated that impeachment “should not be attempted based on simple policy disagreements between Congress and the executive branch.” Written Statement of Professor Frank O. Bowman, III, submitted to the Committee on Homeland Security (January 10, 2024) at 3. However, while President Donald Trump was president, Professor Bowman wrote a book on impeachment entitled “High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump.” In it, he wrote that the power of the House to impeach cabinet secretaries “remains important . . . as a signal of legislative displeasure with administration personnel and policy.” Frank Bowman, “High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump” (2019).

Professor Deborah Pearlstein was the minority-invited witness for the House Committee on Homeland Security, January 18, 2024, hearing on “Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis.” Professor Pearlstein wrote the following in her written testimony regarding the impeachment of Secretary of War William Belknap: “The allegations against Secretary Belknap – charged with ‘basely prostituting his high office to his lust for private gain’ – manifestly had nothing to do with his efforts to implement the policies of the presidential administration of which he was a part.” Written Testimony of Deborah Pearlstein, House Committee on Homeland Security hearing on “Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis” (January 18, 2024), available at <https://homeland.house.gov/wp-content/uploads/2024/01/2024-01-18-HRG-Testimony.pdf>. But that is not true. Article III of the impeachment articles against Secretary Belknap included the charge that he was “disregarding his duty as Secretary of War.” Hind’s Precedents Chapter LXXVII (The Impeachment and Trial of William W. Belknap) at 912, available at <https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3-26.pdf>. During the first Trump impeachment, Professor Pearlstein summed up impeachment standards well. On a New York public radio podcast (available here <https://www.wnycstudios.org/podcasts/impeachment-daily-podcast/episodes/house-almost-ready-impeach-heres-what-you-need-know>), she was asked what she took away from a congressional hearing on impeachment standards in 2019. She responded as follows:

There, the professors were reasonably uniform in recognizing that it doesn’t have to be a crime, that is to say an impeachable offense doesn’t have to be a crime as currently embodied in the federal criminal code as enacted by Congress. The existing criminal laws didn’t exist when the Framers wrote the Constitution and indeed crimes as such weren’t what the Framers had in mind when they put impeachment into the Constitution. What they were thinking about with the impeachment remedy were serious offenses against the public trust, that is certain things that only the President and other senior officials could do that abused their authority. That is, the idea of abuse of power is sort of the definition of an impeachable offense. The other crimes, or so-called high crimes in that list, are treason, bribery, and high crimes and misdemeanors, and if you look at that list all together, treason and bribery are similar. They are betrayals of the public trust; they are betrayals of the national interest and that is exactly what the facts underlying the Article of Impeachment allege here.

Surely there’s a national interest in following America’s laws that define the rules for legal entry into the United States. Professor Pearlstein also wrote the following in a blog post on June 8, 2017:

[I]mpeachment is in the main a political remedy, committed to the discretion of a majority of the House and two-thirds of the members of the Senate, none of whom is bound in any formal (or even informal stare-decisis sort of way) by decisions past legislatures have made in past cases of impeachment.

The historical evidence is overwhelming that no Founding Father understood the phrase “high Crimes and Misdemeanors,” as it came to be used in the Constitution’s Impeachment Clause, to mean indictable crimes. Rather, the Framers were concerned with the much broader concepts of abuse of power, breach of public trust, and injury to the nation. At the Constitutional Convention the first proposal to add an impeachment power was immediately met with calls to enlarge the power to include any offenses against the security of the nation committed by high officials that could not be reduced to the elements of statutory criminal codes that were geared toward private wrongdoing rather than violations of the public trust. Moreover, regarding the Constitution’s use of the phrase “misdemeanors,” there is sometimes confusion as to whether that term connotes a form of crime. It does not. As Professor Michael Stokes Paulsen writes:

Specifically, the term “*misdemeanors*,” in its original meaning, carried with it less the sense of a *smaller or less serious* criminal-law offense (which would be today’s common usage of the word) and more the broader sense of *misconduct* or *misbehavior* – literally of not *demeaning* oneself properly (“*misdemeaning*”) in the exercise of an official capacity or position. The breadth of the constitutional language employed as the standard for impeachment thus plainly embraces a range of congressional judgment, extending beyond bare criminality, as to what types of culpable official misconduct so amount to a betrayal of trust, responsibility, duty, or integrity as to warrant removal from office.<sup>107</sup>

i. The English History that Informed the Framers at the Constitutional Convention

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Impeachment is “committed to the discretion of a majority of the House.” Balkanization, “Does Past Practice Matter When it Comes to Impeachment?” (June 8, 2017), available at <https://balkin.blogspot.com/2017/06/does-past-practice-matter-when-it-comes.html>. Professor Pearlstein also gave testimony to the House Rules Committee on March 3, 2020, in which she stated: “Congress of course has multiple formal mechanisms for expressing non-acquiescence with Executive Branch actions as it stands, from impeachment and censure to the (more common) enactment of contrary legislation.” Statement of Deborah N. Pearlstein, Prepared Testimony to the Committee on Rules, United States House of Representatives (March 3, 2020) Hearing on Article I: Constitutional Perspectives on the Responsibility and Authority of the Legislative Branch, at 12, available at <https://www.congress.gov/116/meeting/house/110603/witnesses/HHRG-116-RU00-Wstate-PearlsteinD-20200303.pdf>. As she wrote, Congress can use impeachment as a means of “expressing non-acquiescence with Executive Branch actions.” In that same testimony to the House Rules Committee, Professor Pearlstein wrote:

[I]t has been decades since Congress has effectively asserted its “ambition” to *guard against the staggering accretion of power in the presidency* ... Congress has acquiesced to broad presidential assertions of authority to act *without congressional authorization* ... Congress has allowed its own vast reserves of constitutional authority to address pressing national problems to go unused. . . Congress’s non-acquiescence – either through subsequent legislation *or other express condemnation*— can change the constitutional calculus substantially ... [T]he President’s power. . . is “at its lowest ebb” when the President takes steps “incompatible with the expressed or implied will of Congress.”

*Id.* at 2-3 (emphasis added). Precisely the same can be said here: Congress has now been left with only one viable means of expressing condemnation of the executive branch’s failing to act in the face of the expressed will of Congress to *statutorily mandate illegal alien detention as an enforcement priority* -- and that condemnation, as Professor Pearlstein noted in her previous testimony, includes impeachment.

<sup>107</sup> Michael Stokes Paulsen, “Checking the Court,” 10 N.Y.U. J. L. & Liberty 18, 68-70 (2016) (citing Samuel Johnson, A Dictionary of the English Language (1755) (defining misdemeanor as “offence; ill behavior ...”).

The Framers were very familiar with the English history of impeachments, which was a powerful tool the English Parliament had come to use to check abuses of a king's ministers. As Steven Bradbury of the Heritage Foundation describes it:

One of the most prominent examples was the impeachment of Thomas Wentworth, Earl of Strafford, during the showdown between the House of Commons and King Charles I leading up to the English Civil War. The grounds for Wentworth's impeachment included that, as Lord Deputy of Ireland and as a principal advisor to the king, he had attempted "to introduce Arbitrary and Tyrannical Government against Law," had acted "to subvert the Fundamental Laws and Government of the Realms," and had undermined the rights of parliament. Over the centuries, the grounds for impeachment included a wide range of misconduct in office by governmental ministers, variously described with phrases like "treason," "high treason," "misdemeanors," "malversations," and "high Crimes and Misdemeanors." By the time the American constitutional convention was held in the summer of 1787, the key term of art "high Crimes and Misdemeanors" was well established and had been used by the English parliament for more than 400 years. The earliest instance of its use was in the impeachment of Michael de la Pole, First Earl of Suffolk, the Lord Chancellor of England under King Richard II, who was impeached by the so-called Wonderful Parliament of 1386 – the first English minister removed from office by impeachment. De la Pole's "high Crimes and Misdemeanors" included, in addition to apparent common law offenses, at least one breach of trust and one omission that were distinctly non-criminal in nature: breaking a promise to parliament that he would follow the recommendations of a committee of the House of Lords and failing to expend a sum of money that parliament had directed be used to ransom the city of Ghent, which was lost to Burgundy and France as a result.<sup>108</sup>

The English colonies in America carried on the tradition of impeachments as a means for the legislature to check the executive. As Peter Charles Hoffer and N. E. H. Hull write, "Far more commonly used than legal historians realize, impeachment proved to be a valuable addition to American constitutions and an embodiment of republican ideals."<sup>109</sup> So well understood was the concept in the colonies that "In none of the early American cases does one find any attempt to justify the right of the colonial lower house to impeach. The right is taken as a given of English legislative jurisprudence."<sup>110</sup>

Early colonial legislatures quickly adopted impeachment practices to address problems caused by rogue officials in other branches of government. As Hoffer and Hull write:

From 1701 to 1755 the colonists broadened the function of impeachments to include a primitive form of checks and balances against the executive and judicial

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<sup>108</sup> Steven Bradbury, *Impeachable High Crimes and Misdemeanors: Not Limited to Criminal Offenses*, The Heritage Foundation (Mar. 23, 2023), available at <https://www.heritage.org/immigration/report/impeachable-high-crimes-and-misdemeanors-not-limited-criminal-offenses>.

<sup>109</sup> Peter Charles Hoffer and N.E.H. Hull, *Impeachment in America: 1635-1805* (Yale University Press 1984), at xiii.

<sup>110</sup> *Id.* at 10.

branches. In this era the target of impeachment became seated officeholders who could not be controlled otherwise and whose conduct seemed, to the prosecutors, to endanger the colony.<sup>111</sup>

Because the criminal code was unsuitable to capturing the conduct or inaction of rogue executive officials, impeachment was employed by the colonial legislatures:

Cases of misuse of power by officials were also difficult for local courts to handle. The offence might not appear in the criminal codes. All the same, misuse of power undermined the legitimacy of state government and impeachment effectively redressed such misconduct.<sup>112</sup>

## ii. The Constitutional Convention

This colonial experience carried over to the delegates to the Constitutional Convention, and their understanding of the impeachment power as it came to appear in the new Constitution warrants particular respect as the popular understanding of the Impeachment Clause at the time it was ratified. As Alexis de Tocqueville wrote nearly 200 years ago, those most interested in the proper functioning of the law give “implicit deference to the opinion of forefathers.”<sup>113</sup>

Nearly contemporaneous with the Constitutional Convention was the impeachment effort against Warren Hastings by the British Parliament just a year before the convention gathered. Hastings was the former governor-general of India whom Member of Parliament Edmund Burke had charged with a variety of articles alleging abuses of power. Notably, the Hastings impeachment articles charged him with no particular crimes. Hasting’s impeachment was generally approved of by the Founders, such that, at the Constitutional Convention, when it was first proposed to limit impeachments in the American Constitution to treason and bribery alone, Virginia delegate George Mason pointed out that “Hastings is not guilty of Treason.”<sup>114</sup> Mason questioned the wisdom of limiting impeachment to those two offenses, arguing that “[t]reason as defined in the Constitution [would] not reach many great and dangerous offences,” and that “[a]ttempts to subvert the Constitution may not be Treason as . . . defined” and that “. . . it is the more necessary to extend: the power of impeachments.”<sup>115</sup> Mason then moved that the convention add “maladministration” to the impeachment power.<sup>116</sup> Elbridge Gerry seconded the motion. Then James Madison argued that the term “maladministration,” which deviated from the more commonly recognized phrase “high Crimes and Misdemeanors,” was “[s]o vague a term [that it] will be equivalent to a tenure during pleasure of the Senate.”<sup>117</sup> Governor Morris agreed with Madison,<sup>118</sup> at which point Mason withdrew his motion and substituted as grounds for

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<sup>111</sup> *Id.* at 14.

<sup>112</sup> *Id.* at 83.

<sup>113</sup> Alexis de Tocqueville, *Democracy in America* 276–77 (Phillips Bradley ed., Alfred A. Kopf, Inc. 1953) (1835).

<sup>114</sup> Farrand, 2 *Records of the Federal Convention of 1787*, at 550.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

impeachment “bribery and other high crimes and misdemeanors.”<sup>119</sup> The motion carried without any further discussion of the new phrase, which ultimately became part of the Constitution.

Many other delegates to the Constitutional Convention stated impeachable offenses should include “corrupt administration,” “neglect of duty,” and “misconduct in office.”<sup>120</sup> Indeed, no delegate to the Constitutional Convention, including those who opposed ratification, ever claimed impeachment was or should be limited in its application to indictable crimes.

As Hoffer and Hull summarize the actions of the delegates, “Through the early debates, every speaker referred to . . . neglect of duty, and misconduct in office as the only impeachable offenses.”<sup>121</sup> And after Madison objected to the vagueness of the proposed impeachment clause:

Mason then moved to add “high crimes and misdemeanors” . . . This passed, 8 to 3, and became the orthodox phraseology. . . The vote in favor of the compromise motion suggests that the delegates understood that the new terms included. . . neglect of duty. . . The addition of misdemeanors to the list of offenses meant that the House of Representatives was permitted to charge officials with. . . misuse of power, and neglect of duty, as well as more prolonged, egregious or financially rapacious misconduct.<sup>122</sup>

Beyond the clear understanding of the Framers that impeachment did not require the commission of a crime, it would make no sense for them to think as such given the legal landscape at the time. As Laurence Tribe writes:

Through the early years of the Republic — really, until the mid-twentieth century — federal criminal law was thin and patchy. It covered relatively few categories of offenses, and it was infrequently and irregularly enforced by tiny federal agencies. Where federal criminal codes did apply, they often had arbitrary, jagged limitations meant to respect now-obsolete boundaries on Congress’s constitutional power. As Justice Story noted in 1833, many federal offenses were punishable only when committed “in special places, and within peculiar jurisdictions, as, for instance, on the high seas, or in forts, navy-yards, and arsenals ceded to the United States.” This haphazard character would have made federal criminal law an improbable tool for defining “high Crimes and Misdemeanors.” Why would the Framers limit the impeachment power to federal crimes, while simultaneously giving Congress hardly any power to create criminal law? Indeed, the early Congresses – filled with Framers – didn’t even try to create a body of criminal law addressing many of the specific abuses that motivated adoption of the Impeachment Clause in the first place. . . In the alternative, one might say that “high Crimes and Misdemeanors” occur when the president violates state criminal law. Here, however, we risk flipping federalism on its head: invoking state law to supply the content of the federal Impeachment Clause would grant states a bizarre primacy in our

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<sup>119</sup> *Id.*

<sup>120</sup> Hoffer and Hull, *supra* note 109, at 101.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 101-02.

constitutional system. Especially given that impeachment is crucial to the separation of powers within the federal government, it would be strange for states (not Congress) to control when this power may be used. Further, if state criminal law governs, then the same act by the president might be impeachable if committed in New York and not if committed in Alabama. But why should quirks and loopholes of state doctrine block Congress from removing an out-of-control president? . . . Indeed, even if a legislator wanted to draft a statute defining all impeachable crimes, she'd likely find the task impossible. As Justice Story cautioned in 1833, "political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."<sup>123</sup>

Legal scholars across the political spectrum agree that some of the most important impeachable offenses by federal officials are those that do not meet the elements of any criminal law, but rather consist of a long series of actions, or inactions, that combine to produce a grave threat to the nation.

As Steven Bradbury writes for the Heritage Foundation:

[A] settled understanding — beyond dispute — [is] that impeachable offenses are not limited to prosecutable crimes. Rather, the Framers of the Constitution understood, and the House of Representatives has consistently concluded, that the impeachment power reaches all manner of gross misconduct in office that does serious harm to the U.S. political system or the U.S. constitutional order. The actions, policies, and statements of Secretary Mayorkas easily meet that standard.<sup>124</sup>

As Michael Gerhardt writes:

[T]he possible lessons that might be derived from trends or patterns in the Congress's past impeachment practices. . . [include] the relatively widespread recognition of the paradigmatic case for impeachment as being based on the abuse of power. The three articles of impeachment approved by the House Judiciary Committee against President Richard Nixon have come to symbolize this paradigm. The great majority of impeachments, if not all of the impeachments brought by the House and convictions by the Senate, approximate this paradigmatic case; all of these cases, with the possible exception of one or two, involve the serious misuse of office or official prerogatives or breaches of the public trusts held. The second pattern consists of the most common characterizations of impeachable offenses made in the constitutional and state ratifying conventions and in Congress (particularly in the Senate) as consisting of serious abuse of power, serious breach of the public trust, and serious injury to the Republic or to the constitutional system. . . The third trend is the apparent consensus among constitutional scholars and historians. . . that there may be a paradigmatic case for impeachment consisting of

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<sup>123</sup> Tribe and Matz, *supra* note 77.

<sup>124</sup> Bradbury, *supra* note 108.

the abuse of power. In the paradigmatic case, there must be not only serious injury to the constitutional order but also a nexus between the misconduct of an impeachable official and the official's formal duties. It is this paradigm that Alexander Hamilton captured so dramatically in his suggestion that impeachable offenses derive from “the abuse or violation of some public trust” and are “of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.” This paradigm is also implicit in the Founders' many references to abuses of power. . . The paradigm has come to be symbolized by the three articles of impeachment approved by the House Judiciary Committee against Richard Nixon – the articles charged obstruction of justice, abuse of powers, and unlawful refusal to supply material subpoenaed by the House of Representatives. These charges derived from Nixon's misuse of the powers and privileges of his office to facilitate his re-election and to hurt his political enemies, as well as to frustrate or to impede inappropriately legitimate attempts to investigate the extent of his misconduct. Nixon's misconduct effectively disabled him from continuing to exercise the constitutional duties of his office. Keeping Nixon in office would have countenanced serious breaches of the public trust and abuses of power . . . .<sup>125</sup>

As Harvard law professor Laurence Tribe writes:

[A]n unyielding fixation on discrete deeds can blind us to patterns that turn individually troubling acts into a dangerous abuse of office. . . [I]ndividual tiles might say little, but viewed together they can compose a shocking picture. In some cases, a mosaic approach is therefore necessary. Indeed, as attorney John Labovitz recognized in 1978, “the concept of [a discrete] impeachable offense guts an impeachment case of the very factors — repetition, pattern, coherence — that tend to establish the requisite degree of seriousness warranting the removal of a president from office.” The question, he added, “is not whether a string of zeroes will sum to one, but whether a number of fractions will.” At times, a single evil act might say everything necessary to justify impeachment. In other cases, though, that determination requires reference to a broader course of conduct that slowly reveals a monster. . . .<sup>126</sup>

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<sup>125</sup> Michael Gerhardt, *The Lessons of Impeachment History*, 67 *Geo. Wash. L. Rev.* 603, 604 (1999). Note that nowhere in the Nixon impeachment articles is there any reference to a “crime” or “criminal” activity committed by the President himself. Instead, the articles (Article II) refer to Nixon’s acting in ways “not authorized by law” and in ways that constituted “unlawful activities.” And that’s exactly what Secretary Mayorkas has done in spades: he has acted in ways not authorized by law, and beyond that, he has unilaterally created programs designed to violate the immigration laws. The Nixon articles (Article I) also charged him with “making false and misleading statements” and “false and misleading testimony,” and concluded he “acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.” Indeed, while the Nixon articles of impeachment did not charge Nixon with committing a crime himself, they did charge him with acting “for the purpose of aiding and assisting such [other] subjects in their attempts to avoid criminal liability.” Similarly, Secretary Mayorkas' creation of programs designed to violate the federal immigration laws is facilitating the entry of unprecedentedly large numbers of illegal aliens.

<sup>126</sup> Tribe and Matz, *supra* note 77.

Article II, Section 3 of the Constitution states that the President “shall take Care that the Laws be faithfully executed.”<sup>127</sup> As Robert J. Delahunty and John Yoo write, “Early American courts and commentators on the Constitution understood the Take Care Clause to impose a duty on the President to enforce the law, regardless of his own administration’s view of its wisdom or policy.”<sup>128</sup> Delahunty and Yoo continue:

In grammatical form, the Take Care Clause is an imperative: it instructs or admonishes the President to “take Care.” The 1828 edition of Noah Webster’s American Dictionary of the English Language explains the meaning of the noun “care” as including “[c]aution; a looking to; regard, attention, or heed, with a view to safety or protection, as in the phrase, ‘take care of yourself.’” In illustrating the various uses of the verb “take,” he mentions “[t]o take care, to be careful; to be solicitous for” and “[t]o take care of, to superintend or oversee; to have the charge of keeping or securing.” Thus, the Take Care Clause appears to charge the President with the duty or responsibility of executing the laws, or at least of supervising the performance of those who do execute them.<sup>129</sup>

Delahunty and Yoo then ask:

What does it mean, then, to “execute” the laws “faithfully”? According to the 1755 edition of Dr. Samuel Johnson’s Dictionary of the English Language, it means “[t]o put in act; to do what is planned or determined.” . . . The adjective “executive,” according to Johnson, derives from the verb and means “[a]ctive; not deliberative; not legislative; having the power to put in act the laws.” And Johnson defines the meanings of the adverb “faithfully” to include both “[w]ith strict adherence to duty and allegiance” and “[w]ithout failure of performance; honestly; exactly.”<sup>130</sup>

As Delahunty and Yoo conclude:

The Take Care Clause is thus naturally read as an instruction or command to the President to put the laws into effect, or at least to see that they are put into effect, “without failure” and “exactly.” It would be implausible and unnatural to read the Clause as creating a power in the President to deviate from the strict enforcement of the laws. The President’s responsibility is primarily supervisory: he is not charged with executing the laws himself. Not only would this obviously have been impossible (how could the President collect customs in both Charleston and Boston at once?), but it is reflected in the phrasing of the Clause. It does not say that the President “shall take Care to execute the laws faithfully,” but rather that he take care that they “be faithfully executed.” Others will “execute” the laws; the President’s role is to see to it that they do so “faithfully.” Furthermore, the next

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<sup>127</sup> U.S. Const. art. II, §3.

<sup>128</sup> Robert J. Delahunty and John Yoo, *Dream On: The Obama Administration’s Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 Tex. L. Rev. 781, 799 (2013) (citing William Rawle, A View of the Constitution of the United States of America 147-50 (2d ed. 1829) (“Every individual is bound to obey the law, however objectionable it may appear to him: the executive power is bound not only to obey, but to execute it.”)).

<sup>129</sup> *Id.* at 799 (citing 1 Noah Webster, An American Dictionary of the English Language 32, 88 (1828)).

<sup>130</sup> *Id.* at 799.

clause [U.S. Const. art. II, §3] charges him to “Commission all the Officers of the United States,” underscoring that he will be provided with subordinates who will assist him in the tasks of executing the laws, and for whose performance he will be accountable.<sup>131</sup>

The key point here is that, while the Take Care Clause applies to the president, when the president, through his subordinates, fails to take care that the laws are faithfully executed. Congress can remedy the situation by impeaching the neglectful or abusive subordinates themselves, as cabinet secretaries are accountable for their own actions in their own right.<sup>132</sup> The oath of office taken by Secretary Mayorkas states “I will well and faithfully discharge the duties of the office on which I am about to enter.”<sup>133</sup> He has violated that oath.

### iii. After the Constitutional Convention

After the Constitutional Convention approved the Constitution for ratification by the states, James Madison and Alexander Hamilton principally authored a series of essays distributed nationwide called *The Federalist Papers*, which advocated for adoption of the Constitution and defended each of its clauses.

In *Federalist No. 65*, Hamilton notes that the Constitution’s Impeachment Clause was modeled on the traditional impeachment practices of the British parliament.<sup>134</sup> Hamilton makes clear that impeachment is a political act precisely because it is *not* a judicial act (such as the judicial acts of punishing crimes). Rather, he writes, “The subjects of [impeachment] are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.” Hamilton writes that impeachment was “designed as a method of NATIONAL INQUEST into the conduct of public men” and that “the true light in which” the practice of impeachments “ought to be regarded” is “as a bridle in the hands of the legislative body upon the executive servants of the government.”

During the ratification debates in the states, every delegate speaking on the matter understood the impeachment power to encompass bad behavior among federal officials that was qualitatively different than criminal conduct. At the Massachusetts and Virginia state conventions called to ratify the Constitution, delegates made clear their understanding that impeachment would

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<sup>131</sup> *Id.* at 799-800 (citing Saikrishna Prakash, *The Essential Meaning of Executive Power*, 2003 U. Ill. L. Rev. 701, 722 (“The Faithful Execution Clause imposes a duty of faithful law execution on the only officer who enjoys the executive power. Whether the chief executive executes the law himself or whether he executes through his executive subordinates, the president must faithfully execute the law.”) and noting that “As President George Washington noted, it would be an ‘impossibility’ for ‘one man’ to perform ‘all the great business of the State.’” (citing 30 *The Writings of George Washington* 334 (John C. Fitzpatrick ed., 1939)).

<sup>132</sup> *See Bowers v. Synar*, 478 U.S. 714, 726 (1986) (“Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws *except by impeachment.*”) (emphasis added).

<sup>133</sup> 5 U.S.C. § 3331.

<sup>134</sup> *See THE FEDERALIST NO. 65* (Alexander Hamilton) (“The model from which the idea of this institution [impeachment] has been borrowed, pointed out that course to the [constitutional] convention. In Great Britain, it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State constitutions have followed the [same] example.”).

be warranted if a federal official “deviates from his duty”<sup>135</sup> or “dare[s] to abuse the power vested in him by the people.”<sup>136</sup> As Professor Michael Gerhardt writes:

In the Virginia convention, several speakers argued that impeachable offenses were not limited to indictable crimes. For instance, James Madison argued that, if the president were to summon only a small number of states in order to try to secure ratification of a treaty that hurt the interests of the other unrepresented states, “he would be impeached and convicted, as a majority of the states would be affected by his misdemeanor.” He suggested further that, “if the president be connected, in any suspicious manner with any person, and there be grounds to believe that he will shelter him,” the president may be impeached. . . . The North Carolina convention featured substantial discussion about the scope of impeachable offenses, especially with respect to whether they were limited only to actual or indictable crimes. For example, James Iredell, who would later serve as an associate justice on the Supreme Court, called attention to the complexity, if not impossibility, of defining the scope of impeachable offenses any more precisely than to acknowledge that they would involve serious injuries to the federal government. He understood impeachment as having been “calculated to bring [great offenders] to punishment for crime which it is not easy to describe, but which every one must be convinced is a high crime and misdemeanor against government. [T]he occasion for its exercise will arise from acts of great injury to the community.” In the meantime, James Wilson continued to explain to the Pennsylvania citizenry the new Constitution, including the nature of the impeachment process. His views are often given special weight (at least with respect to impeachment) by constitutional scholars because of his familiarity with the original design of the Constitution, as reflected in his writings on British constitutional law as applied to the colonies, service as a delegate to the constitutional convention, reputation among his contemporaries as one of the principal architects of the federal Constitution, and appointment as one of the first justices on the Supreme Court. Immediately following his appointment to the Court, Wilson gave a series of lectures as a professor of law at the College of Philadelphia to clarify the foundations of the American Constitution. In these talks, delivered in 1790–1791 but published posthumously in 1804, Justice Wilson described impeachments as “proceedings of a political nature. . . . confined to political characters, to political crimes and misdemeanors, and to political punishments.” He emphasized that the framers believed that “[i]mpeachments, and offenses and offenders impeachable, [did not] come. . . . within the sphere of ordinary jurisprudence. They are founded on different principles; are governed by different maxims; and are directed to different objects . . . .”<sup>137</sup>

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<sup>135</sup> Elliot’s Debates in the Several States on the Adoption of the Federal Constitution, Vol. III, at 240 (comments of G. Nicholas at the Virginia Convention).

<sup>136</sup> Elliot’s Debates in the Several States on the Adoption of the Federal Constitution, Vol. II, at 47 (comments of S. Stillman at the Massachusetts Convention).

<sup>137</sup> Michael Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, Third Edition (2019). See also Hoffer and Hull, *supra* note 109, at 118 (“The ratification debates threw a little light on the framers’ views of the offenses clause. In Virginia, Madison supposed that if a president ‘violated the interest of the nation’

### III. Article I: Willful and Systemic Refusal to Comply with the Law

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that civil officers of the United States, including the Secretary of Homeland Security, “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In his conduct, Secretary Mayorkas, in violation of his oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, to bear true faith and allegiance to the same, and to well and faithfully discharge the duties of his office, has willfully and systemically refused to comply with Federal immigration laws.

Throughout his tenure as Secretary of DHS, Secretary Mayorkas has repeatedly violated laws enacted by Congress regarding immigration and border security. In large part because of his unlawful conduct, millions of aliens have illegally entered the United States on an annual basis, where they continue to unlawfully reside. His refusal to comply with the law is not only an offense against the separation of powers in the Constitution of the United States; it also threatens our national security and has had a dire impact on communities across the country. Despite clear evidence that his willful and systemic refusal to comply with the law has significantly contributed to unprecedented levels of illegal entries, increased control of the Southwest border by drug cartels, and the imposition of enormous costs on states and localities affected by the influx of aliens, Secretary Mayorkas has continued in his refusal to comply with the law, and thereby acted to the grave detriment of the interests of the United States.

Secretary Mayorkas engaged in this scheme or course of conduct by refusing to comply with the law in three crucial points: 1) refusing to comply with the law enforcement mandates (principally statutorily mandated detention of certain aliens); 2) utilizing the statutory parole power in a manner not authorized by statute, and 3) utilizing release authority for aliens arrested on administrative warrants in a manner not authorized by statute. These methods of refusing to comply with the law are interrelated, as Secretary Mayorkas abuses the parole power and release authority as a means of noncompliance with the detention mandates.

#### A. Secretary Mayorkas' Refusal to Comply with Statutory Detention Mandates

Secretary Mayorkas willfully refused to comply with detention mandates set forth in:

- Section 235(b)(2)(A)<sup>138</sup> of the INA, requiring that all applicants for admission who are “not clearly and beyond a doubt entitled to be admitted. . . shall be detained for a [removal] proceeding;”
- Section 235(b)(1)(B)(ii)<sup>139</sup> of the INA, requiring that an alien who is placed into expedited removal proceedings and determined to have a credible fear of persecution “shall be detained for further consideration of the application for asylum”;

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he would be impeachable – a far broader definition of offenses. . . M Madison’s second phrase – ‘of the nation’ – explored this question. The offense must present a real danger to the public or the government.”).

<sup>138</sup> 8 U.S.C. § 1225(b)(2)(A).

<sup>139</sup> 8 U.S.C. § 1225(b)(1)(B)(ii).

- Section 235(b)(1)(B)(iii)(IV)<sup>140</sup> of the INA, requiring that an alien who is placed into expedited removal proceedings and determined not to have a credible fear of persecution “shall be detained. . . until removed”;
- Section 236(c)<sup>141</sup> of the INA, requiring that an alien who is inadmissible or deportable on certain criminal or terrorism-related grounds “shall [be] take[n] into custody” and detained when the alien is released from law enforcement custody; and
- Section 241(a)(2)<sup>142</sup> of the INA, requiring that an alien ordered removed “shall [be] detain[ed]” during “the removal period.”

On September 30, 2021, Secretary Mayorkas issued *Guidelines for the Enforcement of Civil Immigration Laws* (“Guidelines”)<sup>143</sup> that directed DHS officers not to comply with sections 236(c) and 241(a)(2) of the INA. Specifically, the rule stated that the “fact an individual is a removable noncitizen. . . should not alone be the basis of an enforcement action against them”<sup>144</sup> and that DHS “personnel should not rely on the fact of conviction. . . alone.”<sup>145</sup> The Fifth Circuit Court of Appeals called the Guidelines “a calculated, agency-wide rule,”<sup>146</sup> “limiting [U.S. Immigration and Customs Enforcement] officials’ abilities to enforce statutory law”<sup>147</sup> by “prohibiting them [from] rely[ing] solely on a statutorily qualifying conviction or removal order.”<sup>148</sup> This prohibition even applies with respect to aliens subject to mandatory arrest and detention pursuant to section 236(c) and mandatory detention and removal pursuant to section 241(a). The Fifth Circuit concluded that Secretary Mayorkas’ rule had “every indication of being ‘a general policy that is so extreme as to amount to an abdication of. . . statutory responsibilities’”<sup>149</sup> and that Secretary Mayorkas’ “replacement of Congress’s statutory mandates with concerns of equity and race is extralegal. . . plainly outside the bounds of the power conferred by the INA.”<sup>150</sup>

Pursuant to the Secretary’s rule, arrests, detentions, and removals of illegal aliens in the United States have plummeted. According to a House Committee on the Judiciary interim staff report:

In its Fiscal Year 2023 Annual Report, ICE reported that it removed 23 percent fewer illegal aliens than in fiscal year 2020 and roughly 47 percent fewer than in fiscal year 2019. ICE also continues its failure to remove

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<sup>140</sup> 8 U.S.C. § 1225 (b)(1)(B)(iii)(IV).

<sup>141</sup> 8 U.S.C. § 1226(c).

<sup>142</sup> 8 U.S.C. § 1231(a)(2).

<sup>143</sup> Memorandum from Alejandro N. Mayorkas, Sec’y., Dept. of Homeland Sec., to Tae D. Johnson et al., *Guidelines for the Enforcement of Civil Immigration Law*, (Sept. 30, 2021), available at <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>144</sup> *Id.* at 2.

<sup>145</sup> *Id.* at 4.

<sup>146</sup> *Texas v. United States*, 40 F.4th 205, 222 (5th Cir. 2022), *rev’d on other grounds by United States v. Texas*, 599 U.S. 670, 736 (2023).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 220.

<sup>149</sup> *Id.* at 222.

<sup>150</sup> *Id.* at 226.

illegal aliens with final orders of removal. As of December 10, 2023, there were 1,323,264 illegal aliens with final orders of removal who remained in the United States. . .<sup>151</sup>

The report goes on to describe that in fiscal year 2023, “ICE removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020 and nearly 60 percent fewer than in fiscal year 2019.”<sup>152</sup> The report also compares administrative arrests by criminal charge or conviction, highlighting the lack of enforcement under Secretary Mayorkas:

In fiscal year 2018, the Trump Administration arrested aliens responsible for 76,585 dangerous drug offenses compared to 40,698 under the Biden Administration in fiscal year 2023. For assault offenses, the Trump Administration arrested aliens with 50,753 criminal charges and convictions in fiscal year 2018, with only 33,209 in fiscal year 2023. For sex offenses, the number was 6,888 in 2018 but 5,746 in 2023. Across the board, in categories ranging from murder to kidnapping to weapons offenses, the Trump Administration in 2018 arrested far more criminal aliens than the Biden Administration in 2023.<sup>153</sup>

Finally, the report shows that “there are at least 617,601 aliens on ICE’s non-detained docket who have criminal convictions or pending criminal charges. Those are aliens who remain *non-detained* in the United States, free to reoffend.”<sup>154</sup>

State criminal justice systems, including local law enforcement, have been witness to Secretary Mayorkas’ unlawful mandates not to detain criminal aliens and aliens with final removal orders. For example, after reviewing its database of records of inmates in custody between January 20, 2021 and March 20, 2021, the Texas Department of Criminal Justice (TDCJ) found that they received 68 final detainer<sup>155</sup> rescissions from ICE.<sup>156</sup> Of those 68 inmates whose detainers were rescinded, 31 were serving a sentence for a drug offense, none of whom were convicted of only a single offense involving possession for one’s own use of 30 grams or less of marijuana and sentenced to TDCJ.<sup>157</sup> Though section 236(c) of the INA requires detention of illegal aliens who

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<sup>151</sup> H. COMM. ON THE JUDICIARY, NEW DATA REVEAL WORSENING MAGNITUDE OF THE BIDEN BORDER CRISIS AND LACK OF INTERIOR IMMIGRATION ENFORCEMENT (Jan. 18, 2024), *available at* <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 8-9.

<sup>154</sup> *Id.* at 9 (emphasis in original).

<sup>155</sup> A detainer is a request from ICE to other law enforcement agencies to notify ICE before an illegal alien is released from custody and to maintain the alien in custody until ICE can take custody of that alien. *Detainers 101*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/features/detainers> (last visited Feb. 1, 2024).

<sup>156</sup> App. in Support of Plaintiff’s Motion for Preliminary Injunction at 3, *Texas v U.S.* 6:21-cv-00016 (S.D.TX). A detainer is a request from ICE to other law enforcement agencies to notify ICE before an illegal alien is released from custody and to maintain the alien in custody until ICE can take custody of that alien. *Detainers 101*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/features/detainers> (last visited Feb. 1, 2024).

<sup>157</sup> *Id.* at 4.

are convicted of certain drug offenses,<sup>158</sup> pursuant to Secretary Mayorkas' rule, ICE officials did not arrest those 31 illegal aliens as statutorily required. TDCJ also found that six inmates whose detainers were rescinded and released also had final orders of removal.<sup>159</sup> In this situation, ICE officials did not arrest illegal aliens as statutorily required by section 241(a) of the INA. TDCJ notes that "when TDCJ officials ask ICE officials about ICE's shift regarding detainers, the ICE officials attributed it to the new 'enforcement priorities.'"<sup>160</sup>

Separately, in a lawsuit brought by Arizona and other states challenging the enforcement guidelines, Arizona found:

"[S]tatistical evidence and testimony from Acting Phoenix ICE Director Albert Carter confirm[ed] that the changes imposed by the Interim Guidance cause a 'big drop off' in various core ICE missions, harming public safety. In February 2021, ICE was only conducting book-ins at 41% and removals at 55% of pre-February 2021 levels. And it was only issuing immigration detainers at a similarly small fraction. Director Carter's testimony confirmed these drop-offs and Interim Guidance as their sole cause."<sup>161</sup>

Arizona, Montana, and Ohio all agreed that they would be faced with significantly increased costs "resulting from incarceration, supervised release, education, and medical expenses the States must bear in connection with removable aliens DHS will not remove because of the Permanent Guidance."<sup>162</sup>

Like Secretary Mayorkas' willful refusal to comply with the detention mandates most often applicable to illegal aliens within the United States, in sections 236(c) and 241(a) of the INA, Secretary Mayorkas willfully refuses to comply with the detention mandates most often applicable to applicants for admission at the border under sections 235(b)(1) and (b)(2) of the INA. These sections generally require that applicants for admission be detained either during expedited removal proceedings or regular removal proceedings under section 240 of the INA. Since February 2021, however, over 3.3 million inadmissible aliens otherwise subject to mandatory detention, have been released into the United States.<sup>163</sup> As discussed *supra*, DHS often uses parole authority under section 212(d)(5) of the INA to release inadmissible aliens. However, DHS also created and used programs to release aliens that had no statutory basis.

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<sup>158</sup> See § 236(c)(1)(A) requiring an alien to be taken into custody if he is inadmissible for a conviction of a crime involving moral turpitude under § 212(a)(2) of the INA.

<sup>159</sup> App'x in Support of Plaintiff's Motion for Preliminary Injunction at 4, *Texas v U.S.* 6:21-cv-00016 (S.D.TX). TDCJ noted that "there may be other TDCJ inmates with final orders of removal that [we are] unable to access." *Id.*

<sup>160</sup> *Id.* at 4.

<sup>161</sup> Plaintiff's 3-Page Supplement to Their Supplemental Brief, *Arizona v Dep't of Homeland Sec.* No 2:21-cv-00186-SRB at 28 (D. AZ May 18, 2021) (emphasis in original).

<sup>162</sup> Combined Motion for Preliminary Injunction and Memorandum in Support of Motion for Preliminary Injunction, *Arizona v. Biden* No. 3:21-cv-00314 at 28 (S.D. Ohio Nov. 23, 2021).

<sup>163</sup> Committee staff conducted an independent analysis of publicly available information and statistics provided to the Committee by U.S. Customs and Border Protection.

For example, in March 2021, without any legal basis other than blanketed “prosecutorial discretion,” USBP started using Notices to Report (NTR), to release aliens into the country with minimal processing and without initiating removal proceedings.<sup>164</sup> Aliens were released at the border “with nothing more than a ‘piece of paper that said ‘go find somebody at ICE.’”<sup>165</sup> Ultimately more than 104,000 inadmissible aliens were released with an NTR.<sup>166</sup>

In an interview about Secretary Mayorkas’ catch and release policies, former CBP Commissioner Mark Morgan noted that “section 235 is very clear that there’s a mandatory detention requirement. That’s not being done by this Administration.”<sup>167</sup> He went on to explain that an effective strategy to handling migrant surges and ending catch and release is to simply follow the law as required in section 235 of the INA, stating that “one of the strong incentives is that we utilize both 235 provisions to remove people to a contiguous country while waiting for their process and detain those in the United States while they are going through their asylum process.”<sup>168</sup> By using that strategy following illegal alien surges in 2019, CBP was able to reduce illegal immigration by 85% by February 2020.<sup>169</sup> Former USBP Chief Rodney Scott, who served under both President Trump and President Biden, agreed that based on his training, knowledge, and experience, DHS under Secretary Mayorkas was not even attempting to detain all applicants at the border.<sup>170</sup>

All told, under Secretary Mayorkas, DHS has released at least 3.3 million aliens into the United States, most of whom are subject to mandatory detention<sup>171</sup> Secretary Mayorkas shows no sign of slowing down his refusal to comply with the law. In fact, in December 2023, a DHS official admitted that “an average of 5,000 illegal aliens are currently being released into the United States each day at the border.”<sup>172</sup> Secretary Mayorkas admits that most aliens at the border are being released, telling USBP agents that 85% of aliens at the border are released<sup>173</sup> and later telling a reporter that over 70% of aliens are released at the border every day and well over one million aliens are released into the U.S. annually.<sup>174</sup>

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<sup>164</sup> DEP’T OF HOMELAND SEC. OFFICE OF INSPECTOR GENERAL, OIG-268, U.S. BORDER PATROL FACES CHALLENGES ADMINISTERING POST-APPREHENSION OUTCOMES CONSISTENTLY 4 (Sept. 13, 2022).

<sup>165</sup> Florida v. United States, 3:21-cv-1066-TKW3 ZCB, slip op. 24 (N.D. Fla. Mar. 8, 2023), 2023 U.S. Dist. LEXIS 4016

<sup>166</sup> Letter from Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Ron Johnson, Sen. (January 6, 2022) available at <https://www.ronjohnson.senate.gov/services/files/F9D5467E-EEC9-4AEC-9156-73C5957CFE57>; Florida v. United States, slip op. at 24.

<sup>167</sup> H. Comm. on Homeland Sec., Transcribed Interview of Mark Morgan 27 (Jan. 22, 2024).

<sup>168</sup> *Id.* at 28.

<sup>169</sup> *Id.* at 28.

<sup>170</sup> H. Comm. on Homeland Sec., Transcribed Interview of Rodney Scott 43 (Jan 22, 2024).

<sup>171</sup> Letter from Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. to Ron Johnson, Senator (January 6, 2022) available at <https://www.ronjohnson.senate.gov/services/files/F9D5467E-EEC9-4AEC-9156-73C5957CFE57>.

<sup>172</sup> Adam Shaw & Bill Melugin, *5,000 illegal immigrants released every day into the US, admin officials privately tell lawmakers*, FOX NEWS (Dec. 9, 2023), <https://www.foxnews.com/politics/5000-illegal-immigrants-released-every-day-us-admin-officials-privately-tell-lawmakers>.

<sup>173</sup> Adam Shaw, Bill Melugin, & Griff Jenkins, *Mayorkas tells Border Patrol agents that ‘above 85%’ of illegal immigrants released into US: sources*, FOX NEWS (Jan. 8, 2024), <https://www.foxnews.com/politics/mayorkas-tells-border-patrol-agents-illegal-immigrants-released-into-us-sources>.

<sup>174</sup> Adam Shaw, *Mayorkas acknowledges that majority of illegal immigrants released into US: ‘I know the data,’* FOX NEWS (Jan. 5, 2024), <https://www.foxnews.com/politics/mayorkas-acknowledges-that-majority-of-illegal-immigrants-released-into-us-i-know-the-data>.

Secretary Mayorkas claims that he cannot detain aliens at the border because he does not have the funding or detention capacity to comply with the statutory mandates.<sup>175</sup> However, Secretary Mayorkas made it clear early on in his tenure that he disagreed with congressional detention mandates, testifying before the House Appropriations Subcommittee on Homeland Security that he was “concerned about the overuse of detention, and where alternatives to detention, ATD, would suffice. . . we will indeed be looking at that and executing accordingly.”<sup>176</sup> Secretary Mayorkas has purposefully reduced detention capacity by closing detention facilities, underutilizing available detention beds, and requesting insufficient funding. For example, in Fiscal Year 2020 and 2021, DHS requested enough funds for 54,000 and 60,000 detention beds, respectively.<sup>177</sup> By Fiscal Year 2022, however, Secretary Mayorkas reduced requested detention space by nearly 45 percent, for 32,500 beds.<sup>178</sup> In Fiscal Years 2023 and 2024, Secretary Mayorkas requested only 25,000 beds.<sup>179</sup> Moreover, in his Fiscal Years 2022 and 2023 budget requests, Secretary Mayorkas claimed in budget request documents, that “a reduction in detention capacity level will not impede ICE’s ability to apprehend, detain, and remove noncitizens that present a threat to national security, border security, and public safety.”<sup>180</sup> DHS has also never provided Congress with the statutorily mandated report on detention needs as required under 8 U.S.C. § 1368, and requested by the Committee in a letter on January 4, 2024.<sup>181</sup> Judge Wetherell of the U.S. District Court for the Northern District of Florida aptly noted the message sent by DHS with these actions:

Thus, like a child who kills his parents and then seeks pity for being an orphan, it is hard to take Defendants’ claim that they had to release more aliens into the country because of limited detention capacity seriously when they have elected not to use one of the tools provided by Congress [MPP] and they have continued to ask for less detention capacity in furtherance of their prioritization of ‘alternatives to detention’ over actual detention.<sup>182</sup>

Secretary Mayorkas’ willful and systemic refusal to comply with detention mandates prevents DHS from effectively removing illegal aliens from the United States and incentivizes more illegal

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<sup>175</sup> Florida v. United States, slip op. at 40.

<sup>176</sup> *Homeland Sec. Dep’t Fiscal Year 2022 Budget Request: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. on Appropriations*, 117th Cong. (May 26, 2021) (Statement of Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec.).

<sup>177</sup> DEP’T OF HOMELAND SEC., FY 2020 BUDGET IN BRIEF 3, *available at* [https://www.dhs.gov/sites/default/files/publications/fy\\_2020\\_dhs\\_bib.pdf](https://www.dhs.gov/sites/default/files/publications/fy_2020_dhs_bib.pdf); DEP’T OF HOMELAND SEC., FY 2021 BUDGET IN BRIEF 3, *available at* [https://www.dhs.gov/sites/default/files/publications/fy\\_2021\\_dhs\\_bib\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/fy_2021_dhs_bib_0.pdf).

<sup>178</sup> DEP’T OF HOMELAND SEC., FY 2022 BUDGET IN BRIEF 3, *available at* [https://www.dhs.gov/sites/default/files/publications/dhs\\_bib\\_-\\_web\\_version\\_-\\_final\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf).

<sup>179</sup> DEP’T OF HOMELAND SEC., FY 2023 BUDGET IN BRIEF 3, *available at* [https://www.dhs.gov/sites/default/files/2022-03/22-%201835%20-%20FY%202023%20Budget%20in%20Brief%20FINAL%20with%20Cover\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2022-03/22-%201835%20-%20FY%202023%20Budget%20in%20Brief%20FINAL%20with%20Cover_Remediated.pdf).

<sup>180</sup> DEP’T OF HOMELAND SEC., FY 2024 BUDGET IN BRIEF 3, *available at* [https://www.dhs.gov/sites/default/files/2023-03/DHS%20FY%202024%20BUDGET%20IN%20BRIEF%20%28BIB%29\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/DHS%20FY%202024%20BUDGET%20IN%20BRIEF%20%28BIB%29_Remediated.pdf).

<sup>181</sup> Letter from Mark Green, Chairman, H. Comm. on Homeland Sec. to Alejandro Mayorkas, Sec’y, U.S. Dept of Homeland Sec. (Jan. 4, 2024).

<sup>182</sup> Florida v. United States, slip op. at 40.

aliens to come to the United States. Congress put these detention mandates in place primarily because, as the Supreme Court has explained in the context of the section 236(c) mandate, “one of the major causes of the . . . failure to remove deportable . . . aliens was the agency’s failure to detain those aliens during their deportation proceedings.”<sup>183</sup> DHS itself verified Congress’s concerns in its *FY 2021 Enforcement Lifecycle Report*, that amply demonstrated that (regarding aliens encountered at the Southwest border) continuously detained aliens have historically almost always been repatriated, while nondetained aliens have rarely been:

- Of aliens encountered at the Southwest border in fiscal year 2013, DHS returned or removed 98.4 percent of those who were continuously detained as of December 31, 2021, but only 6.9 percent of those who were sometimes detained, and 15.1 percent of those who were never detained. Of those continuously detained, only 0.7 percent had an unexecuted removal order, while 23.2 percent of those sometimes detained and 12.6 percent of those never detained had unexecuted orders.
- For fiscal year 2014, the comparable repatriation percentages were 98.5 percent as compared to 9.2 percent and 8.1 percent, and the comparable unexecuted removal order percentages were 0.2 percent as compared to 25.3 percent and 26.3 percent.
- For fiscal year 2015, the comparable repatriation percentages were 98.2 percent as compared to 11.1 percent and 10.3 percent, and the comparable unexecuted removal order percentages were 0.3 percent as compared to 24.2 percent and 21.6 percent.
- For fiscal year 2016, the comparable repatriation percentages were 97.4 percent as compared to 4.0 percent and 10.1 percent, and the comparable unexecuted removal order percentages were 1.1 percent as compared to 22.8 percent and 24.4 percent.
- For fiscal year 2017, the comparable repatriation percentages were 97.3 percent as compared to 2.8 percent and 6.0 percent, and the comparable unexecuted removal order percentages were 1.1 percent as compared to 20.5 percent and 25.8 percent.
- For fiscal year 2018, the comparable repatriation percentages were 97.0 percent as compared to 2.1 percent and 5.4 percent, and the comparable unexecuted removal order percentages were 1.8 percent as compared to 18.0 percent and 25.2 percent.
- For fiscal year 2019, the comparable repatriation percentages were 94.7 percent as compared to 2.2 percent and 7.9 percent, and the comparable unexecuted removal order percentages were 4.8 percent as compared to 11.4 percent and 15.1 percent.<sup>184</sup>

Moreover, in mandating detention at the border, Congress understood that a lack of consequences, such as detention, incentivizes illegal immigration. The former Fifth, now Eleventh,

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<sup>183</sup> *Demore v. Kim*, 538 U.S. 510, 519 (2003).

<sup>184</sup> Office of Immigration Statistics, U.S. Dept. of Homeland Sec., *Fiscal Year 2021 Enforcement Lifecycle Report* (2022) (appendix tables), available at <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.

Circuit Court of Appeals provided an example in the 1982 case of *Haitian Refugee Center v. Smith* the court noted.<sup>185</sup>

It is highly likely that [the then Immigration and Naturalization Service's] INS' inaction provided the greatest inducement to the ultimate swollen tide of incoming, undocumented Haitians. Record material suggests that a large percentage of the aliens bought passage to the United States from promoters in Haiti whose best sales pitch was the large number of the prospect's countrymen who, without visas or other documents, had reached Florida and were residing there undisturbed. Protestations by INS of the illegality of such operations could hardly be expected to prevail against the proprietary reasoning that Haitians who reached southern Florida were living, working and earning in the United States. "The proof of the pudding" was surely seen as being in the eating; those deciding whether or not to make the trip were not dissuaded by witnessing the return of earlier emigres.<sup>186</sup>

Chief Patrol agents agreed with the Fifth Circuit's insight in transcribed interviews with the Committee. Chief Patrol Agent Joel Martinez, Laredo Sector, was asked whether he believed "the current rate of release at the southwest border" to be "an active pull factor for people coming into the United States." His response was "Yes."<sup>187</sup> Chief Patrol Agent Anthony "Scott" Good, El Paso Sector, was asked whether if "someone perceives that they're going to be released, is that a pull factor?" His response was "Yes."<sup>188</sup> Chief Patrol Agent John Modlin, Tucson Sector, stated that "the most obvious way to not encourage illegal migration, is everyone's held until they have a hearing."<sup>189</sup> And Deputy Chief Patrol Agent Dustin Caudle, Yuma Sector, stated that "the belief that they are going to be released with no consequence is certainly something that many migrants tell our agents" as a reason that they came illegally to the United States.<sup>190</sup>

Former senior DHS officials also agreed that detention is a requisite consequence for controlling illegal immigration. According to Mark Morgan, "[t]he [detention] mandates are very clear. He [Secretary Mayorkas] refuses to enforce the law. He refuses to apply any strategy of deterrence or consequences to those that are illegally entering. . . [i]f you illegally enter our country, nothing happens. The vast majority are released in the United States. In fact, they're rewarded after they're released."<sup>191</sup> Former USBP Chief Rodney Scott agreed that Secretary Mayorkas knew that his decisions to release would pull more illegal aliens to the United States.<sup>192</sup>

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<sup>185</sup> *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982).

<sup>186</sup> *Id.* at 1030 n.11.

<sup>187</sup> H. COMM. ON HOMELAND SEC., MAJORITY REPORT: APPENDIX: FIRST HAND ACCOUNTS OF THE CRISIS FROM BORDER PATROL SECTOR CHIEFS, 118th Cong. 12 (Dec. 21, 2023), *available at* <https://homeland.house.gov/wp-content/uploads/2023/12/TI-Appendix.pdf>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 13.

<sup>190</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Dustin Caudle, Deputy Chief Patrol Agent, U.S. Border Patrol, Dep't of Homeland Sec. 114 (Sept. 28, 2023).

<sup>191</sup> H. Comm. on Homeland Sec., Transcribed Interview of Mark Morgan 51-52 (Jan. 22, 2024).

<sup>192</sup> H. Comm. on Homeland Sec., Transcribed Interview of Rodney Scott 32 (Jan. 22, 2024).

Secretary Mayorkas' catch-and-release scheme begins with his willful and systemic refusal to follow detention mandates, and continues with his abuse of authority in releasing aliens from mandatory detention.

#### B. Secretary Mayorkas' Abuse of the Parole Power to Release Aliens from Mandatory Detention

Secretary Mayorkas willfully exceeded his parole authority as set forth in section 212(d)(5)(A) of the INA -- permitting him to grant (generally inadmissible) aliens parole who are applying for admission to the United States “only on a case-by-case basis,” temporarily, and “for urgent humanitarian reasons or significant public benefit” — in that he paroled aliens both *en masse* at the border in order to release them from mandatory detention and through categorical parole programs.

Some historical context is in order. As the Eleventh Circuit Court of Appeals explained in 1983 in *Jean v. Nelson*, “[p]rior to 1954 it was INS policy to detain almost all aliens at the port of entry pending a determination of their admissibility.”<sup>193</sup> Then, “[t]he 1954 closure of the Ellis Island immigration center was accompanied by announcements that detention of undocumented aliens in exclusion was to cease, except in ‘but a few cases’ where the alien was deemed ‘likely to abscond or those whose freedom of movement could be adverse to the national security or the public safety.’”<sup>194</sup> When the case reached the Supreme Court in 1985 in *Jean v. Nelson*, the Court noted that “[i]n the late 1970’s and early 1980’s...large numbers of undocumented aliens arrived in South Florida, mostly from Haiti and Cuba.”<sup>195</sup> In the underlying 1983 decision of the District Court for the Southern District of Florida in *Louis v. Nelson*, the district court concluded that “[t]he logical inference. . . is that the policy of parole in conjunction with work authorization ‘provided the greatest inducement to the ultimate swollen tide of incoming undocumented Haitians.’”<sup>196</sup> In any event, the Supreme Court explained that “[c]oncerned about this influx. . . the Attorney General in the first half of 1981 ordered the INS to detain without parole any immigrants who could not present a prima facie case for admission. The aliens were to remain in detention pending a decision on their admission or exclusion.”<sup>197</sup>

The new detention policy was the subject of federal litigation, with the district court in *Louis v. Nelson* ruling that “the new detention policy. . . was not adopted in accordance with the [notice and comment] requirements of the Administrative Procedure Act” and thus “null and void,” but the court clarified that it “does not mean to say that detention in itself is unlawful,” a “question must be left to another day.”<sup>198</sup> The court also ruled that “[p]laintiffs have failed to prove by a preponderance of the evidence that they were incarcerated because of their race and/or national origin” in violation of the Fifth Amendment’s equal protection guarantee.<sup>199</sup> In the Supreme Court’s ultimate ruling on the case, the Court noted that the Eleventh Circuit had “stated that the

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<sup>193</sup> *Jean v. Nelson*, 711 F.2d 1455, 1468-69 (11th Cir. 1983).

<sup>194</sup> *Id.* at 1469 (Quoting “Address of the Attorney General, Nov. 11, 1954, reported in 32 Int.Rel. No. 12, “New Detention Policy of the Immigration and Naturalization Service.”).

<sup>195</sup> *Jean v. Nelson*, 472 U.S. 846, 849 (1985).

<sup>196</sup> *Louis v. Nelson*, 544 F. Supp. 973, 978 n.17 (S.D. Fla. 1982).

<sup>197</sup> *Jean v. Nelson*, 472 U.S. at 849.

<sup>198</sup> *Louis v. Nelson*, 544 F. Supp. 973 at 1003-04 (S.D. Fla. 1982).

<sup>199</sup> *Id.*

statutes and regulations, as well as policy statements of the President and the Attorney General, required INS officials to consider aliens for parole individually, without consideration of race or national origin” and had asked the District Court on remand “to ensure that the INS had exercised its broad discretion in an individualized and nondiscriminatory manner.”<sup>200</sup> The Court decided the case on nonconstitutional grounds and “affirm[ed] the en banc court’s judgment insofar as it remanded to the District Court for a determination whether the INS officials are observing [self-imposed] limit[s] upon their broad statutory discretion to deny parole to class members in detention,” with the District Court to consider “(1) whether INS officials exercised their discretion. . . to make individualized determinations of parole, and (2) whether INS officials exercised this broad discretion under the statutes and regulations without regard to race or national origin.”<sup>201</sup> Per order of the district court, the INS then issued regulations regarding the exercise of parole, in which the INS noted that “[t]he legislative history of the parole provision shows a Congressional intent that parole be used in a restrictive manner.”<sup>202</sup>

Congress amended the parole statute in 1996 to prohibit the *en masse* grant of parole designed to circumvent duly enacted immigration law. The current text of the statute was added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”),<sup>203</sup> which provided that the DHS Secretary “may. . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.”<sup>204</sup> As the Fifth Circuit Court of Appeals concluded in *Texas v. Biden*:

DHS cannot. . . parole aliens *en masse*; that was the whole point of the “case-by-case” requirement that Congress added in IIRIRA.... So the government’s proposal to parole every alien it cannot detain is the opposite of the “case-by-case” determinations required by law.<sup>205</sup>

DHS’s pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power.... [is] not *nonenforcement*; it’s *misenforcement*, suspension of the INA, or both.<sup>206</sup>

The Supreme Court concluded in 2022 in *Biden v. Texas* that the parole “authority is not unbounded: DHS may exercise its discretion to parole applicants ‘only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.’”<sup>207</sup> However, the Court decided that “we need not and do not resolve the parties’ arguments regarding. . . whether the Government is lawfully exercising its parole authorities” by utilizing parole to release aliens apprehended at the border and subject to mandatory detention.<sup>208</sup>

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<sup>200</sup> *Jean v. Nelson*, 472 U.S. at 853.

<sup>201</sup> *Id.* at 857.

<sup>202</sup> *Detention and Parole of Inadmissible Aliens*, 47 Fed. Reg. 30044 (July 9, 1982) (Interim rule with requests for comments).

<sup>203</sup> Pub. L. No. 104-208 (1996).

<sup>204</sup> *Id.* § 602 of title VI of division C.

<sup>205</sup> *Texas v. Biden*, 20 F.4th 928 at 997 (citation omitted).

<sup>206</sup> *Id.* at 998 (citation omitted).

<sup>207</sup> 142 S.Ct 2528, 2543 (2022) (citation omitted).

<sup>208</sup> *Id.* at 2544.

Despite clear Congressional intent based on the statutory language that parole be used in limited circumstances, Secretary Mayorkas has authorized inadmissible aliens to be released en masse at the border based on demographics, detention overcrowding, or for no reason at all. In November 2021, USBP stopped using NTRs and moved on to what they called “Parole Plus Alternatives to Detention (ATD).” Under Parole Plus ATD, if certain USBP sectors experienced detention capacity issues, aliens were released without initiating removal proceedings,<sup>209</sup> sent to ICE to be enrolled in the ATD program,<sup>210</sup> and given instructions to report to an ICE ERO office within 60 days where they would be issued Notices to Appear in immigration court.<sup>211</sup> “From a practical standpoint, the Parole + ATD ‘pathway’ . . . is indistinguishable from the NTR pathway”<sup>212</sup> and therefore had similar outcomes. As of May 2, 2022, 35 percent of aliens did not check-in with ICE as directed.<sup>213</sup> According to DHS, as of March 2023, projections showed that for every 90 days that Parole + ATD continued, the program created a backlog that takes 5.5 years and \$49 million to clear.<sup>214</sup>

Chief Border Patrol agents testified to the Committee that during 2022, parole was the favored “processing pathway” for illegal aliens at the border due to detention overcrowding – which is not a reason contemplated by Congress under section 212(d)(5) of the INA. On May 5, 2023, Chief Patrol Agent Jason Owens recounted that:

“[P]rocessing somebody for parole requires about half the time that processing some-that does processing somebody under NTA. So the flow that we were seeing, the capacities that we had, the capacities of our partners down the chain in the system, and what best fit[s] the migrant at the time, those are some of the factors that we used to make that determination.”<sup>215</sup>

USBP sectors received guidance from headquarters on what procedures to use for parole, what demographics to parole, and what capacity issues would trigger the use of parole.<sup>216</sup> USBP would also receive guidance on specific demographics that should be deemed eligible for parole. For example, in the Rio Grande Valley sector, agents were told to parole Venezuelans and Colombians,<sup>217</sup> and in Laredo agents were told to parole Venezuelans.<sup>218</sup> USBP tracks border

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<sup>209</sup> U.S. Border Patrol was using its parole authority under 212(d)(5) as the basis to release these aliens but kept limited to no record on a case-by-case determination. *Florida v. United States*, slip op. at 27.

<sup>210</sup> DEP’T OF HOMELAND SEC. OFFICE OF INSPECTOR GENERAL, OIG-268, U.S. BORDER PATROL FACES CHALLENGES ADMINISTERING POST-APPREHENSION OUTCOMES CONSISTENTLY 5 (Sept. 13, 2022).

<sup>211</sup> *Id.* at 5, 12; *Florida v. United States*, slip op. at 26.

<sup>212</sup> *Florida v. United States*, slip op. at 28.

<sup>213</sup> *Id.* at 33.

<sup>214</sup> *Id.* at 97

<sup>215</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol 121 (May 5, 2023).

<sup>216</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Aaron Heitke, Chief Patrol Agent, U.S. Border Patrol 78 (May 9, 2023); H. Comm. on Homeland Sec., Transcribed Interview of Joel Martinez, Chief Patrol Agent, U.S. Border Patrol 79 (Jun. 1, 2023).

<sup>217</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Gloria Chavez, Chief Patrol Agent, U.S. Border Patrol 79 (Sep. 26, 2023).

<sup>218</sup> H. Comm. on Oversight and Accountability & Comm. on Homeland Sec., Transcribed Interview of Joel Martinez, Chief Patrol Agent, U.S. Border Patrol 75 (Jun. 1, 2023).

encounters through its case management system and should be keeping data on every individualized, case-by-case parole decision it makes.<sup>219</sup> However, the Committee was unable to verify that process. On February 9, 2023, the Committee sent a letter to Secretary Mayorkas requesting for review a sampling of Form I-213s for aliens that had been paroled at the border. Secretary Mayorkas has not responded to that letter. Notably, the evidence that is available shows that “agents were directed to document ‘why’ the alien was paroled on the I-213 form by stating ‘[s]ubject was paroled due to time in custody constraints at [CBP facility]’” and later were directed to “stamp the alien’s I-94 form ‘PAROLED.’”<sup>220</sup> This record is wholly insufficient. Moreover, instead of providing specific reasons why paroling individual aliens would serve an “urgent humanitarian reason” or “significant public benefit,” DHS has argued that “[t]he primary ‘public benefit’ that the Parole+ATD policy sought to achieve was speeding up the inspection mandated by § [235] to ‘decompress’ overcrowded CBP facilities.”<sup>221</sup>

It stands to reason that USBP was unable to adequately evaluate and record each parole decision. In Fiscal Year 2022, when Parole Plus ATD was heavily utilized, USBP at the Southwest border encountered an average of 6,045 illegal aliens per day.<sup>222</sup> It would be impossible to meaningfully interview and consider each alien on a case-by-case basis at that rate. The evidence is clear that Secretary Mayorkas’ goal is to process and release as fast as possible,<sup>223</sup> leaving insufficient time for individualized assessments and interviews.<sup>224</sup>

### C. Secretary Mayorkas' Abuse of the Parole Power to Create Categorical Parole Programs

Secretary Mayorkas uses parole as a default tool to bring large populations of specific demographics into the United States. He has created, reopened, or expanded a series of categorical parole programs never authorized by Congress for foreign nationals outside of the United States, including for certain Central American minors,<sup>225</sup> Ukrainians,<sup>226</sup> Venezuelans,<sup>227</sup> Cubans,<sup>228</sup>

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<sup>219</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Aaron Heitke, Chief Patrol Agent, U.S. Border Patrol 79 (May 9, 2023).

<sup>220</sup> *Florida v. United States*, slip op. at 27.

<sup>221</sup> *Florida v. United States*, slip op. at 93.

<sup>222</sup> *Nationwide Encounters*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last visited Feb. 1, 2024).

<sup>223</sup> H. Comm. on Homeland Sec., Transcribed Interview of Mark Morgan 99 (Jan. 22, 2024).

<sup>224</sup> H. Comm. on Homeland Sec., Transcribed Interview of Rodney Scott 53 (Jan. 22, 2024).

<sup>225</sup> *Notice of Enhancements to the Central American Minors Program*, 88 FR 21694 (Apr. 11, 2023).

<sup>226</sup> *Implementation of the Uniting for Ukraine Parole Process*, 87 FR 25040 (Apr. 27, 2022).

<sup>227</sup> *Implementation of a Parole Process for Venezuelans*, 87 FR 63507 (Oct. 19, 2022).

<sup>228</sup> *Implementation of a Parole Process for Cubans*, 88 FR 1266 (Jan. 9, 2023).

Haitians,<sup>229</sup> Nicaraguans,<sup>230</sup> Colombians,<sup>231</sup> Salvadorans,<sup>232</sup> Guatemalans,<sup>233</sup> Hondurans,<sup>234</sup> and more generally for inadmissible aliens to be able to schedule appointments at the border through the CBP One application to be considered for (and overwhelmingly granted) parole,<sup>235</sup> which have enabled hundreds of thousands of inadmissible aliens to enter the United States in violation of the terms of the parole statute.

The Immigration and Nationality Act of 1952 granted the Attorney General the authority to “parole” aliens into the United States: “[He] may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States.”<sup>236</sup>

The House Judiciary Committee report accompanying the Act stated:

[The parole] authority should be surrounded with strict limitations . . . to permit the [Secretary of Homeland Security] to parole inadmissible aliens into the United States in emergency cases, such as the case of an alien who requires immediate medical attention before there has been an opportunity for an immigration officer to inspect him, and in cases where it is strictly in the public interest to have an inadmissible alien present in the United States, such as, for instance, a witness or for purposes of prosecution.<sup>237</sup>

But as Arnold Leibowitz has written, “The phenomenon of mass parole began in 1956 when [President Eisenhower] interpreted very broadly the parole authority . . . to permit [Hungarians] to enter en masse as refugees. [P]rior to 1956, the parole authority had been used only to benefit individual aliens.”<sup>238</sup>

Congress sought to put an end to such abuse of the parole statute through the Refugee Act of 1980.<sup>239</sup> Law professors Adam B. Cox and Cristina M. Rodriguez explained that “[w]hen Congress [in 1980]. . . creat[ed] a comprehensive regulatory scheme for the admission of refugees, the legislative history . . . made clear that Congress sought to constrain the President’s use of parole

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<sup>229</sup> *Implementation of a Parole Process for Haitians*, 88 FR 1243 (Jan. 9, 2023).

<sup>230</sup> *Implementation of a Parole Process for Nicaraguans*, 88 FR 1255 (Jan. 9, 2023).

<sup>231</sup> *Implementation of a Family Reunification Parole Process for Colombians*, Notice of implementation of a family reunification parole process for Colombians, 88 Fed. Reg. 43591 (July 10, 2023).

<sup>232</sup> *Implementation of a Family Reunification Parole Process for Salvadorans*, Notice of Implementation of a Family Reunification Parole Process for Salvadorans, 88 FR 43611 (July 10, 2023).

<sup>233</sup> *Implementation of a Family Reunification Parole Process for Guatemalans*, Notice of implementation of a family reunification parole process for Guatemalans, 88 FR 43581 (July 10, 2023).

<sup>234</sup> *Implementation of a Family Reunification Parole Process for Hondurans*, Notice of Implementation of a Family Reunification Parole Process for Hondurans, 88 FR 43601 (July 10, 2023).

<sup>235</sup> *Circumvention of Lawful Pathways*, 88 FR 31314 (May 16, 2023) (final rule); *Circumvention of Lawful Pathways*, 88 FR 11704 (Feb. 23, 2023) (notice of proposed rulemaking).

<sup>236</sup> Pub. L. No. 82-414, § 212(d)(5), 66 Stat. 163 (June 27, 1952).

<sup>237</sup> H.R. Rep. No. 82-1365 at 51-52 (1952).

<sup>238</sup> Arnold Leibowitz, *The Refugee Act of 1980: Problems and Congressional Concerns*, 467 The Annals of the American Academy of Political and Social Science 163, 165 (1983).

<sup>239</sup> Pub. L. No. 96-212, 94 Stat. 102 (1980).

authority.”<sup>240</sup> U.S. Senator Edward Kennedy (D-Mass.), one of the architects of the Refugee Act, later explained that: “[A] concern in Congress was the use of the Attorney General’s ‘parole authority’ . . . [which] was of deep concern to many in Congress, especially in the House of Representatives. One of the principal arguments for the [Refugee] Act was that it would bring the admission of refugees under greater Congressional and statutory control and eliminate the need to use the parole authority.”<sup>241</sup>

As professors Cox and Rodriguez explained:

With the Refugee Act of 1980, Congress directly responded to the executive-driven agenda in two ways. First, it added language to the parole provision requiring that the discretionary act serve compelling reasons in the public interest — an addition many in Congress (perhaps mistakenly) regarded as a means of “bring[ing] the admission of refugees under greater Congressional and statutory control.” Second, and more importantly, it created a scheme for overseas refugee selection that expressly delegated power to the President to set the number of annual refugee admissions and to select the countries from which they would be accepted.<sup>242</sup>

The “compelling reasons” language is now at section 212(d)(5)(B)<sup>243</sup> of the INA: “The [DHS Secretary] may not parole into the United States an alien who is a refugee unless the [Secretary] determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207 of the INA.”<sup>244</sup>

The First Circuit Court of Appeals concluded in 1987 in *Amanullah v. Nelson* that:

[P]lainly[, a] purpose of the Refugee Act [was] to eliminate the Attorney General’s use of his parole authority as a regularly-travelled alternate route for entry into the United States.<sup>245</sup>

The only conclusion which can sensibly be drawn . . . is that Congress was attempting to restore the parole authority to the narrow uses for which it was originally intended, that is, “for emergent reasons or for reasons deemed strictly in the public interest,” . . . and not to perpetuate — or further encourage — its employment as a discretionary floodgate for the admission of an alien tide.<sup>246</sup>

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<sup>240</sup> Adam B. Cox & Cristina M. Rodriguez, *The President and Immigration Law*, 119 Yale L.J. 458, 505 (2009) (footnote omitted), available at

[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13919&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13919&context=journal_articles).

<sup>241</sup> Edward Kennedy, *Refugee Act of 1980*, 15 Int’l Migration Rev. 141, 146 (1981).

<sup>242</sup> Adam Cox and Cristina Rodriguez, *The President and Immigration Law Redux*, 125 Yale L.J. 104, 117-18 (2015) (footnote omitted).

<sup>243</sup> 8 U.S.C. § 1182(d)(5)(B).

<sup>244</sup> 8 U.S.C. § 1157.

<sup>245</sup> *Amanullah v. Nelson*, 811 F.2d 12(1<sup>st</sup> Cir. 1987).

<sup>246</sup> *Id.* at 13 (citations omitted).

[T]here are clear indicia of a congressional desire to discourage any extravagant — or even generous — use of the Attorney General’s parole authority in connection with both nonrefugee and refugee aliens.<sup>247</sup>

Despite the enactment of the Refugee Act, Executive Branch abuse of the parole statute continued. As noted, Congress responded by amending the text of the parole statute in IIRIRA to read that the DHS Secretary “may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” The House Judiciary Committee report accompanying the IIRIRA explained that:

In recent years . . . parole has been used increasingly to admit entire categories of aliens who do not qualify for admission under any other category in immigration law, with the intent that they will remain permanently in the United States. This contravenes the intent of [the parole statute] . . . . Without an effective control mechanism, the Attorney General can continue to use the parole authority to implement immigration policy without Congressional knowledge or approval. An example of a recent abuse . . . stems from the September 1994 migration agreement negotiated by the Clinton Administration with Cuba. To implement this agreement, the Administration is using the parole authority to admit up to 20,000 Cuban nationals annually. The paroled Cubans will eventually be entitled to adjust to permanent resident status. In this case, the use of parole to fulfill the terms of the Cuban migration agreement is a misuse and intentionally admits, on a permanent basis, aliens who are not otherwise eligible for immigrant visas . . . . Such use of the parole authority has not been authorized by Congress. Indeed, the Clinton Administration did not even attempt to consult with Congress in negotiating the Cuban migration agreement.<sup>248</sup>

In 2007, the Ninth Circuit Court of Appeals in *Ortega-Cervantes v. Gonzales*<sup>249</sup> concluded as to IIRIRA that:

In enacting IIRIRA . . . Congress expressed concern that the Attorney General had been using parole “to circumvent Congressionally-established immigration policy or to admit aliens who do not qualify for admission under established legal immigration categories . . . . Congress responded in IIRIRA by narrowing the circumstances in which aliens could qualify for “parole into the United States.”<sup>250</sup>

In 2011, the U.S. Court of Appeals for the Second Circuit in *Cruz-Miguel v. Holder*<sup>251</sup> came to a similar conclusion:

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<sup>247</sup> *Id.* at 13-14.

<sup>248</sup> H.R. Rep. No. 104-469, part 1, at 77-78 (1996).

<sup>249</sup> 501 F.3d 1111 (9<sup>th</sup> Cir. 2007).

<sup>250</sup> *Id.* at 1119.

<sup>251</sup> 650 F.3d 189 (2<sup>nd</sup> Cir. 2011).

Congress, in IIRIRA, specifically narrowed the executive’s discretion . . . to grant “parole into the United States.”<sup>252</sup>

IIRIRA struck . . . the phrase “for emergent reasons or for reasons deemed strictly in the public interest” as grounds for granting parole into the United States and inserted “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” The legislative history indicates that this change was animated by concern that parole . . . was being used by the executive to circumvent congressionally established immigration policy.<sup>253</sup>

The Fifth Circuit Court of Appeals more recently explained in 2021 in *Texas v. Biden* that:

Throughout the mid-twentieth century, the executive branch on multiple occasions purported to use the parole power to bring in large groups of immigrants . . . . In response, Congress twice amended [the parole statute] to limit the scope of the parole power and prevent the executive branch from using it as a programmatic policy tool . . . in the Refugee Act of 1980 [and in IIRIRA in 1996].<sup>254</sup>

Secretary Mayorkas has allowed hundreds of thousands of inadmissible aliens to enter the United States pursuant to various categorical parole programs, in violation of the terms of the parole statute. In FY 2023 alone, DHS granted parole to 83,294 Haitians, 65,177 Venezuelans, 49,208 Cubans, and 36,334 Nicaraguans under those countries’ categorical parole programs.<sup>255</sup> In addition, CBP officials at Southwest border ports of entry processed 281,148 CBP One appointments just in the January-September 2023 period.<sup>256</sup>

As to the CBP One application, Secretary Mayorkas explained that:

[W]e are creating an appointment system for individuals to seek entry at our ports of entry . . . [T]his can be done on one’s smart phone with an app called CBP One. The app is designed to discourage individuals from congregating near the border and creating unsafe conditions . . . .

[T]his scheduling mechanism will be available for noncitizens, including those who seek to claim asylum, to schedule a time to present themselves at a port of entry for inspection and processing, rather than arriving unannounced at a port of entry or attempting to cross in-between ports of entry. Those who use this process will

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<sup>252</sup> *Id.* at 199.

<sup>253</sup> *Id.* at 199 n.15 (citations omitted).

<sup>254</sup> 20 F.4th 928, 947 (5<sup>th</sup> Cir. 2021).

<sup>255</sup> Office of Homeland Security Statistics, U.S. Dep’t of Homeland Sec., *Immigration Enforcement and Legal Processes Monthly Tables*, available at <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables>.

<sup>256</sup> *Id.*

generally be eligible for employment authorization while they are in the United States.<sup>257</sup>

Based on Secretary Mayorkas' description, the CBP One application has facilitated entry into the United States by granting parole to hundreds of thousands of inadmissible aliens, and they do not even have to claim asylum.

Todd Bensman at the Center for Immigration Studies revealed that:

From January through September 5, 2023, DHS vetting resulted in only 698 rejections for unspecified "Ineligibility Reasons" out of 225,000 invited to cross the border into the United States, according to new records obtained by the Center for Immigration Studies through ongoing FOIA litigation against U.S. Customs and Border Protection (CBP).

That number — 698 [represents] 0.31 percent of total applicants . . . .<sup>258</sup>

So, the vast majority of aliens attending CBP One appointments received a grant of parole or other type of relief. At the very least, during fiscal year 2023, 266,846 aliens were granted parole through CBP One, according to data provided by DHS to the Committee.<sup>259</sup> Thus, in FY 2023 alone, DHS granted parole to over 810,000 aliens through unlawful categorical parole programs.<sup>260</sup>

As a point of comparison, for FYs 1992 through 1996 and FYs 1998 through 2003, the INS and then DHS reported annually on the number of grants of parole. The most comparable types of parole are: (1) "humanitarian parole," which, as DHS described is for "urgent humanitarian reasons" . . . [and] is used in cases of medical emergency and comparable situations;"<sup>261</sup> (2) "public interest" parole, for "significant public benefit" . . . [and] is generally used for aliens who enter to take part in legal proceedings;"<sup>262</sup> and (3) "overseas" parole "while the alien is still overseas . . . designed to constitute long-term admission to the United States."<sup>263</sup> DHS also noted that "[i]n recent years, most of the aliens the DHS has processed through overseas parole have arrived under

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<sup>257</sup> News release, U.S. Dep't of Homeland Sec., Secretary Mayorkas Delivers Remarks on DHS's Continued Preparation for the End of Title 42 and Announcement of New Border Enforcement Measures and Additional Safe and Orderly Processes, (Jan. 5, 2023) *available at* <https://www.dhs.gov/news/2023/01/05/secretary-mayorkas-delivers-remarks-dhss-continued-preparation-end-title-42-and>.

<sup>258</sup> Todd Bensman, *New Records Show Biden's DHS Accepting 99.7 Percent of Recent Aliens Applying for Entry Using CBP One*, CENTER FOR IMMIGRATION STUDIES (Sept. 26, 2023), *available at* <https://cis.org/Bensman/New-Records-Show-Bidens-DHS-Accepting-997-Percent-Recent-Aliens-Applying-Entry-Using-CBP>.

<sup>259</sup> Press Release, H. Comm. Homeland Sec., *New Documents Obtained by Homeland Majority Detail Shocking Abuse of CBP One App* (Oct. 23, 2023), *available at* <https://homeland.house.gov/2023/10/23/new-documents-obtained-by-homeland-majority-detail-shocking-abuse-of-cbp-one-app/>.

<sup>260</sup> Committee Analysis of DHS Data from <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023>; <https://homeland.house.gov/2023/10/23/new-documents-obtained-by-homeland-majority-detail-shocking-abuse-of-cbp-one-app/>; and <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-september-2023-monthly-update>.

<sup>261</sup> Office of Immig. Statistics, U.S. Dep't of Homeland Sec., *2003 Yearbook of Immigration Statistics* at 191 (2004), *available at* [https://dhs.gov/sites/default/files/publications/Yearbook\\_Immigration\\_Statistics\\_2203.pdf](https://dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2203.pdf).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

special legislation or international migration agreements.”<sup>264</sup> The INS and DHS granted parole in such categories 47,571 times in fiscal year 1992, 32,323 times in 1993, 28,837 times in 1994, 43,212 times in 1995, 30,136 times in 1996, 46,736 times in 1998, 49,783 times in 1999, 41,915 times in 2000, 39,947 times in 2001, 38,441 times in 2002, and 28,866 times in 2003.<sup>265</sup> Thus, Secretary Mayorkas is unlawfully granting parole pursuant to categorical parole programs created by Secretary Mayorkas at a level approximately 10 times the historic grant level of similar paroles.

Secretary Mayorkas’ willful and systemic refusal to follow the Congressionally imposed limits on parole perpetuates the crisis at the Southwest border. After implementing his categorical parole program for Cubans, Haitians, Nicaraguans, and Venezuelans in January 2023, Secretary Mayorkas claimed that the program would cut out smuggling organizations<sup>266</sup> and reduce the number of illegal immigrants between ports of entry at the Southwest border.<sup>267</sup> Those claims, of course, did not come true, as USBP entries between ports remained high throughout FY 2023 reaching an historic level in December,<sup>268</sup> and cartels and smuggling organizations are still active and in control of the border.<sup>269</sup> Further, Secretary Mayorkas knows that his categorical parole program serve as *de facto* visa programs. Applicants for parole skip the line and enter before those waiting years for their Congressionally authorized visas<sup>270</sup> and once those aliens are paroled they are eligible for significant public benefits.<sup>271</sup>

#### D. Secretary Mayorkas' Utilization of Section 236(a) of the INA to Unlawfully Release Aliens Subject to Mandatory Detention

Secretary Mayorkas willfully exceeded his release authority set forth in section 236(a) that permits, in certain circumstances, the release of aliens arrested on an administrative warrant. Specifically, Secretary Mayorkas released aliens apprehended at the border without a warrant despite their being subject to a separate applicable mandatory detention requirement set forth in section 235(b)(2) of the INA. After the United States District Court of the Northern District of Florida barred Secretary Mayorkas from utilizing two variants of mass release on parole of aliens

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<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at 82 (table H); INS, U.S. Department of Justice, *1997 Statistical Yearbook of the Immigration and Naturalization Service* at 109 (table G) (1999), available at [https://www.dhs.gov/sites/default/files/publications/Yearbook\\_Immigration\\_Statistics\\_1997.pdf](https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1997.pdf).

<sup>266</sup> *Oversight of the U.S. Dep’t of Homeland Sec.: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (July 26, 2023) (Written testimony of Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec.).

<sup>267</sup> *Id.*

<sup>268</sup> *Nationwide Encounters*, U.S. Customs and Border Patrol, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last visited Feb. 1, 2024).

<sup>269</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., *Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol, Dep’t of Homeland Sec.* 34 (May 5, 2023).

<sup>270</sup> According to the February 2024 State Department visa bulletin, visas are currently available for unmarried sons or daughters of a U.S. citizen from Mexico who filed their petitions in 2001. *The Visa Bulletin*, U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Feb. 1, 2024).

<sup>271</sup> An alien who enters the United States on parole is considered a “qualified” alien and therefore are likely eligible for some Federal public benefits, including the Supplemental Nutrition Assistance Program, Medicaid, State Child Health Insurance Program, and Temporary Assistance for Needy Families. *See* 8 U.S.C. §§ 1611 - 13.

apprehended at the border,<sup>272</sup> Secretary Mayorkas simply switched to releases under section 236(a). From January through March 2023, USBP released a total of 58,402 aliens with an NTA.<sup>273</sup> As soon as DHS could no longer use Parole+ATD in March 2023, use of the NTA increased significantly. In April 2023, USBP released 65,591 aliens with an NTA and by December 2023, USBP released 191,141 aliens with an NTA.<sup>274</sup> Clearly, Secretary Mayorkas is willing to continuously circumvent statutory mandates to implement his catch and release scheme.

Secretary Mayorkas' strategy to use 236(a) to release applicants for admission at the border would be news to the Supreme Court. In *Biden v. Texas*, Justice Alito wrote in dissent that “[T]he INA gives DHS discretion to choose from among only three options for handling the relevant category of inadmissible aliens. The Government must either: (1) detain them, (2) return them to a contiguous foreign nation, or (3) parole them into the United States on an individualized, case-by-case basis.”<sup>275</sup>

In *Florida v. United States*<sup>276</sup> Judge Wetherell explained why Secretary Mayorkas' use of section 236(a) in an attempt to evade a statutory detention mandate is unlawful:

[§ 236(a)] begins by stating that, “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed.” It then states that, following such arrest, the Attorney General “may continue to detain the arrested alien” or “may release the alien” either “on bond” or on “conditional parole . . . .”

DHS contends that §[236](a) applies to aliens arriving at the Southwest Border once the alien reaches U.S. soil. And because §[235](a)'s definition of applicants for admission also includes these aliens, DHS contends that Congress gave the agency a choice—if DHS wants to detain an alien at the Southwest Border, it can apply §[235](b), but if DHS wants to release the alien, it can apply §[236](a).<sup>277</sup>

The court then concluded that:

The Court rejects DHS's argument for two reasons. First, §[236](a) does not apply to applicants for admission apprehended at the Southwest Border. Second, even if the statute could apply under some circumstances, the evidence at trial showed that DHS is initially processing applicants for admission at the Southwest Border under §[235], and there is nothing in the INA that contemplates that processing can switch between §[235] and §[236].

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<sup>272</sup> *Florida v. Mayorkas* 2023 LEXIS 83406 (N.D. Fla. 2023), available at <https://caselaw.findlaw.com/court/us-dis-crt-n-d-flo-pen-div/2200468.html>; *Florida v. United States*, 3:21-cv-1066-TKW3 ZCB (N.D. Fla. Mar. 8, 2023), 2023 U.S. Dist. LEXIS 4016, available at <https://clearinghouse.net/doc/137115/>.

<sup>273</sup> *Custody and Transfer Statistics Fiscal Year 2023*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023> (last visited Feb. 1, 2024).

<sup>274</sup> *Id.*

<sup>275</sup> *Biden v. Texas*, 142 S.Ct. at 2555.

<sup>276</sup> *Florida v. United States*, No. 3:21-cv-1066-TKW3 ZCB (N.D. Fla. Mar. 8, 2023).

<sup>277</sup> *Id.*, slip op. at 78-79.

Starting with the first point, §[235](a) treats a specific class of aliens as “applicants for admission,” and [235](b) mandates detention of these aliens throughout their removal proceedings. Section [236](a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien.

As the Supreme Court stated in *Jennings v. Rodriguez*,<sup>278</sup> §[236] applies to “certain aliens already in the country . . . And even if an alien crossing the Southwest Border fell within §[236](a)’s general language, §[235](b)’s specific mandatory language would trump §[236](a)’s general permissive language. Indeed, “it is a commonplace of statutory construction that the specific governs the general . . . And this canon squarely applies to §[235] and §[236], as it is “most frequently applied to statutes in which a general permission . . . is contradicted by a specific prohibition . . . .

Moreover, DHS’s position would render mandatory detention under §[235](b) meaningless. Indeed, the 1996 expansion of §[235](b) to include illegal border crossers would make little sense if DHS retained discretion to apply §[236](a) and release illegal border crossers whenever the agency saw fit . . . In fact, as the Attorney General has explained, “section 235 (under which detention is mandatory) and section [236(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.”<sup>279</sup>

That brings the Court to the second point. Even if DHS were correct that §[235](b) and §[236](a) overlap, and even if DHS were correct that it has discretion to decide which provision to apply, what DHS certainly may not do is initiate an inspection under §[235] and then, at some later time, attempt to shift the alien’s detention to §[236](a).

DHS’s initial apprehension and processing of applicants for admission at the Southwest Border is an “inspection” under §[235]. During that inspection, if DHS decides to release an alien under §[236](a), it initiates a removal proceeding against the alien under [§240] by serving a NTA and then relies on those pending removal proceedings as a basis to shift the alien’s detention from §[235](b) to §[236](a). At closing argument, counsel for DHS described the agency’s position that the decision to place an applicant for admission in standard removal proceedings under §[240], instead of expedited removal proceedings under §[235](b)(1), causes §[236](a) to govern the alien’s detention.<sup>280</sup>

The court then concluded: “The problem with this argument (and what makes DHS’s application of §[236](a) in this manner unlawful) is that §[235](b)(2), not §[236](a), governs the

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<sup>278</sup> *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

<sup>279</sup> The court cited *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (Att’y Gen. 2019).

<sup>280</sup> *Florida v. U.S.*, slip op. at 79-81.

detention of applicants for admission whom DHS places in standard removal proceedings following in inspection under §[235].”<sup>281</sup> The court explained that:

In *Jennings*, the plaintiffs made the same basic argument DHS advances here—i.e., that “for a proceeding” in §[235](b)(2) means “only until the start of applicable proceedings” and that §[236](a) governs detention once those proceedings begin. . . . The Supreme Court, however, rejected the plaintiffs’ position that §[236](a) governs the detention of applicants for admission once removal proceedings begin, holding that “(b)(2) mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”<sup>282</sup>

The Court then stated that “Another problem with DHS’s reliance on §[236] is that the statute is not even triggered unless an arrest warrant is issued . . . . If the alien has not been arrested on a warrant, then the subsequent provisions giving the Attorney General discretion to detain or release “the arrested alien” are likewise not triggered.”<sup>283</sup> The court explained that:

Here, the evidence establishes that DHS is not obtaining warrants for aliens apprehended at the Southwest Border. Instead, it relies on the warrantless arrest authority in [§287(a)(2) of the INA] to take the aliens into custody for inspection and processing. Even if DHS is putting an “administrative warrant” in the alien’s file when the NTA is issued the alien is released, that is not happening. . . . until (or if) they report to an ICE office for issuance of an NTA. But, by that point, the decision to release the alien has already been made.

Additionally, as the Supreme Court noted in *Jennings*, what DHS claims to be doing makes little sense . . . . (“If respondents’ interpretation of §[235](b) were correct, then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the Attorney General would have to issue an arrest warrant in order to continue detaining the alien. To put it lightly, that makes little sense.”). The warrants required by §[236](a) are arrest warrants, but by the time DHS puts the “administrative warrant” in the alien’s file (if it is even doing so), the alien has already been arrested under §[287] and the warrant is only being issued so the alien can be released.<sup>284</sup>

The court concluded that “[t]his sleight of hand—using an ‘arrest’ warrant as de facto ‘release’ warrant—is administrative sophistry at its worst”<sup>285</sup> and “[s]uffice it to say at this point, if the Non-Detention Policy was “agency action” subject to judicial review, the Court would find that it is unlawful insofar as it allows aliens arriving at the Southwest Border to be released under §[236](a).”<sup>286</sup>

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<sup>281</sup> *Id.* at 81-82.

<sup>282</sup> *Id.* at 82 (citation omitted).

<sup>283</sup> *Id.* at 82-83.

<sup>284</sup> *Id.* at 83-84.

<sup>285</sup> *Id.* at 84.

<sup>286</sup> *Id.* at 84-85.

## E. Consequences of Secretary Mayorkas' Refusal to Comply with the Law

Secretary Mayorkas' willful and systemic refusal to comply with the law has had calamitous consequences for the Nation and the people of the United States, including:

### i. Border Encounters

During FY 2017 through 2020, an average of about 590,000 aliens each fiscal year were encountered as inadmissible aliens at ports of entry on the Southwest border or apprehended between ports of entry.<sup>287</sup> Thereafter, during Secretary Mayorkas' tenure in office, that number skyrocketed to over 1,400,000 in fiscal year 2021, over 2,300,000 in fiscal year 2022, and over 2,400,000 in fiscal year 2023.<sup>288</sup> Similarly, during fiscal years 2017 through 2020, an average of 130,000 persons who were not turned back or apprehended after making an illegal entry were observed along the border each fiscal year.<sup>289</sup> During Secretary Mayorkas' tenure in office, that number more than trebled to 400,000 in fiscal year 2021,<sup>290</sup> 600,000 in fiscal year 2022,<sup>291</sup> and 750,000 in fiscal year 2023.<sup>292</sup>

Secretary Mayorkas' enabling of an open border has had a serious detrimental impact on law enforcement, especially Border Patrol agents. In May 2023, the DHS Office of the Inspector General (OIG) released a report documenting how the surge of illegal aliens across the border has negatively impacted the psychological health and morale of CBP and ICE officials.<sup>293</sup> Later that same month, the DHS OIG released another report further documenting the impact to morale, recruitment, and operations that details to the Southwest border had on northern Border Patrol agents.<sup>294</sup>

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<sup>287</sup> *Immigration Enforcement and Legal Processes Monthly Tables*, OFF. OF HOMELAND SEC. STATISTICS, <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables> (last visited Feb. 1, 2024).

<sup>288</sup> *Id.*

<sup>289</sup> DEP'T OF HOMELAND SEC., DHS BORDER SECURITY METRICS REPORT: 2022 18 tbl. 2b (Jul. 3, 2023), *available at* [https://www.dhs.gov/sites/default/files/2023-07/2023\\_0703\\_pley\\_fiscal\\_year\\_2022\\_border\\_security\\_metrics\\_report\\_2021\\_data.pdf](https://www.dhs.gov/sites/default/files/2023-07/2023_0703_pley_fiscal_year_2022_border_security_metrics_report_2021_data.pdf).

<sup>290</sup> *Id.*

<sup>291</sup> Bill Melugin and Ronn Blitzer, *Border Officials Count 599,000 'Gotaway' Migrants in Fiscal Year 2022: Source*, FOX NEWS, *available at* <https://www.foxnews.com/politics/border-officials-count-599000-gotaway-migrants-fiscal-year-2022-source>.

<sup>292</sup> CONGRESSIONAL BUDGET OFFICE, *THE DEMOGRAPHIC OUTLOOK 2024 TO 2054* 21 (Jan. 2024), *available at* <https://www.cbo.gov/system/files/2024-01/59697-Demographic-Outlook.pdf#page=9>.

<sup>293</sup> DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GENERAL, OIG-23-24, *INTENSIFYING CONDITIONS AT THE SOUTHWEST BORDER ARE NEGATIVELY IMPACTING CBP AND ICE EMPLOYEES' HEALTH AND MORALE* 21 (May 3, 2023) *available at*, <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-24-May23.pdf>

<sup>294</sup> DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GENERAL, OIG-23-27, *CBP FACILITIES IN VERMONT AND NEW YORK GENERALLY MET TEDS STANDARDS, BUT DETAILS TO THE SOUTHWEST BORDER AFFECTED MORALE, RECRUITMENT, AND OPERATIONS* 8-9 (May 23, 2023) *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-27-May23.pdf>.

ii. Impact on American Communities

American communities both along the Southwest border and across the United States have been devastated by the dramatic growth in illegal entries, the number of aliens unlawfully present, and the substantial rise in the number of aliens who were unlawfully granted parole, creating a fiscal and humanitarian crisis and dramatically degrading the quality of life of the residents of those communities. The impact to the American people ranges from the burden of the health care costs of illegal aliens and finite medical resources they use to the law enforcement, education, and housing costs. Nor should the impacts this crisis is having on ranchers and landowners near the Southwest border be forgotten.

Medical care for illegal aliens, especially in rural communities has had a devastating impact on the local communities. The Yuma Regional Medical Hospital in Arizona incurred more than \$26 million in unreimbursed medical costs for illegal aliens from December 2021 to November 2022 alone.<sup>295</sup> Dr. Robert Trenchel, chief executive officer of the hospital noted that:

“\$26 million dollars is equal salary and benefits to support 212 bedside nurses. The City of Yuma has 100,000 people and we’ve had over 300,000 people cross the border here. That’s three times the population of Yuma coming across the border... We are the only hospital within a 3-hour radius – which means they come here.”<sup>296</sup>

Since 2022, more than 150,000 migrants have gone through New York City’s shelter intake system.<sup>297</sup> In October, Gwynne Hogan reported in The City that: “Compounding the capacity issues as a record nearly 120,000 people, including 64,000 migrants, are now staying in city shelters with 4,000 more arriving each week, the FDNY began vacating shelters for fire-code violations . . . .”<sup>298</sup> Mayor Eric Adams said that “we are past our breaking point”<sup>299</sup> and that “[t]his issue will destroy New York City.”<sup>300</sup> He stated that “We need help, and it's not going to get any

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<sup>295</sup> *Every State is a Border State: Examining Secretary Mayorkas’ Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Feb. 28, 2023) (Written Testimony of Robert J. Trenchel), available at <https://www.congress.gov/118/chr/CHRG-118hhrg51887/CHRG-118hhrg51887.pdf>.

<sup>296</sup> *Id.*

<sup>297</sup> *Funding for New York City’s Services for People Seeking Asylum: Excerpt from the State of the City’s Economy and Finances*, NYC.Gov, <https://comptroller.nyc.gov/wp-content/uploads/2023/12/Funding-for-New-York-City-s-Services-for-People-Seeking-Asylum.pdf> (last visited Jan. 31, 2024).

<sup>298</sup> Gwynne Hogan, *Baffled Migrants Sent from Shelter to Shelter With No Rest as City Pushes Them To Leave*, THE CITY, Oct. 24, 2023, <https://www.thecity.nyc/2023/10/24/migrants-reticketing-roosevelt-hotel-welcome-center-eric-adams/>.

<sup>299</sup> *See As City Nears Arrival of 100,000 Asylum Seekers Since Last Spring, Mayor Adams Lays out Updated Costs if State and Federal Governments do not Take Swift Action*, NYC.Gov, Aug. 9, 2023, [https://www.nyc.gov/office-of-the-mayor/news/583-23/as-city-nears-arrival-100-000-asylum-seekers-since-last-spring-mayor-adams-lays-out-updated#/> \(“As I declared nearly a year ago, we are facing an unprecedented state of emergency due to the asylum seeker crisis,” said Mayor Adams. “\[W\]e are past our breaking point.”\).](https://www.nyc.gov/office-of-the-mayor/news/583-23/as-city-nears-arrival-100-000-asylum-seekers-since-last-spring-mayor-adams-lays-out-updated#/)

<sup>300</sup> Emma G. Fitzsimmons, *In Escalation, Adams Says Migrant Crisis ‘Will Destroy New York City,’* NEW YORK TIMES, Sept. 7, 2023, [https://www.nytimes.com/2023/09/07/nyregion/adams-migrants-destroy-nyc.html#:~:text=The%20city%20we%20knew%2C%20we're%20about%20to%20lose.&text=In%20a%20sharp%20escalation%20over,way%20to%20fix%20the%20issue](https://www.nytimes.com/2023/09/07/nyregion/adams-migrants-destroy-nyc.html#:~:text=The%20city%20we%20knew%2C%20we're%20about%20to%20lose.&text=In%20a%20sharp%20escalation%20over,way%20to%20fix%20the%20issue.). (“Let me tell you something New Yorkers, never in my life have I had a problem that I did not see an ending to — I don’t see an ending to this’ the mayor said on Wednesday night in his opening remarks at a town hall-style gathering in Manhattan. ‘This issue will destroy New York City.’”).

better. From this moment on, it's downhill. There is no more room.”<sup>301</sup> Mayor Adams explained that:

“There’s two schools of thought in the city right now,” he said. “One school of thought states you can come from anywhere on the globe and come to New York and we are responsible, on taxpayers limited resources, to take care of you for as long as you want: Food, shelter, clothing, washing your sheets, everything, medical care, psychological care for as long as you want. And it’s on New York City taxpayer’s dime. And there’s another school of thought, that we disagree.”<sup>302</sup>

“We just disagree,” he said, adding that it wasn’t a question of if migrants would be sleeping on the streets, but when.<sup>303</sup>

In FY 2023, New York City spent \$1,450,000,000 addressing Secretary Mayorkas' migrant crisis, and city officials fear it will spend another \$12,000,000,000 over the following three fiscal years, causing painful budget cuts to important city services.<sup>304</sup> The Mayor’s Chief of Staff Camille Joseph Varlack stated that “the asylum seeker crisis continues to eat away at our city’s finances”<sup>305</sup> and Chief Advisor Ingrid P. Lewis-Martin stated that “unless we get the help we need and deserve from our federal partners, things will get worse for the most vulnerable New Yorkers.”<sup>306</sup> In September, Mayor Adams “directed every agency to implement a 5 percent reduction in city-funded spending in each year of the financial plan through a Program to Eliminate the Gap (PEG) as part of the upcoming November Plan, Preliminary Budget, and Executive Budget . . . Desperate times calls for desperate measures, and these are desperate times,” said Chief Advisor Ingrid P. Lewis-Martin.”<sup>307</sup>

The influx of migrants has troubled many New Yorkers. A Quinnipiac University poll of New York City voters found that:

More than 8 in 10 voters (85 percent) are either very concerned (64 percent) or somewhat concerned (21 percent) that the city will not be able to accommodate the surge of migrants that have made their way to New York City since the spring of 2022, while 14 percent are either not so concerned (7 percent) or not concerned at all (7 percent).

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<sup>301</sup> Morning Edition, *NYC's Mayor Eric Adams Proposes Suspending Shelter Right Amid Migrant Crisis*, NPR, Aug. 3, 2023, <https://www.npr.org/2023/08/03/1191792910/nycs-mayor-eric-adams-proposes-suspending-shelter-right-amid-migrant-crisis>.

<sup>302</sup> Gwynne Hogan, *Baffled Migrants Sent from Shelter to Shelter With No Rest as City Pushes Them To Leave*, THE CITY, Oct. 24, 2023, <https://www.thecity.nyc/2023/10/24/migrants-reticketing-roosevelt-hotel-welcome-center-eric-adams/>.

<sup>303</sup> *Id.*

<sup>304</sup> NYC.gov, *supra* note 299.

<sup>305</sup> *Mayor Adams Releases November 2023 Financial Plan Update*, NYC.Gov, Nov. 16, 2023, <https://www.nyc.gov/office-of-the-mayor/news/875-23/mayor-adams-releases-november-2023-financial-plan-update>.

<sup>306</sup> *Id.*

<sup>307</sup> *Amid Deepening Asylum Seeker Crisis, Mayor Adams Announces New Steps to Stabilize City's Budget as Required by Law*, NYC.Gov, Sept. 9, 2023, <https://www.nyc.gov/office-of-the-mayor/news/650-23/amid-deepening-asylum-seeker-crisis-mayor-adams-new-steps-stabilize-city-s-budget-as>.

A majority of voters (62 percent) agree with a statement Mayor Adams made a few months ago that the surge of migrants seeking sanctuary in New York City could destroy the city, while 33 percent disagree.<sup>308</sup>

Concerns about the impact on residents' quality of life crosses all ethnic line. Liam Stack and Jeffery C. Mays reported in the New York Times that:

Gabriela Vizhnag . . . mother of a third grader, said she was “not racist or anti-immigrant” because she herself immigrated from Mexico. But she opposed the plan to house people in a school gym with no available showers and only two bathrooms.

“It is not good for the children and it is not humane for the migrants,” she said.<sup>309</sup>

New York City has even resorted to offering to fly migrants out of the city to anywhere else in the world they would like to go. Anthony Izaguirre reported for the Associated Press that “New York City is intensifying efforts to transport migrants out of the city as its shelter system reaches capacity, setting up a dedicated office to provide asylum-seekers with free, one-way tickets to anywhere in the world.”<sup>310</sup> At a reticketing site, “Signs stuck to the door, translated to Spanish, French, Arabic, and Russian” stated “THIS IS NOT A RESPITE SITE/SHELTER. THERE ARE NO BEDS AT THIS SITE. WE ARE HERE TO HELP YOU GET TO TRANSPORTATION TO ANY STATE, OR COUNTRY OF YOUR CONVENIENCE.”<sup>311</sup>

The mayor of Denver, Colorado, Mike Johnston, told city councilmembers that if the city continues to spend at its' current rate on the migrant crisis, it would spend around \$180 million or around 10 to 15 percent of its' 2024 general fund budget on the migrant crisis.<sup>312</sup> To put that in context, Denver put around \$50 million towards homelessness in 2023.<sup>313</sup> From large cities such as New York City, Chicago, and Denver to rural communities, Americans are feeling the impact of Secretary Mayorkas' border crisis. In June 2021, the American Farm Bureau Federation, and the farm bureaus of all 50 states and Puerto Rico wrote Secretary Mayorkas, “Farm and ranch families, many of whom have

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<sup>308</sup> NYC Mayor Adams' Approval Sinks To Record Low, Under Fire On Several Fronts, *Quinnipiac University New York City Poll Finds; Most Voters Worry Budget Cuts Will Affect Their Daily Lives*, The Quinnipiac University Poll, Dec. 6, 2023, <https://poll.qu.edu/poll-release?releaseid=3886>.

<sup>309</sup> Liam Stack & Jeffery C. Mays, *As Crisis Grows, All of New York's Migrant Plans Are Met With Outrage*, NEW YORK TIMES, May 18, 2023, <https://www.nytimes.com/2023/05/18/nyregion/migrant-housing-shelters-nyc.html>.

<sup>310</sup> Anthony Izaguirre, *New York City Sets Up Office to Give Migrants One-Way Ticket Out of Town*, AP, Oct. 27, 2023, <https://apnews.com/article/immigration-migrants-new-york-city-adams-3bd95e19eefa3d1ea023287ee849eb14>.

<sup>311</sup> Gwynne Hogan, *Baffled Migrants Sent from Shelter to Shelter With No Rest as City Pushes Them To Leave*, THE CITY, Oct. 24, 2023, <https://www.thecity.nyc/2023/10/24/migrants-reticketing-roosevelt-hotel-welcome-center-eric-adams/>.

<sup>312</sup> Marc Sallinger, *Denver Mayor Says Migrant Crisis Could Cost City \$180 Million in 2024*, 9NEWS, Jan. 2, 2024, <https://www.9news.com/article/news/local/next/next-with-kyle-clark/denver-mayor-says-migrant-crisis-could-cost-city-180-million-2024/73-7921e159-19cb-4378-9ee7-991092173f8e>.

<sup>313</sup> *Id.*

owned land for generations, are bearing the brunt of this unprecedented influx and have never seen a more dire situation.”<sup>314</sup>

In testimony before the House Homeland Security Committee hearing on, “The Financial Cost of Mayorkas’ Open Border,” Yuma County Supervisor Jonathan Lines stated:

“[A]griculture is the number one industry in Yuma and our farms produce many of the fruits and vegetables that are distributed throughout North America. In fact, 91 percent of the leafy greens, romaine lettuce, and spinach consumed in the United States and Canada from Thanksgiving through Easter are grown, processed, and shipped from farms in the Yuma growing region. This industry ultimately brings in more than \$4 billion to the community each year.

“The surge in illegal immigration has had a devastating effect on this critical industry in Arizona. People crossing illegally travel on foot, urinate and defecate in fields and irrigation canals on the farms after they cross the border, which ruins whatever crop is growing in that particular farm.

“Farmers must abide by stringent food safety rules and this trespass and the defecating in production areas renders these crops grown completely unmarketable, thus the crop is destroyed and farmers must bear this staggering loss. As a result, farmers in Yuma have had to invest millions since this administration took office in crop loss to hire security and build fences around their farms to protect our nation's food supply.”<sup>315</sup>

### iii. Increasing Migrant Deaths

Secretary Mayorkas' unlawful mass release of apprehended aliens and unlawful mass granting of categorical parole to aliens have enticed an increasing number of aliens to make the dangerous journey to our Southwest border. Consequently, according to the United Nations's International Organization for Migration (IOM), the number of migrants intending to illegally cross our border who have perished along the way, either en route to the United States or at the border, almost doubled during Secretary Mayorkas' tenure as secretary, from an average of about 700 a year during the fiscal years 2017 through 2020, to an average of about 1,300 a year during the fiscal years 2021 through 2023. The IOM states that “These figures represent the lowest estimates available as many more deaths are likely to go unrecorded due to lack of data from official sources” and that “States across the Americas need to recognize that the growing death toll

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<sup>314</sup> “Letter from Arizona Farm Bureau Federation, et al., to Alejandro Mayorkas, Secretary, Dep’t of Homeland Sec., et al. (Jun. 3, 2021) *available at*, [https://texasfarmbureau.org/wp-content/uploads/2021/06/Letter\\_to\\_Sec\\_Mayorkas\\_Vilsack\\_Haaland\\_June3\\_2021.pdf](https://texasfarmbureau.org/wp-content/uploads/2021/06/Letter_to_Sec_Mayorkas_Vilsack_Haaland_June3_2021.pdf).

<sup>315</sup> *The Financial Costs of Mayorkas’ Open Border: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong (Sept. 20, 2023) (testimony of Jonathan Lines, Yuma County Supervisor).

is a humanitarian emergency of great dimension, especially because it is likely that deaths during migratory transit are many more than IOM has been able to record.”<sup>316</sup>

#### iv. Smugglers and Transnational Criminal Organizations

Alien smuggling organizations have gained tremendous wealth during Secretary Mayorkas' tenure, with their estimated revenues rising from about \$500,000,000 in 2018 to approximately \$13,000,000,000 in 2022.<sup>317</sup> The massive increase in the number of migrants now traveling up through Mexico on their way to the Southwest border represents a historic business opportunity for the cartels, because the cartels charge every person who wants to cross the border.<sup>318</sup> The continuous flood of illegal aliens across the Southwest border has strained Border Patrol agents, forcing them away from patrolling the border, in order to focus their efforts on processing, transporting, and releasing illegal aliens into the United States. This has left broad stretches of the border open to further exploitation by the cartels, who traffic drugs or smuggle other groups of illegal aliens, who would like to avoid contact with U.S. authorities across the border.<sup>319</sup>

Gregory Bovino, then-chief patrol agent for the El Centro Sector, confirmed this tactic to the House Committee on Homeland Security in July 2023, stating, “So, what in fact happens, there is a large group [that] comes across or a group comes across, gives up to Border Patrol agents, and, as Border Patrol agents are busy dealing with that group that had given up, the gotaways come around the periphery.”<sup>320</sup> In May 2023, two other chief patrol agents confirmed the cartels' use of this tactic in interviews with Committee staff.<sup>321</sup> In an interview with House Committee on Homeland Security staff in May 2023, Chief Owens, then serving as chief patrol agent for the Del Rio Sector, said that his sector intelligence unit ascertained the cartels were making more than \$30 million per week from human smuggling just his alone.<sup>322</sup>

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<sup>316</sup> The International Organization for Migration, *US-Mexico Border World's Deadliest Migration Land Route*, Sept. 12, 2023, <https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route>; see MISSING MIGRANTS PROJECT, ANNUAL REGIONAL OVERVIEW (Jan. - Dec. 2022), available at [https://missingmigrants.iom.int/sites/g/files/tmzbdl601/files/publication/file/MMP%20Americas%20briefing%20summary%202022%20-%20EN\\_3.pdf](https://missingmigrants.iom.int/sites/g/files/tmzbdl601/files/publication/file/MMP%20Americas%20briefing%20summary%202022%20-%20EN_3.pdf).

<sup>317</sup> Miriam Jordan, *Smuggling Migrants at the Border Now a Billion-Dollar Business*, NEW YORK TIMES, Jul. 25, 2022, <https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html>; See also [https://www.washingtonpost.com/video/politics/nielsen-cartels-make-500-million-a-year-from-smuggling-migrants-into-the-us/2018/05/18/3bed176a-5aac-11e8-9889-07bcc1327f4b\\_video.html](https://www.washingtonpost.com/video/politics/nielsen-cartels-make-500-million-a-year-from-smuggling-migrants-into-the-us/2018/05/18/3bed176a-5aac-11e8-9889-07bcc1327f4b_video.html).

<sup>318</sup> Resendiz, Julie, “*Border Patrol: Mexican cartels charging every person that comes across*,” BORDER REPORT, March 26, 2021, available at <https://www.borderreport.com/immigration/border-patrol-mexican-cartels-charging-every-person-that-comes-across/>

<sup>319</sup> *On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents: Hearing Before the H. Comm. on Oversight & Accountability*, 118th Cong. (Feb. 27, 2023).

<sup>320</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Gregory Bovino, Chief Patrol Agent, U.S. Border Patrol 135 (Jul. 12, 2023).

<sup>321</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol 51-52 (May 5, 2023); H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Aaron Heitke, Chief Patrol Agent, U.S. Border Patrol 40-41 (May 9, 2023).

<sup>322</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol, 40 (May 5, 2023).

Additionally, since 2021, encounters involving unaccompanied alien children (UAC) have remained at record-high levels.<sup>323</sup> Unfortunately, the influx of UACs has empowered the violent gang, Mara Salvatrucha (MS-13), to deploy an aggressive recruitment scheme aimed at targeting these young children, who often cross the border alone. According to a report by the Human Trafficking Search, “MS-13 preys on the vulnerability of the unaccompanied minors; some have previously suffered sexual abuse either in their home country or during the trip north; others lack a community and do not speak English. Members of MS-13 seek out vulnerable young girls using violence and other coercive tactics to intimidate these girls into having sex for money to help financially support the gang.”<sup>324</sup>

During a law enforcement roundtable hosted at the White House in 2018, Angel Melendez, Homeland Security Investigations (HSI) special agent in charge for New York, said that ICE routinely finds that 30 percent of MS-13 members they arrest came into the country as UACs.<sup>325</sup> Agent Melendez also confirmed that MS-13 was, “looking at unaccompanied alien children that came into the states as potential recruits to continue to fill in their ranks.”<sup>326</sup> During Secretary Mayorkas’ tenure at the Department of Homeland Security, CBP reported encountering over 450,000 unaccompanied alien children at the Southwest border<sup>327</sup>, thereby giving MS-13 a large population to recruit from.

#### v. Inundating Immigration Courts

During Secretary Mayorkas' tenure, the immigration court backlog has more than doubled from about 1,300,000 cases to over 3,000,000 cases.<sup>328</sup> The backlog is destroying the courts’ ability to administer justice and provide appropriate relief in a timeframe that does not run into years or even decades. As Secretary Mayorkas acknowledged, “those who have a valid claim to asylum . . . often wait years for a . . . decision; likewise, noncitizens who will ultimately be found ineligible for asylum or other protection—which occurs in the majority of cases— often have spent many years in the United States prior to being ordered removed.”<sup>329</sup> He noted that of aliens placed in expedited removal proceedings and found to have a credible fear of persecution, and thus referred to immigration judges for removal proceedings, “significantly fewer than 20 percent . . . were ultimately granted asylum”<sup>330</sup> and only “28 percent of cases decided on their merits are grants of

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<sup>323</sup> William A. Kandel, Congressional Research Service, IN11638, “Increasing Numbers of Unaccompanied Children at the Southwest Border” (June 28, 2023).

<sup>324</sup> *The Connection between the Mara Salvatrucha and Human Trafficking*, Human Trafficking Search, August 24, 2017, <https://humantraffickingsearch.org/the-connection-between-the-mara-salvatrucha-and-human-trafficking/>

<sup>325</sup> Transcript of “Remarks by President Trump at Law Enforcement Roundtable on MS-13” (February 6, 2018) available at *Remarks by President Trump at Law Enforcement Roundtable on MS-13 – The White House* (archives.gov)

<sup>326</sup> *Id*

<sup>327</sup> Southwest Land Border Encounters, U.S. CUSTOMS AND BORDER PROTECTION, available at *Southwest Land Border Encounters | U.S. Customs and Border Protection* (cbp.gov)

<sup>328</sup> *Immigration Court Case Closures Accelerate, Racing to Catch Up with Growing DHS Filings*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC) (Feb. 21, 2023), <https://trac.syr.edu/reports/709/>; *Historical Immigration Court Backlog Tool*, TRAC, <https://trac.syr.edu/phptools/immigration/backlog/> (last visited Feb. 1, 2024).

<sup>329</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314, 31326 (May 16, 2023).

<sup>330</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704, 11716 (proposed Feb. 23, 2023).

relief.”<sup>331</sup> In the Circumvention of Lawful Pathways, DHS admits that “the fact that migrants can wait in the United States for years before being issued a final order denying relief, and that many such individuals are never actually removed, likely incentivizes migrants to make the journey north.”<sup>332</sup>

Mr. Nolan Rappaport, former chief democratic counsel for the House Judiciary Committee’s Immigration Subcommittee, has written that:

[T]he [Biden] administration caused a border crisis by releasing unprecedented numbers of undocumented migrants into the country — and Congress can’t fix that.

This has resulted in an immigration court backlog that is so large, it severely limits the court’s ability to adjudicate asylum applications, with some migrants waiting as long as 10 years for a hearing. The right to apply for asylum is meaningless if the immigration court can’t adjudicate their applications.

The backlog also severely limits the court’s ability to conduct removal proceedings. Illegal border crossers are essentially safe from deportation once they have reached the interior of the country, and they can keep trying until they succeed.<sup>333</sup>

The immigration court has more than 700 judges . . . But, the Congressional Research Service estimated . . . that it would take 1,349 judges 10 years to clear the backlog, which was only 1,979,313 cases when [it] made that calculation . . .

The backlog has gotten so large that the average wait for an initial master calendar hearing for pleadings and to schedule an individual hearing on the merits of the case is four years. A final decision frequently takes years after that.<sup>334</sup>

Mr. Rappaport ruefully concluded that, “I am afraid that if a solution isn’t found soon, the only way to end the backlog will be to suspend consideration of asylum applications.”<sup>335</sup>

#### vi. Migrant Children Employed in Dangerous Jobs

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<sup>331</sup> *Id.* at 11716 n.97.

<sup>332</sup> *Id.* at 11716.

<sup>333</sup> Nolan Rappaport, *Our Immigration Courts Are in Crisis — and It’s Making It Impossible to Secure Our Borders*, THE HILL, Dec. 15, 2023, <https://thehill.com/opinion/4361833-our-immigration-courts-are-in-crisis-and-its-making-it-impossible-to-secure-our-borders/>.

<sup>334</sup> *Id.*; see HOLLY STRAUT-EPPSTEINER, CONG. RESEARCH SERV., R47637, IMMIGRATION JUDGE HIRING AND PROJECTED IMPACT ON THE IMMIGRATION COURTS BACKLOG (2023), available at <https://crsreports.congress.gov/product/pdf/R/R47637>.

<sup>335</sup> Rappaport, *supra* note 197.

During Secretary Mayorkas' tenure as Secretary of Homeland Security, more than 450,000 unaccompanied alien children have been encountered at the Southwest border,<sup>336</sup> and the vast majority have been released into the United States. As a result, there has been a dramatic upsurge in migrant children being employed in dangerous and exploitative jobs in the United States, as David Leonhardt has documented in the New York Times:

After unaccompanied children come to the U.S., authorities place them with so-called sponsors, adults who are supposed to care for the children and ensure they attend school. Frequently, though, the sponsors allow the children to work full time, knowing that their parents need the money that working children can wire home . . . In many communities, child labor has become an open secret. Yet this modern version of child labor brings the same terrible costs that led this country to ban the practice in the early 20th century. Children are exhausted. Many never graduate from high school and learn the skills necessary to find decent-paying work as adults. Some . . . suffer gruesome injuries while working jobs intended for adults.<sup>337</sup>

And Hannah Dreier reported in the New York Times that:

Everyone understood that the children were under extraordinary pressure to earn money to pay off their travel debts and help their families back home.<sup>338</sup>

[Most of the] migrant children [who] have entered the United States on their own since 2021 . . . have ended up working full time, fueling a resurgence in child labor not seen in a century. . . .<sup>339</sup>

[A]ll minors are barred from the most dangerous occupations, including digging trenches, repairing roofs and cleaning slaughterhouses.

But as more children come to the United States to help their families, more are ending up in these plants. Throughout the company towns that stud the “broiler belt,” which stretches from Delaware to East Texas, many have suffered brutal consequences. A Guatemalan eighth grader was killed on the cleaning shift at a Mar-Jac plant in Mississippi in July; a federal investigation had found migrant children working illegally at the company a few years earlier. A 14-year-old was hospitalized in Alabama after being overworked at a chicken operation there. A 17-year-old in Ohio had his leg torn off at the knee while cleaning a Case Farms plant. Another child lost a hand in a meat grinder at a Michigan operation.<sup>340</sup>

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<sup>336</sup>Southwest Land Border Encounters, U.S. CUSTOMS AND BORDER PROTECTION, *available at* <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

<sup>337</sup> David Leonhardt, *Child Labor and the Broken Border: A Times Investigation Looked into the Exploitation of Young Migrants*, NEW YORK TIMES, Sept. 19, 2023, <https://www.nytimes.com/2023/09/19/briefing/child-labor-migrants.html>.

<sup>338</sup> Hannah Dreier, *The Kids on the Night Shift*, NEW YORK TIMES MAGAZINE, Sept. 20, 2023, <https://www.nytimes.com/2023/09/18/magazine/child-labor-dangerous-jobs.html>.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

Ms. Dreier also reported that:

Far from home, many of these children are under intense pressure to earn money. They send cash back to their families while often being in debt to their sponsors for smuggling fees, rent and living expenses.

“It’s getting to be a business for some of these sponsors,” said Annette Passalacqua, who left her job as a caseworker in Central Florida last year . . . .

Sponsors are required to send migrant children to school, and some students juggle classes and heavy workloads. Other children arrive to find that they have been misled by their sponsors and will not be enrolled in school.<sup>341</sup>

When Kelsey Keswani . . . an United States Department of Health and Human Services (“HHS”) contractor in Arizona attempted to connect unaccompanied migrant children with sponsors. . . [says that i]n recent years, “the kids almost all have a debt to pay off, and they’re super stressed about it . . . .”<sup>342</sup>

Now, just a third of migrant children are going to their parents. A majority are sent to other relatives, acquaintances or even strangers, a Times analysis of federal data showed. . . Parents know that they would be turned away at the border or quickly deported, so they send their children in hopes that remittances will come back.<sup>343</sup>

Federal law bars minors from a long list of dangerous jobs . . . . But these jobs — which are grueling and poorly paid, and thus chronically short-staffed — are exactly where many migrant children are ending up . . . [R]ecently arrived preteens and teenagers are running industrial dough mixers, driving massive earthmovers and burning their hands on hot tar as they lay down roofing shingles, The Times found.

Unaccompanied minors have had their legs torn off in factories and their spines shattered on construction sites, but most of these injuries go uncounted. The Labor Department tracks the deaths of foreign-born child workers but no longer makes them public. Reviewing state and federal safety records and public reports, The Times found a dozen cases of young migrant workers killed since 2017, the last year the Labor Department reported any.

The deaths include . . . a 16-year-old who was crushed under a 35-ton tractor-scraper outside Atlanta; and a 15-year-old who fell 50 feet from a roof in Alabama where he was laying down shingles.<sup>344</sup>

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<sup>341</sup> Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, NEW YORK TIMES, Feb. 28, 2023, [https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?action=click&pgtype=Article&state=default&module=stylIn-migrant-child-labor&variant=show&region=MAIN\\_CONTENT\\_1&block=storyline\\_top\\_links\\_recirc](https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?action=click&pgtype=Article&state=default&module=stylIn-migrant-child-labor&variant=show&region=MAIN_CONTENT_1&block=storyline_top_links_recirc).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

## vii. Fentanyl

Secretary Mayorkas' failure to enforce the law resulted in drawing millions of illegal aliens to the Southwest border, which has led to the reassignment of U.S. Border Patrol agents from protecting the border from illicit drug trafficking to processing illegal aliens for release. As a result, during Secretary Mayorkas' tenure, the flow of fentanyl across the border and other dangerous drugs, both at and between ports of entry, has increased dramatically. CBP seized approximately 4,800 pounds of fentanyl in fiscal year 2020, approximately 11,200 pounds in fiscal year 2021, approximately 14,700 pounds in fiscal year 2022, and approximately 27,000 pounds in fiscal year 2023.<sup>345</sup> In the last three fiscal years, the Border Patrol has been seizing an increasing quantity of fentanyl between ports of entry.<sup>346</sup> While the Border Patrol is seizing record amounts of fentanyl, agents are repeatedly being pulled from patrolling the border in order to help process and transport illegal aliens due to Secretary Mayorkas' crisis at the Southwest border.<sup>347</sup> However, federal officials believe they only apprehend about 10 percent or fewer of all the fentanyl coming across the Southwest border.<sup>348</sup> As a result, over 70,000 Americans died from fentanyl poisoning in 2022,<sup>349</sup> and fentanyl is now the number one killer of Americans between the ages of 18 and 45.<sup>350</sup> The fentanyl that cartels are trafficking across the Southwest border is not staying in border communities, but rather is spread throughout the nation wreaking havoc on communities.

## viii. National Security

The crisis at the Southwest border is a significant threat to the national security of the United States. As Mr. Morgan told Committee staff on January 22, 2024, "it's not a matter [if] and when a national security threat enters our country, they're already here."<sup>351</sup> Secretary Mayorkas' catch-and-release scheme is enticing people from all over the world, including nations hostile to the United States and ones known for terrorism, to come to the U.S. "In fiscal year 2023, Border Patrol encountered illegal aliens from roughly 170 countries," including China, Turkey, Mauritania, Uzbekistan, Russia, Afghanistan, Egypt, Pakistan, Kyrgyzstan, Iran, Syria, Iraq, and

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<sup>345</sup> *Drug Seizure Statistics*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>; *CBP Enforcement Statistics Fiscal Year 2020*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2020>.

<sup>346</sup> *Drug Seizure Statistics*, *supra* note 209.

<sup>347</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Anthony Good, Chief Patrol Agent, U.S. Border Patrol 32 (June 22, 2024).

<sup>348</sup> Nick Miroff, *DEA Seized Enough Fentanyl to Kill Every Person in the U.S. in 2022*, THE WASHINGTON POST, Dec. 20, 2022, <https://www.washingtonpost.com/national-security/2022/12/20/fentanyl-seizures-2022-dea/>.

<sup>349</sup> *Provisional Drug Overdose Death Counts*, NATIONAL VITAL STATISTICS SYSTEM, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>. Synthetic opioids data is found under "12-Month-ending Provisional Number of Drug Overdose Deaths by Drug or Drug Class."

<sup>350</sup> *Year in Review: DEA Innovates to Fight Fentanyl*, U.S. DRUG ENF'T ADMIN, <https://www.dea.gov/press-releases/2024/01/25/year-review-dea-innovates-fight-fentanyl> (last visited Feb. 2, 2024).

<sup>351</sup> H. Comm. on Homeland Sec., Transcribed Interview of Mark Morgan 52-53 (Jan. 22, 2024).

Yemen.<sup>352</sup> About 63 percent of those aliens were single adults,<sup>353</sup> none of whom are meaningfully screened or vetted.<sup>354</sup>

During Secretary Mayorkas' tenure, USBP saw an increase in the number of aliens on the Terrorists Screening Data Set (TSDS). From FY 2017 through FY 2020, 11 illegal aliens whose names appear on the TSDS were apprehended attempting to cross the Southwest border between ports of entry.<sup>355</sup> In comparison, from FY 2021 through FY 2024 (year to date), the number of aliens on the TSDS increased to 331.<sup>356</sup> The historic number of apprehensions of aliens on the TSDS represents a significant public safety and national security threat. Under Secretary Mayorkas' leadership, the surge of illegal immigrants has overwhelmed federal law enforcement to the point where it is now easier for criminals, terrorists, or others with bad intentions, to enter the interior of the U.S. undetected. Sometimes, even though those aliens are apprehended, they are quickly processed and released into the interior. Most recently, a known member of the Somali terror group al-Shabaab, was released shortly after being apprehended while illegally crossing the Southwest border near San Ysidro, California on March 13, 2023.<sup>357</sup> It wasn't until January 18, 2024 where the Terrorist Screening Center made a redetermination that the illegal alien was involved in the use, manufacture, or transport of explosives or firearms and the alien was finally arrested.<sup>358</sup>

Another national security threat to the homeland is the historic number of known gotaways who have evaded the Border Patrol. These undetected illegal aliens present “untold numbers of national security threats.”<sup>359</sup> During Secretary Mayorkas' tenure, USBP agents have been pulled out of the field to process illegal aliens for release, leaving large swathes of the border unmanned.<sup>360</sup> The lack of border enforcement has led to historic numbers of aliens who are not

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<sup>352</sup> H. COMM. ON THE JUDICIARY, NEW DATA REVEAL WORSENING MAGNITUDE OF THE BIDEN BORDER CRISIS AND LACK OF INTERIOR IMMIGRATION ENFORCEMENT 7 (Jan. 18, 2024), *available at* <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf>.

<sup>353</sup> *Nationwide Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2023>. (last visited Feb. 1, 2024).

<sup>354</sup> See Mark Morgan, *supra* note 214 at 93 (“do you really think when we encounter a Cuban national, military age, single, adult male that we’re working with Cuba to get his biographical information from the government of Cuba? Do you think Cuba is working with us diligently to let us know whether he was just recently released from prison or he’s a known murderer or a gang member? Of course not. It’s not happening. It’s a lie. Every time Secretary Mayorkas says that these individuals we’re encountering are vetted, it’s a lie.”).

<sup>355</sup> *CBP Enforcement Statistics Fiscal Year 2023*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2023>. (last visited Feb. 1, 2024).

<sup>356</sup> *Id.*

<sup>357</sup> Jennie Taer, *Terrorist Caught Illegally Crossing the Border was Allowed to Roam Free for Nearly a Year*, *Memo Says*, THE DAILY CALLER, Jan. 29, 2024, [https://dailycaller.com/2024/01/29/exclusive-terrorist-caught-illegally-crossing-border-allowed-roam-free-nearly-year-memo-says/?utm\\_source=118th+Members%2C+Chiefs%2C+And+Comms+Directors&utm\\_campaign=9341c68a3e-EMAIL\\_CAMPAIGN\\_2019\\_02\\_04\\_09\\_01\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_3985f74780-9341c68a3e-147591794](https://dailycaller.com/2024/01/29/exclusive-terrorist-caught-illegally-crossing-border-allowed-roam-free-nearly-year-memo-says/?utm_source=118th+Members%2C+Chiefs%2C+And+Comms+Directors&utm_campaign=9341c68a3e-EMAIL_CAMPAIGN_2019_02_04_09_01_COPY_01&utm_medium=email&utm_term=0_3985f74780-9341c68a3e-147591794).

<sup>358</sup> *Id.*

<sup>359</sup> Mark Morgan, *supra* note 214 at 52.

<sup>360</sup> See H. Comm. on Homeland Sec., Transcribed Interview of Rodney Scott 80 (Jan. 22, 2024) (“And then what else worries me is, because of all that, we’re leaving hundreds and hundreds of miles of border open right now and still documenting almost 1.8 million illegal entries that got away. So all that, combined, worries me greatly.”).

turned back or apprehended after making an illegal entry (gotaways). Along the Southwest border, in FY 2021, the number of gotaways was recorded at a little over 389,000,<sup>361</sup> in FY 2022, 600,000,<sup>362</sup> and in FY 2023, 750,000.<sup>363</sup> Then-Chief Raul Ortiz told the Committee in March 2023 that the true number of gotaways – known or undetected – could be at least 20 percent higher than the reported number.<sup>364</sup> USBP does not “know who they are, where they came from, what their intent it, why they’re bringing with them. And it could range from very minimal to very severe. We just don’t know. And so, because of that, of course it’s a concern.”<sup>365</sup>

ix. Unpatrolled Borders, Unpatrolled Skies

Secretary Mayorkas has degraded public safety by leaving wide swaths of the border effectively unpatrolled. USBP agents are being diverted from guarding the border, to processing, and then to unlawful release.

Deputy Chief Patrol Agent Dustin Caudle of the Yuma Sector in Arizona, told the Committees on Homeland Security and the Committee on Oversight and Accountability that:

[Yuma] had capacity issues almost every day. They were overwhelmed with transportation duties. They were overwhelmed with processing duties. There was multiple support requests to get detailed personnel in there to assist with that. A large percentage of the Border Patrol agents were pulled off of their line functions and performing administrative or processing duties rather than performing that frontline law enforcement mission.<sup>366</sup>

Chief Owens told the Committees that:

[I]f my men and women are stuck in a humanitarian effort of processing these folks, they cannot be in two places at once. They cannot be out on patrol. And where I need them out on patrol is to not only account for those got-aways but to reduce them, where possible. Everything revolves, as I said before, around having those men and women on the ground doing the job.<sup>367</sup>

Chief Patrol Agent Anthony “Scott” Good told the Committees that:

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<sup>361</sup> Office of the Inspector General, DHS, “*Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees’ Health and Morale*,” OIG-23-24, (May 3, 2023), available at <https://www.oig.dhs.gov/reports/2023/intensifying-conditions-southwest-border-are-negatively-impacting-cbp-and-ice-employees-health-and-morale/oig-23-24-may23>.

<sup>362</sup> *Id.*

<sup>363</sup> CONGRESSIONAL BUDGET OFFICE, *THE DEMOGRAPHIC OUTLOOK 2024 TO 2054* (Jan. 2024), available at <https://www.cbo.gov/system/files/2024-01/59697-Demographic-Outlook.pdf#page=9>.

<sup>364</sup> *Failure By Design: Examining Secretary Mayorkas’ Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023).

<sup>365</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol, Dep’t of Homeland Sec. 96 (May 5, 2023).

<sup>366</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Dustin Caudle, Chief Patrol Agent, U.S. Border Patrol Sept. 28, 2023).

<sup>367</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Jason Owens, Chief Patrol Agent, U.S. Border Patrol, 42 (May 5, 2023).

When you have larger influxes such as this, it takes more agents to assist in processing, not only for the processing of the migrants but the welfare and care of the migrants, the security of those facilities. So that—that is a draw of manpower from the field, which is where we’ll see an increase in things like got-aways, what we call when migrants evade us and we don’t make the encounter or apprehension . . . .<sup>368</sup>

As we’re spread thin doing other functions and have less agents available to make interdictions, that increases the likelihood of got-aways.<sup>369</sup>

As to the impact on Federal Air Marshals, Senator Ted Cruz stated last October that:

Security incidents continue to occur in the sky, meaning TSA’s decision to take air marshals off flights and deploy them to the border may be putting the traveling public at risk. For example, during a Jet Blue flight from New York to Salt Lake City last November, a passenger held a straight edge razor to another passenger’s throat and threatened her life. In March of this year, a passenger on a United Airlines flight from Los Angeles to Boston attempted to open the emergency door and kill everyone on board. Thankfully the other passengers and crew subdued the individuals, but these events should never have happened in the first place. While it is unknown whether air marshals would have been on those particular flights, what is known is that on both occasions at least 200 air marshals were busy assisting at the southern border and would not have been available to protect those flights.<sup>370</sup>

And Eric Katz reported in Government Executive last May that:

DHS will send nearly 200 Federal Air Marshals to the border . . . restarting a process it began—and subsequently paused—last fall. The deployments are mandatory, Dave Londo, president of the Air Marshals National Council, said, and employees will be sent for 21-day rotations. Last year, the air marshals assisted with duties such as hospital watch, transportation, and welfare checks. While DHS has maintained that the deployments would not threaten safety on passenger flights, Londo decried the decision as “crazy” and said it would damage morale in the workforce.<sup>371</sup>

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<sup>368</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Anthony Good, Chief Patrol Agent, U.S. Border Patrol 26 (Jun. 29, 2024).

<sup>369</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Anthony Good, Chief Patrol Agent, U.S. Border Patrol 36 (Jun. 29, 2024).

<sup>370</sup> Letter from Ted Cruz, Senator, to David Pekoske, Adm’r, Transp. Sec. Admin., (Oct. 3, 2023), *available at* <https://www.commerce.senate.gov/services/files/1622D46F-A2E2-410F-91E5-0488C7CD96BE>.

<sup>371</sup> Eric Katz, *Biden Deploys Thousands to the Border, and Some of the New Assignments Aren't Optional*, GOVERNMENT EXECUTIVE, May 11, 2023, <https://www.govexec.com/workforce/2023/05/biden-deploys-thousands-federal-personnel-border/386230/>.

## F. Constitutional History of Impeachment Based on Failures to Comply with the Law

From the early days of English constitutional history, impeachable offenses have encompassed failures to follow the law.<sup>372</sup> Harvard law professor Raoul Berger has noted this in his analysis of impeachment:

English impeachments did not require an indictable crime . . . The following charges drawn from impeachment cases disclose that impeachable misconduct was patently not “criminal” in the ordinary sense [and] they give content to the phrase “high crimes and misdemeanors.

Lord Treasurer Middlesex (1624), high crimes and misdemeanors; allowed the office of Ordinance to *go unrepaired though money was appropriated for the purpose*; allowed contracts for greatly needed powder to lapse . . .

Duke of Buckingham (1626), misdemeanors . . . *neglected as great admiral to safeguard the seas . . .*

Sir Richard Gurney, lord Mayor of London (1642), high crimes and misdemeanors; *thwarted Parliament’s order* to store arms and ammunition in storehouses . . .

Peter Pett, Commissioner of the Navy (1688), high crimes and misdemeanors; *negligent preparation for the Dutch invasion*; loss of a ship through neglect to bring it to mooring . . .<sup>373</sup>

As Berger points out, Justice Joseph Story paraphrased these and other examples of English impeachments in his Commentaries on the Constitution when describing the proper application of the Constitution’s Impeachment Clause, writing that “lord chancellors . . . and other magistrates have not only been impeached for . . . acting grossly contrary to the duties of their office, but . . . for attempts to subvert the fundamental laws, and introduce arbitrary power. So where. . . a lord admiral to have neglected the safeguard of the sea . . . ; these have all been deemed impeachable offenses.”<sup>374</sup>

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<sup>372</sup> Black’s Law Dictionary defines “neglect of duty” as follows: “neglect of duty . . . A public officer's failure to perform one or more duties imposed by law; gross neglect of duty . . . 1. Frequent and severe neglect of duty resulting in a significant threat to or endangerment of the public welfare.” *Neglect of duty*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>373</sup> RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 67-68 (1973) (emphasis added). Alex Simpson describes the impeachable offenses committed by the Duke of Buckingham in greater detail, as follows: “Whereas the said duke, by reason of his said offices . . . ought at all times since the said offices obtained, to have safely guarded, kept, and preserved the said seas and the dominion of them; and ought also whenever they wanted either men, ships, munition, or other strength whatsoever, that might conduce to the better safeguard of them, to have used, from time to time, his utmost endeavor for the supply of such wants” yet he hath not according to his said offices, “during the time aforesaid, safely kept the said seas; insomuch, that by reason of his neglect and default therein, not only the trade and strength of this kingdom of England hath been during the said time, much decayed; but the same seas also have been, during the same time, ignominiously infested by pirates and enemies.” Alex Simpson, *A Treatise on Federal Impeachment* (1916), at 100.

<sup>374</sup> Berger, *supra* note 77, at 67-69 (citing Joseph Story, *Commentaries on the Constitution* (1833) 2: § 798).

Beyond the English examples, as historians Peter Charles Hoffer and N.E.H. Hull points out, “[T]he influence of state experience with impeachment upon national law did not end with the framing of the Constitution of the United States. State cases reflected American understanding of the federal rules, offering a continuing flow of precedent and commentary upon the utility of impeachment in republics.”<sup>375</sup> They go on to recount what those early state impeachments encompassed regarding the neglect of duty or willful refusal to follow the law by government officials:

William Greenleaf of Worcester, Massachusetts . . . was by [the year] 1788 commander of the county militia and sheriff . . . On June 12 . . . the house voted, 157 to 10, that the complaints [against him] were “sufficient grounds for bringing forward articles of impeachment . . . for misconduct . . . in his office” . . . The final draft of the articles cited a long train of abuses, reaching back “for many years” . . . The Massachusetts representatives were almost the same body of men who debated the federal provisions for impeachment in the ratification convention. They knew that offenses need not be indictable in a criminal court . . . The six articles of impeachment brought against Greenleaf charged that he had . . . given false information to the treasury (both general accusations), and more specifically that he had *improperly accounted for tax money* . . . [T]he verdict came down: 20 voted guilty, 3 voted not guilty.<sup>376</sup>

In a 1789 inquiry [in New Hampshire] into the conduct of David Webster, sheriff of Grafton, Israel Morey, a petitioner, charged that Webster . . . *refused to obey the orders of a Grafton justice* . . .<sup>377</sup>

[Also in New Hampshire, Supreme Court Justice Woodbury Langdon faced impeachment.] Throughout 1788 the house and senate received regular complaints against Langdon for skipping court sessions . . . Langdon expressed his own reasons to the house on December 23, 1789. First, he argued that judges could adjourn sessions at will . . . On June 16, 1790, the house began impeachments proceedings against the judge for *neglect of duty* . . . The resolution to impeach passed 35 to 29 the next day . . . *By setting himself up outside the law, he violated the oath of his office*. For this the appropriate response was impeachment . . . [I]mpeachment of a totally incompetent official could proceed even without evidence of willful or criminal intent.<sup>378</sup>

[In Georgia, superior court judge Henry] Osbourne had not brought [election] returns to the proper place but put them at [someone else’s] disposal instead. The investigating committee found “partial, arbitrary, illegal and manifest violation of the sacred engagement and trust reposed in [Osbourne] [as a civil election worker] . . .” for which he should be impeached. The diverse “high crimes and

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<sup>375</sup> Peter Charles Hoffer and N.E.H. Hull, *Impeachment in America: 1635-1805* 118 (Yale University Press 1984)

<sup>376</sup> *Id.* at 123-24, 126.

<sup>377</sup> *Id.* at 126 (emphasis added).

<sup>378</sup> *Id.* at 127, 129-130 (emphasis added).

misdemeanors” alleged were “meddling” and “beguiling” – not offenses mentioned in the criminal laws of Georgia -- but were very similar to those in New Jersey, New Hampshire, Massachusetts, and, later, in Kentucky, Tennessee, and Vermont cases: a breach of trust or a failure to carry out official duties because of partiality . . . The lower house agreed to impeach Osbourne on November 23 [1791]. . . Osbourne. . . had violated his official trust . . . The articles alleged . . . that he did not deliver the returns at the proper time or place . . . .<sup>379</sup>

[In South Carolina in 1792] tax collector William Davis [was impeached by the house] for *failing to keep tax books [and] devising his own tax schedules*. . .<sup>380</sup>

[Also in South Carolina Alexander] Moultrie’s willful mishandling of public funds was reported to the lower house . . . The assembly voted the impeachment 76 to 9 . . . [D]one in office, [Moultrie’s action] was “subversive of the trust reposed in him, contrary to the notion on his appointment,” and “injurious to the interests of the people.”<sup>381</sup>

In Pennsylvania, state comptroller general John Nicholson [was impeached]. On April 3, 1793, the House Committee on Ways and Means found Nicholson guilty of a “high misdemeanor” for certifying the New Loan notes without consulting the register-general or the treasurer, as required by law. The House voted 53 to 4 to create a committee to write articles of impeachment . . . He certified [the notes] payable at the treasury contrary to law [and] he failed to consult with the register-general, as provided under the terms of another 1792 act.<sup>382</sup>

[In Massachusetts in 1794] William Hunt, a justice of the peace for Middlesex . . . was impeached [because] he had knowingly overstepped his authority.<sup>383</sup>

The New Jersey assembly fit a number of prospective impeachment cases into its ordinary business in 1799 . . . John Lacey, a justice of the peace for Burlington, was accused of prejudicial proceedings in the court of common pleas for the county . . . [T]he eight draft articles of impeachment rested upon his . . . *inattention to duty* . . . Despite confession by a defendant, he had ordered a constable not to execute a judgment . . . *He had also given blank precepts [orders or writs] to the constables* . . . .<sup>384</sup>

As Hoffer and Hull conclude:

The federal Constitution . . . derived its impeachment and trial provisions from state precedents . . . The impeachments of William Greenleaf and William Hunt of

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<sup>379</sup> *Id.* at 131-32 (emphasis added).

<sup>380</sup> *Id.* at 133.

<sup>381</sup> *Id.* at 135 (emphasis added).

<sup>382</sup> *Id.* at 137-38.

<sup>383</sup> *Id.* at 141-42.

<sup>384</sup> *Id.* at 168.

Massachusetts, Alexander Moultrie, William Davis of South Carolina, Woodbury Langdon of New Hampshire, Henry Osbourne of Georgia, and John Nicholson of Pennsylvania among others during this era all involved accusations of either gross mismanagement of public funds or abusive and wanton misuse of power. . . . Seen at a distance of two hundred years, the charges against all these men were substantial, though in all cases except Moultrie’s and Osbourne’s, no grounds existed for regular court proceedings against them. Under the category of general offenses, that is, acts dangerous to the public weal or violating the public trust, managers and triers classed mismanagement of funds, arbitrariness on the bench, and incompetence in office.<sup>385</sup>

Importantly for the impeachment case against Secretary Mayorkas, Steven Bradbury points out that:

[W]hile a criminal violation usually requires commission of a wrongful act, impeachable conduct may involve non-action — the refusal or “serious failure to discharge the affirmative duties” of the office in question. Thus, the one Cabinet officer previously impeached by the U.S. House of Representatives, William Belknap, was charged, among other things, with . . . “criminally disregarding his duty as Secretary of War.”<sup>386</sup>

While in the past, federal judges have faced impeachment for drunkenness on the bench,<sup>387</sup> today we have the most egregious example ever of a federal official’s failure to comply with the law, which has caused terrible harm on a vast scale and at great human cost. Secretary Mayorkas’ failure to act to enforce the nation’s immigration laws constitutes an impeachable willful refusal to comply with the law that far exceeds the standards of past impeachment precedents.

Nor are there any reasonable excuses for the Secretary’s failure to enforce the law. In the absence of any reasonable excuse, as Delahunty and Yoo write:

[An overbroad] claim of prosecutorial discretion in immigration matters threatens to vest the Executive Branch with broad domestic policy authority that the Constitution does not grant it . . . Can a President [or other high executive official] decline to enforce the deportation statute against all illegal immigrants because of a belief in an “open borders” policy? Can a President [or other high executive official] who wants tax cuts that a recalcitrant Congress will not enact decline to enforce the income tax laws? Can a President [or other high executive official] effectively repeal the environmental laws by refusing to sue polluters, or workplace and labor laws by refusing to fine violators?<sup>388</sup>

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<sup>385</sup> *Id.* at 112, 145 (emphasis added).

<sup>386</sup> Stephen Bradbury, *Impeachable High Crimes and Misdemeanors: Not Limited to Criminal Offenses*, THE HERITAGE FOUNDATION, Mar. 23, 2023, available at <https://www.heritage.org/immigration/report/impeachable-high-crimes-and-misdemeanors-not-limited-criminal-offenses>.

<sup>387</sup> Judge John Pickering was impeached in 1803 for appearing drunk on the bench, 3 *Annals of Cong.* 322 (1803), as was Judge Mark Delahay, Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States* §§ 2504–05 (1907).

<sup>388</sup> Delahunty and Yoo, *supra* note 128, at 784.

Black’s Law Dictionary (11th edition, 2019) has a special definition of “prosecutorial discretion” in the immigration context. Black’s Law Dictionary defines “prosecutorial discretion” as “2. *Immigration law.* A federal authority’s discretion not to immediately arrest or endeavor to remove an illegal immigrant because the immigrant does not meet the federal government’s immigration-enforcement priorities.” In the immigration context, certain federal immigration statutory provisions, such as Sections 1226(c) and 1231(a)(2) of Title 8, require by their clear text that the federal government “shall” detain aliens convicted of specific types of crimes or who have final orders of removal. Certainly, in such cases of statutorily mandatory detention, Congress itself has set the federal government’s immigration-enforcement priorities. And again, as the Supreme Court has held, Congress — not the President or Executive Branch officials — has the “complete and absolute power” over the subject of immigration and “plenary power” over the admission and exclusion of aliens.<sup>389</sup>

And while it is certainly true that it is not practically possible to detain every illegal entrant ever, when Congress, by statute, mandates “shall,” that must, at the very least, mean that inevitably limited enforcement resources be directed toward enforcing mandatory provisions of law over others, and, most particularly, that limited resources should not be directed away from mandatory detention and toward blanket programs of exemptions from the federal immigration laws unilaterally created by the Secretary. Indeed, Secretary Mayorkas’ decision to redirect limited resources and implement his own policies intentionally *takes away* resources from the enforcement of Congress’ statutorily mandated limits on prosecutorial discretion. That intentional redirection of taking enforcement resources away from statutorily mandated detention and case-by-case processing, and toward his own unilaterally created immigration exemption program, constitutes a *qualitative* difference in enforcement, and not just a quantitative difference in enforcement between differing administrations.

Of course, a cabinet Secretary could conceivably have a reasonable excuse for failure to act. As Delahunty and Yoo write:

[A] type of defense commonly available when the duty of enforcement has been breached is that the agency simply lacked sufficient resources<sup>390</sup> — funding, staffing, or leadership — to discharge its enforcement duty in full.<sup>391</sup>

But there is no evidence here that Secretary Mayorkas’ unilateral implementation of mass exemptions from the immigration laws has anything to do with a lack of appropriated resources. As Delahunty and Yoo explain:

Even though the question of whether resource constraints excuse an agency’s nonenforcement decisions is almost always one for Congress, large-scale

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<sup>389</sup> See, e.g., *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972); *Galvan v. Press*, 347 U.S. 522, 531 (1954) (Congress’s exclusive power extends “to the entry of aliens and their right to remain here[.]”); *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 (1972) (“[p]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established.”).

<sup>390</sup> Delahunty and Yoo, *supra* note 128, at 845.

<sup>391</sup> *Id.*

nonenforcement . . . nonetheless calls for a reasoned public explanation and defense. One has first to consider whether the excuse is factually true or not. If it is not true, the excuse should likely be rejected. But even if the circumstances were as the party offering the excuse claimed, the excuse may still be rejected as flimsy or insufficient. If I seek to excuse my failure to keep my promise to attend your child’s birthday party because I was short of cash and could not pay for the taxi fare, you can rightly reject my excuse if you know that I could easily have withdrawn cash from the bank on my way to the taxi stand, or that I spent all the cash I had on an expensive present for myself.<sup>392</sup>

In this case, Secretary Mayorkas has provided no evidence to substantiate any claims of inadequate resources. He has given no estimates of what the cost savings of Secretary Mayorkas’ unilateral immigration law exemptions would be. He has not explained how the resources freed up by these non-enforcement decisions would be used to improve ICE’s enforcement efforts in other areas.

It is certainly true, as the Supreme Court explained in *Biden v. Texas*, that “[e]very administration, including the Trump and Biden administrations, has utilized th[e parole] authority to some extent” as “congressional funding has consistently fallen well short of the amount needed to detain all land-arriving inadmissible aliens at the border.”<sup>393</sup> And, as the dissenting justices stated, “[d]ue to the huge numbers of aliens who attempt to enter illegally from Mexico, DHS does not have the capacity to detain all inadmissible aliens encountered at the border, and no one suggests that DHS must do the impossible.”<sup>394</sup>

However, while resource constraints have placed upper limits on the number of apprehended aliens who can be detained at any one-time, prior administrations of both political parties have striven in good faith to comply with the detention mandates. For instance, as the Supreme Court found in *Biden v. Texas*, “the Trump administration chose to implement [the Migrant Protection Protocols] MPP in part so that ‘[c]ertain aliens attempting to enter the U.S. illegally . . . will no longer be released into the country, where they often fail to file an asylum application and/or disappear before an immigration judge can determine the merits of any claim.’”<sup>395</sup>

Further, as United States District Court Judge T. Kent Wetherell II of the Northern District of Florida concluded in *Florida v. United States*,<sup>396</sup> “despite the historic increases in border traffic, [Secretary Mayorkas] took steps to reduce detention capacity, including closing all of DHS’s family detention facilities,”<sup>397</sup> “requesting less detention capacity from Congress,”<sup>398</sup> and “le[ading] Congress to believe that it did not need more detention capacity” by stating “in its fiscal year 2022 and 2023 budget requests that ‘a reduction in detention capacity level will not impeded ICE’s ability to apprehend, detain, and remove noncitizens that present a threat to national security,

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<sup>392</sup> *Id.* at 847.

<sup>393</sup> *Biden v. Texas*, 142 S.Ct. at 2543.

<sup>394</sup> *Id.* at 2550 (J. Alito, J. Thomas, J. Gorsuch, dissenting).

<sup>395</sup> *Biden v. Texas*, 142 S.Ct. at 2535.

<sup>396</sup> *Florida v. United States*, 3:23cv9962-TKW-ZCB (May 11, 2023).

<sup>397</sup> *Id.*, slip op. at 39.

<sup>398</sup> *Id.*

border security, and public safety.”<sup>399</sup> Judge Wetherell concluded that, “it is hard to take [DHS’s] claim that they had to release more aliens into the country because of limited detention capacity seriously.”<sup>400</sup>

Judge Wetherell’s conclusion is further bolstered by data that President Biden’s Solicitor General Elizabeth Prelogar provided to the Supreme Court demonstrating that of single adult aliens and aliens in family units encountered at the Southwest border, the proportion continuously detained was 56 percent in fiscal year 2017, 54 percent in 2018, 33 percent in 2019, 66 percent in 2020, but only 10 percent in 2021.<sup>401</sup> It is thus not surprising that DHS’ 2024 budget request states that ICE’s Enforcement and Removal Operations’ average daily detainee population (“ADP”) fell from 50,165 in 2019 to 22,630 in 2022.<sup>402</sup> Despite this plunge in capacity during Secretary Mayorkas’ border crisis, DHS’s fiscal year 2024 request seeks funding for an ADP of only 25,000.<sup>403</sup>

Why? DHS contends that:

Funding an ADP of 25,000 maintains ICE’s ability to effectively manage its current detainee population flows. ICE retains the ability to apprehend, detain and remove noncitizens that present a threat to national security, border security, and public safety. As noncitizens pass through immigration proceedings, sufficient and appropriate detention capacity provides ICE with adequate time and flexibility to gain custody of immigration law violators, ensure compliance with court procedures, and efficiently utilize transportation networks to remove priority individuals.<sup>404</sup>

Supporting an ADP of 25,000 will provide ICE with the flexibility and capacity to detain immigration law violators and those who pose a security threat while efficiently managing the detention portfolio.<sup>405</sup>

It is important to note that policy priorities seeking to limit detention of noncitizens assessed to not pose a threat to national security or public safety make significant increases in ADP unlikely under current circumstances.<sup>406</sup>

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<sup>399</sup> *Id.*, slip op. at 39-40.

<sup>400</sup> *Id.*, slip op. at 40.

<sup>401</sup> Letter from Elizabeth B. Prelogar, Solicitor General, Off. of the Solicitor Gen., U.S. Dep’t of Justice, to Scott S. Harris, clerk, Supreme Court of the United States (appendix 1) (June 6, 2022) (not including aliens enrolled in MPP or expelled under Title 42), *available at* [https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875\\_Letter%2021-954%20%206-6-2022.pdf](https://www.supremecourt.gov/DocketPDF/21/21-954/227228/20220606154050875_Letter%2021-954%20%206-6-2022.pdf).

<sup>402</sup> U.S. DEP’T OF HOMELAND SEC., U.S. IMMIG’R AND CUSTOMS ENF’T BUDGET OVERVIEW FISCAL YEAR 2024 CONGRESSIONAL JUSTIFICATION ICE-3, *available at* [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>403</sup> *Id.*

<sup>404</sup> *Id.* at ICE – O&S – 18.

<sup>405</sup> *Id.* at ICE – O&S – 19.

<sup>406</sup> *Id.* at ICE 4.

Secretary Mayorkas has decided that he knows better than Congress and thus that he can feel free to disregard the detention mandates that Congress has established. ICE only needs to “retain[] the ability to apprehend, detain and remove noncitizens that [Secretary Mayorkas believes] present a threat to national security, border security, and public safety.” DHS’s budget request actually states that “[i]n alignment with guidance to limit detention among noncitizens who do not threaten national security, public safety, or meet mandatory detention requirements, noncitizen ADP [average daily population at ICE detention facilities] remained below target in [fiscal year] 2022.”<sup>407</sup> This statement is significant for two reasons. First, Secretary Mayorkas’ DHS now actually has guidance to, “limit detention.” Second, the guidance apparently does not limit detention for aliens who meet mandatory detention requirements. So, Secretary Mayorkas admits that there are mandatory detention requirements, yet he does not seek the appropriate funding from Congress to satisfy these requirements in good faith. In fact, he has chosen not to comply with a statutory mandate that:

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the [DHS Secretary] shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain —

- (A) all aliens subject to detention under section [236](c) and section [241](a);
- (B) all inadmissible or deportable aliens subject to proceedings under section [238] [aggravated felons] or section [235](b)(2)(A) or [240] [removal proceedings before immigration judges]; and
- (C) other inadmissible or deportable aliens in accordance with the priorities established by the [Secretary].<sup>408</sup>

As a consequence of Secretary Mayorkas’ mass releases of apprehended aliens from mandatory detention, the number of inadmissible aliens who CBP’s Office of Field Operations officers encounter at Southwest border ports of entry, and aliens who USBP agents apprehend between the ports of entry released into American communities increased from an average of approximately 80,000 a year during 2017-2020, to approximately 320,000 in 2021, 780,000 in 2022 and 1.28 million in 2023.<sup>409</sup>

As Judge Wetherell concluded, the claim that the “crisis at the border is not largely of [Secretary Mayorkas’] own making because of their more lenient detention policies is divorced from reality and belied by the evidence.”<sup>410</sup> Rather, DHS “effectively incentivized [the surge in illegal migration] that has been ongoing since early 2021 by establishing policies and practices that all-but-guaranteed that the vast majority of aliens arriving at the Southwest Border who were

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<sup>407</sup> *Id.* (emphasis added).

<sup>408</sup> 8 U.S.C. § 1368(b)(1). On January 4, 2024, the Committee sent a letter to Secretary Mayorkas requesting copies of the required reports. The Committee had yet to receive a single report and has no reason to believe any were ever prepared or sent to Congress.

<sup>409</sup> *Immigration Enforcement and Legal Processes Monthly Tables*, OFF. OF HOMELAND SEC. STATISTICS, <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables> (last visited Feb. 1, 2024).

<sup>410</sup> *Florida v. U.S.*, *supra* note 276, slip op. at 21.

not excluded under the Title 42 Order would not be detained and would instead be quickly released into the country where they would be allowed to stay (often for five years or more) while their asylum claims were processed or their removal proceedings ran their course—assuming, of course, that the aliens do not simply abscond before even being placed in removal proceedings, as many thousands have done.”<sup>411</sup> Further, DHS’s “actions were akin to posting a flashing ‘Come In, We’re Open’ sign on the Southwest border. The unprecedented ‘surge’ of aliens that started arriving at the Southwest Border almost immediately after President Biden took office and that has continued unabated over the past two years was a predictable consequence of these actions.”<sup>412</sup>

Secretary Mayorkas’ refusal to comply with the law rises far beyond the level at which it comes to usurp Congress’ legislative power. As Delahunty and Yoo write:

Several reasons support a robust conception of the Executive’s enforcement duty. The passage of legislation is an arduous and slow-moving process, requiring proponents of a new law to assemble majorities on repeated occasions to overcome Congress’s built-in tendency towards inertia. The Framers created multiple veto points such as bicameralism and presentment to impede the passage of all but well-considered legislation. By its own internal procedural rules (including the filibuster) and complex committee structure, Congress itself has substantially added to the bias in favor of legislative inaction. For legislation of any real significance to be enacted, there must first be “buy in” from many interested players representing many different perspectives, interests, and constituencies. This entire complicated process is intended to encourage legislation that reflects what Madison called [in Federalist No. 63] “the cool and deliberate sense of the community” . . . Second, the threat of nonenforcement gives the President improper leverage over Congress by providing a second, postenactment veto . . . that second “veto” gives him a bargaining edge in negotiating with Congress for which the Constitution did not provide. Third, the possibility of class-wide nonenforcement creates an incentive for members of Congress to bypass each other in fashioning legislation and to deal directly with the Executive instead.<sup>413</sup>

Indeed, when Members of Congress and Senators negotiate immigration and other provisions, they give-and-take, but the giving and taking relies on the integrity of the meaning of negotiated words going forward for its legitimacy. So if a Member or a Senator says during negotiations on a bill that “I will accept X, Y, and Z with respect to other enforcement provisions, but only if very important provision A is prefaced with a ‘shall,’ because that’s very important,” and that agreement is made, both the text of the “shall” provision, and all the other enforcement provisions of the bill, will have depended on the future integrity, and consistent application, of the word “shall” as understood by the drafters and enactors of the legislation. If words like “shall” have no meaning, the legislative process itself is meaningless.

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<sup>411</sup> *Id.*, slip op at 21-22.

<sup>412</sup> *Id.*, slip op at 18-19 (footnote omitted).

<sup>413</sup> Delahunty and Yoo, *supra* note 128, at 794-95 (citing *Loving v. United States*, 517 U.S. 748, 757-58 (1996)). “Article I’s precise rules of representation, member qualifications, bicameralism, and voting procedure make Congress the branch most capable of responsive and deliberative lawmaking.”)

The Secretary's refusal to enforce huge swathes of the nation's immigration laws also does far more harm than simply negating congressional legislation. It tends to also alter the demand for federal legislation itself and the shape of future legislation. The Guarantee Clause of the Constitution, for example, states "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence."<sup>414</sup> As James Madison noted, large influxes of unauthorized immigrants could tip the balance in favor of policies disapproved of by the majority of American citizens.<sup>415</sup>

And beyond its unconstitutionality, and its nature as an impeachable offense, the Secretary's willful refusal to follow the law, if allowed the stand, would set a terrible precedent. As Delahunty and Yoo wrote in another context:

If the President [or the Secretary of Homeland Security] may constitutionally permit 15% of the nation's illegal immigrant population to remain in the United States without fear of removal, why may he not do the same for 50% of that population, or for all of it? True, as long as some funding was available to ICE for enforcement, the President [or the Secretary] could not claim that an appropriations shortfall justified the total cessation of deportation activities. Still, the President [or the Secretary] could deliberately allocate ICE's resources in such a way as to achieve essentially that result. But if the President [or the Secretary] can constitutionally implement an open borders policy on his own initiative and without authorization from Congress, what remains of the immigration law?<sup>416</sup>

The impeachment proceedings against Secretary Mayorkas also occur in a unique legal context in which the Supreme Court of the United States itself has left the House of Representatives no choice but to impeach the Secretary if DHS is to promptly resume enforcement of the federal immigration laws. Indeed, the Secretary continues his impeachable conduct by exploiting the Supreme Court's refusal to provide relief to the States, which has resulted in a situation, as articulated by Supreme Court itself, in which impeachment by the House of Representatives and removal by the Senate is the only remaining means by which the States can obtain prompt relief.

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<sup>414</sup> U.S. Const, Art. IV, Sec. 4.

<sup>415</sup> See Douglas Smith, "An Analysis of Two Federal Structures: The Articles of Confederation and the Constitution," 34 San Diego L. Rev. 249, n.152 (stating "Madison noted that either alien residents ... might side with a minority faction and work innovations in the structure of government that would be anti-republican," and citing James Madison in FEDERALIST NO. 43 as follows: "May it not happen, in fine, that the minority of citizens may become a majority of persons, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the rights of suffrage?"). Such concerns have been echoed ever since, notably by Frances Perkins, President Franklin Delano Roosevelt's Secretary of Labor, who wrote "It is generally recognized that the United States can no longer absorb annually hundreds of thousands of immigrants without serious economic and social dislocations. Certainly the present restrictions can not be relaxed while millions of workers are unemployed and maintained at public expense." 21st Annual Report of the Secretary of Labor (Washington: Government Printing Office, 1934). The situation today, of course, is much worse.

<sup>416</sup> Delahunty and Yoo, *supra* note 128, at 847.

In *United States v. Texas*,<sup>417</sup> the Supreme Court agreed to hear a case involving the very same unilateral suspensions of the federal immigration laws by Secretary Mayorkas that are at issue in this impeachment. In that case, the majority of the Supreme Court stated that “On the merits, the District Court ruled that the [Secretary’s] Guidelines are unlawful, and vacated the Guidelines. The U.S. Court of Appeals for the Fifth Circuit declined to stay the District Court’s judgment.”<sup>418</sup> But then the majority went on to hold that “because the States lack Article III standing, the District Court did not have jurisdiction.”<sup>419</sup> As the majority said, “Article III of the Constitution confines the federal judicial power to ‘Cases’ and ‘Controversies.’ Under Article III, a case or controversy can exist only if a plaintiff has standing to sue.”<sup>420</sup> And the majority decided the States did not have standing to sue, despite overwhelming evidence to the contrary. As the concurring Justices in the case noted, “The States proved that the [Secretary’s] Guidelines increase the number of aliens with criminal convictions and final orders of removal released into the States. They also proved that, as a result, they spend more money on everything from law enforcement to healthcare.”<sup>421</sup> Even so, the majority of the Court refused to address the merits of the case, writing that “We take no position on whether the Executive Branch here is complying with its legal obligations under [federal statutory law]. We hold only that the federal courts are not the proper forum to resolve this dispute.”<sup>422</sup>

Strikingly, the majority of the Court went on to write that “even though the federal courts lack Article III jurisdiction over this suit, other forums remain open for examining the Executive Branch’s arrest policies. For example, Congress possesses an array of tools to analyze and influence those policies ... those are political checks for the political process.”<sup>423</sup> As the dissenting Justice pointed out, “The Court holds Texas lacks standing to challenge a federal policy that inflicts substantial harm on the State and its residents by releasing illegal aliens with criminal convictions for serious crimes. In order to reach this conclusion, the Court . . . holds that the only limit on the power of a President to disobey a law like the important provision at issue is Congress’ power to employ the weapons of inter-branch warfare . . . .”<sup>424</sup>

The dissenting Justice also pointed out how the Solicitor General of the United States, at oral argument, pointed to how “Congress has tools at its disposal” in providing relief to the States.<sup>425</sup> As the dissenting Justice explained, “Congress may wield what the Solicitor General described as “political . . . tools”—which presumably means such things as . . . *impeachment and removal*.”<sup>426</sup>

Indeed, during the oral argument in *United States v. Texas*, Justice Kavanaugh, who went on to write the majority opinion in that case, made a remarkable statement about the position of the United States Solicitor General. As the Solicitor General’s official website states, “The Solicitor

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<sup>417</sup> *United States v. Texas*, 599 U.S. 670 (2023).

<sup>418</sup> *Id.* at 675.

<sup>419</sup> *Id.* at 686.

<sup>420</sup> *Id.* at 675.

<sup>421</sup> *Id.* at 690 (Gorsuch, J., concurring).

<sup>422</sup> *Id.* at 685.

<sup>423</sup> *Id.*

<sup>424</sup> *Id.* at 709 (Alito, J., dissenting) (emphasis added).

<sup>425</sup> *Id.* at 710 (Alito, J., dissenting).

<sup>426</sup> *Id.* (emphasis added).

General determines . . . the positions the government will take before the [Supreme] Court.”<sup>427</sup> The Solicitor General speaks for the Biden Administration and presents its official legal positions to the Supreme Court. During the oral argument in *United States v. Texas*, Justice Kavanaugh explicitly said that he understood the Solicitor General’s position to be that Congress would be “forced” to impeach Secretary Mayorkas. Justice Kavanaugh, speaking to the Solicitor General, said “I think your position is, instead of judicial review, Congress has to resort to shutting down the government or impeachment or dramatic steps if it — if some administration comes in and says we’re not going to enforce laws or at least not going to enforce the laws to the degree that Congress by law has said the laws should be enforced, and – and that’s forcing — I mean, I understand your position, but it’s forcing Congress to take dramatic steps, I think.”<sup>428</sup> So in the understanding of the Justice who authored the majority opinion in *United States v. Texas*, it was the official position of the Biden Administration’s top lawyer charged with stating its official position to the Supreme Court that Congress be forced to impeach Secretary Mayorkas.

The majority opinion in the case, written by Justice Kavanaugh, went on to state “Congress possesses an array of tools to analyze and influence those policies — oversight, appropriations, the legislative process, and Senate confirmations, to name a few.”<sup>429</sup> Of those “political tools” the majority opinion explicitly mentions, all of them are clearly non-solutions in this case. To take them one at a time:

*Oversight.* The House Committee on Homeland Security has conducted extensive oversight, as described in this report, and as a result, the Committee sees clearly the same thing the courts have seen, namely that Secretary Mayorkas is not enforcing and will not enforce the federal immigration laws.

*Appropriations.* If Congress appropriates more money to DHS to enforce the law as written, that money will be entirely wasted since the Secretary has clearly demonstrated he will not enforce the federal immigration laws as written. If Congress appropriates less money, the Secretary will then have the excuse – which he does *not* have now – that the Department is underfunded, and therefore can’t enforce the law as written. If Congress simply strikes appropriations for the salary of the Secretary, the Secretary can just claim he’s going to continue failing to enforce the law as written because now he’s not getting paid to enforce the law.

*The legislative process.* To what end could the House of Representatives now use the legislative process when the Secretary has clearly demonstrated he will not enforce the federal immigration laws as written in statutes already enacted?

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<sup>427</sup> *About the Office*, OFFICE OF THE SOLICITOR GENERAL, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/osg/about-office> (last accessed Jan. 29, 2024).

<sup>428</sup> Transcript of Oral Argument at 53, *United States v. Texas*, 599 U.S. 670 (2023) (No. 22-58). The Solicitor General replied “Well, I think that if those dramatic steps would be warranted, it would be in the face of a dramatic abdication of statutory responsibility by the executive.” *Id.* Of course, that “dramatic abdication of statutory responsibility” by Secretary Mayorkas is exactly what is described in this report.

<sup>429</sup> *United States v. Texas*, 599 U.S. 670, 685 (2023).

*Senate confirmations.* The Senate cannot confirm a new Secretary until the old one has vacated the position. And that is exactly what the House of Representatives is being forced to do here through the impeachment process.

In sum, the “political tools” the majority opinion lists are wholly ineffective non-solutions in this case. The Supreme Court has left the House with only one alternative “political tool” that makes sense in order to promptly address the crisis at the border: impeachment is the only political tool the American people have now, through their elected Representatives in the House, to enforce their immigration laws.

As the dissenting Justice explained:

Congress passed and President Clinton signed a law that commands the detention and removal of aliens who have been convicted of certain particularly dangerous crimes. The Secretary of Homeland Security, however, has instructed his agents to disobey this legislative command and instead follow a different policy that is more to his liking. And the Court now says that no party injured by this policy is allowed to challenge it in court. That holding not only violates the Constitution’s allocation of authority among the three branches of the Federal Government; it also undermines federalism. This Court has held that the Federal Government’s authority in the field of immigration severely restricts the ability of States to enact laws or follow practices that address harms resulting from illegal immigration. If States are also barred from bringing suit even when they satisfy our established test for Article III standing, they are powerless to defend their vital interests . . . To put the point simply, Congress enacted a law that requires the apprehension and detention of certain illegal aliens whose release, it thought, would endanger public safety. The Secretary of DHS does not agree with that categorical requirement . . . [T]he Court’s answer today is that the Executive’s policy choice prevails unless Congress, by . . . threatening impeachment and removal, etc., can win a test of strength [thereby] [r]elegating Congress to these disruptive measures.<sup>430</sup>

Not only is Secretary Mayorkas exploiting the States’ inability to obtain judicial review, he is also furthering efforts to prevent States from protecting their own borders. On January, 2024, Solicitor General Prelogar filed an application with the Supreme Court on behalf of DHS to vacate an injunction the Fifth Circuit Court of Appeals granted the State of Texas to prevent federal Border Patrol agents, except in cases of medical emergencies, from taking down barbed wire the state erected to protect its own borders.<sup>431</sup> The Supreme Court then sided with the Biden administration, leaving the states now unable even to protect themselves.<sup>432</sup>

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<sup>430</sup> *Id.* at 731 (Alito, J., dissenting).

<sup>431</sup> Application to Vacate the Injunction Pending Appeal Entered by the United States Court of Appeals for the Fifth Circuit (No. 23A \_\_ In the Supreme Court of the United States, DHS v. State of Texas) (January 2024).

<sup>432</sup> See Maureen Grope and John Fritze, *Razor Wire at The Border: Supreme Court Says Feds Can Remove Barriers In Texas Meant To Block Migrants*, USA TODAY, Jan. 22, 2024, <https://www.usatoday.com/story/news/politics/2024/01/22/supreme-court-razor-wire-texas-border-immigration/72169822007/>.

As the dissenting Justice pointed out in *United States v. Texas*, “When we have jurisdiction, we have a ‘virtually unflagging obligation’ to exercise that authority,” and that, in this case, “the majority shuns that duty.”<sup>433</sup> The Secretary has exploited that shunning of judicial duty to further his own agenda which, in turn, imposes a duty on the House of Representatives to impeach Secretary Mayorkas.

Secretary Mayorkas may think he has been given a blank check by the Supreme Court. But he cannot cash that check unless Congress lets him. That is why it is the duty of the House to impeach Secretary Mayorkas and the duty of the Senate to remove him from office.

It is now the duty of the House of Representatives to take the only action available to it in order to promptly resume enforcement of the federal immigration laws, and that is to impeach Secretary Mayorkas, so he can be removed from office and the President can nominate, and the Senate can confirm, a replacement willing to perform the duties of office.

Oddly, the majority opinion in *United States v. Texas* attempted to downplay the significance of the case by stating “The discrete standing question raised by this case rarely arises because federal statutes that purport to *require* the Executive Branch to make arrests or bring prosecutions are rare . . . .”<sup>434</sup> But, as the dissenting Justice points out:

The majority suggests that any law that constrains an Executive’s “enforcement discretion” is “highly unusual,” and notes that the States cite no “similarly worded federal laws” that “*require* the Executive Branch to make arrests or bring prosecutions” in other, non-immigration contexts. But there is nothing peculiar about Congress’s reserving its mandates for an area—immigration—where it both exercises particularly broad authority, and identifies a unique “wholesale failure” by the enforcement authority.<sup>435</sup>

That is, it is rare for Congress to mandate arrests and prosecutions because Congress has, unsurprisingly, reserved those mandates for what Congress considers the highest priority needs of immigration enforcement to maximize the safety and security of Americans. The Supreme Court has said examples of federal laws that absolutely require action on the part of enforcers of the law are rare, and they are. But they are rare for a reason: They are reserved for statutes designed to protect the very integrity of America as an independent nation distinct from others in the world. It is even rarer for a Secretary of Homeland Security to so brazenly ignore the requirements of those particularly important federal statutes regarding border control.

The stakes here are high indeed. As the dissenting Justice correctly explains:

At issue here is Congress’s authority to control immigration, and “[t]his Court has repeatedly emphasized that ‘over no conceivable subject is the legislative power of Congress more complete than it is over’ the admission of aliens.” In the exercise of that power, Congress passed and President Clinton signed a law that commands the

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<sup>433</sup> *United States v. Texas*, 599 U.S. 670, 736 (2023) (Alito, J., dissenting).

<sup>434</sup> *Id.* at 684.

<sup>435</sup> *Id.* at 731 n.9 (Alito, J., dissenting).

detention and removal of aliens who have been convicted of certain particularly dangerous crimes . . . These provisions were part of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), which was adopted “against a backdrop of wholesale failure by the [Immigration and Naturalization Service] to deal with increasing rates of criminal activity by aliens.” To remedy this problem, Congress “*subtract[ed]* some of that discretion when it comes to the arrest and release of criminal aliens.” Two such limits are important here. First, 8 U.S.C. § 1226(c) directs the Government to “take into custody any alien” inadmissible or deportable on certain criminal or terrorist grounds “when the alien is released” from criminal custody, including when such an alien is released on “parole, supervised release, or probation.” Second, § 1231(a) imposes a categorical detention mandate. Section 1231(a)(2) provides that the Government “shall detain [an] alien” “[d]uring the removal period,” which often begins either when an “order of removal becomes administratively final” or when an “alien is released from detention or confinement” not arising from immigration process, § 1231(a)(1)(B). This requirement is reinforced by the direction that “[u]nder no circumstance during the removal period shall the [Government] release an alien” found inadmissible or deportable under almost any of the grounds relevant under § 1226(c). § 1231(a)(2). And § 1231(a)(1)(A) commands that the Government “shall remove the alien” within the removal period. All of our recent decisions interpreting these provisions confirm that, for covered aliens, *shall* means *shall*; it does not mean “may.” Until quite recently, that was the Government’s understanding as well. The events that gave rise to this case began on January 20, 2021, when the Acting Secretary of DHS issued a memorandum with “enforcement priorities” for the detention and removal of aliens found to be in this country illegally. This memorandum prioritized: (1) aliens “whose apprehension” implicated “national security,” (2) aliens not present “before November 1, 2020,” and (3) aliens due to be released from criminal confinement who had both been “convicted of an ‘aggravated felony’” and were “determined to pose a threat to public safety” . . . This prioritization was inconsistent with the § 1226(c) arrest mandate, which extends to all aliens convicted of any crime within a long list of statutory categories. After some litigation regarding these two memoranda, a new DHS Secretary issued a Final Memorandum instructing that even aliens in priority groups need not necessarily be apprehended and removed . . . [T]he Final Memorandum did not simply *permit* deviations from the statutory mandates; it flatly *contradicted* those mandates by stating that qualifying convictions were insufficient grounds for initiating arrest, detention, and removal . . . The Court[’s] decision . . . renders States already laboring under the effects of massive illegal immigration even more helpless.<sup>436</sup>

Indeed, the Supreme Court’s decision in *United States v. Texas* brings America full circle to the problem faced by early American colonial legislatures. To quote historians Hoffer and Hull again on this point:

From 1701 to 1755 the colonists broadened the function of impeachments to include a primitive form of checks and balances against the executive and judicial

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<sup>436</sup> *Id.* at 711-12, 715, 731 (Alito, J., dissenting).

branches. In this era the target of impeachment became seated officeholders who could not be controlled otherwise and whose conduct seemed, to the prosecutors, to endanger the colonies.<sup>437</sup>

So, too, today, as the States, abandoned by the Supreme Court in its decision and by Secretary Mayorkas in his failures to act, now look to the House of Representatives to take the only available action left to promptly restore immigration enforcement.<sup>438</sup> Whereas, as Hoffer and Hull write, “In the seventeenth century, impeachments and trials gave otherwise weak assemblies the power to uncover and punish crimes against the public trust by defendants too highly placed in government to be reached by the courts,”<sup>439</sup> today, following *United States v. Texas*, impeachment is now the only way the States can obtain relief, as the Supreme Court itself has placed Secretary Mayorkas beyond its own judicial review.

If the Supreme Court will not hear the challenge to unconstitutionally egregious abuses of the concept of “prosecutorial discretion,” then it cannot be the case that the executive branch is the final arbiter of that issue in our constitutional system of separation of powers. There must always be a check to a blank check claimed by any branch of the federal government. And in this case, that check is impeachment. The Supreme Court has collapsed the decision tree here down to only two branches: Congress can let the executive branch ignore and rewrite federal statutory immigration law, or Congress can impeach the high executive branch official who is doing so. If our Constitution is to be upheld, the legislative branch will prevail, and the statutes it enacts will be respected. If the Constitution is to be disregarded, and abandoned by its duly-elected representatives in the House and Senate, the States will be left to the mercy of an unelected bureaucrat.

The dissenting Justice in *United States v. Texas* also remarked on how similar Secretary Mayorkas' abuses are to the dreaded “dispensing power”<sup>440</sup> employed in England before American independence:

The majority’s conception of Presidential authority smacks of the powers that English monarchs claimed prior to the “Glorious Revolution” of 1688, namely, the power to suspend the operation of existing statutes, and to grant dispensations from compliance with statutes. After James II was deposed, that changed. The English Bill of Rights of 1689 emphatically rejected “the pretended Power of Suspending of Laws or the Execution of Laws by Rega[l] Authority without Consent of

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<sup>437</sup> Hoffer and Hull, *supra* note 109, at 14.

<sup>438</sup> See also by Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, Third Edition (2019) (“The framers and ratifiers chose Congress as the federal impeachment authority because they believed that the special power to sanction executive and judicial misconduct should be exercised by an electorally accountable body that was not subject to the control of those whom it was attempting to discipline ... [Alexander] Hamilton believed that judges lacked the kind of skills, judgment, and public accountability that the body empowered to try impeachments needed to have.”).

<sup>439</sup> Hoffer and Hull, *supra* note 109, at xi.

<sup>440</sup> See CORRINE COMSTOCK WESTON AND JENELLE RENFROW GREENBERG, *SUBJECTS AND SOVEREIGNS: THE GRAND CONTROVERSY OVER LEGAL SOVEREIGNTY IN ENGLAND* 22, 32 (1981), (noting the king “was the sole judge of the occasions when considerations of equity ... required setting aside statute law for the benefit of a particular person or class of persons.”).

Parl[i]ament” and “the pretended Power of Dispensing with Laws or the Execution of Laws by Rega[l] Authorit[y] as it ha[s] bee[n] assumed and exercised of late.”<sup>441</sup>

The dissenting Justice cites to our own Declaration of Independence and its condemnation of the dispensing power (the fourth paragraph of the Declaration states of King George III, “He has refused his Assent to Laws, the most wholesome and necessary for the public good.”), and explains:

In 1774, Jefferson had addressed the subject of this [royal dispensing power in his Summary View of the Rights of British America], explaining that British monarchs “for several ages past” had “declined the exercise of this power in that part of [the] empire called Great Britain” but had resumed the practice in the American Colonies and had “rejected laws of the most salutary tendency,” such as one forbidding the importation of slaves . . . By 1787, six State Constitutions contained provisions prohibiting the suspension of laws, and at the Constitutional Convention, a proposal to grant the President suspending authority was unanimously defeated.<sup>442</sup>

Delahunty and Yoo go into greater detail regarding the American view of the royal dispensing power, which is worth considering here:

[L]essons of constitutional history that were well-known to the Framers had taught them to be conscious of the danger of an uncontrolled Executive that regularly “dispensed with” or “suspended” the law . . . James II and, occasionally, his predecessors did land in serious trouble when they used the dispensing power to accomplish important policy objectives of their own that cut against the clear preferences of Parliament, as expressed in statutory law . . . His broad use of the dispensing power was a major cause of the Glorious Revolution . . . William’s military and political victory over James led to fundamental constitutional changes in English law, most of which have entered into the broad stream of our own constitutional history. Of particular relevance here, that victory enabled Parliament to abolish the royal dispensing power altogether. On December 16, 1689, Parliament formally did so. Thenceforward, English law has acknowledged no dispensing power unless specifically provided for by Act of Parliament . . . By the time of the Founding, it had become entirely obvious that the King’s dispensing power was gone. Lord Mansfield, a leading eighteenth-century English jurist who, like Blackstone, exercised substantial influence on the Framers, stated that by 1766, the King’s prerogative power no longer included either a dispensing or a suspending power . . . Versed in England’s constitutional history, the Framers surely understood that the Constitution’s grant of the executive power did not include dispensation, and that to charge the President with the “faithful execution” of the laws underscored that fact.<sup>443</sup>

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<sup>441</sup> 599 U.S. 670, 732 (2023) (Alito, J., dissenting).

<sup>442</sup> *Id.*, at 733 and n.15 (Alito, J., dissenting).

<sup>443</sup> Delahunty and Yoo, *supra* note 128, at 797, 805, 807-08.

Indeed, President George Washington, and his Treasury Secretary Alexander Hamilton, understood that executive authority to refrain from enforcement of the law extended only to narrow, case-by-case determinations of the sort that Secretary Mayorkas has rejected in favor of blanket exclusions. For example, despite the widespread violation of the whiskey tax laws during Washington’s presidency, President Washington insisted he had a duty to enforce the laws to the greatest extent practicable, issuing a proclamation in which he referred to “the particular duty of the executive ‘to take care that laws be faithfully executed.’”<sup>444</sup> Far from abandoning enforcement of the law, Washington enforced the whiskey tax wherever he could. A delegation President Washington sent to Pennsylvania to discuss the rampant non-compliance with the whiskey tax with representatives of that state even reported that “[o]ne of the conferees then enquired, whether the President could not suspend the execution of the excise acts, until the meeting of Congress; but he was interrupted by others, who declared, that they considered such a measure as impracticable. The Commissioners expressed the same opinion.”<sup>445</sup>

Since the Supreme Court refused to hear the merits of the case in *United States v. Texas*, it is worth considering what the district court in that case found regarding the facts and the law. As the district court judge wrote in his opinion in *United States v. Texas*,<sup>446</sup> “the core of the dispute is whether the Executive Branch may require its officials to act in a manner that conflicts with a statutory mandate imposed by Congress.”<sup>447</sup> The court concluded, “It may not.”<sup>448</sup> As the court elaborated:

Sections 1226(c) and 1231(a)(2) of Title 8 of the United States Code state that the Executive Branch “shall” detain aliens convicted of specific types of crimes or who have final orders of removal ... True, the Executive Branch has case-by-case discretion to abandon immigration enforcement as to a particular individual. This case, however, does not involve individualized decision-making. Instead, this case is about a rule that binds Department of Homeland Security officials in a generalized, prospective manner — all in contravention of Congress’s detention mandate ... Using the words “discretion” and “prioritization,” the Executive Branch claims the authority to suspend statutory mandates.<sup>449</sup>

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<sup>444</sup> Draft of a Proclamation Concerning Opposition to the Excise Laws (Sept. 7, 1792), in 12 PAPERS OF ALEXANDER HAMILTON 330-31 (Harold C. Syrett ed., 1962) at 330-31 n.1.

<sup>445</sup> From the Commissioners sent to Western Pennsylvania to President Washington (Sept. 24, 1794), in 16 Papers of George Washington (2007) at 702, 706. Note that, according to the contemporaneous and widely-used 1785 edition of Samuel Johnson’s Dictionary, the first and primary definition of “impracticable” was “not to be performed.” Samuel Johnson’s Dictionary (1785 ed.), available at

<http://archive.org/stream/dictionaryofengl01johnuoft#page/n1011/mode/2up>, at 1104. In the end, amid continued resistance to the nation’s whiskey tax, President Washington’s response was not to suspend the whiskey tax laws for them, but rather to selectively exercise his constitutional pardon power to grant amnesty for some past crimes (conditional, of course, on the pardon recipients’ obeying the law in the future). See generally Thomas P. Slaughter, *The Whiskey Rebellion* 218-20 (1986).

<sup>446</sup> 606 F.Supp. 3d 437 (S.D. Tex. 2022).

<sup>447</sup> *Id.* at 449.

<sup>448</sup> *Id.* See also as Louis W. Fisher has written, “It is worth noting that “Congress can explicitly or implicitly cabin executive enforcement discretion, reducing it to the constitutional minimum.” Louis W. Fisher, *Executive Enforcement Discretion and the Separation of Powers: A Case Study on the Constitutionality of DACA and DAPA*, 120 W. VA. L. REV. 131, 138 (2017).

<sup>449</sup> *Texas v. United States*, 606 F. Supp. 3d 450 (S.D. Tex. 2022).

The court explained that while the federal statute requires the detention of aliens who were:

convicted of crimes including crimes of moral turpitude;  
aliens convicted of drug offenses;  
aliens convicted of multiple offenses with an aggregate sentence of confinement of five years or more;  
aliens who are traffickers of controlled substances;  
aliens who participate in the commercialized sex industry;  
aliens who participate in the human trafficking industry;  
aliens who engage in money laundering;  
aliens convicted of certain firearms offenses; and  
aliens with final orders of removal

The court found that that “the Final [DHS] Memorandum does *not* instruct officers to prioritize aliens convicted of [such] crimes.”<sup>450</sup> Instead, “[u]nlike the [previous] Memorandum, the Final Memorandum’s ‘public safety’ priority no longer presumptively subjects aliens convicted of aggravated felonies to enforcement action, including detention.”<sup>451</sup> All this, while “The statute, however, specifically provides that the [Government] ‘*shall* take into custody any alien’ that has committed an aggravated felony.”<sup>452</sup> Further, the final DHS memorandum, directly contrary to the statute “states, DHS ‘personnel should *not* rely on the fact of conviction . . .’ when deciding to enforce the law.”<sup>453</sup> To quote Gouverneur Morris again at the Constitutional Convention of 1787: “[E]very society from a great nation down to a club ha[s] the right of declaring the conditions on which new members should be admitted.”<sup>454</sup> And as Alexander Hamilton wrote in Federalist No. 65, impeachable offenses are “of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”<sup>455</sup> What could be more injurious to the fabric of American society itself than the willful refusal to follow the nation’s immigration laws — enacted by duly-elected representatives of the people — which define the very threads of that fabric? When Secretary Mayorkas forsakes the conditions of admittance to America enacted by duly-elected Representatives, he welcomes criminals into America’s house without permission, contrary to law.

The district court then described the great harms resulting from Secretary Mayorkas’ new policy, directly contrary to law, of failing to detain illegal aliens who had been convicted of aggravated felonies:

The number of convicted criminal aliens in ICE custody per day has dropped dramatically in the months since the January Memorandum was issued and has continued through today under the subsequent Memoranda. There has been little variation in custody numbers since the January Memorandum was issued . . . There

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<sup>450</sup> *Id.* at 457-58 (emphasis added).

<sup>451</sup> *Id.* at 457.

<sup>452</sup> *Id.* (citing 8 U.S.C. §§ 1226(c)(1)(B) and 1227(a)(2)(A)(iii)) (emphasis added).

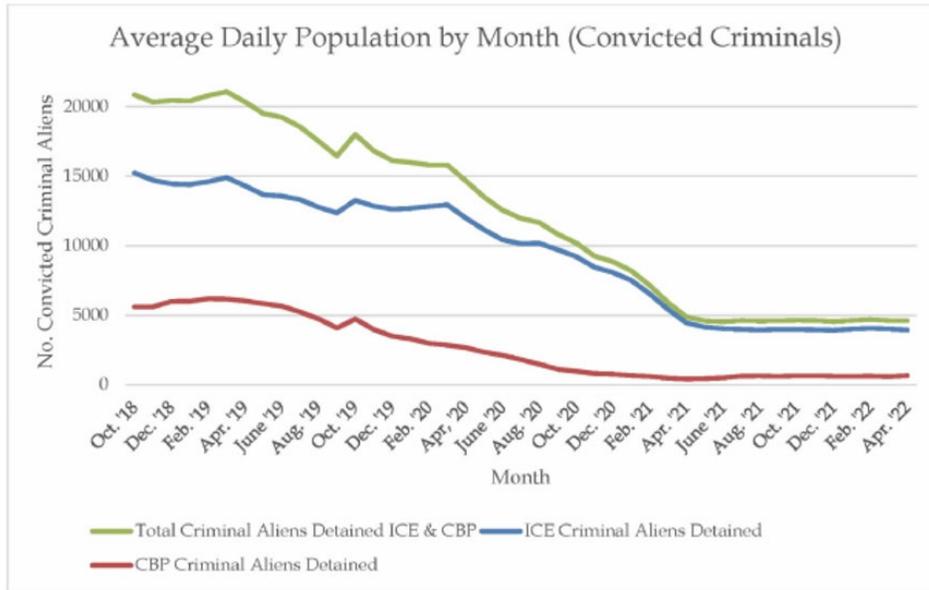
<sup>453</sup> *Id.* (emphasis added).

<sup>454</sup> 2 Farrand, The Records of the Federal Convention of 1787, at 238.

<sup>455</sup> THE FEDERALIST NO. 65, at 338 (Alexander Hamilton) (Gideon ed., 2001).

has been little practical difference between ICE’s detention of aliens with criminal convictions under the February Memorandum and under the Final Memorandum.<sup>456</sup>

The court then displayed the following chart, showing the dramatic drop in criminal aliens detained following the issuance of the Final DHS Memorandum.



The district court pointed out that under Secretary Mayorkas' new binding policy, “DHS personnel . . . are *precluded* from relying on a conviction, no matter how serious, or the result of a database search [for convictions] alone before taking an enforcement action . . . The Memoranda have resulted in ICE officers rescinding detainers and declining to take aliens into custody who are covered by the statutes . . . It has also led to the release of aliens with final orders of removal.”<sup>457</sup>

The court continued:

The Final Memorandum facially binds DHS personnel using mandatory language . . . It also states DHS “personnel *should not* rely on the fact of conviction or the result of a database search alone”. . . Prior to the Final Memorandum, agents could detain an alien with a criminal conviction listed in Section 1226(c) based on the simple fact of that conviction alone. [But under the new policy] [i]f an officer determines that the *only* factor supporting detention is that the alien is covered by the mandatory provisions of Section 1226(c) or Section 1231(a)(2), the officer may not detain the alien . . . Furthermore, the mandatory “ICE Academy” training webinar on the Final Memorandum for DHS personnel [requires that] ICE officer[s] should also examine the following mitigating factors: . . . “Lengthy presence in the United States; A mental condition that may have contributed to the criminal

<sup>456</sup> Texas v. United States, 606 F.Supp. 3d 437, 460 (S.D. Tex. 2022).

<sup>457</sup> *Id.* at 462-63 (emphasis added).

conduct; . . . Whether the noncitizen may be eligible for humanitarian protection or other immigration relief . . . .”<sup>458</sup>

The court added:

Consider that, under the Final Memorandum, an officer who has reason to believe that an alien was convicted of one of the serious crimes implicated by Section 1226(c) can no longer detain him upon release on that basis alone . . . . So too for aliens with final orders of removal under Section 1231(a)(2). Perhaps most problematic is that an officer cannot “rely on the fact of conviction or the result of a database search alone.” Yet that is precisely what Section 1226(c) demands: the mandatory detention of certain criminal aliens who are convicted of certain crimes. The Final Memorandum says otherwise; staff can no longer follow the statute’s categorical command. This flips the presumption of detention on its head by starting from the premise that an official should *not* enforce the law.<sup>459</sup>

The court chastised the Biden Administration for its meritless budget excuses, writing:

[T]he Constitution demands, that when it is difficult for the Executive Branch to comply with Congress’s instructions, the proper course is to ask for more support or for the law to be changed . . . . Throughout this case, the Government has trumpeted the fact that it does not have enough resources to detain those aliens it is required by law to detain. The Government blames Congress for this deficiency. At the same time, however, the Government has submitted two budget requests in which it asks Congress *to cut* those very resources and capacity by 26%. Additionally, the Government has persistently underutilized existing detention facilities. To say that this is incongruous is to say the least.<sup>460</sup>

Turning to the mandatory language of the statutes, the district court stated:

Indeed, federal courts remain mindful that “respect for Congress’s prerogatives as policymaker means carefully attending to the words it chose rather than replacing them with others of our own.” (Citing *Murphy v. Smith*, 483 U.S. 220, 224 (2018).) . . . . Lest any doubt remain, the Supreme Court has interpreted both Sections 1226(c) and 1231(a)(2) as mandatory. In *Johnson v. Guzman Chavez*, the Supreme Court noted “detention is mandatory” during an alien’s removal period, as prescribed by Section 1231(a)(2). (Citing *Johnson v. Guzman Chavez*, 594 U.S. \_\_\_, 141 S.Ct. 2271, 2281 (2021).) . . . . Section 1226(c) was enacted “against a backdrop of wholesale failure by the INS to deal with increasing rates of criminal activity by aliens.” (Citing *Demore v. Kim*, 538 U.S. 510, 518 (2003).) The failure “to remove deportable criminal aliens” resulted in overpopulated prisons, monetary costs, and increased crime. (Citing *id.* at 518-20.) Crucially, “Congress also had before it evidence that one of the major causes of the INS’ failure to remove deportable

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<sup>458</sup> *Id.* at 469-72.

<sup>459</sup> *Id.* at 487.

<sup>460</sup> *Id.* at 481.

criminal aliens *was the agency's failure to detain those aliens* during their deportation proceedings.” (Citing *id.* at 519 (emphasis added).) Before Section 1226(c) was enacted, the Attorney General had broad discretion on whether to detain aliens in this context. Later, *and in response to these concerns*, Congress amended the law *to require* the Attorney General to detain a subset of deportable criminal aliens who committed the most serious crimes, pending a determination of their removability. (Citing *id.* at 521.) . . . Like Section 1226(c), Section 1231(a)(2) was enacted against the same backdrop. As the Supreme Court noted, “protecting the community from dangerous aliens” is a “statutory purpose” of that section. (Citing *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001).)<sup>461</sup>

The court cited a concurring opinion by Justice Kavanaugh<sup>462</sup> in which he stated, “It is undisputed that Congress may mandate that the Executive Branch detain certain noncitizens during removal proceedings or before removal.”<sup>463</sup>

The district court continued:

Congress’s exclusive power extends “to the entry of aliens and their right to remain here[.]” (Citing *Galvan v. Press*, 347 U.S. 522, 531 (1954).) “[P]lenary congressional power to make policies and rules for exclusion of aliens has long been firmly established.” (Citing *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 (1972).) . . . DHS, however, does not have “unreviewable and unilateral discretion to ignore statutory limits imposed by Congress and to remake entire titles of the United States Code to suit the preferences of the executive branch.” (Citing *Texas v. Biden*, 20 F.4<sup>th</sup> 928, 1004 (5<sup>th</sup> Cir. 2021).) . . . Whatever its contours, prosecutorial discretion “does not encompass the discretion not to follow a law imposing a mandate or prohibition on the Executive Branch.” (Citing *In re Aiken County*, 725 F.3d 255, 266 (Kavanaugh, J., writing for himself).)<sup>464</sup>

The court concluded that “The Final Memorandum flatly contradicts the detention mandates under Sections 1226(c) and 1231(a)(2) . . . And it clearly provides that a conviction alone cannot be the basis for placing an alien in removal proceedings. This plainly contradicts the language of the statutes.”<sup>465</sup>

The Biden Administration requested a stay of the district court’s decision pending appeal, which the Fifth Circuit denied,<sup>466</sup> concluding as follows:

[DHS’s] Considerations Memo compels officials to comply with the Final Memo by utilizing prosecutorial discretion in a manner that violates statutory law. For example, it provides that the guidelines “are essential to advancing this

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<sup>461</sup> *Id.* at 479, 482-83.

<sup>462</sup> *Neisen v. Priap*, 586 U.S. \_\_\_, 139 S.Ct. 954, 973 (2019) (Kavanaugh, J., concurring).

<sup>463</sup> *Texas v. United States*, 606 F.Supp. 3d 437, 482-83 (S.D. Tex. 2022).

<sup>464</sup> *Id.* at 483-84.

<sup>465</sup> *Id.* at 487.

<sup>466</sup> *Texas v. United States*, 40 F.4<sup>th</sup> 205 (5<sup>th</sup> Cir. 2022) *rev’d on other grounds by United States v. Texas*, 599 U.S. 670, 736 (2023).

Administration’s stated commitment to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” DHS’s replacement of Congress’s statutory mandates with concerns of equity and race is extralegal, considering that such policy concerns are plainly outside the bounds of the power conferred by the INA . . . This is especially troubling in light of the fact that Congress attempted to prohibit such individualized consideration when it enacted § 1226(c) because the previous policy led to unacceptably high rates of criminal alien flight . . . We further note the oddity that DHS emphasizes “limited resources” as its main defense of a rule that increases the complexity of its purportedly already-overwhelmed agents’ jobs. For example, the Final Memo instructs that, before pursuing enforcement, personnel should, “to the fullest extent possible, obtain and review the entire criminal and administrative record and other investigative information to learn of the totality of the facts and circumstances of the conduct at issue.” But prior to the Final Memo, personnel could simply rely on an order of removal or a qualifying criminal conviction. As the district court observed, DHS is “in effect . . . making it harder to comply with the statutory mandate it complains it doesn’t have the resources to comply with”. . . [Further] Given that the number of encounters with illegal border-crossers is ten times what it was in April 2020, an increase in arrests and expulsions is far from impressive, especially if amici are correct that roughly three-fourths of the illegal aliens that cross the border go undetected by DHS entirely.<sup>467</sup>

Another district court in Florida held similarly.<sup>468</sup> The court stated:

The Supreme Court has recognized that immigration officials have “broad discretion” in carrying out the immigration laws, *see Arizona v. United States*, 567 U.S. 387, 396 (2012). But that discretion must be exercised within the confines established by Congress because, as the Supreme Court has repeatedly held, Congress — not the President or Executive Branch officials — has the “complete and absolute power” over the subject of immigration and “plenary power” over the admission and exclusion of aliens. *See, e.g., Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). . . [T]he evidence establishes that Defendants have effectively turned the Southwest border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country — on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute — without even initiating removal proceedings . . . Detention is the surest way to ensure that an alien will not abscond pending completion of their immigration proceedings . . . With respect to the second point, the “case-by-case” requirement in § 1182(d)(5) requires DHS to conduct an individualized assessment of each alien to determine whether to grant parole. This requirement was added to the statute in 1996 “to limit the scope of the parole power and prevent the executive branch from using it as a programmatic policy tool.” *Texas v. Biden*, 20 F.4<sup>th</sup> 928, 947 (5<sup>th</sup> Cir. 2021); *see also Cruz-Miguel v. Holder*, 650 F.3d 189, 199 n.15 (2d Cir. 2011) (explaining that the current

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<sup>467</sup> *Id.* at 226 and nn.5, 6 (2022).

<sup>468</sup> *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023).

language in the § 1182(d)(5) was the result of amendments animated by concerns that the parole authority “was being used by the executive to circumvent congressionally established immigration policy”) . . . .<sup>469</sup>

#### IV. Article II: Breach of Public Trust

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that civil Officers of the United States, including the Secretary of Homeland Security, “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In his conduct while Secretary of Homeland Security, Mayorkas, in violation of his oath to well and faithfully discharge the duties of his office, has breached the public trust.

Secretary Mayorkas knowingly made false statements, and knowingly obstructed lawful Congressional oversight of DHS, principally to obfuscate the results of his willful and systemic refusal to comply with the law. Additionally, Secretary Mayorkas’ conduct has breached the public trust by his willful refusal to fulfill his statutory “duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens” as set forth in section 103(a)(5) of the INA.

What followed from Secretary Mayorkas’ willful and systemic refusal to follow the law, and his violation of the separation of powers, were historically horrific consequences constituting a humanitarian crisis. Once the Secretary and the rest of the country saw the vast, undeniable consequences of his failure to enforce the nation’s immigration laws, he should have changed course. But he did not. He persisted in his lawlessness, with all its known consequences, with deliberate indifference. That willful and continued failure to enforce the law in the face of undeniably terrible consequences turns a willful and systemic refusal to follow the law into a breach of trust. This is not a mere policy difference between Congress and the Secretary. The Secretary’s conduct constitutes a refusal to correct intentional refusals to follow the law at the cost of a continuing human catastrophe.

Black’s Law Dictionary defines “deliberate indifference” in the context of both criminal and tort law, as follows: “deliberate indifference. 1. *Criminal law*. (1951) The careful preservation of one’s ignorance despite awareness of circumstances that would put a reasonable person on notice of a fact essential to a crime . . . 2. *Criminal law*. Awareness of and disregard for the risk of harm to another person’s life, body, or property. 3. *Torts*. Conscious disregard of the harm that one’s actions could do to the interests or rights of another.”<sup>470</sup> Both definitions, when applied to the conduct of high executive branch officials, amount to an impeachable breach of trust and abuse of power: the classic Nero’s fiddling while Rome burned.<sup>471</sup> As Charles Black wrote in his seminal

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<sup>469</sup> *Id.* at 1248-50, 1279.

<sup>470</sup> *Deliberate Indifference*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>471</sup> As Justices Blackmun and Marshall once wrote, “In some cases, by any reasonable standard, governmental negligence is an abuse of power. This is one of those cases.” *Davidson v. Cannon*, 474 U.S. 344, 353-54 and n.2 (Blackmun and Marshall, J.J., dissenting) (also stating (“Where occurrence of the harm is substantially certain, the law imputes to the actor an intent to cause it. Where harm is less certain, we may call the actor negligent. In some circumstances, the risk of injury is so high that the government’s failure to make efforts to avoid the injury is

book on impeachment, “[T]he general law furnishes us with a valuable concept. When carelessness is so gross and habitual as to be evidence of indifference to wrongdoing, it may be in effect equivalent to ratification of wrongdoing. If I drive my car in an utterly reckless manner, and someone is injured, the case is not merely that I have been guilty of ‘negligence,’ but that I have so behaved as to show indifference to whether somebody got hurt or not. *Gross and habitual indifference of this kind is more than mere negligence, and might well be held to amount to impeachable conduct.*”<sup>472</sup>

Professor Michael Gerhardt summed up the concept of breach of trust as it relates to impeachable abuses of power:

In the paradigmatic case, there must be not only serious injury to the constitutional order [in Mayorkas’ case, it’s his violation of the separation of powers] but also a nexus between the misconduct of an impeachable official and the official’s formal duties. It is this paradigm that Alexander Hamilton captured so dramatically in his suggestion that impeachable offenses derive from “the abuse or violation of some public trust” and are “of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”<sup>473</sup>

#### A. Secretary Mayorkas’ Knowingly False Statements And Knowing Obstruction of Lawful Oversight

Secretary Mayorkas has knowingly made false statements, and knowingly obstructed lawful oversight of DHS, principally to obfuscate the results of his willful and systemic refusal to comply with the law. Specifically, Secretary Mayorkas repeatedly made false statements related to the security of the border, operational control of the border, screening and vetting of Afghans, and conduct of Border Patrol agents. Secretary Mayorkas has withheld important data and information requested by the Committee and hampered investigations of the DHS Office of Inspector General.

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unacceptable, even if its omission still might be categorized as negligence ... [G]overnmental negligence may amount to an abuse of power.”) (the syllabus of the case states “When threatened by a fellow inmate in the New Jersey State Prison, petitioner sent a note reporting the incident to respondent Assistant Superintendent of the prison, who read the note and sent it to respondent Corrections Sergeant, who, while informed of its contents, did not read it or notify other officers of the threat and forgot about it by the time he went off duty. Two days later the inmate attacked petitioner and inflicted serious injuries.”).

<sup>472</sup> Charles L. Black, Jr., *Impeachment: A Handbook, New Edition* (Part I) (1974) (emphasis added) (going on to state “Here, as in so many cases, everything depends on what the evidence in a case actually shows, but these are the right lines along which to sort out the evidence.”). The law professor invited by the minority to testify on impeachments standard at the committee’s January 10, 2024 hearing cited the same Charles Black Jr. book on impeachment repeatedly throughout his written and oral testimony, whom he called a “great” impeachment scholar. See Written Statement of Professor Frank O. Bowman, III, submitted to the Committee on Homeland Security (January 10, 2024) at 2, 3, 6, 7, 8. Of course, the conduct of Secretary Mayorkas goes well beyond gross negligence, as he has knowingly violated the federal immigration laws by issuing rules and guidance documents that unilaterally create exemptions from the law that are explicitly prohibited by federal statute.

<sup>473</sup> Michael Gerhardt, *The Lessons of Impeachment History*, 67 *Geo. Wash. L. Rev.* 617 (1999).

## 1. Knowing False Statements

### Secure Border

Secretary Mayorkas knowingly made false statements to Congress that the border is “secure,” “no less secure than it was previously,” and “closed,”<sup>474</sup> and that DHS has “operational control” of the border (as that term is defined in the Secure Fence Act of 2006).<sup>475</sup>

- On March 18, 2021, in an interview on CBS This Morning, Secretary Mayorkas said, “I want to repeat my assurance to our audience this morning that the border is, in fact, secure.”<sup>476</sup>
- On March 21, 2021, in interviews on Fox News, Good Morning America, and Meet the Press, Secretary Mayorkas assured the American people that “the border is secure, the border is closed;”<sup>477</sup> “the border is closed, the border is secure;”<sup>478</sup> “our message has been straightforward and simple and it’s true, the border is closed;”<sup>479</sup> and “quite frankly, when we are finished doing so, the American public will look back on this and say we secured our border and we upheld our values and our principles as a nation.”<sup>480</sup>
- On May 11, 2021, a Fox reporter asked Secretary Mayorkas to clarify what he meant when he previously said the border was closed and Secretary Mayorkas replied, “the border is closed.”<sup>481</sup>
- On May 26, 2021, in a hearing before the House Appropriations Committee, Secretary Mayorkas testified that “the President could not have been clearer in his articulation of this administration’s position nor could I have been clearer and continue to be so, which is the border is closed. . . .”<sup>482</sup> and that the Biden administration’s efforts on the border crisis “speak powerfully to the fact the border is closed and that we enforce the laws that Congress has passed, but we will do so effectively to ensure the greatest impact and outcome from the resources that we have.”<sup>483</sup>

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<sup>474</sup> MAJORITY REPORT, DHS SECRETARY ALEJANDRO MAYORKAS’ DERELICTION OF DUTY, H. COMM. ON HOMELAND SEC., 118<sup>th</sup> Cong., at 69-71 (July 19, 2023).

<sup>475</sup> *Id.* at 72-75.

<sup>476</sup> *Homeland Security secretary on surge in migration at Southwest U.S. border*, 1:15, CBS NEWS, March 18, 2021, <https://www.cbsnews.com/video/homeland-security-secretary-on-surge-in-migration-at-southwest-us-border/>.

<sup>477</sup> *Trump administration dismantled “safe” border policies, Biden rebuilding process: DHS chief Mayorkas*, 12:32, FOX NEWS, Mar. 21, 2021, <https://www.foxnews.com/transcript/trump-administration-dismantled-safe-border-policies-biden-rebuilding-process-dhs-chief-mayorkas>.

<sup>478</sup> “*The Border Is Closed, The Border Is Secure*”: *Secretary Alejandro Mayorkas*, GOOD MORNING AMERICA, Mar. 21 2021, <https://www.goodmorningamerica.com/news/video/border-closed-border-secure-secretary-alejandromayorkas-76589288>.

<sup>479</sup> *Meet The Press* – March 21, 2021, NBC NEWS, March 21, 2021, *available at* <https://www.nbcnews.com/meet-the-press/meet-press-march-21-2021-n1261691>.

<sup>480</sup> *Id.*

<sup>481</sup> The White House, *Press Briefing by Press Secretary Jen Psaki, Secretary of Energy Jennifer Granholm, and Secretary of Homeland Security Alejandro Mayorkas, May 11, 2021*, May 11, 2021, *available at* <https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/11/press-briefing-by-press-secretary-jen-psaki-secretary-of-energy-jennifer-granholm-and-secretary-of-homeland-security-alejandromayorkas-may-11-2021/>.

<sup>482</sup> Caroline Downey, *DHS Secretary Insists “Border Is Closed”, Defends Response to Migrant Crisis*, NATIONAL REVIEW, May 26, 2021, *t* <https://www.nationalreview.com/news/dhs-secretary-insists-border-is-closed-defends-response-to-migrant-crisis/>.

<sup>483</sup> *Id.*

- On September 20, 2021, at a press conference in Del Rio, Texas, Secretary Mayorkas asserted that the “borders are not open.”<sup>484</sup>
- On September 21, 2021, in a hearing before the Senate Committee on Homeland Security and Government Affairs, Senator Ron Johnson asked, “you have repeatedly stated that our borders are not open; they are closed, do you honestly believe that our borders are closed?” Secretary Mayorkas responded, “Senator, I do, and let me speak to that.”<sup>485</sup>
- On September 22, 2021, in a hearing before the House Committee on Homeland Security, Secretary Mayorkas responded to a Member’s question, “Congressman, the border is secure. We are executing our plan. I have been very clear and unequivocal in that regard . . . Congressman, [the border] is no less secure than it was previously.”<sup>486</sup> In the same hearing, a different Member confronted Secretary Mayorkas about record levels of Border Patrol retirements and historic levels of narcotics coming across the border, asking “you still stand by your statement, yes or no, that the border is secure?” Secretary Mayorkas responded, “yes.”<sup>487</sup>
- On November 15, 2022, in a hearing before the House Committee on Homeland Security, a Member asked Secretary Mayorkas whether he continues to maintain that the border is secure. Secretary Mayorkas replied, “yes, we are working day in and day out to enhance its security, Congressman.”<sup>488</sup>
- On March 29, 2023, in a hearing before the House Committee on Appropriations, a Member asked Secretary Mayorkas whether he maintained “today that in light of the statements made by Chief Ortiz that the border is secure?” Secretary Mayorkas responded, “Congressman, I stand by my prior assessment, because indeed I define it as ‘maximizing the resources we have to deliver the most effective results.’”<sup>489</sup>
- On May 11, 2023, during a White House press briefing, Secretary Mayorkas stated, “I want to be very clear: our borders are not open.”<sup>490</sup>
- On July 26, 2023, in a hearing before the House Judiciary Committee, when Secretary Mayorkas was asked if the border is open, he responded, “no, it is not.”<sup>491</sup> In the same hearing, when asked whether President Biden told him to open the border or whether he chose to open the border himself, Secretary Mayorkas responded, “the border is not open, Congressman.”<sup>492</sup> Secretary Mayorkas was also asked whether he or the Biden

<sup>484</sup> Callie Patteson, *DHS Secretary Alejandro Mayorkas Says “Borders Are Not Open”*, THE NEW YORK POST, Sept. 20, 2021, <https://nypost.com/2021/09/20/dhs-secretary-alejandro-mayorkas-says-borders-are-not-open/>.

<sup>485</sup> *Threats To The Homeland: Evaluating The Landscape 20 Years After 9/11: Hearing Before the Senate Comm. on Homeland Sec. and Gov’t Aff.*, 117th Cong., (Sept. 21, 2021)..

<sup>486</sup> *Worldwide Threats To The Homeland: 20 Years After 9/11: Hearing Before the H. Comm. on Homeland Sec.*, 117th Cong., 1st sess., at 64 (Sept. 22, 2021).

<sup>487</sup> *Id.* at 82.

<sup>488</sup> *Worldwide Threats to the Homeland: Hearing Before the H. Comm. on Homeland Sec.*, 117th Cong. (Nov. 15, 2022).

<sup>489</sup> *Budget Hearing – Fiscal Year 2024 Request for the Department of Homeland Security: Hearing Before the H. Appropriations Comm.*, 118th Cong. (Mar. 29, 2023).

<sup>490</sup> The White House, *Press Briefing by Press Secretary Karine Jean-Pierre and Secretary of Homeland Security Alejandro Mayorkas*, May 11, 2023, available at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/11/press-briefing-by-press-secretary-karine-jean-pierre-and-secretary-of-homeland-security-alejandro-mayorkas/>.

<sup>491</sup> *Oversight of the U.S. Department of Homeland Security: Hearing Before the H. Judiciary Comm.* 118th Cong., (July 26, 2023).

<sup>492</sup> *Id.*

administration ever tried to adopt an open-border policy and Secretary Mayorkas responded, “no, we’re not.”<sup>493</sup>

Secretary Mayorkas’s claim that the “border is secure” and similar variations are easily disproven. The sheer number of times Secretary Mayorkas has made this statement since taking office is shocking, given the clear and overwhelming evidence to the contrary.

Former Obama-era DHS Secretary Johnson once said that 1,000 encounters a day “overwhelms the system” and the number of encounters in March 2019 (103,731—well over 3,000 per day on average) constituted a crisis.<sup>494</sup> During Secretary Mayorkas’ first month in office, CBP reported 101,099 encounters at the Southwest border—and that was his low-water mark.<sup>495</sup> Of the 35 months since Alejandro N. Mayorkas was sworn in as Secretary of the Department of Homeland Security, the number of monthly encounters at the Southwest border has surpassed 200,000 19 times.<sup>496</sup> Just this past December, a new monthly record was set when CBP reported more than 302,000 encounters at the Southwest border, and more than 371,000 encounters nationwide.<sup>497</sup>

Then-Border Patrol Chief Ortiz testified to the Committee in March 2023 that five of nine Southwest border sectors were “experiencing a higher level of flow” that “creates some unique challenges for us and it puts a strain on the overall immigration system. . . . I have to move resources into those five Southwest border sectors and that forces me to make some adjustments across the entire 2,000 miles of the Southwest border.”<sup>498</sup>

When asked by Committee staff during her September 2023 interview, whether she had ever seen such high encounter numbers over so long a period of time, Chief Patrol Agent Gloria Chavez of the Rio Grande Valley Sector answered no.<sup>499</sup> John Modlin, Chief Patrol Agent of the Tucson Sector, additionally testified to the House Committee on Oversight and Accountability in February 2023 that his sector was overwhelmed under the flow of “unprecedented” numbers of illegal aliens:

“So Fiscal Year 18, 19, and 20, Tucson Sector had about 60,000 apprehensions. [In FY] 21, 190,000 apprehensions, so we tripled the previous year, or had all three of those years combined. Last year it quadrupled. Last year it was 250,000. We’re 20,000 ahead right now [in FY23], so we went from what I would describe as unprecedented to a point where I don’t have the correct adjective to describe what’s going on.”<sup>500</sup>

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<sup>493</sup> *Id.*

<sup>494</sup> Anna Giaritelli, “Obama’s DHS Secretary Jeh Johnson: ‘We are truly in a crisis’ at southern border,” THE WASHINGTON EXAMINER, March 29, 2019, *available at* <https://www.washingtonexaminer.com/news/obamas-dhs-secretary-jeh-johnson-we-are-truly-in-a-crisis-at-southern-border>.

<sup>495</sup> *Southwest Land Border Encounters* CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Feb. 1, 2024).

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> *Failure By Design: Examining Secretary Mayorkas’ Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Mar. 15, 2023).

<sup>499</sup> H. Comm. on Oversight and Accountability & H. Comm. on Homeland Sec., Transcribed Interview of Gloria Chavez, Chief Patrol Agent, U.S. Border Patrol, Dep’t of Homeland Sec. (Sept. 23, 2023).

<sup>500</sup> *On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents: Hearing Before the H. Comm. on Oversight and Accountability*, 118th Cong. (Feb. 7, 2023)..

Local law enforcement also recognizes Secretary Mayorkas' open borders policies for what they are. "Now, basically, the border's open," said Guerra in March 2021.<sup>501</sup> In November 2021, the Western States Sheriffs' Association issued a letter declaring that the Southwest border had been "turned into an invisible lane in the sand," subsequently declaring no confidence in Secretary Mayorkas' ability to lead the department and calling for his removal.<sup>502</sup> Just a few months later, in April 2022, the National Sheriff's Association sent a letter signed by more than 70 sheriffs across the nation to Senate leadership, writing that, "We simply have no border left in Arizona, New Mexico, Texas, or Southern California."<sup>503</sup> On February 14, 2023, Sheriff Leon Wilmot of Yuma County, Arizona, declared, "[T]o see Mayorkas say that the border's secure is a blatant lie."<sup>504</sup>

Border Patrol agents and their families recognize that the border is open, no matter what terms bureaucrats like Secretary Mayorkas employ. Judd said in March 2021, "We are overwhelmed. e do not have the resources to stop the cartels from bringing in illegal aliens, from bringing in drugs, therefore we are in fact in a crisis."<sup>505</sup> Mayra Cantu, the wife of a Border Patrol agent with more than 15 years on the job, told the Committee in September 2023 that "[W]e have to realize that right now our border, no matter how you write it down on paper, it is open. We see it every day. I live in the Rio Grande Valley. I see it every day. It fills up my downtown where I like to shop. It fills up our downtown area with immigrants trying to get to that bus station to hit wherever they're going to go to. They just walk out."<sup>506</sup> USBP Chief Jason Owens told ABC News in September 2023, "This isn't sustainable. Up and down the system, everybody is overwhelmed."<sup>507</sup>

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<sup>501</sup> Gabrielle Fonrouge, *Texas sheriff in charge of US-Mexico border says it's 'basically open,' blames Biden*, THE NEW YORK POST, March 18, 2021, <https://nypost.com/2021/03/18/texas-sheriff-at-us-mexico-border-says-its-basically-open/>.

<sup>502</sup> Rob Crilly, *Association of sheriffs from 17 states sign a letter declaring 'no confidence' in Homeland Security Secretary Alejandro Mayorkas and urges Biden to replace him with someone who will 'enforce the rule of law'*, THE DAILY MAIL, Nov. 24, 2021, <https://www.dailymail.co.uk/news/article-10239465/Sheriffs-17-states-declare-no-confidence-Homeland-Security-Secretary-Alejandro-Mayorkas.html>.

<sup>503</sup> Paul Bedard, *Sheriffs shocker: 'No border left'*, THE WASHINGTON EXAMINER, Apr. 27, 2022, <https://www.washingtonexaminer.com/news/washington-secrets/sheriffs-shocker-no-border-left>

<sup>504</sup> America's Newsroom [@AmericaNewsroom], *CARTEL CRISIS: How Mexican Cartels Are Exploiting Biden's Open Border Policy @BillHemmer – reporting live from Yuma, AZ – is joined by two county officials who claim the border is under control of the cartels, not the US. 'We have never seen it this bad.'* Tweet, Twitter, February 14, 2023, available at <https://twitter.com/AmericaNewsroom/status/1625511036227842048?lang=en>.

<sup>505</sup> Adam Schrader, *"Border Patrol warns Biden that 'overwhelmed' staff can't cope with 'crisis' levels of immigration: Agents reveal how migrants are heading for US because they 'hear on the news we are letting people in'-as cartel warfare breaks out on border*, THE DAILY MAIL, Mar. 18, 2021, <https://www.dailymail.co.uk/news/article-9374793/Border-Patrol-leader-warns-flood-migrants-crisis-levels-gun-battle-erupts-cartels.html>.

<sup>506</sup> *An Unbearable Price: The Devastating Human Costs of the Biden-Mayorkas Border Crisis: Hearing Before the H. Comm. on Homeland Sec.*, 118th Cong. (Sept. 13, 2023).

<sup>507</sup> World News Tonight [@ABCWorldNews], *The new Border Patrol chief says "Everybody is overwhelmed" after a surge of migrants at the U.S.-Mexico border. He says human smugglers have sent thousands of migrants to the U.S.* @MattRiversABC reports. <https://trib.al/eh9saHe>," Tweet, Twitter, September 24, 2023, available at <https://twitter.com/abcworldnews/status/1706089762312913403?s=42&t=aJ1-2F725W5QDExEU1f0QQ>.

Democrats who represent border districts have also contradicted Mayorkas' false representations outright, with Representative Cuellar saying in September 2022, "Obviously the border is not secure and I've been saying this for so many years."<sup>508</sup>

Even illegal aliens themselves do not believe the border is closed. One migrant told Fox News Channel in September 2022, after getting off a bus from Texas in front of Vice President Kamala Harris' Washington, D.C., home, "It's open, not closed. The border is open . . . Everybody believes that the border is open. It's open because we enter. We come in, free, no problem . . . We came illegally, not legally."<sup>509</sup> A Venezuelan family making their way to the Southwest border . . . told CNN in 2023 that President Biden and Secretary Mayorkas' policies provided the incentive for them to make the journey, saying, "We had been planning this for a while when we saw the news that the U.S. was helping us—the immigrants. So here we are now."<sup>510</sup> One Mauritanian national trying to fly to Colombia told one reporter in September 2023, "I'll do whatever it takes to get to America. From what I've seen, it is easy to get in once you reach the border."<sup>511</sup>

### Operational Control

Another of Secretary Mayorkas' repeated false claims is his assertion that DHS maintains "operational control" of the border. It is first important to understand what "operational control" means. Per the statutory definition laid out by the Secure Fence Act of 2006, operational control constitutes "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."<sup>512</sup> Operational control, per the statute, is considered aspirational, as in it is not possible to prevent "all unlawful entries." No prior administration achieved that or claimed that they had. Secretary Mayorkas, however, knowing the definition of "operational control," per the Secure Fence Act, stated multiple times that DHS has achieved it.

On April 28, 2022, Secretary Mayorkas testified under oath to the House Judiciary Committee that DHS possessed operational control of the Southwest border.<sup>513</sup> When asked twice by Texas Rep. Chip Roy if DHS maintained operational control of the Southwest border, Secretary Mayorkas answered affirmatively both times.<sup>514</sup> Rep. Roy then displayed the Secure Fence Act's

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<sup>508</sup> Joshua Nelson, *Rep. Henry Cuellar says obviously the border is not secure*, FOX NEWS, Sept. 27, 2022, <https://www.foxnews.com/media/henry-cuellar-obviously-border-not-secure>.

<sup>509</sup> Emma James and Katelyn Caralle, *Kamala Harris IGNORES reporter's question about migrants bussed to her DC residence by Texas Gov. Abbott, after she was ridiculed over claim border is secure*, THE DAILY MAIL, Sept. 15, 2022, <https://www.dailymail.co.uk/news/article-11215335/Texas-sends-two-buses-containing-100-illegal-migrants-Vice-Presidents-DC-HOME.html>.

<sup>510</sup> Nick Paton Walsh et al., *On One of the World's Most Dangerous Migrant Routes, a Cartel Makes Millions off the American Dream*, CNN, Apr. 15, 2023, <https://www.cnn.com/2023/04/15/americas/Darién-gap-migrants-colombia-panama-whole-story-cmd-intl/index.html>.

<sup>511</sup> James Franey, *EXCLUSIVE: On board the Biden Express - Dailymail.com joins the throng of African migrants on daily sold-out Flight TK800 from Istanbul to Bogota as they make their way to our southern border*, THE DAILY MAIL, Sept. 29, 2023, <https://www.dailymail.co.uk/news/article-12576219/On-board-Biden-Express-African-migrants-flight-Istanbul-Bogota.html>.

<sup>512</sup> 8 U.S.C. § 1701, Pub. L. 109–367, § 2(b).

<sup>513</sup> "I Know It's True, You Know It's True!": Sparks Fly Between Chip Roy & Mayorkas, *Forbes Breaking News*, YouTube video, May 1, 2022, available at <https://www.youtube.com/watch?v=sH1-Q2frimk>.

<sup>514</sup> *Id.*

definition of operational control, asking Secretary Mayorkas if he still maintained that DHS possessed operational control as defined by that Act, to which the Secretary again said yes.<sup>515</sup> He further stated that his predecessors “would have said the same thing in 2020 and 2019.”<sup>516</sup>

Not only has Secretary Mayorkas’ testimony been inconsistent with the assessments of border security professionals, but his multiple statements on the matter are also not consistent.

After definitively declaring that DHS possessed operational control in April 2022, Secretary Mayorkas later backtracked to alter the definition of operational control in hopes of meeting a lower, self-manufactured standard.<sup>517</sup> He gave the following testimony to the Senate Homeland Security and Governmental Affairs Committee in May 2022, just days after telling Rep. Roy that DHS had operational control based on the Secure Fence Act definition:

“Actually there is a statutory definition, which provides, if I am not mistaken— and I will double-check to make sure of my accuracy before this committee—is that operational control is if no individual and no controlled substance passes through our border. Under that strict definition this country has never had operational control but obviously, a layer of reasonableness must be applied here, and looking at that definition through the lens of reasonableness we dedicate now 23,000 personnel to the border.”<sup>518</sup>

Secretary Mayorkas’ testimony was later refuted by his own Border Patrol chief.<sup>519</sup> Chief Ortiz testified that DHS did not have operational control of the border.<sup>520</sup>

When asked by Chairman Green whether DHS had operational control of the Southwest border, Chief Ortiz answered that the Department did not.<sup>521</sup> In a subsequent exchange, Chief Ortiz further confirmed that DHS also did not possess operational control per the Secure Fence Act definition:

- March 14, 2023: Chairman Green: “You heard the Secretary, he said we have operational control, that’s the definition of operational control.”  
Chief Ortiz: “Based upon the definition you have sir, up there, no.”  
  
Green: “We don’t have operational control?”

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<sup>515</sup> *Id.*

<sup>516</sup> *Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on Judiciary*, 117th Cong. (Apr. 28, 2022).

<sup>517</sup> *Resources and Authorities Needed to Protect and Secure the Homeland: Hearing Before the Senate Homeland Security and Governmental Affairs Comm.*, 117th Cong., 2nd sess., May 4, 2022, available at <https://www.congress.gov/event/117th-congress/senate-event/332409/text>.

<sup>518</sup> *Id.*

<sup>519</sup> “Full Committee Field Hearing: ‘Failure By Design: Examining Secretary Mayorkas’ Border Crisis,’” *Homeland Security Committee Events*, YouTube video, 42:51, March 15, 2023, <https://www.youtube.com/watch?v=7Z1ETzh3AUA&t=2571s>.

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

Ortiz: “No sir.”<sup>522</sup>

Secretary Mayorkas later told the Senate Judiciary Committee in March 2023 that by the statutory definition, “no administration has ever had operational control”<sup>523</sup> and that he did not use the Secure Fence Act definition in evaluating operational control.<sup>524</sup> These comments came just days after then-Chief Ortiz’s testimony to the House Committee on Homeland Security. It is further worth noting that his claims that “no administration” ever having had operational control per the statutory requirement is inconsistent with his April 2022 assertion that previous secretaries would have said they did.

Finally, in testimony before the House Judiciary Committee on July 26, 2023, Secretary Mayorkas told Rep. Nadler that he had not misled Congress about having operational control of the Southwest border because Representative Roy “did not allow me to complete my answer”<sup>525</sup> — an assertion contradicted by the official record. Secretary Mayorkas subsequently repeated this excuse to Rep. Roy in the same hearing when pressed on the clear inconsistencies in his testimony, which Rep. Roy pointed out.<sup>526</sup>

Secretary Mayorkas has claimed to have operational control based on the Secure Fence Act definition<sup>527</sup> — a false claim, as he himself later admitted in declaring that no administration has ever had operational control per the definition. And he has been dishonest by claiming to not use the statutory definition in determining whether DHS has operational control, after using that very definition as a measure of the term in his April 2022 testimony.

Secretary Mayorkas cannot have it both ways. His claim of operational control in the context of the statutory definition in 2022, followed by a new interpretation later in which he insinuated that the legal definition is unreasonable, is intellectually dishonest at best, and deceitful at worst. It also indicates that he has substituted his own definition for the one that Congress placed in law.

Below is a comprehensive timeline laying out the instances in which Secretary Mayorkas has made false or misleading claims that DHS had operational control of the border:

- April 27, 2022: “Ranking Member Katko, it is our responsibility to maintain operational control of the border. . . and we will not lose operational control of the border.”<sup>528</sup>

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<sup>522</sup> *Id.*

<sup>523</sup> Suzanne Monyak, *Republican Senators Grill DHS Chief Over Border Security*, *CQ Roll Call*, March 28, 2023, available at <https://rollcall.com/2023/03/28/republican-senators-grill-dhs-chief-over-border-security/>.

<sup>524</sup> *Id.*

<sup>525</sup> *Oversight of the U.S. Department of Homeland Security: Hearing Before the House Judiciary Comm.*, July 26, 2023, *House Judiciary GOP*, YouTube video, 40:14, available at [judiciary.house.gov/committee-activity/hearings/oversight-us-department-homeland-security-0](https://judiciary.house.gov/committee-activity/hearings/oversight-us-department-homeland-security-0).

<sup>526</sup> *Id.* at 1:52:16.

<sup>527</sup> 8 U.S.C. § 1701, Pub. L. 109–367, § 2(b).

<sup>528</sup> *A Review of the Fiscal Year 2023 Budget Request for the Department of Homeland Security: Hearing Before the House Homeland Security Comm.*, 117th Cong., 2nd sess., at 40, April 27, 2022, available at <https://www.congress.gov/117/chrg/CHRG-117hhr48215/CHRG-117hhr48215.pdf>.

- April 28, 2022: Representative Roy: “The Secure Fence Act of 2006 says what? That the Secretary of Homeland Security shall take all actions the Secretary determines necessary to achieve and maintain operational control over the entire international land and maritime borders. Will you testify under oath right now, do we have operational control, yes or no?” Mayorkas: “Yes, we do, and we—”

Roy: “We have operational control of the borders?”

Mayorkas: “Yes, we do, and Congressman, we are working to—”

Roy: “Assume operational control defined. In this section the term operational control means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Do you stand behind your testimony that we have operational control in light of this definition?”

Mayorkas: “Congressman, I think the Secretary of Homeland Security would have said the same thing in 2020 and 2019.”<sup>529</sup>

- March 28, 2023: “With respect to the definition of operational control — I do not use the definition that appears in the Secure Fence Act, and the Secure Fence Act provides, statutorily, that operational control is defined as ‘preventing all unlawful entries into the United States.’ By that definition, no administration has ever had operational control. So the way I define it is maximizing the resources that we have to deliver the most effective results, and we are indeed doing that.”<sup>530</sup>
- April 19, 2023: Representative Bishop: “Do you admit that your policies have led the country farther away from operational control of the border, as defined by the Congress? Secretary Mayorkas: “Congressman, no I do not.”<sup>531</sup>
- July 26, 2023: Rep. Nadler: “So, can you describe what happened in that exchange last year?” Secretary Mayorkas: “Ranking Member Nadler, the congressman did not allow me to complete my answer.”<sup>532</sup>
- July 26, 2023: Rep Roy: “If you will recall, when you testified here in front of me, when I asked that question, when you very clearly stated we do have operational control, when

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<sup>529</sup> U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security: Hearing Before the House Judiciary Comm.*, 117th Cong., 2nd sess., 119-20, April 28, 2022, available at <https://www.congress.gov/117/chr/CHRG-117hhr/49702/CHRG-117hhr/49702.pdf>.

<sup>530</sup> Alejandro Mayorkas, *Secretary Mayorkas Testifies at Homeland Security Oversight Hearing, C-SPAN video*, 38:36, March 28, 2023, available at <https://www.c-span.org/video/?526938-1/secretary-mayorkas-testifies-homeland-security-oversight-hearing>.

<sup>531</sup> Rep. Dan Bishop *Shreds Mayorkas’ DHS Budget Request, Homeland Security Committee Republicans*, YouTube video, 2:00, April 19, 2023, available at <https://www.youtube.com/watch?v=9C0bE731s6E>.

<sup>532</sup> *Oversight of the U.S. Department of Homeland Security: Hearing Before the House Judiciary Comm.*, 118th Cong., *House Judiciary GOP*, YouTube video, 40:14, July 26, 2023, available at [judiciary.house.gov/committee-activity/hearings/oversight-us-department-homeland-security-0](https://judiciary.house.gov/committee-activity/hearings/oversight-us-department-homeland-security-0).

presented with the actual definition of operational control, you didn't hesitate. You said, 'I do.'"

"And you, in fact, then referred back and said, 'I believe that my predecessors would have said the same thing.' I asked Chad Wolf that question in this room and Chad said, 'Well, no, we didn't use that framing to say we have operational control. We're striving to achieve operational control.' But you didn't do that. You looked straight at the American people, straight at me, straight at every person on this committee and said, 'We have operational control.' Why?"

Secretary Mayorkas: "Congressman, two points. One, you did not let me complete my answer. Two—"

Roy: "Hold on. Just — give me your second point. Go ahead."

Secretary Mayorkas: "Thank you. Two, the Secure Fence Act defines operational control as not a single individual crosses the border."

Roy: "I'm aware. I read it and I read it to you, and you read it. And in fact, you said 'I do.' You didn't hesitate. You didn't say, 'I do. I need to explain what I mean by I do.' You said, 'I do' over and over again."<sup>533</sup>

- July 26, 2023: Representative Sheila Jackson Lee: "So would you say, having been asked this over and over again, that the United States, the President of the United States, the Secretary of Homeland Security, and all of the hard working men and women at the border, have operational control or have a form of presence, that they are aware of what's going on in the border and that they're working to secure the border every single day?" Secretary Mayorkas: "As we define that term, Congresswoman, we do."<sup>534</sup>

## Screening and Vetting

Secretary Mayorkas knowingly made false statements to Congress regarding the scope and adequacy of the vetting of the thousands of Afghans who were airlifted to the United States and then granted parole following the Taliban takeover of Afghanistan after President Biden's precipitous withdrawal of United States forces,<sup>535</sup> including that "the federal government employs a multi-layered and rigorous screening and vetting process" and that "[t]hrough a whole-of-government approach, we are ensuring that Afghans arriving in the United States have been thoroughly screened and vetted."<sup>536</sup>

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<sup>533</sup> *Id.* at 1:51:41.1.

<sup>534</sup> *Id.* at 1:02:27, July 26, 2023, <https://www.youtube.com/live/cAhJdIQy1IA?feature=share&t=3747>.

<sup>535</sup> See generally "Homeland Republicans Demand Answers on DHS's Improper Vetting of Afghan Evacuees Following Biden's Catastrophic Withdrawal," <https://homeland.house.gov/2023/05/01/homeland-republicans-demand-answers-on-dhss-improper-vetting-of-afghan-evacuees-following-bidens-catastrophic-withdrawal/>.

<sup>536</sup> *Oversight of the Department of Homeland Security: Hearing Before the S. Judiciary Comm.*, 117th Cong., (Nov. 16, 2021) (testimony of U.S. Dep't of Homeland Sec., Sec'y Alejandro Mayorkas), available at <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-homeland-security>.

DHS' Office of the Inspector General "(OIG") in fact has concluded that:

[W]e determined DHS encountered obstacles to screen, vet, and inspect all Afghan evacuees arriving as part of Operation Allies Refuge (OAR)/Operation Allies Welcome (OAW).<sup>537</sup>

CBP did not always have critical data to properly screen, vet, or inspect Afghan evacuees arriving as part of OAR/OAW. We determined some of the information used to vet evacuees through U.S. Government databases, such as name, DOB, identification number, and travel document data, was inaccurate, incomplete, or missing. CBP also admitted or paroled evacuees who were not fully vetted into the United States. We attribute the challenges to DHS not having: (1) a list of Afghan evacuees who were unable to provide sufficient identification documents; (2) a contingency plan to support similar emergency situations; and (3) standardized policies. As a result, DHS paroled at least two individuals into the United States who posed a risk to national security and the safety of local communities and may have admitted or paroled more individuals of concern.<sup>538</sup>

Based on the cultural differences and questionable data in the biographic fields, it was challenging for DHS to fully screen and vet the evacuees. The Federal Government provides guidance on how to nominate and screen travelers with incomplete names. However, it also identifies the inherent limitations that exist in any primarily name-based system such as two of the systems described in the guidance.<sup>539</sup>

CBP also allowed some evacuees to enter into the United States who may not have been fully vetted. According to internal DHS reports, CBP admitted or paroled dozens of evacuees with derogatory information into the country. We confirmed two such cases[.]<sup>540</sup>

DHS officials attributed screening and vetting issues to the time constraints at lily pads. According to DHS, the timeframes were limited to just days or weeks, and DHS needed to expedite screening and vetting to meet these time constraints.<sup>541</sup>

Although this was an unprecedented humanitarian event, CBP was aware that evacuees might arrive without sufficient documentation. Yet, CBP did not develop a backup plan for validating the identity of Afghan evacuees entering the United States at the points of entry.<sup>542</sup>

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<sup>537</sup> Office of the Inspector General, DHS, *DHS Encountered Obstacles to Screen, Vet, and Inspect all Evacuees During the Recent Afghanistan Crisis (REDACTED)*, OIG-22-64 (Sept. 6, 2022), available at <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-64-Sep22-Redacted.pdf>.

<sup>538</sup> *Id.* at 8.

<sup>539</sup> *Id.* at 9.

<sup>540</sup> *Id.* at 11.

<sup>541</sup> *Id.* at 12.

<sup>542</sup> *Id.* at 13.

Consistent with the findings of the OIG, Rodney Scott, Secretary Mayorkas' first USBP Chief, has explained to Committee staff the limitations involved in “thoroughly” or “rigorously” vetting many foreign nationals:

The Secretary knows that when U.S. Border Patrol agents run those records checks, or ICE or anybody else, on foreign nationals, primarily it is only checking points of entry, well, it is only checking U.S. databases really, but it's primarily only criminal offenses that have happened in the U.S.

On a limited basis, we will get information from . . . INTERPOL or we'll have a connectivity to another nation, but we don't have direct plug-ins to other nations' criminal databases. And many of the nations these people are coming from, we know for a fact, don't even have good criminal database records systems to pull from.

And, a lot of times, we have no idea even who the person is. So the fingerprints, that's valid, but they can make up any name they want.

In the perfect world, if an agent has any suspicion, then that agent has the ability to work through the State Department or the consulate's office, go to that country, ask a bunch of more questions. But when you're handling over a thousand arrests a day, let alone 10,000, the agents don't have time to do any of that.

This has all been briefed to the Secretary. He knows that vetting is a joke. It's literally a check-the-box. It's only people that have been in the U.S., committed a crime, and either left on their own or been deported. And we have no idea what any of these people did anywhere else in the world.<sup>543</sup>

Mr. Scott separately testified to the House Judiciary Committee that:

When law enforcement officers at any level in the U.S. use a person's biographical and biometric information to run records checks, that freshly collected information is being compared to existing records in specific U.S. agency databases. It is extremely rare for any information about criminal acts committed by a foreign national outside the U.S. to be documented within these U.S. criminal history databases. When Secretary Mayorkas or any U.S. official asserts that aliens are properly vetted, they are really telling you that they checked U.S. databases to see if the alien had any known criminal history inside the U.S. or if the alien had been identified and placed in the Terrorist Screening Database or Data Set.

To ensure there is no confusion here, running records checks on any alien that has not been arrested by U.S. law enforcement in the past or is not currently known by U.S. intelligence is like looking for something on an empty hard drive. There is simply no data to compare it with. The alien could be a saint, or he/she could be

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<sup>543</sup> H. Comm. on Homeland Sec., Transcribed Interview with Rodney Scott, at 51-52, Jan. 22, 2024.

serial killer. There are a few ways to find out more about who the alien really is. One way is to request information from officials in the alien’s home nation. At best, that is extremely time-consuming and requires U.S. State Dept. support. In many cases this is not even an option due to a lack of diplomatic relations or a lack of capabilities in the other nation. Another way to solicit more information is for a skilled interviewer to conduct an in-depth face-to-face interview in the alien’s native language.<sup>544</sup>

Secretary Mayorkas knowingly made false statements that apprehended aliens with no legal basis to remain in the United States were being quickly removed, such as a claim in April 2023 that “[t]hose who arrive at our border and do not have a legal basis to stay ... will be removed most often in a matter of days and just a few weeks”<sup>545</sup> and one in May 2023 that he and DHS were “making it very clear that our border is not open, that crossing irregularly is against the law, and that those who are not eligible for relief will be quickly returned.”<sup>546</sup> However, of those aliens placed into expedited removal proceedings since January 21, 2021, who were not found to have a credible fear of persecution and thus immediately removable, “roughly 40 percent were not removed and remained in the United States as of August 31, 2023.”<sup>547</sup>

### Whipping Incident

Secretary Mayorkas knowingly made false statements supporting the false narrative that USBP agents maliciously whipped illegal aliens.<sup>548</sup> The result seriously damaged agency morale. Joel Martinez, then-acting Chief Patrol Agent of the USBP’s Laredo Sector, told Committee staff in June 2023 that Secretary Mayorkas’ slander of the agents had negatively affected agents across the force and it “takes a toll on our agents.”<sup>549</sup> When asked by Representative Anthony D’Esposito during congressional testimony, former USBP Chief Rodney Scott described Secretary Mayorkas’

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<sup>544</sup> *Terrorist Entry Through the Southwest Border: Hearing Before the Subcomm. on Immig’r Integrity, Sec., and Enf’t of the H. Judiciary Comm.* 118th Cong. (Sept. 14, 2023) available at [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/scott-testimony.pdf?\\_gl=1\\*170n2yi\\*\\_ga\\*MTkxNzQ4MzU3LjE3MDY2NTE3NDM.\\*\\_ga\\_1818ZEW81\\*MTcwNTk4NjA4NS43LjAuMTcwNTk4NjA4NS4wLjAuMA](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/scott-testimony.pdf?_gl=1*170n2yi*_ga*MTkxNzQ4MzU3LjE3MDY2NTE3NDM.*_ga_1818ZEW81*MTcwNTk4NjA4NS43LjAuMTcwNTk4NjA4NS4wLjAuMA).

<sup>545</sup> DHS, *Secretary Mayorkas: Beginning May 12th DHS Will Use Expedited Removal Proceedings* (Apr. 27, 2023), available at <https://www.dhs.gov/medialibrary/assets/video/42852#:~:text=Those%20who%20arrive%20at%20our,and%20just%20a%20few%20weeks>.

<sup>546</sup> Speeches, U.S. Dep’t of Homeland Sec., Secretary Mayorkas Remarks at a Media Availability Outlining Planning and Operations Ahead of the Lifting of the Title 42 Public Health Order (May 10, 2023), available at <https://www.dhs.gov/news/2023/05/10/secretary-mayorkas-remarks-media-availability-outlining-planning-and-operations>.

<sup>547</sup> H. Committee on the Judiciary and Subcommittee on Immgr. Integrity, Sec., and Enf’t, *Interim Staff Report: New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigration Enforcement*, 118<sup>th</sup> Cong., (Jan. 18, 2024) at 5, available at [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?\\_gl=1\\*ua9yco\\*\\_ga\\*MTkxNzQ4MzU3LjE3MDY2NTE3NDM.\\*\\_ga\\_1818ZEW81\\*MTcwNjY1NDY2NC4yLjEuMTcwNjY1NDY3MC4wLjAuMA](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?_gl=1*ua9yco*_ga*MTkxNzQ4MzU3LjE3MDY2NTE3NDM.*_ga_1818ZEW81*MTcwNjY1NDY2NC4yLjEuMTcwNjY1NDY3MC4wLjAuMA).

<sup>548</sup> H. Comm. on Homeland Sec., *Majority Report, DHS Secretary Alejandro Mayorkas’ Dereliction of Duty*, 118<sup>th</sup> Cong. (July 19, 2023) at 87-88.

<sup>549</sup> *Id.* at 88.

statements as “a kick in the gut” that “damaged morale beyond anything that could be imagined.”<sup>550</sup>

The agents were later cleared of the false charges,<sup>551</sup> though they received undefined administrative punishments.<sup>552</sup>

Secretary Mayorkas was a major reason why these agents were treated so unfairly. In the days immediately following the incident, he took to cable news with incendiary statements such as, “We are very troubled by what we have seen,” and “One cannot weaponize a horse to aggressively attack a child.”<sup>553</sup> Secretary Mayorkas told CNN, “I was horrified by what I saw” — just seconds after promising an investigation that would be driven by facts, not politics.<sup>554</sup>

On September 22, 2021, Secretary Mayorkas testified before the Committee on that “the facts will drive the actions that we take. We ourselves will pull no punches and we need to conduct this investigation thoroughly, but very quickly. It will be completed in days and not weeks. I wanted to ensure this committee, and you, Mr. Chairman, and Mr. Ranking Member, of that fact.”<sup>555</sup>

On the morning of Friday, September 24, 2021, nearly a week after the events in question, Secretary Mayorkas was informed by Marsha Espinosa, DHS’ Assistant Secretary for Public Affairs, of eyewitness reports that no whipping had occurred.<sup>556</sup> Despite having received this information, several hours later Secretary Mayorkas went to the White House podium and stated that “we know that those images painfully conjured up the worst elements of our nation’s ongoing battle against systemic racism . . . . First of all, the images, as I expressed earlier — the images horrified us in terms of what they suggest and what they conjure up, in terms of not only our nation’s history, but, unfortunately, the fact that that page of history has not been turned entirely. And that means that there is much work to do, and we are very focused on doing it.”<sup>557</sup>

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<sup>550</sup> *Id.*

<sup>551</sup> DHS, CBP, Office of Professional Responsibility, *Report of Investigation* at 5 (July 8, 2022), available at <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>552</sup> Callie Patteson, Samuel Chamberlain, and MaryAnn Martinez, *Biden Admin Admits Border Agents Did Not ‘Whip’ Migrants, Punishes Them Anyway*, *The New York Post*, July 8, 2022, available at <https://nypost.com/2022/07/08/border-agents-falsely-accused-of-whipping-migrants-punishment/>.

<sup>553</sup> “‘Horrified’: Mayorkas Reacts to Disturbing US Border Patrol Video”, *CNN*, Sept. 21, 2021, available at <https://www.cnn.com/videos/politics/2021/09/21/mayorkas-reacts-to-border-patrol-del-rio-texas-horse-video-sot-keilar-new-day-vpx.cnn>.

<sup>554</sup> *Id.*

<sup>555</sup> *Worldwide Threats To The Homeland: 20 Years After 9/11.; Hearing Before the H. Comm. on Homeland Sec.*, 117th Cong. (Sept. 22, 2021),

<sup>556</sup> Bill Melugin and Adam Shaw, *Mayorkas Alerted That No Haitian Migrants Were ‘Whipped’ Hours Before WH Press Conference*, *Fox News*, Oct. 12, 2022, available at <https://www.foxnews.com/politics/mayorkas-alerted-haitian-migrants-whipped-hours-wh-press-conference>.

<sup>557</sup> Adam Shaw, *Mayorkas Doubles Down on Border Patrol Criticism, Even As ‘Whip’ Narrative Crumbles*, *Fox News*, Sept. 24, 2021, available at <https://www.foxnews.com/politics/mayorkas-doubles-down-border-patrol-criticism-whip-narrative>.

On top of his false accusations, Secretary Mayorkas promised Congress on September 22, 2021, that the investigation into the events in Del Rio would be completed in “days – not weeks.”<sup>558</sup> However, DHS did not release its report until July 8, 2022.<sup>559</sup>

## 2. Obstruction of Lawful Oversight

### i. Failure to Comply with Subpoenas

Secretary Mayorkas failed to comply with multiple subpoenas issued by congressional committees.<sup>560</sup> Chairman Green sent one such subpoena to Secretary Mayorkas on October 31, 2023, detailing the Committee’s need to do so following DHS’ almost complete lack of cooperation over a six month period regarding the Committee’s request for documents and information to “assist . . . [with the Committee’s] oversight of [DHS’] screening and vetting of certain Afghan . . . evacuees after the August 2021 U.S. withdrawal from Afghanistan.”<sup>561</sup> DHS had belatedly— on October 20 — produced a completely unsatisfactory response that included “150 pages [that] were either wholly redacted, devoid of content, or illegible,” with “many of the remaining pages appear[ing] to be nothing more than scanned printouts from spreadsheets of data that were provided in a format that rendered them indecipherable.”<sup>562</sup> Information in some of the documents produced was contained in “tabs [that] were locked or password-protected,” and DHS “refused to provide the password.”<sup>563</sup> Most distressingly, DHS had “failed to produce a single e-mail or other communication from Department employees related to the withdrawal from Afghanistan or [CBP’s] screening, vetting, or inspection of Afghan evacuees at U.S. ports of entry.”<sup>564</sup>

Chairman Green sent Secretary Mayorkas another subpoena on August 22, 2023, detailing the Committee’s need to do so following DHS’ lack of cooperation over an almost four-month period with the Committee’s request for documents and information to “assist the Committee . . . with its oversight of DHS’ Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole program.”<sup>565</sup> DHS’ lack of cooperation culminated with its “continu[ing] to cast doubt on any

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<sup>558</sup> Kevin Johnson, *Mayorkas Vows Swift Probe into Agents on Horseback at Texas Border*, *USA Today*, Sept. 22, 2021, available at <https://www.usatoday.com/story/news/politics/2021/09/22/photos-border-patrol-using-horse-reins-whips-prompts-dhs-probe/5812845001/>.

<sup>559</sup> Office of Professional Responsibility, CBP, DHS, *CBP Office of Professional Responsibility – Del Rio Horse Patrol Unit Investigation Report*, July 8, 2022, available at <https://www.cbp.gov/document/report/cbp-office-professional-responsibility-del-rio-horse-patrol-unit-investigation>.

<sup>560</sup> See Subpoena from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec. (Dec. 8, 2023); Subpoena from Rep. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec. (Oct. 31, 2023); Subpoena from Rep. Mark Green, Chairman, H. Comm. on Homeland Sec., to Hon. Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec. (Aug. 21, 2023).

<sup>561</sup> Letter from Mark Green, Chairman, House Homeland Security Committee, to Alejandro Mayorkas, Secretary, DHS, at 1 (Oct. 31, 2023), available at <https://homeland.house.gov/wp-content/uploads/2023/10/2023-10-31-Green-to-Mayorkas-DHS-re-Subpoena-Afghan-Screening-and-Vetting.pdf>.

<sup>562</sup> *Id.*

<sup>563</sup> *Id.* at 2.

<sup>564</sup> *Id.*

<sup>565</sup> Letter from Mark Green, Chairman, House Homeland Security Committee, to Alejandro Mayorkas, Secretary, DHS, at 1 (Aug. 22, 2023), available at <https://homeland.house.gov/wp-content/uploads/2023/08/2023-08-22-Green-to-Mayorkas-DHS-re-Subpoena-CHNV-Parole-Program.pdf>.

definitive timeline for future production . . . [indicating a] demonstrated approach to indefinitely protract production.”<sup>566</sup>

ii. Failure to Provide the Office of the Inspector General with Necessary Records and Information

Secretary Mayorkas delayed or denied DHS’ Office of Inspector General (OIG) access to DHS records and information, hampering OIG’s ability to effectively perform its vital investigations, audits, inspections, and other reviews of agency programs and operations to satisfy the OIG’s obligations under 5 U.S.C. § 402(b), to Congress.

Joseph Cuffari, DHS’ Inspector General, sent a letter to Chairman Green outlining the delays and denials:

The Senate confirmed my nomination to be the Inspector General of DHS on July 25, 2019. During the first two years of my tenure, OIG did not experience significant problems obtaining records and information from DHS. Things changed in 2021, when DHS began interpreting the Inspector General Act in counterintuitive and flatly incorrect ways.

For example, DHS withheld records from OIG for over six months in 2021 on the grounds that they contained information about individuals covered by the Privacy Act that generally may not be disclosed to the public. Of course, OIG is not the public; it is part of DHS. Moreover, the Privacy Act does not refer to the Inspector General or limit an OIG’s right of access, so it does not justify withholding records from OIG. Periodically since 2021, DHS has nonetheless cited the Privacy Act as a basis for withholding records from OIG.

To take another example from 2021, DHS delayed producing records to OIG on the ground that they were covered by the Presidential Records Act. Here too, the Presidential Records Act does not refer to the Inspector General or limit an OIG’s right of access, so it does not justify withholding records from OIG.

In 2022, an internal memo prepared by a DHS attorney and approved by a supervisory attorney stated that the Department could deny OIG access to any type of information that is not subject to public disclosure. Although the General Counsel of DHS ultimately disavowed to OIG the view expressed in the memo, it is disconcerting that such a memo was ever approved by a supervisory attorney in the first place; indeed, to this day it is unclear whether some DHS officials continue to agree with the faulty legal opinion in the memo.

Further, in 2022, OIG learned that large numbers of DHS employees had been told that they should not provide documents directly to OIG, and that instead all such documents were subject to review by DHS attorneys before they could be disclosed to OIG. This review process led to lengthy delays and confusion over whether OIG

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<sup>566</sup> *Id.*

eventually received all of the records that it had requested in connection with a particular investigation, audit, or inspection. This review process also appears to violate the Whistleblower Protection Enhancement Act, which prohibits an agency from implementing or enforcing a policy that restricts employees' communications with an OIG concerning waste, fraud, or abuse. 5 U.S.C. § 2302(b)(13)(B). If a DHS employee wants to disclose wrongdoing to OIG and supports their disclosure with documents, the employee has a statutory right to do so, yet employees are being told otherwise by DHS officials.

Apart from the above, DHS takes the view that OIG may obtain DHS records and information only to the extent that such records and information relate to an identified audit, inspection, or evaluation. This view is inconsistent with the broad language of the Inspector General Act, quoted above, inasmuch as it adds a condition to OIG access not found in the law. Furthermore, the Department's position makes it difficult to obtain and analyze data that would assist in improving the way OIG identifies DHS high-risk areas for future work. For example, DHS denied OIG's request for access to Federal Emergency Management Agency grant data, significantly impacting OIG's ability to identify trends of fraudulent behavior and to coordinate with other agencies to eliminate duplicate payments of benefits. Beginning with OIG's Semi-Annual Report for the six-month period ending September 30, 2021, and continuing with each subsequent Semi-Annual Report, OIG has documented DHS's delays in fulfilling, and outright denials, of OIG's requests for records and information.<sup>567</sup>

#### B. Secretary Mayorkas' Refusal to Change Course in the Face of the Dire Consequences That Resulted From His Refusal to Comply With The Law

Secretary Mayorkas inherited what his first USBP Chief called, "arguably the most effective border security in our nation's history."<sup>568</sup> Secretary Mayorkas, however, proceeded to abandon effective border security initiatives without engaging in adequate alternative efforts that would enable DHS to maintain control of the border and guard against illegal entry. Secretary Mayorkas, under section 103(a)(5) of the INA, has the "duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens. . ."<sup>569</sup> However, he did not replace effective border security initiatives with an alternative, resulting in boundaries and borders uncontrolled and unguarded. Secretary Mayorkas' willful inaction is evidenced by the devastating consequences at the Southwest border. In that willful inaction, he failed to fulfill his statutory duty, and thus is in breach of the public trust . . . .

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<sup>567</sup> Letter from Joseph Cuffari, Inspector General, Office of the Inspector General, U.S. Dep't of Homeland Sec., to Hon. Mark Green, Chairman, H. Comm. on Homeland Sec. (Jan. 17, 2024).

<sup>568</sup> Letter from Rodney S. Scott to Sen. Charles Schumer, U.S. Sen. Majority Leader, Sen. Mitch McConnell, U.S. Sen. Minority Leader, Sen. Gary Peters, and Sen. Rob Portman, (Sept. 11, 2021), *available at* <https://www.ronjohnson.senate.gov/services/files/57C4C0D7-EEB7-4F43-8252-9FD339DDFBD4>.

<sup>569</sup> 8 U.S.C. § 1103(a)(5).

According to Chief Scott, Secretary Mayorkas “summarily rejected” the “multiple options to reduce the illegal entries...through proven programs and consequences” provided by civil service staff at DHS.<sup>570</sup> Furthermore, Mr. Scott told the Committee on Homeland Security that:

During my professional conversations and interactions with Secretary Mayorkas while I was still Chief, he made it very clear that he fully understood that decreasing deterrence and consequences for illegal entry, and increasing the release of aliens that had entered the U.S. illegally, wi[ll] unquestionably result in an increase in illegal immigration to the U.S., that in his words at that time, would be unsustainable.<sup>571</sup>

[T]he Biden administration, to include the official transition teams and Secretary Mayorkas, were advised by career border security experts that removing physical and policy obstacles intended to deter illegal immigration would result in a loss of control of our international borders. Secretary Mayorkas chose to ignore these stark warnings and implemented a series of decisions that directly resulted in the massive illegal immigration and the associated crime, death, and general chaos that we are experiencing today.<sup>572</sup>

Despite clear warnings and understanding of the consequences, Secretary Mayorkas failed to take responsive action or attempt to satisfy his statutory duty to control the border.

#### 1. The Migrant Protection Protocols

Secretary Mayorkas terminated the Migrant Protection Protocols (hereinafter referred to as “MPP”).

On December 20, 2018, DHS Secretary Kirstjen Nielsen proclaimed that “[t]oday we are announcing historic measures to bring the illegal immigration crisis under control,”<sup>573</sup> and stated that:

Aliens trying to game the system to get into our country illegally will no longer be able to disappear into the United States, where many skip their court dates. Instead, they will wait for an immigration court decision while they are in Mexico. “Catch and release” will be replaced with “catch and return.” In doing so, we will reduce illegal migration by removing one of the key incentives that encourage people [to take] the dangerous journey to the United States in the first place. This will also allow us to focus more attention on those who are actually fleeing persecution.

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<sup>570</sup> Letter from Rodney Scott to Charles Schumer, U.S. Senate Majority Leader, Mitch McConnell, U.S. Senate Minority Leader, U.S. Senator Gary Peters & U.S. Senator Rob Portman, at 2 (Sept. 11, 2021), *available at* <https://www.ronjohnson.senate.gov/services/files/57C4C0D7-EEB7-4F43-8252-9FD339DDFBD4>.

<sup>571</sup> H. Comm. on Homeland Sec., Transcribed Interview with Rodney Scott, at 10, Jan. 22, 2024.

<sup>572</sup> *Id.* at 8-9.

<sup>573</sup> DHS, *Press Release: Secretary of Homeland Security Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration*, Dec. 20, 2018, *available at* <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

The following month, Secretary Nielsen informed the heads of CBP, ICE, and U.S. Citizenship and Immigration Services (USCIS) that they “will begin implementation of Section 235(b)(2)(C) of the . . . INA [which allows DHS to return certain aliens “who [are] arriving on land . . . from a foreign territory contiguous to the United States . . . to that territory pending a [removal] proceeding”] . . . on a large-scale basis to address the migration crisis along our southern border.”<sup>574</sup>

As DHS explained:

MPP will provide a safer and more orderly process that will discourage individuals from attempting illegal entry and making false claims to stay in the U.S., and allow more resources to be dedicated to individuals who legitimately qualify for asylum.<sup>575</sup>

[Many] aliens claiming credible fear . . . know it will give them an opportunity to stay in our country, even if they do not actually have a valid claim to asylum. As a result, the United States has an overwhelming asylum backlog . . . Most of these claims are not meritorious — in fact nine out of ten asylum claims are not granted by a federal immigration judge. However, by the time a judge has ordered them removed from the United States, many have vanished.<sup>576</sup>

Aliens trying to enter the U.S. to claim asylum will no longer be released into our country, where they often disappear before a court can determine their claim’s merits.<sup>577</sup>

As the U.S. District Court for the Northern District of Texas concluded in 2021 in *Texas v. Biden*,<sup>578</sup> MPP was extraordinarily effective:

DHS stated that “MPP has demonstrated operational effectiveness,” [noting] that it had “returned more than 55,000 aliens to Mexico under MPP” and that “MPP has been an indispensable tool in addressing the ongoing crisis at the southern border and restoring integrity to the immigration system . . . .”

Specifically, DHS found “[s]ince a recent peak of more than 144,000 in May 2019, total enforcement actions [along the Southwest border] . . . have decreased by 64% through September 2019”. . . Moreover, DHS found “[b]order encounters with

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<sup>574</sup> Memorandum from Kirstjen M. Nielsen, Secretary, DHS, to L. Francis Cissna, Director, USCIS, Kevin K. McAleenan, Commissioner, CBP, and Ronald D. Vitiello, Deputy Director and Senior Official Performing the Duties of Director, ICE, *Policy Guidance for Implementation of the Migrant Protection Protocols*, Jan. 25, 2019, available at [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).

<sup>575</sup> DHS, *Press Release: Migrant Protection Protocols*, Jan. 24, 2019, available at <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>576</sup> *Press Release: Secretary of Homeland Security Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration*.

<sup>577</sup> *Id.*

<sup>578</sup> 554 F. Supp.3d 818 (N.D. Tex., 2021).

Central American families — who were the main driver of the crisis and comprise a majority of MPP-amenable aliens — have decreased by approximately 80%.<sup>579</sup>

DHS has observed a connection between MPP implementation and decreasing enforcement actions at the border — including a rapid and substantial decline in apprehensions in those areas where the most amenable aliens have been processed and returned to Mexico pursuant to MPP.<sup>580</sup>

DHS found that . . . “MPP returnees who do not qualify for relief or protections are being quickly removed from the United States. Moreover, aliens without meritorious claims — which no longer constitute a free ticket into the United States — are beginning to voluntarily return home.”<sup>581</sup>

DHS concluded its review of MPP and found it to be a “cornerstone” of DHS’s efforts to restore integrity to the immigration system:

MPP is one among several tools DHS has employed effectively to reduce the incentive for aliens to assert claims for relief or protection, many of which may be meritless, as a means to enter the United States to live and work during the pendency of multi-year immigration proceedings.<sup>582</sup>

The court concluded that “Since MPP’s termination, the number of enforcement encounters on the Southwest border has [indeed] skyrocketed . . . [with] encounters jumping from 75,000 in January 2021, when MPP was suspended, to about 173,000 in April 2021.”<sup>583</sup> In *Texas v. Biden*, the Fifth Circuit Court of Appeals explained that the district court “pointed to evidence that ‘the termination of MPP has contributed to the current border surge’ . . . (citing DHS’s previous determinations that MPP had curbed the rate of illegal entries).”

But Secretary Mayorkas went ahead anyway to attempt to terminate the MPP:

Within weeks after taking office, President Biden issued an Executive Order directing the Secretary of Homeland Security to review and assess whether to terminate or modify MPP. After a thorough review, Secretary Alejandro Mayorkas concluded that MPP should be terminated, and on June 1, 2021, issued a memorandum to that effect. On August 13, 2021, however, the U.S. District Court for the Northern District of Texas determined that the June 1, 2021 memorandum was not issued in compliance with the [APA]. The Court remanded it to the Department for further consideration . . .

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<sup>579</sup> *Id.* at 833 (citations and footnote omitted).

<sup>580</sup> *Id.* (citation omitted).

<sup>581</sup> *Id.* (citations omitted).

<sup>582</sup> *Id.* at 834 (citation omitted).

<sup>583</sup> *Id.* at 837.

After further and more extensive review, including a robust consideration of the benefits and costs of MPP, Secretary Mayorkas announced his decision to terminate MPP and to rescind all prior memoranda relating to MPP . . . .<sup>584</sup>

Secretary Mayorkas and Attorney General Merrick Garland explained why they did not want to restart the MPP:

[We] considered whether returning noncitizens to Mexico . . . through the [MPP] . . . would have a similar effect to [our] proposed approach . . . For two reasons, DHS is responding to the current exigency with the approach reflected in this proposed rule rather than attempting to manage the current surge in migration by relying solely on the programmatic use of its contiguous-territory return authority.

*First*, the resources and infrastructure necessary to use contiguous-territory return authority at scale are not currently available. To employ the contiguous-territory return authority at a scale sufficient to meaningfully address the anticipated migrant flows, the United States would need to redevelop and significantly expand infrastructure for noncitizens to be processed in and out of the United States to attend immigration court hearings throughout the duration of their removal proceedings. This would require, among other things, the construction of substantial additional court capacity along the border. It would also require the reassignment of [immigration judges] and ICE attorneys to conduct the hearings and CBP personnel to receive and process those who are coming into and out of the country to attend hearings.<sup>585</sup>

However, DHS clearly had the resources and infrastructure in place just a few years prior when the MPP was implemented and expanded operationally along the entire Southwest border. What did Secretary Mayorkas do with those resources and infrastructure? At the very least, just as the MPP was implemented in stages, Secretary Mayorkas could have reimplemented it in stages.

Secretary Mayorkas and Attorney General Garland also advanced another reason:

*Second*, programmatic implementation of contiguous-territory return authority requires Mexico's concurrence and support. When DHS was previously under an injunction requiring it to re-implement MPP, the Government of Mexico would only accept the return of MPP enrollees consistent with available shelter capacity in specific regions, and indeed had to pause the process at times due to shelter constraints. Notably, Mexico's shelter network is already strained from the high volume of northbound irregular migration we are seeing today . . . Any potential re-starting of returns under MPP . . . would require the Government of Mexico to

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<sup>584</sup> Memorandum from Robert Silvers, Under Secretary, Office of Strategy, Pol'y, and Plans, Dep't of Homeland Sec., to U.S. Custom and Border Protection, U.S. Immgr. and Custom Enf't, U.S. Citizenship and Immigration Services, Office of Operations Coordination, *Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols*, at 1 (Dec. 2, 2021), available at [https://www.dhs.gov/sites/default/files/2022-01/21\\_1202\\_ply\\_mpp-policy-guidance\\_508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1202_ply_mpp-policy-guidance_508.pdf).

<sup>585</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704, 11731 (Feb. 23, 2023) (proposed rule).

make an independent decision to accept noncitizens who would be returned under this authority and to date the Government of Mexico has made clear that it will not accept such returns.<sup>586</sup>

It is certainly the case that successful implementation of the MPP requires Mexico's concurrence and support as a sovereign nation. It seems likely, however, that Mexico would again provide such concurrence and support if it sensed that Secretary Mayorkas and President Biden themselves supported the program. In fact, Stephania Taladrid has reported in the *New Yorker* in 2022 that:

“It’s not necessarily the case that the Mexican government opposes [the MPP],” a senior official who served in the Biden Administration said. “One of the things that they had consistently told us — when they saw that Biden had won, and obviously saw that there was likely going to be a reversal of some, if not many, of the policies — was, ‘Go slow.’ Because they feared what ultimately ended up happening, which was a large rush of people through their country to reach the United States.”<sup>587</sup>

## 2. Border Wall Construction

Secretary Mayorkas terminated border wall construction c.<sup>588</sup> DHS stated that:

“Consistent with the Department of Homeland Security’s . . . border barrier plan . . . CBP . . . in coordination with the U.S. Army Corps of Engineers . . . intends to cancel the remaining border barrier contracts located within U.S. Border Patrol’s . . . Laredo Sector and all border barrier contracts located in the Rio Grande Valley Sector.

Secretary Mayorkas acted despite the fact that the border wall system is a critical and successful component in maintaining order and security at the Southwest border. A CBP press release in October 2020 stated plainly, “The results speak for themselves: illegal drug, border crossing, and human smuggling activities have decreased in areas where barriers are deployed . . . [T]he border wall is forcing drug smugglers to where we are best prepared to catch them – our ports of entry.”<sup>589</sup> The release also noted other successes achieved by investing in the border wall system. In the Yuma Sector, illegal crossings in places with new border wall system dropped 87 percent from FY 2019 to FY 2020. In one section of the Rio Grande Valley Sector, apprehensions decreased by 79 percent following the construction of a new border wall system.

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<sup>586</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. at 11731 (Feb. 23, 2023).

<sup>587</sup> Stephania Taladrid, *The Continued Calamity at the Border*, *New Yorker*, Jan. 18, 2022, available at <https://www.newyorker.com/news/dispatch/the-continued-calamity-at-the-border?>

<sup>588</sup> Press Release, U.S. Dep’t of Homeland Sec., DHS to Terminate Border Barrier Contracts in Laredo and Rio Grande Valley, (Oct. 8, 2021), available at <https://www.dhs.gov/news/2021/10/08/dhs-terminate-border-barrier-contracts-laredo-and-rio-grande-valley>.

<sup>589</sup> DHS, *News, The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, October 29, 2020, available at <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers>.

In testimony before the House Committee on Homeland Security on April 19, 2023, Secretary Mayorkas declared, “I stand by the decision of this administration to cease construction of the wall.”<sup>590</sup>

When Secretary Mayorkas terminated border wall contracts, he essentially dismissed the experience and desires of his front-line workforce, and deprived USBP agents with an effective tool used for deterrent. According to a 2018 survey of USBP agents by the National Border Patrol Council, 89 percent said a “wall system in strategic locations is necessary to securing the border.”<sup>591</sup>

The cancelation of wall contracts also represented a major source of waste and abuse of taxpayer resources. After federal contracts with border wall construction firms were suspended, the Department of Defense (DOD) initially was incurring costs of \$6 million per day to continue paying contractors “to drive out to project sites and guard the unused pallets of steel and other construction materials.”<sup>592</sup> These costs decreased to \$3 million per day as firms laid-off workers from the projects.<sup>593</sup> Ultimately, the estimated additional cost of suspending and terminating the contracts for the roughly \$10 billion in DOD funding for border wall construction totaled around 20 percent of the allocation — an astounding waste of taxpayer resources.<sup>594</sup> Yet, Secretary Mayorkas made no immediate move to decrease the cost of taxpayer dollars. In fact, on April 27, 2022, Mayorkas testified to Congress that DHS had spent \$72 million in shutdown costs related to the halting of border wall construction.<sup>595</sup>

### 3. Asylum Cooperative Agreements

Section 208(a)(2)(A) of the INA provides the following:

[An alien may not apply for asylum] if [the Secretary of Homeland Security] determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality . . . ) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless [the Secretary] finds that it is in the public interest for the alien to receive asylum in the United States.<sup>596</sup>

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<sup>590</sup> “Congressman Brecheen Questions Secretary Mayorkas During Homeland Security Committee Hearing 4/19/23,” Congressman Josh Brecheen, YouTube video, 4:54, April 19, 2023, <https://www.youtube.com/watch?v=YCa4Y0DFOBY>.

<sup>591</sup> Stephen Dinan, “Border Patrol agents back Trump wall, survey finds,” The Washington Times, April 2, 2018, <https://www.washingtontimes.com/news/2018/apr/2/border-patrol-agents-back-trump-wall-survey-finds/>.

<sup>592</sup> S. Comm. on Homeland Sec. and Governmental Affairs, *Minority Report, President Biden is Wasting Billions by Not Building the Border Wall*, 117<sup>th</sup> Cong. (July 21, 2021) at 6.

<sup>593</sup> *Id.* 7.

<sup>594</sup> *Id.* 7

<sup>595</sup> Stephen Dinan, “DHS has spent \$72 million to avoid building more border wall,” The Washington Times, April 27, 2022, <https://www.washingtontimes.com/news/2022/apr/27/dhs-has-spent-72-million-avoid-building-more-borde/>.

<sup>596</sup> 8 U.S.C. § 1158(a)(2)(A).

These agreements, known as “safe third country agreements” and more recently as “asylum cooperative agreements” (“ACA”), equitably share the burden of complying with international asylum accords. In 2002, the United States entered into the first of these agreements, with Canada, which was implemented by regulation in 2004.<sup>597</sup>

The Trump administration signed ACAs with the governments of Guatemala on July 26, 2019,<sup>598</sup> El Salvador on September 20, 2019,<sup>599</sup> and Honduras on September 25, 2019.<sup>600</sup> Each agreement was negotiated primarily by DHS staff, and they were signed for the government of the United States by Acting DHS Secretary Kevin K. McAleenan.

DHS and the U.S. Department of Justice then promulgated an interim final rule setting forth the framework for addressing asylum claims by aliens pursuant to the ACAs (and other future agreements with countries other than Canada).<sup>601</sup> The rule stated:

The INA’s ACA provision provides authority to pursue significant policy interests by entering into bilateral or multilateral agreements allowing for burden-sharing between the United States and other countries with respect to refugee-protection claims.

Consistent with this compelling policy aim, this interim rule is intended to aid the United States in its negotiations with foreign nations on migration issues. Specifically, the rule will aid the United States as it seeks to develop a regional framework with other countries to more equitably distribute the burden of processing the protection claims of the hundreds of thousands of irregular migrants who now seek to enter the United States every year and claim a fear of return.<sup>602</sup>

To help alleviate those burdens and promote regional migration cooperation, the United States recently signed bilateral ACAs with El Salvador, Guatemala, and Honduras in an effort to share the distribution of asylum claims.<sup>603</sup>

[T]his rule will establish a screening mechanism to evaluate whether an alien who would otherwise be removable to a third country under an ACA. . . can establish that it is more likely than not that he or she would be persecuted on

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<sup>597</sup> *Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry*, 69 FR 69490 (Nov. 29, 2004).

<sup>598</sup> *Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims*, 84 Fed. Reg. 64095 (Nov. 20, 2019).

<sup>599</sup> *Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims*, 85 Fed. Reg. 83597 (Dec. 22, 2020).

<sup>600</sup> *Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims*, 85 Fed. Reg. 25462 (May 1, 2020).

<sup>601</sup> *Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act*, 84 Fed. Reg. 63994 (Nov. 19, 2019) (interim final rule; request for comment).

<sup>602</sup> *Id.* at 63997.

<sup>603</sup> *Id.* at 63995.

account of race, religion, nationality, membership in a particular social group, or political opinion, or would be tortured in that third country.<sup>604</sup>

Prior to implementation of an ACA, the Attorney General and the Secretary [of Homeland Security] . . . [shall] make a categorical determination whether a country to which aliens would be removed under such an agreement provides “access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.”<sup>605</sup>

On February 2, 2021, the same day that Secretary Mayorkas was sworn in as Secretary of DHS, and less than a week after Antony Blinken was sworn in as Secretary of U.S. Department of State, President Biden issued an Executive Order that stated in part:

The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule [discussed above] as well as any agency memoranda or guidance issued in reliance on that rule. In the interim, the Secretary of State shall promptly consider whether to notify the governments of the Northern Triangle that, as efforts to establish a cooperative, mutually respectful approach to managing migration across the region begin, the United States intends to suspend and terminate the [ACAs between the government of the United States and the governments of Guatemala, El Salvador, and Honduras].<sup>606</sup>

Four days later, on February 6, Secretary of State Blinken made the following announcement:

The United States has suspended and initiated the process to terminate the [ACAs] with the Governments of El Salvador, Guatemala, and Honduras as the first concrete steps on the path to greater partnership and collaboration in the region laid out by President Biden. The termination of these Agreements is effective after the notice period stipulated, but their suspension is immediate.<sup>607</sup>

At a Senate Committee on Homeland Security and Government Affairs hearing in May 2021, Senator Hawley questioned Secretary Mayorkas as to “why you cancelled” the El Salvador, Guatemala and Honduras ACAs.<sup>608</sup> Secretary Mayorkas responded that “the reason why [they]

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<sup>604</sup> *Id.* at 63996.

<sup>605</sup> *Id.* at 63997.

<sup>606</sup> Executive Order 14010, *Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, (Feb. 2, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration-throughout-north-and-central-america-and-to-provide-safe-and-orderly-processing/>.

<sup>607</sup> Press Release, U.S. State Dep’t, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*, (Feb. 6, 2021), available at <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

<sup>608</sup> *DHS Actions to Address Unaccompanied Minors at the Southern Border: Hearing Before the S. Comm. on Homeland Sec. and Government Affairs*, 117th Cong. (May 13, 2021), <https://www.hsgac.senate.gov/hearings/dhs-actions-to-address-unaccompanied-minors-at-the-southern-border/>.

were terminated is because there was nothing safe about them,” “that is not our concept of a safe third country,” and “in my opinion, [they] put children in harm’s way.”<sup>609</sup>

In the joint DHS and DOJ proposed rule on *Circumvention of Lawful Pathways*,<sup>610</sup> which was later promulgated on May 16, 2023, Secretary Mayorkas and Attorney General Garland explained why they decided not to pursue ACAs to address the border crisis:

The Departments considered whether to use section 208(a)(2)(A) of the INA. . . by negotiating safe third-country agreements or asylum cooperative agreements. Negotiating such agreements, however, is a lengthy and complicated process that depends on the agreement of other nations.

Although the time between the publication of an NPRM and promulgation of a final rule can be substantial, the time it takes to negotiate and finalize safe –third-country agreements remains even more protracted since they involve not only diplomatic and operational negotiations, but also, in many countries, approval of any such agreement by their respective legislatures.<sup>611</sup>

While it is certainly true that “[n]egotiating such agreements. . . is a lengthy and complicated process that depends on the agreement of other nations,” such agreements were successfully negotiated during the prior administration. All that Secretary Mayorkas and the Biden administration had to do was keep them in place.

Knowingly making false statements to Congress and to the American people, and obstructing lawful oversight in order to distract from the dire consequences of failures to replace effective border control policies with even minimally effective ones, constitute an impeachable breach of trust well within the precedents of constitutional law, history, and tradition. That breach of trust is deepened further by Secretary Mayorkas' willful refusal to carry out his statutory duty to control and guard the boundaries and borders against illegal entry, notwithstanding the dire consequences of his abdication of that duty.

### C. Constitutional History of Impeachments Based on Breach of Trust

Early Congresses reiterated the Constitutional Convention’s understanding of impeachment, which encompassed an approach to addressing behavior that is qualitatively different than criminal acts. In the history of impeachments, the overwhelming majority of impeachment articles relate to breaches of trust and related abuses of power, not criminal offenses. As Professor Gerhardt summarized in 1999:

First, it is noteworthy that of the sixteen men impeached by the House of Representatives, only four were impeached primarily or solely on grounds strictly constituting a criminal offense . . . The House's articles of impeachment against the

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<sup>609</sup> *Id.* (testimony of Alejandro Mayorkas, Sec’y of Dept. of Homeland Sec.) (video starting at 2:00.22).

<sup>610</sup> *Circumvention of Lawful Pathways*, 88 Fed. Reg. 11704.

<sup>611</sup> *Id.* at 11731-32.

other twelve include misuses of power that were not indictable federal offenses, at least at the time that they were approved.<sup>612</sup>

Gerhardt notes further that “[m]ost, if not all, of the officials impeached by the House and the seven officials convicted and removed by the Senate were found to have misused their offices or their prerogatives or to have injured seriously the Republic by breaching the special trusts that they held by virtue of holding their federal offices.”<sup>613</sup>

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<sup>612</sup> Michael Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, at 613-14 (1999) at 613-14 and n.66 (noting “These twelve include Senator William Blount (impeached in 1797 for engaging in a conspiracy to compromise the neutrality of the United States in disregard of the constitutional provisions for the conduct of foreign affairs and for an attempt to oust the President’s lawful appointee as principal agent for Indian affairs, thereby intruding upon the President’s supervision of the executive branch); Judge John Pickering (impeached in 1803 for making errors in conducting a trial in violation of his trust and duty and for “being a man of loose morals and intemperate habits,” 13 *Annals of Cong.* 322 (1803), who appeared on the bench drunk and used profane language); Associate Justice Samuel Chase (impeached in 1804 for allowing his partisan views to influence his conduct of two trials and for delivering “an intemperate and inflammatory political harangue” to a grand jury and thus conducting himself “in a manner highly arbitrary, oppressive, and unjust,” 14 *Annals of Cong.* 731 (1804)); Judge James Peck (impeached in 1826 for vindictive use of power in charging with contempt, imprisoning, and disbarring a lawyer who publicly had criticized one of his decisions); Judge West W. Humphreys (impeached in 1862 for neglect of duty because he had joined the Confederacy without resigning his position as a federal judge); President Andrew Johnson (impeached in 1868 for violating the Tenure in Office Act by removing a member of his cabinet, interfering with execution of that Act, and making inflammatory speeches that subjected the Congress to ridicule); Judge Mark Delahay (impeached in 1876 for intoxication both on and off the federal bench); Judge George W. English (impeached in 1926 for using his office for personal monetary gain as well as for threatening to jail a local newspaper editor for printing a critical editorial and summoning local officials into court under false pretext to harangue them); Judge Charles Swayne (impeached in 1903 for maliciously and unlawfully imprisoning two lawyers and a litigant for contempt and for using his office for personal monetary gain); Judge Robert Archbald (impeached in 1912 for direct and indirect personal monetary gain); Judge Harold Louderback (impeached in 1932 for direct and indirect personal monetary gain); and Judge Halsted Ritter (impeached in 1936 for direct and indirect personal monetary gain and for engaging in behavior that brought the judiciary into disrepute).”).

<sup>613</sup> Michael Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 618-19 and n.81 (1999) (stating “These officials include the following: Senator William Blount (not only for engaging in conduct that undermined presidential authority and undermined the national government’s relations with various Indian tribes, but also for acting in a manner “contrary to the duty of his trust... in violation of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof,” 5 *Annals of Cong.* 948-49 (1798)); Judge John Pickering (for making errors in conducting a trial in violation of his duty and trust and for engaging on the bench in behavior unbecoming of a federal judge); Associate Justice Samuel Chase (for conducting himself on the bench “in a manner highly arbitrary, oppressive, and unjust,” 14 *Annals of Cong.* 728-29 (1804)); Judge West Humphreys (for neglect of duty); President Andrew Johnson (for violating the Tenure in Office Act and for exercising his authority to interfere with the proper execution of the law); Judge Mark Delahay (for intoxication both on and off the bench); Secretary of War William Belknap (for receiving an illegal payment in exchange for making a military appointment); Judge George English (for using his office for personal monetary gain); Judge James Peck (for vindictive use of power); Judge Charles Swayne (for exercising his power maliciously and for using his office for personal monetary gain); Judge Robert Archbald (for using his office for improper financial gain); Judge Harold Louderback (for using his office for improper financial gain); Judge Halsted Ritter (for engaging in behavior that brought disrepute to the judiciary); Harry Claiborne (for income tax evasion); Judge Alcee Hastings (for bribery and perjury); and Judge Walter Nixon (for making false statements to a grand jury). All seven convictions and removals made by the Senate have involved abuses of power and serious breaches of the public trust: Judge Pickering (for drunkenness and senility); Judge Humphreys (for neglect of duty); Judge Archbald (for bribery); Judge Ritter (for engaging in misbehavior that brought the judiciary into disrepute); Judge Claiborne (for tax evasion); Judge Hastings (for conspiracy to solicit a bribe); and Judge Nixon (for making false statements to a grand jury).”).

As the House impeachment inquiry found when considering the impeachment of President Nixon in 1974, and as the House Judiciary Committee reiterated in its 2019 report on the impeachment of President Donald Trump, “[a] strong majority of the impeachments voted by the House since 1789 have included ‘one or more allegations that did not charge a violation of criminal law.’”<sup>614</sup>

Further, as Steven Bradbury writes for the Heritage Foundation:

In the debates of the First Congress, leading Members of the House, including Madison, expressed the view that impeachment would be an available response if the President failed to “superintend” the “excesses” of his subordinates or if he or the other officers of the executive branch neglected their duties or failed to carry out their statutory responsibilities. In the first decades of the republic following ratification, commentators continued to stress the broad nature and flexibility of the impeachment power as a response to executive misconduct. In his great Commentaries on the Constitution, Justice Joseph Story wrote in 1833: “Not but that crimes of a strictly legal character fall within the scope of the [impeachment] power . . . but that it has a more enlarged operation, and reaches, what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence.”<sup>615</sup>

There are ample precedents for impeaching high executive branch officials for breach of trust.<sup>616</sup> As Ethan J. Leib and Andrew Kent write:

Parliaments in the time of James I and Charles I used their powers to investigate, denounce, and impeach royal officials who . . . failed to faithfully execute their offices. Impeachments of ministers and other royal officials condemned them for

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<sup>614</sup> Staff of H. Comm. on the Judiciary, 116th Cong., *Constitutional Grounds for Presidential Impeachment* 33, (Comm. Print 2019), available at <https://www.congress.gov/116/meeting/house/110281/documents/HHRG-116-JU00-20191204-SD001.pdf> (quoting 1974 House Impeachment Report, p. 24: “Of the thirteen impeachments voted by the House since 1789, at least ten involved one or more allegations that did not charge a violation of criminal law.”).

<sup>615</sup> Bradbury, *supra* note 108.

<sup>616</sup> Black’s Law Dictionary (11<sup>th</sup> edition, 2019) defines “breach of trust” as “breach of trust . . . 1.1. A trustee’s violation of either the trust’s terms or the trustee’s general fiduciary obligations; the violation of a duty that equity imposes on a trustee, whether the violation was willful, fraudulent, negligent, or inadvertent . . . A breach of trust subjects the trustee to removal. . . .” *Breach of Trust*, BLACK’S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

betrayal of “trust,” “unfaithfulness and carelessness,” acting “contrary to his oath, and the faith and trust reposed in him,” and “neglect[ing] the just performance of his said Office and Duty, and [having] broken the said Trust therewith committed unto him.”<sup>617</sup>

By the time America achieved its independence from England, that understanding of potential grounds for impeachment was prevalent in America as well. In Federalist No. 46, James Madison wrote that “[G]overnments are in fact . . . agents and trustees of the people,” and that was a common sentiment among many other delegates to the Constitutional Convention as well. As Professor Robert Natelson writes:

When the federal constitutional convention met in 1787, most of the state constitutions already contained fiduciary language. At the federal convention, ideals of fiduciary government were enunciated by James Madison, Alexander Hamilton, Pierce Butler, Nathaniel Gorham, Gouverneur Morris, Elbridge Gerry, Luther Martin, Rufus King, and John Dickinson. During the ensuing public debate over the Constitution, leading proponents of the new government repeatedly characterized officials as the people’s servants, agents, guardians, or trustees. Among these proponents were Madison, Dickinson, John Jay, Tench Coxe, George Washington, James Kent (the future New York Chancellor and treatise-writer), and many others. This was a subject on which there was no disagreement from the Constitution’s opponents. They very often used the same kind of language, and based their own arguments on fiduciary principles as well.<sup>618</sup>

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<sup>617</sup> Ethan J. Leib and Andrew Kent, “*Fiduciary Law and the Law of Public Office*,” 62 *Wm. & Mary L. Rev.* 1297, 1320-21 (2021). See also E. Mabry Rogers & Stephen B. Young, “*Public Office as a Public Trust: A Suggestion that Impeachment for High Crimes and Misdemeanors Implies a Fiduciary Standard*,” 63 *GEO. L.J.* 1025, 1040 (1975) (explaining the “public trust theory” of these impeachments, in which “acting contrary to oath, to the duty of the official position, to the great trust reposed in the accused by the King, and to the laws of the Realm” was most relevant).

<sup>618</sup> Robert G. Natelson, “The Constitution and the Public Trust,” 52 *Buff. L. Rev.* 1077, 1083-85 (2004). As Carl Richard writes, Marcus Tullius Cicero was one of “[t]he founders’ principal Roman heroes”). Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* 57 (1994). Cicero famously wrote “On Duties,” in which he pronounced “It is, then, peculiarly the place of a magistrate [public official] to bear in mind that he represents the state and that it is his duty to uphold its honour and its dignity, to enforce the law, to dispense to all their constitutional rights, and to remember that all this has been committed to him as a sacred trust.” Marcus Tullius Cicero, *De Officiis* 126 (Walter Miller trans., Loeb ed. 1956). Another philosopher well read by the founders was John Locke, who also wrote famously on the duties of public officials, writing in his *Second Treatise on Civil Government* that public officials must act consistently with the purposes of their governmental trust, for the good of the people and the security of their persons, liberty, and property, adding that when officials violate those purposes of government, their authority is subject to forfeiture. John Locke, *Of Civil Government: Second Treatise* 144-45 (Russell Kirk, intro. 1955) (1690). Locke wrote that “it is likely, the common question will be made: Who shall be judge whether the prince or legislative act contrary to their trust? . . . To this I reply: The people shall be judge; for who shall be judge whether the trustee or deputy acts well and according to the trust reposed in him, but he who deposes him, and must, by having deposed him, have still the power to discard him when he fails in his trust? If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment, where the welfare of millions is concerned, and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous?” *Id.* at 203-04. Locke was cited repeatedly during the constitutional convention debates. See, e.g., James Madison, *Journal* (June 27, 1787), reprinted in *The Records of the Federal Convention of 1787*, vol. 1 (Max Farrand ed., 1911) at 437-38.

For example, James Madison considered whether the executive “might betray his trust to foreign powers.”<sup>619</sup> Alexander Hamilton wrote that the union should not “be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust,”<sup>620</sup> and George Washington referred to his own military position as a “public trust.”<sup>621</sup>

As Professor Natelson adds, “The new federal Constitution itself referred in several places to ‘public Trust’ and to public offices being ‘of Trust.’”<sup>622</sup> The elements of a public trust include the following:

In addition to certain obvious moral norms, such as not absconding with the public till, there are at least five broad fiduciary obligations potentially relevant to government officials: (1) the duty to follow instructions, (2) the duty of reasonable care, (3) the duty of loyalty, (4) the duty of impartiality, and (5) the duty to account. The first of these is the obligation to act in accordance with the purpose and rules of the relationship as set forth in the governing instruments. In the government context, this means that officials should work only in accordance with the purposes of their offices and honor the rules set by pre-established law and administrative regulations. The duty of reasonable care applies irrespective of good intent and comprehends obligations to manage assets competently, select and supervise agents diligently, and undertake appropriate factual and legal investigations before making decisions. The duty of loyalty is the fiduciary’s obligation to subordinate his own interests to the welfare of the beneficiaries. . . . The duty of impartiality requires the decision maker to avoid favoring some beneficiaries over others, unless otherwise directed by the governing documents. Thus, a trustee, for example, must act with due regard to each beneficiary’s respective interests. By analogy, public trustees should avoid targeting particular constituencies for favor or for punishment. Finally, the fiduciary has a duty to account for his conduct, including an obligation to repair any harm caused by breach.<sup>623</sup>

Of course, as Professor Natelson writes, “Impeachment was the principal punitive measure associated in the public mind with breach of trust.”<sup>624</sup> The availability of impeachment of high

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<sup>619</sup> The Records of the Federal Convention of 1787, vol. 2 (Max Farrand ed., 1911) at 66.

<sup>620</sup> THE FEDERALIST NO. 59, at 310 (Alexander Hamilton) (Gideon ed., 2001).

<sup>621</sup> George Washington, To the Executives of the States, Providence U.S. Chron., (Mar. 15, 1783), reprinted in The Documentary History of the Ratification of the Constitution, vol. 13 (Merrill Jensen et al. eds., 1976) at 70.

<sup>622</sup> Robert G. Natelson, “The Constitution and the Public Trust,” 52 Buff. L. Rev. 1077, 1086 (2004) (citing U.S. Const. art. I, § 3, cl. 7 (“Office of.. Trust”); id., art. I, § 9, cl. 8; id., art. II, § 1, cl. 2 (“Office of Trust”).

<sup>623</sup> Natelson, *supra* note 620, at 1088-90.

<sup>624</sup> *Id.* at 1165. At the national convention, James Madison “thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislative or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. . . . In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within

government officials with crucial duties related to the safety and security of Americans, such as Secretary Mayorkas, has always been considered particularly important. As Robert Natelson writes:

[W]hile citizens can elect most higher officials, the bureaucracy is effectively beyond direct citizen control and exit from the government-citizen relationship requires physically removing oneself from the government's territorial jurisdiction. For these reasons, the logic of fiduciary law suggests that the standards of conduct binding public trustees ought to be fairly demanding.<sup>625</sup>

## Duty of the Senate

Should the House do its duty and impeach Secretary Mayorkas, it will become the special and solemn duty of Senators, who are uniquely elected statewide in the federal system, to remove him from office. The Supreme Court, having denied to the states judicial review of Secretary Mayorkas' willful and systemic refusals to comply with the law, has left Congress as the only remaining source of relief for the states. The Founders designed the Senate specifically to protect the interests of the states, and Senators have a unique duty to protect the interests of the states. In Federalist No. 62, James Madison said Senators have a special obligation, a "senatorial trust."<sup>626</sup> The Senate, wrote Madison, would embody a "constitutional recognition of the portion of sovereignty remaining in the individual states" and would act to preserve that sovereignty.<sup>627</sup> In Federalist No. 45, Madison wrote that "The Senate. . . will owe its existence more or less to the favor of the State Governments. . . ."<sup>628</sup> The Senate, he continued in Federalist No. 46, would be "disinclined to invade the rights of the individual States, or the prerogatives of their governments."<sup>629</sup>

In Federalist No. 59, Alexander Hamilton also emphasized that Senators secured "a place in the organization of the National Government" for the "States, in their political capacities."<sup>630</sup> During the ratification convention in New York, Hamilton said "you will certainly see that the senators will constantly look up to the state governments with an eye of dependence and affection.

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the compass of probable events, and either of them might be fatal to the Republic." James Madison, Journal (July 20, 1788), reprinted in *The Records of the Federal Convention of 1787*, vol. 2 (Max Farrand ed., 1911) at 65-66. Gouverneur Morris said the following after hearing Madison's view on the subject: "Mr. Govr. Morris. . . was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him." James Madison, Journal (July 20, 1788), reprinted in *The Records of the Federal Convention of 1787*, vol. 2 (Max Farrand ed., 1911) at 68. In Federalist No. 65, Alexander Hamilton went on to write "A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."

<sup>625</sup> Natelson, *supra* note 620, at 1088.

<sup>626</sup> THE FEDERALIST NO. 62, at 319 (James Madison) (Gideon ed., 2001).

<sup>627</sup> *Id.* at 320.

<sup>628</sup> THE FEDERALIST NO. 45, at 240 (James Madison) (Gideon ed., 2001).

<sup>629</sup> THE FEDERALIST NO. 46, at 245 (James Madison) (Gideon ed., 2001).

<sup>630</sup> THE FEDERALIST NO. 59, at 308 (Alexander Hamilton) (Gideon ed., 2001).

If they are ambitious to continue in office, they will make every prudent arrangement for this purpose, and, whatever may be their private sentiments or politics, they will be convinced that the surest means of obtaining a reelection will be a uniform attachment to the interests of their several states.”<sup>631</sup> Hamilton then told the convention delegates “the senators will constantly be attended with a reflection, that their future existence is absolutely in the power of the states. Will not this form a powerful check?”<sup>632</sup>

The same understanding of Senators as the unique defenders of the interests of the states went on to predominate after the Constitution was ratified. In a July 1789 letter to John Adams, Roger Sherman wrote that “The senators . . . will be vigilant in supporting their rights against infringement by the . . . executive of the United States.”<sup>633</sup> In his 1803 edition of Blackstone's Commentaries, George Tucker wrote that if a senator abuses the confidence of “the individual state which he represents,” he “will be sure to be displaced.”<sup>634</sup> And Joseph Story, in his Commentaries on the Constitution of the United States, wrote that the Senate “would increase public confidence by securing the national government from undue encroachments on the powers of the states.”<sup>635</sup>

#### D. Conclusion

Nowhere in the Nixon impeachment articles is there any reference to a “crime” or “criminal” activity committed by the President himself. Instead, Article II of the Nixon impeachment articles refers to President Richard Nixon acting in ways “not authorized by law” and in ways that constituted “unlawful activities.”<sup>636</sup> That is exactly what Secretary Mayorkas has done: he has instituted policies not authorized by law, in fact specifically designed to circumvent immigration laws, and ordered DHS employees to disobey federal law.

Article I of the Nixon impeachment articles also charged the former President with “making false and misleading statements” and “false and misleading testimony,” concluding that he “acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.”<sup>637</sup> Indeed, while the Nixon articles of impeachment did not charge him with committing a crime himself, they did charge him with facilitating other people “in their

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<sup>631</sup> The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, vol. 2, at 306 (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott 1888).

<sup>632</sup> *Id.* at 317-18.

<sup>633</sup> The Founders' Constitution, vol. 2, 232 (Philip B. Kurland & Ralph Lerner eds., 1987).

<sup>634</sup> Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and the Commonwealth of Virginia 23-24 (St. George Tucker ed., Philadelphia, Birch & Snell 1803).

<sup>635</sup> Joseph Story, Commentaries on the Constitution of the United States § 702, at 183 (Boston, Hilliard, Gray & Co. 1833).

<sup>636</sup> House Judiciary Committee, Articles of Impeachment of Richard Nixon, H.R. Rep. No. 1305, 93rd Cong., 2nd Sess. (1974) at 3-4.

<sup>637</sup> *Id.* at 2.

attempts to avoid criminal liability.”<sup>638</sup> Analogously, Secretary Mayorkas' creation of policies designed to violate the federal immigration laws is facilitating and encouraging the entry of an unprecedented number of illegal aliens.

While Secretary Mayorkas has ordered DHS employees to violate federal law, which lower courts have recognized, the Supreme Court has left it to Congress to exercise the only viable means it has to provide redress to the states and the American people: the impeachment of Secretary Mayorkas.

In this case, there is an apt quote from Professor Berger:

To the extent that impeachment retains a residual punitive aura, it may be compared to deportation, which is attended by very painful consequences but which, the Supreme Court held, “is not a punishment for a crime . . . It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions” laid down for his residence, precisely as impeachment is designed to remove an unfit officer for the good of the government.<sup>639</sup>

This Committee, through these articles of impeachment, begins the process of deporting Secretary Mayorkas from his position on account of his failure to comply with his official duties, and thereby allow his position to be filled by someone willing to enforce the Nation’s immigration laws once again.

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<sup>638</sup> *Id.*

<sup>639</sup> Berger, *supra* note 77, at 81 (citing *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893)).

V. Hearings (a detailed summary of the two hearings held that were specifically related to the impeachment effort)

The Committee held the following hearings in the 118<sup>th</sup> Congress that were used to develop H. Res. 863:

1. “Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States,” held before the Homeland Security Committee on January 10, 2024. During this hearing, the Committee heard testimony from: The Honorable Austin Knudsen, Attorney General, State of Montana; The Honorable Gentner Drummond, Attorney General, State of Oklahoma; The Honorable Andrew Bailey, Attorney General, State of Missouri; Frank O. Bowman, III, Professor Emeritus of Law, University of Missouri School of law. In this hearing, the Witnesses testified on the impacts to States as a result of Secretary Mayorkas' failure to faithfully enforce the laws of the United States.
2. “Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis,” held before the Homeland Security Committee on January 18, 2024. The Committee heard testimony from: Tammy Nobles, private citizen; Josephine Dunn, private citizen; and Deborah Pearlstein, Director, Program in Law and Public Policy and Charles and Marie Robertson Visiting Professor in Law and Public Affairs, Princeton University. In this hearing, the witnesses testified on the impacts of the border crisis driven by the refusal of Secretary Mayorkas to fulfill his obligation to faithfully enforce the laws of the United States.

VI. Committee Consideration

The Committee met on January 30, 2023, a quorum being present, to consider H. Res. 863 and ordered the measure to be favorably reported to the House, as amended, by a recorded vote of 18 Yeas to 15 Nays.

VII. Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H. Res. 863:

1. An amendment to the Amendment in the Nature of a Substitute offered by Ms. Jackson Lee (117); to strike Article I; was NOT AGREED TO by a recorded vote of 15 Yeas to 18 Nays (Roll Call No. 038).

Vote: 038			
On: Amendment to the ANS offered by Ms. Jackson Lee 117			
<b>Yea</b>	<b>15</b>	<b>Nay</b>	<b>18</b>
Member	Vote	Member	Vote
Mr. Green of TN	Nay	Mr. Thompson of MS	Yea
Mr. McCaul	Nay	Ms. Jackson Lee	Yea
Mr. Higgins of LA	Nay	Mr. Payne	Yea

Mr. Guest	Nay	Mr. Swalwell	Yea
Mr. Bishop of NC	Nay	Mr. Correa	Yea
Mr. Gimenez	Nay	Mr. Carter of LA	Yea
Mr. Pfluger	Nay	Mr. Thanedar	Yea
Mr. Garbarino	Nay	Mr. Magaziner	Yea
Ms. Greene of GA	Nay	Mr. Ivey	Yea
Mr. Tony Gonzales of TX	Nay	Ms. Goldman of NY	Yea
Mr. LaLota	Nay	Mr. Robert Garcia of CA	Yea
Mr. Ezell	Nay	Mrs. Ramirez	Yea
Mr. D’Esposito	Nay	Mr. Menendez	Yea
Ms. Lee of FL	Nay	Ms. Clarke of NY	Yea
Mr. Luttrell	Nay	Ms. Titus	Yea
Mr. Strong	Nay		
Mr. Brecheen	Nay		
Mr. Crane	Nay		

2. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Correa (059); to strike Article II; was NOT AGREED TO by a recorded vote of 15 Yeas to 18 Nays (Roll Call No. 039).

Vote: 039			
On: Amendment to the ANS offered by Mr. Correa 059			
<b>Yea</b>	<b>15</b>	<b>Nay</b>	<b>18</b>
Member	Vote	Member	Vote
Mr. Green of TN	Nay	Mr. Thompson of MS	Yea
Mr. McCaul	Nay	Ms. Jackson Lee	Yea
Mr. Higgins of LA	Nay	Mr. Payne	Yea
Mr. Guest	Nay	Mr. Swalwell	Yea
Mr. Bishop of NC	Nay	Mr. Correa	Yea
Mr. Gimenez	Nay	Mr. Carter of LA	Yea
Mr. Pfluger	Nay	Mr. Thanedar	Yea
Mr. Garbarino	Nay	Mr. Magaziner	Yea
Ms. Greene of GA	Nay	Mr. Ivey	Yea
Mr. Tony Gonzales of TX	Nay	Ms. Goldman of NY	Yea
Mr. LaLota	Nay	Mr. Robert Garcia of CA	Yea
Mr. Ezell	Nay	Mrs. Ramirez	Yea
Mr. D’Esposito	Nay	Mr. Menendez	Yea
Ms. Lee of FL	Nay	Ms. Clarke of NY	Yea
Mr. Luttrell	Nay	Ms. Titus	Yea
Mr. Strong	Nay		

Mr. Brecheen	Nay	
Mr. Crane	Nay	

3. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Thompson of MS (016); to strike the text of pages 2 through 20 and insert a statement regarding due process; was NOT AGREED TO by a recorded vote of 15 Yeas to 18 Nays (Roll Call No. 040).

Vote: 040			
On: Amendment to the ANS offered by Mr. Thompson of MS 016			
<b>Yea</b>	<b>15</b>	<b>Nay</b>	<b>18</b>
Member	Vote	Member	Vote
Mr. Green of TN	Nay	Mr. Thompson of MS	Yea
Mr. McCaul	Nay	Ms. Jackson Lee	Yea
Mr. Higgins of LA	Nay	Mr. Payne	Yea
Mr. Guest	Nay	Mr. Swalwell	Yea
Mr. Bishop of NC	Nay	Mr. Correa	Yea
Mr. Gimenez	Nay	Mr. Carter of LA	Yea
Mr. Pfluger	Nay	Mr. Thanedar	Yea
Mr. Garbarino	Nay	Mr. Magaziner	Yea
Ms. Greene of GA	Nay	Mr. Ivey	Yea
Mr. Tony Gonzales of TX	Nay	Ms. Goldman of NY	Yea
Mr. LaLota	Nay	Mr. Robert Garcia of CA	Yea
Mr. Ezell	Nay	Mrs. Ramirez	Yea
Mr. D'Esposito	Nay	Mr. Menendez	Yea
Ms. Lee of FL	Nay	Ms. Clarke of NY	Yea
Mr. Luttrell	Nay	Ms. Titus	Yea
Mr. Strong	Nay		
Mr. Brecheen	Nay		
Mr. Crane	Nay		

4. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Ivey (020); to strike the text of pages 2 through 20 and insert testimony from past minority witnesses; was NOT AGREED TO by a recorded vote of 15 Yeas to 18 Nays (Roll Call No. 041).

Vote: 041			
On: Amendment to the ANS offered by Mr. Ivey 020			
<b>Yea</b>	<b>15</b>	<b>Nay</b>	<b>18</b>
Member	Vote	Member	Vote
Mr. Green of TN	Nay	Mr. Thompson of MS	Yea

Mr. McCaul	Nay	Ms. Jackson Lee	Yea
Mr. Higgins of LA	Nay	Mr. Payne	Yea
Mr. Guest	Nay	Mr. Swalwell	Yea
Mr. Bishop of NC	Nay	Mr. Correa	Yea
Mr. Gimenez	Nay	Mr. Carter of LA	Yea
Mr. Pfluger	Nay	Mr. Thanedar	Yea
Mr. Garbarino	Nay	Mr. Magaziner	Yea
Ms. Greene of GA	Nay	Mr. Ivey	Yea
Mr. Tony Gonzales of TX	Nay	Ms. Goldman of NY	Yea
Mr. LaLota	Nay	Mr. Robert Garcia of CA	Yea
Mr. Ezell	Nay	Mrs. Ramirez	Yea
Mr. D’Esposito	Nay	Mr. Menendez	Yea
Ms. Lee of FL	Nay	Ms. Clarke of NY	Yea
Mr. Luttrell	Nay	Ms. Titus	Yea
Mr. Strong	Nay		
Mr. Brecheen	Nay		
Mr. Crane	Nay		

5. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Ivey (023); to strike the text of pages 2 through 20 and insert excerpts from a letter by constitutional law scholars; was NOT AGREED TO by a recorded vote of 15 Yeas to 18 Nays (Roll Call No. 042).

Vote: 042			
On: Amendment to the ANS offered by Mr. Ivey 023			
<b>Yea</b>	<b>15</b>	<b>Nay</b>	<b>18</b>
Member	Vote	Member	Vote
Mr. Green of TN	Nay	Mr. Thompson of MS	Yea
Mr. McCaul	Nay	Ms. Jackson Lee	Yea
Mr. Higgins of LA	Nay	Mr. Payne	Yea
Mr. Guest	Nay	Mr. Swalwell	Yea
Mr. Bishop of NC	Nay	Mr. Correa	Yea
Mr. Gimenez	Nay	Mr. Carter of LA	Yea
Mr. Pfluger	Nay	Mr. Thanedar	Yea
Mr. Garbarino	Nay	Mr. Magaziner	Yea
Ms. Greene of GA	Nay	Mr. Ivey	Yea
Mr. Tony Gonzales of TX	Nay	Ms. Goldman of NY	Yea
Mr. LaLota	Nay	Mr. Robert Garcia of CA	Yea
Mr. Ezell	Nay	Mrs. Ramirez	Yea
Mr. D’Esposito	Nay	Mr. Menendez	Yea

Ms. Lee of FL	Nay	Ms. Clarke of NY	Yea
Mr. Luttrell	Nay	Ms. Titus	Yea
Mr. Strong	Nay		
Mr. Brecheen	Nay		
Mr. Crane	Nay		

6. An Amendment in the Nature of a Substitute offered by Mr. Green of TN was AGREED TO by a recorded vote of 18 Yeas to 15 Nays (Roll Call No. 047).

Vote: 047			
On: Amendment in the Nature of a Substitute to H. Res. 863 offered by Mr. Green of TN			
<b>Yea</b>	<b>18</b>	<b>Nay</b>	<b>15</b>
Member	Vote	Member	Vote
Mr. Green of TN	Yea	Mr. Thompson of MS	Nay
Mr. McCaul	Yea	Ms. Jackson Lee	Nay
Mr. Higgins of LA	Yea	Mr. Payne	Nay
Mr. Guest	Yea	Mr. Swalwell	Nay
Mr. Bishop of NC	Yea	Mr. Correa	Nay
Mr. Gimenez	Yea	Mr. Carter of LA	Nay
Mr. Pfluger	Yea	Mr. Thanedar	Nay
Mr. Garbarino	Yea	Mr. Magaziner	Nay
Ms. Greene of GA	Yea	Mr. Ivey	Nay
Mr. Tony Gonzales of TX	Yea	Ms. Goldman of NY	Nay
Mr. LaLota	Yea	Mr. Robert Garcia of CA	Nay
Mr. Ezell	Yea	Mrs. Ramirez	Nay
Mr. D'Esposito	Yea	Mr. Menendez	Nay
Ms. Lee of FL	Yea	Ms. Clarke of NY	Nay
Mr. Luttrell	Yea	Ms. Titus	Nay
Mr. Strong	Yea		
Mr. Brecheen	Yea		
Mr. Crane	Yea		

7. A motion by Mr. Green to report H. Res. 863, as amended, to the House to the House with a favorable recommendation, was AGREED TO by a recorded vote of 18 Yeas to 15 Nays (Roll Call No. 48).

Vote: 048			
On: H. Res. 863, Motion to Favorably Report, as amended			
<b>Yea</b>	<b>18</b>	<b>Nay</b>	<b>15</b>
Member	Vote	Member	Vote

Mr. Green of TN	Yea	Mr. Thompson of MS	Nay
Mr. McCaul	Yea	Ms. Jackson Lee	Nay
Mr. Higgins of LA	Yea	Mr. Payne	Nay
Mr. Guest	Yea	Mr. Swalwell	Nay
Mr. Bishop of NC	Yea	Mr. Correa	Nay
Mr. Gimenez	Yea	Mr. Carter of LA	Nay
Mr. Pfluger	Yea	Mr. Thanedar	Nay
Mr. Garbarino	Yea	Mr. Magaziner	Nay
Ms. Greene of GA	Yea	Mr. Ivey	Nay
Mr. Tony Gonzales of TX	Yea	Ms. Goldman of NY	Nay
Mr. LaLota	Yea	Mr. Robert Garcia of CA	Nay
Mr. Ezell	Yea	Mrs. Ramirez	Nay
Mr. D’Esposito	Yea	Mr. Menendez	Nay
Ms. Lee of FL	Yea	Ms. Clarke of NY	Nay
Mr. Luttrell	Yea	Ms. Titus	Nay
Mr. Strong	Yea		
Mr. Brecheen	Yea		
Mr. Crane	Yea		

VIII. Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

IX. Congressional Budget Office Estimate, New Budget Authority, Entitlement Authority, and Tax Expenditures

With respect to the requirements of clause 3(c) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with respect to the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

X. Federal Mandates Statement

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

XI. Duplicative Federal Programs

Pursuant to clause 3(c) of rule XIII, the Committee finds that H. Res. 863 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

XII. Statement of General Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII, the objective of H. Res. 863 is to impeach Department of Homeland Security Secretary Alejandro Nicolas Mayorkas for high crimes and misdemeanors.

XIII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

In compliance with rule XXI, this measure, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

XIV. Applicability to the Legislative Branch

The Committee finds that H. Res. 863 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## APPENDIX A: LETTERS FROM THE HOUSE COMMITTEE ON HOMELAND SECURITY TO THE DEPARTMENT OF HOMELAND SECURITY AND ITS COMPONENT AGENCIES

1. On January 26, 2023, the Committee sent a letter to the Administrator of the Transportation Security Administration (TSA), David Pekoske, after a media report that a cyber actor was able to access the Federal Terrorist Screening Dataset (FTSD), as well as a critical derivative of the dataset, the No-Fly List. Based on the reporting, as many as 1.5 million data entries, including names, dates of birth and aliases of individuals prohibited from flying into, out of, within, or over the United States was accessed on an unsecure Amazon Web Services server.
2. On January 30, 2023, the Committee sent a letter to the Secretary of the Department of Homeland Security (DHS), Alejandro Mayorkas, concerning President Biden's January 2021 proclamation terminating physical border barrier construction at the United States' southwest border with Mexico. The letter requested communications between components of the DHS, the Department of Defense (DOD), and third-party contractors affected by the proclamation, as well as assessments of its environmental, economic and national security impacts.
3. On January 30, 2023, the Committee sent a letter to Acting Director for U.S. Immigration and Customs Enforcement (ICE), Tae Johnson, regarding the awarding of two sole source contracts to a nonprofit, Family Endeavors, whose senior staff included several former ICE officials and a member of the Biden-Harris transition team. This letter built upon a letter sent by then-Ranking Member John Katko on December 7, 2022, and a DHS Inspector General Report that found that nearly 20% of funds allocated by ICE for the multimillion-dollar contract had gone unused by the contracting nonprofit.
4. On February 7, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas after several media reports that a Chinese Communist Party (CCP) surveillance balloon was seen in U.S. airspace. DOD acknowledged that it had been monitoring the status of the balloon for several weeks and did not inform Congress when it had entered U.S. airspace, calling into question when DHS had knowledge of the surveillance balloon and its established plan for informing Congress and the American public of its presence.
5. On February 9, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas regarding DHS' use of Notices to Appear and Parole Plus Alternatives to Detention to process migrants at the southwest border. Despite the statutory limitations to use parole on a case-by-case basis, DHS and Customs and Border Protection (CBP) had released at least 160,000 migrants into the United States in December 2022 alone.
6. On February 14, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and USNORTHCOM and NORAD Commander, General Glen D. VanHerck, following up the February 7, 2023 letter on the CCP surveillance balloon, to request a briefing on DHS' steps to prevent incursions of surveillance devices into sovereign U.S. space and to answer why Congress had not been notified by the executive branch prior to the release of media reports on the incident.

7. On February 26, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning a visit to the U.S. Coast Guard Headquarters by a delegation of officials from Cuba's Border Guard and Ministry of Foreign Affairs. At the time of the delegation visit, the Cuban government was still designated a state sponsor of terrorism, making the access of senior officials at a sensitive national security site such as the Coast Guard Headquarters extremely troubling.
8. On March 3, 2023, the Committee sent a letter to Federal Bureau of Investigation (FBI) Director Christopher Wray and TSA Administrator David Pekoske after TSA stopped a passenger attempting to smuggle an explosive device at Lehigh Valley International Airport, to request a briefing to better understand TSA's processes for identifying explosives in baggage, securing the devices, and ensuring the safety of airport passengers.
9. On March 13, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning internal complaints within DHS's Office of Intelligence and Analysis' (DHS-I&A) Overt Human Intelligence Collection Program (OHIC) about possible overreach of its statutory mandate resulting in potential violations of Americans' civil liberties. Along with communications related to DHS-I&A's creation and assessment of OHIC, the Committee requested, specifically, a document from 2016, referred to in a Politico article, that explained how OHIC operated.
10. On April 3, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas to express concern and request documents regarding possible national security concerns stemming from the use of Chinese-manufactured cranes in U.S. ports. A March 5, 2023, Wall Street Journal report estimated that cranes manufactured by Chinese firm Shanghai Zhenhua Heavy Industries were utilized in 80 percent of U.S. ports and that software used in the cranes could possibly be utilized to collect information on U.S. national security and military operations.
11. On April 20, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and FBI Director Christopher Wray requesting information on a violent attack at the site of the future Atlanta Public Safety Training Center. Since one of the individuals charged with domestic terrorism at the site of the attack was an employee of the Southern Poverty Law Center (SPLC), the Committee also enquired whether DHS or FBI had cited the SPLC as a source to identify threats of domestic terrorism.
12. On April 24, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and FBI Director Christopher Wray concerning the arrest of two individuals for operating a Chinese police station in Lower Manhattan and obstruction of justice. According to the Department of Justice (DOJ), the FBI had previously charged 40 CCP officers for similar incidents involving transnational repression schemes in the United States.
13. On April 27, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas requesting information about the U.S Citizenship and Immigration Services (USCIS) parole program for Cuban, Haitian, Nicaraguan and Venezuelan (CHNV) migrants. CBP reports indicated that at the time of writing, over 30,000 migrants per month had been processed through this program.

14. On May 1, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas requesting information on the screening and vetting of Afghan refugees in the aftermath of the U.S. withdrawal from Afghanistan. This letter renewed and expanded upon multiple requests for information from the Committee in the 117th Congress.
15. On May 10, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating the pressing need for information on security threats posed by Chinese manufactured cranes in U.S. ports, as outlined in the Committee's April 3 letter.
16. On May 10, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning the Cybersecurity and Infrastructure Security Agency's (CISA) efforts to combat Mis-, Dis- and Malinformation (MDM), including through the possible censorship-by-proxy of American citizens and planned creation of the Disinformation Governance Board (DGB). After several news reports following the release of communications by the company Twitter with government entities, the Committee was alarmed by the apparent use of government funds, resources, and authority by components of DHS to moderate or censor American speech.
17. On May 19, 2023, the Committee, joint with the House Committee on the Judiciary and the House Committee on Oversight and Accountability, sent a letter to DHS Secretary Alejandro Mayorkas requesting documents and information on individuals apprehended at the southwest border with derogatory information related to terrorism. This letter was prompted by rising totals of both known alien got-aways, migrant individuals who had evaded detection at the border, and also individuals with derogatory information in the Terrorist Screening Dataset (TSDS) in Fiscal Year (FY) 2023.
18. On June 1, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning the expansion of the Central American Minors refugee program. The eligibility for qualifying parents was expanded to include anyone who is a part of the child's household and economic unit, and from the child's country of origin. The eligibility to petition also includes individuals granted Temporary Protected Status or parole and fails to require any actual biological relation or legal responsibility to the eligible child. The Committee requested information on DHS' decision to expand the program and its process for implementation.
19. On June 1, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning modifications to the CBP One Application to allow aliens to make appointments for entry at the southwest border. Since these modifications were markedly different than the original purpose of the application, to streamline entry services and inspection for legal trade and travel, the Committee wished to understand how the application had been changed to accommodate a new feature of processing potentially undocumented migrants.
20. On June 5, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas after media reports that a grant recipient of DHS' Targeted Violence and Terrorism Prevention program had worked hand-in-hand with groups and individuals that equated mainstream conservative organizations with violent extremists. This letter expressed similar concerns to a letter from the Brennan Center for Justice at New York University School of Law to the Senate and House

Appropriations Committees, which stated that the “grant program and the organizations it funds pose a threat to core American values across all political lines.”

21. On June 9, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas to reiterate the Committee's need for documents, communications, and a briefing on DHS' vetting and screening of Afghan migrants after the August 2021 U.S. withdrawal from Afghanistan, following up on the Committee's May 1, 2023, letter to Secretary Mayorkas. In addition to accommodating DHS's requested timeline for production by reducing the scope of its requests, the Committee afforded DHS the opportunity to hold a virtual briefing.
22. On June 13, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and FBI Director Christopher Wray following a Wall Street Journal report on a joint venture between the People's Republic and China (PRC) and Cuba that would allow the CCP's intelligence services to conduct surveillance of United States citizens on US soil. This incident was part of a string of attempts by the CCP to exploit U.S. sovereignty and national security, including the CCP's surveillance balloon that entered U.S. airspace and use of police stations to repress PRC nationals in the United States, which were the subjects of the Committee's February 8, 2023, and April 4, 2023, letters, respectively.
23. On June 15, 2023, the Committee sent a letter to TSA Administrator David Pekoske requesting further information about a security breach involving the FTSD and the No-Fly List, as outlined in the Committee's January 26, 2023, letter and TSA's subsequent Security Directive 1544, which requires carriers to destroy superseded watchlist records. In addition to requests for information on its most recent response, the Committee wanted to understand TSA's strategy for identifying and responding to other similar incidents in the past 5 years.
24. On June 28, 2023, the Committee sent a letter to Acting CBP Commissioner Troy Miller concerning updates to official CBP monthly encounter statistics that occurred sometimes months after their official publication on CBP's Public Data Portal. To account for a discrepancy in numbers, it seemed CBP adjusted the total number of nationwide border encounters for every month in FY2023. The Committee wished to understand CBP's process and explanations for amending reported data.
25. On June 30, 2023, the Committee sent a letter to TSA Administrator David Pekoske requesting information on ongoing administrative disputes between TSA and airlines regarding security service fees. Both the significant amount of fees in dispute, over \$50 million, and the length of time required to resolve most of these disputes, typically years, caused significant concern for the Committee and prompted its inquiry.
26. On July 21, 2023, the Committee sent a letter to CBP's Senior Official Performing the Duties of the Commissioner Troy Miller concerning the reassignment of Gregory Bovino, U.S. Border Patrol Chief Patrol Agent for the El Centro Sector, to an indefinite headquarters assignment following the Committee's transcribed interview of Chief Bovino. A CBP whistleblower also revealed that reassignment of perceptibly problematic officers to vague roles within CBP headquarters in the hopes that they would relocate, retire, or resign, has been a longstanding practice within CBP.

27. On July 31, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and Department of the Treasury Secretary Janet Yellen, regarding DHS and the Treasury Department's efforts to combat illicit financial activities by transnational criminal organizations and suspected terrorists. Due to the significant overlap between the objectives of the Treasury Department and DHS components, namely Homeland Security Investigations and the Secret Service, in combatting illicit financial activities, the Committee wished to better understand the roles of each party.
28. On August 3, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas to better understand DHS I&A's processes for issuing security clearances to State, Local, Tribal, and Territorial (SLTT) law enforcement partners. This letter was prompted by reports that DHS had begun to strictly limit security clearances to SLTT law enforcement agencies as a policy, which had a negative impact on their ability to receive and use critical intelligence.
29. On August 3, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating its requests for information on the CHNV parole program, as outlined in the Committee's February 2, 2023, and April 27, 2023, letters. Due to DHS' delinquent responses and refusal to provide a date for full production, the Committee also expressed its willingness to compel the full production if DHS did not act promptly.
30. On August 10, 2023, the Committee sent a letter to Acting ICE Director Patrick Lechleitner following the publication of footage including former ICE official and Endeavors senior director Andrew Lorenzen-Strait admitting to brokering deals between Cherokee Federal, a federal contractor and federal agencies involved in the processing of migrant family units. Furthermore, the Committee had become aware that a former subordinate of Andrew Lorenzen-Strait, Claire Trickler-McNulty, had become the Assistant Director of ICE's Office of Immigration Project Evaluation, where she had authority to review and approve ICE contracts for migrant housing, supervision, and services.
31. On August 21, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas regarding the Secretary's testimony to the Senate Committee on the Judiciary that he did not know the significance of bracelets that were used by Mexican cartels as a smuggling tactic. In 2022, the New York Times reported that human smuggling had become a billion-dollar industry for cartels, and the Secretary's ignorance of this tactic was particularly troubling due to the then-5.1 million migrant encounters that CBP had reported during President Biden and Secretary Mayorkas's tenure, making this total possibly even higher.
32. On August 22, 2023, the Committee issued a subpoena to DHS Secretary Alejandro Mayorkas, compelling the production of data, communications, and other information related to DHS' expansion of the CHNV parole program. This subpoena followed two previous letters requesting the information, on April 27, 2023, and August 3, 2023, several delays of a production timeline by the Department of Homeland Security's Office of Legislative Affairs (DHS-OLA), and only a limited initial production on August 15, 2023.

33. On August 31, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas, FBI Director Christopher Wray and National Counterterrorism Center Director Christine Abizaid, to request a briefing on ongoing efforts to track and counter plots by the Iranian government, its proxies, and Foreign Terrorist Organizations to attack individuals in the United States. Three separate incidents in the prior year of Iranian targeting operations demonstrated the urgent need for action to respond to such threats.
34. On September 6, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and FBI Director Christopher Wray concerning a report that a dozen foreign nationals had used a smuggler with ties to the Islamic State of Iraq and Syria to cross the southwest border and enter the United States. As outlined in the Committee's May 19, 2023, letter, the rising number of both gotaways and individuals in the TSDS encountered at the southwest border had created a significant national security threat.
35. On September 14, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating its concern for the expansion of DHS's CBP One Application, as outlined in the Committee's June 1, 2023, letter. Since that letter, reports outlined that the CBP One Application was vulnerable to exploitation by cartels using virtual private networks (VPN) to evade the application's geofencing requirements to secure appointments for migrants outside of Mexico.
36. On September 18, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating and prioritizing its requests for documents and communications regarding CISA's potential involvement in content moderation and removal efforts with private entities and CISA-funded non-governmental organizations, as outlined in the Committee's May 10, 2023, letter.
37. On September 19, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas, FBI Director Christopher Wray and DOD Secretary Lloyd J. Austin, concerning a report of multiple instances of Chinese nationals attempting to access U.S. military bases and other sensitive sites. The report mentioned that in recent years, as many as 100 such incidents had been reported at sensitive sites in the United States.
38. On September 21, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas regarding the establishment of the Homeland Intelligence Expert Group within the Department of Homeland Security's I&A, which included several individuals with demonstrated political bias that might inhibit their ability to provide impartial analysis of Homeland Security threats.
39. On September 26, 2023, the Committee on sent a letter to Acting ICE Director Patrick Lechleitner concerning the authority and operations of ICE's Office of Immigration Program Evaluation (OIPE), which was subject to a media report that stated that certain migrant supervision contracts require the direct approval of OIPE. As the Committee's August 10 letter outlined, Claire Trickler-McNulty, OIPE's assistant director, is a political appointee with significant personal and professional connections to former ICE official Andrew Lorenzen-Strait, who had recently served as a senior director for Family Endeavors, whom ICE awarded a multimillion-dollar migrant housing contract.

40. On September 26, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating its requests for data and communications relating to the CHNV parole program as outlined in the Committee's August 22, 2023, subpoena and requesting a concrete timeline for production.
41. On September 26, 2023, the Committee, joint with the House Committee on Foreign Affairs, the House Committee on Education and the Workforce and the House Select Committee on China, sent a letter to DHS Secretary Alejandro Mayorkas concerning several issues with the Forced Labor Enforcement Task Force's (FLETf) enforcement of the Uyghur Forced Labor Prevention Act (UFLPA). Among the concerns were FLETf's decision to grant the Department of Labor's Bureau of International Labor Affairs the role of monitoring forced labor from the People's Republic of China, the limited use of sanctions by the Biden administration and the limited number of entities added to the Department of Commerce's Bureau of Industry and Security's Entity List.
42. On September 29, 2023, the Committee, joint with the House Committee on the Judiciary and the House Committee on Oversight and Accountability, sent a letter to DHS Secretary Alejandro Mayorkas again requesting information on individuals with derogatory information related to terrorism that had been apprehended at the southwest border, as outlined in the May 19, 2023, letter from the Committees.
43. On October 13, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas reiterating its request for data, communications and information related to DHS' expansion of the CBP One mobile application and its possible cybersecurity vulnerabilities, as outlined in the Committee's September 14, 2023, letter to DHS.
44. On October 20, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas concerning the hiring, vetting and performance of a USCIS adjudications officer, Nejwa Ali. According to media reports, Nejwa Ali, who had served as a spokeswoman for the Palestine Liberation Organization and made several antisemitic social media posts during the tenure of her USCIS employment which escalated to even more intense and disturbing material that glorified the terrorist group Hamas in the wake of Hamas' October 7, 2023, attack on Israel.
45. On October 24, 2023, the Committee sent a letter to Acting ICE Director Patrick Lechleitner, Assistant Director of OIPE Claire Trickler-McNulty and Principal Deputy General Counsel for the Department of Homeland Security Joseph Maher, requesting copies of materials related to Claire Trickler-McNulty's employment and her compliance with existing ethical standards for political appointees.
46. On October 24, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas following a media report that the San Diego Field Office Intelligence Unit of CBP had published an official, internal document entitled, "Foreign Fighters of Israel-Hamas Conflict May Potentially be Encountered at Southwest Border". The Committee expressed concern that it had first learned of this report via media and not through an official channel with DHS, an issue it had also raised in its February 7, 2023, letter on a CCP surveillance balloon.

47. On October 27, 2023, the Committee sent a letter to Acting ICE Director Patrick Lechleitner reiterating its requests for documents, communications and other information related to OIPE and its assistant director Claire Trickler-McNulty, as outlined in the Committee's September 26, 2023, letter.
48. On October 31, 2023, the Committee issued a subpoena to DHS Secretary Alejandro Mayorkas for all delinquent requests for information on DHS' vetting and screening of Afghan migrants after the August 2021 U.S. withdrawal from Afghanistan, as outlined in the Committee's May 1, 2023, and June 9, 2023, letters. In the two weeks before the subpoena, the Committee had received two productions pursuant to its letters containing either thousands of pages of fully redacted or entirely illegible pages or data sheets that insufficiently responded to the Committee's requests.
49. On November 1, 2023, the Committee sent a letter to DHS Assistant Secretary for Legislative Affairs Zephranie Buetow and Acting ICE Assistant Director of Congressional Relations Sean Hackbarth concerning multiple instances of miscommunication, delinquent responses, and insufficient productions to the Committee's requests. The Committee requested communications between DHS-OLA and ICE-OCR related to its previous letters in order to better understand why DHS and ICE had provided only limited responses to its production requests, and oftentimes multiple months after its established deadlines.
50. On December 11, 2023, the Committee sent a letter to DHS Secretary Alejandro Mayorkas and FBI Director Christopher Wray concerning investigations into instances of foreign government-sponsored transnational repression on U.S. soil. The Committee had established its concern for transnational repression schemes by the Iranian government and the CCP in its April 24, 2023, letter and August 31, 2023, letter, and had held a hearing on October 25, 2023, where it heard testimony from Masih Alinejad, who had nearly been a victim of kidnapping by malign actors associated with the Iranian government.
51. On January 4, 2024, the Committee sent a letter to DHS Secretary Alejandro Mayorkas requesting information about Secretary Mayorkas's justification for paroling certain foreign nationals into the United States without explicitly providing compelling reasons in the public interest to do so. The Committee requested both DHS's justification and any internal guidance issued to DHS components that referred to determinations of compelling reasons to parole certain groups foreign nationals.
52. On January 4, 2024, the Committee sent a letter to DHS Secretary Alejandro Mayorkas requesting copies of reports on DHS's detention capacity. Under 8 U.S.C § 1368, the Secretary has a legal obligation to inform Congress of its detention capacity, the number of criminal aliens released from detention, and the number of inadmissible or deportable aliens released into the United States due to a lack of detention space, every six months, though the Committee had yet to receive a single report throughout the duration of the 118th Congress.

APPENDIX B: TRANSCRIBED INTERVIEWS OF KEY PEOPLE TO THE IMPEACHMENT  
AGAINST ALEJANDRO N. MAYORKAS

1. Bovino, Gregory K. .... Chief Patrol Agent, El Centro Sector, U.S. Border Patrol, April 2020 – July 2023, August 2023 – Present
2. Caudle, Dustin ..... Deputy Chief Patrol Agent, Yuma Sector, U.S. Border Patrol, August 2022 – Present
3. Chavez, Gloria I. .... Chief Patrol Agent, Rio Grande Valley Sector, U.S. Border Patrol, October 2022 – Present
4. Good, Anthony “Scott” ..... Chief Patrol Agent, El Paso Sector, U.S. Border Patrol, March 2023 – Present
5. Heitke, Aaron M. .... Chief Patrol Agent, San Diego Sector, U.S. Border Patrol, February 2020 – July 2023
6. Martinez, Joel ..... Chief Patrol Agent, Laredo Sector, U.S. Border Patrol, June 2023 – Present
7. McGoffin, Sean Lynn ..... Chief Patrol Agent, Yuma Sector, U.S. Border Patrol, December 2023 – Present; Chief Patrol Agent, Big Bend Sector, U.S. Border Patrol, December 2020 – December 2023
8. Modlin, John R. .... Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, August 2021 – Present
9. Morgan, Mark A. .... Acting Commissioner, U.S. Customs and Border Protection, July 2019 – January 2021; Acting Director, U.S. Immigration and Customs Enforcement, May 2019 – July 2019; Chief Patrol Agent, U.S. Border Patrol, October 2016 – January 2017
10. Owens, Jason D. .... Chief Patrol Agent, U.S. Border Patrol, June 2023 – Present; Chief Patrol Agent, Del Rio Sector, U.S. Border Patrol, November 2021 – June 2023
11. Scott, Rodney S. .... Chief Patrol Agent, U.S. Border Patrol, February 2020 – August 2021

APPENDIX C: HEARINGS AND MEETINGS OF THE HOUSE OF REPRESENTATIVES IN  
THE 118TH CONGRESS CONDUCTING OVERSIGHT OF SECRETARY ALEJANDRO  
MAYORKAS, THE DEPARTMENT OF HOMELAND SECURITY, AND THE BORDER  
CRISIS

1. *“A Roundtable on America’s Fentanyl Crisis.”* January 11, 2023. H. Comm. on Energy and Commerce (available at <https://www.youtube.com/watch?v=-dKOgqBcc8I>)\*

2. *“The Biden Border Crisis: Part I.”* February 1, 2023. H. Comm. on the Judiciary (Serial no. 118-2) (<https://www.govinfo.gov/content/pkg/CHRG-118hhr50918/pdf/CHRG-118hhr50918.pdf>)
3. *“On the Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents.”* February 7, 2023. H. Comm. on Oversight and Accountability. (Serial no. 118-2) (<https://www.congress.gov/118/meeting/house/115281/documents/HHRG-118-GO00-Transcript-20230207.pdf>)
4. *“The Biden Border Crisis, Part II.”* February 23, 2023. H. Comm. on the Judiciary. (Serial no. 118-4) (<https://www.congress.gov/118/chrg/CHRG-118hhr51491/CHRG-118hhr51491.pdf>)
5. *“The Fentanyl Crisis in America: Inaction is No Longer an Option.”* March 1, 2023. H. Comm. on the Judiciary (Serial no. 118-5) (<https://www.congress.gov/118/chrg/CHRG-118hhr51493/CHRG-118hhr51493.pdf>)
6. *“Force Multipliers: Examining the Need for Additional Resources to Disrupt Transnational Crime at the Border and Beyond.”* March 8, 2023. H. Comm on Oversight and Accountability. (Serial no. 118-5) (<https://www.congress.gov/118/chrg/CHRG-118hhr51472/CHRG-118hhr51472.pdf>)
7. *“Failure by Design: Examining Secretary Mayorkas’ Border Crisis.”* March 15, 2023. H. Comm. on Homeland Sec. (Serial no. 118-3) (<https://www.congress.gov/118/chrg/CHRG-118hhr52122/CHRG-118hhr52122.pdf>)
8. *“Securing America’s Maritime Border: Challenges and Solutions for U.S. National Security.”* March 23, 2023. H. Comm. on Homeland Sec. (Serial no. 118-5) (<https://www.govinfo.gov/content/pkg/CHRG-118hhr52386/pdf/CHRG-118hhr52386.pdf>)
9. *“The State of American Diplomacy in 2023: Growing Conflicts, Budget Challenges, and Great Power Competition.”* March 23, 2023. H. Comm. on Foreign Affairs. (Serial no. 118-6) (<https://www.congress.gov/118/chrg/CHRG-118hhr52241/CHRG-118hhr52241.pdf>)
10. *“Follow the Money: The CCP’s Business Model Fueling the Fentanyl Crisis.”* March 23, 2023. H. Comm. on Financial Services. (Serial no. 118-11) (<https://www.congress.gov/118/chrg/CHRG-118hhr52389/CHRG-118hhr52389.pdf>)
11. *“Biden’s Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border.”* March 28, 2023. H. Comm. on Homeland Sec. (Serial no. 118-6) (<https://www.congress.gov/118/chrg/CHRG-118hhr52888/CHRG-118hhr52888.pdf>)
12. *“Department of Homeland Security Appropriations for 2024.”* March 29, 2023. H. Comm. on Appropriations. (<https://www.congress.gov/118/chrg/CHRG-118hhr53030/CHRG-118hhr53030.pdf>)

13. *"The Homeland Security Cost of the Biden Administration's Catastrophic Withdrawal from Afghanistan."* April 18, 2023. H. Comm. on Homeland Sec. (Serial no. 118-7) (<https://www.congress.gov/118/chrg/CHRG-118hhr52889/CHRG-118hhr52889.pdf>)
14. *"Oversight of the Office of Refugee Resettlement's Unaccompanied Alien Children Program."* April 18, 2023. H. Comm. on Oversight and Accountability. (Serial no. 118-20) (<https://www.congress.gov/118/chrg/CHRG-118hhr51892/CHRG-118hhr51892.pdf>)
15. *"Insights from the HHS Inspector General on Oversight of Unaccompanied Minors, Grant Management, and CMS."* April 18, 2023. H. Comm. on Energy and Commerce. (available at <https://www.youtube.com/watch?v=Ezpk5BIDS7Y>)\*
16. *"Budget Hearing – Fiscal Year 2024 Request for the U.S. Immigration and Customs Enforcement Agency."* April 18, 2023. H. Comm. on Appropriations. (<https://www.govinfo.gov/content/pkg/CHRG-118hhr53031/pdf/CHRG-118hhr53031.pdf>)
17. *"Budget Hearing – Fiscal Year 2024 Request for the U.S. Customs and Border Protection Agency."* April 19, 2023. H. Comm. on Appropriations. (<https://www.govinfo.gov/content/pkg/CHRG-118hhr53031/pdf/CHRG-118hhr53031.pdf>)
18. *"The Biden Border Crisis: Exploitation of Unaccompanied Alien Children."* April 26, 2023. H. Comm. on the Judiciary. (Serial no. 118-16) (<https://www.govinfo.gov/content/pkg/CHRG-118hhr51996/pdf/CHRG-118hhr51996.pdf>)
19. *"China in Our Backyard: How Chinese Money Laundering Organizations Enrich the Cartels."* April 26, 2023. H. Comm. on Oversight and Accountability. (Serial no. 118-25) (<https://www.congress.gov/118/meeting/house/115810/documents/HHRG-118-GO27-Transcript-20230426.pdf>)
20. *"Protecting the Homeland: An Examination of Federal Efforts to Support State and Local Law Enforcement."* May 16, 2023. H. Comm. on Homeland Sec. (Serial no. 118-12) (<https://www.congress.gov/118/chrg/CHRG-118hhr54104/CHRG-118hhr54104.pdf>)
21. *"The Biden Border Crisis: Part III."* May 23, 2023. H. Comm. on the Judiciary. (Serial no. 118-22) (<https://www.congress.gov/118/chrg/CHRG-118hhr52461/CHRG-118hhr52461.pdf>)
22. *"Examining DHS' Failure to Prepare for the Termination of Title 42."* June 6, 2023. H. Comm. on Homeland Sec. (Serial no. 118-15) (<https://www.congress.gov/118/chrg/CHRG-118hhr53978/CHRG-118hhr53978.pdf>)
23. *"Help Wanted: Law Enforcement Staffing Challenges at the Border."* June 6, 2023. H. Comm. on Oversight and Accountability. (Serial no. 118-39) (<https://www.congress.gov/118/chrg/CHRG-118hhr52573/CHRG-118hhr52573.pdf>)

24. *“Transnational Criminal Organizations: The Menacing Threat to the U.S. Homeland.”* June 7, 2023. H. Comm. on Homeland Sec. (Serial no. 118-16) (<https://www.congress.gov/118/chrg/CHRG-118hhr53960/CHRG-118hhr53960.pdf>)
25. *“The Border Crisis: Is the Law Being Faithfully Executed?”* June 7, 2023. H. Comm. on the Judiciary. (Serial no. 118-25) (<https://www.congress.gov/118/chrg/CHRG-118hhr52733/CHRG-118hhr52733.pdf>)
26. *“Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis.”* June 14, 2023. H. Comm. on Homeland Sec. (Serial no. 118-17) (<https://www.congress.gov/118/chrg/CHRG-118hhr54093/CHRG-118hhr54093.pdf>)
27. *“Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security.”* June 21, 2023. H. Comm. on Homeland Sec. (Serial no. 118-18) (<https://www.congress.gov/118/chrg/CHRG-118hhr53947/CHRG-118hhr53947.pdf>)
28. *“Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border.”* July 12, 2023. H. Comm. on Homeland Sec. (Serial no. 118-21) (<https://www.congress.gov/118/chrg/CHRG-118hhr54231/CHRG-118hhr54231.pdf>)
29. *“Oversight of the Federal Bureau of Investigation.”* July 12, 2023. H. Comm on the Judiciary. (Serial no. 118-32) (<https://www.congress.gov/118/chrg/CHRG-118hhr52977/CHRG-118hhr52977.pdf>)
30. *“The Consequences of Criminal Aliens on U.S. Communities.”* July 13, 2023. H. Comm. on the Judiciary. (Serial no. 118-34) (<https://www.congress.gov/118/chrg/CHRG-118hhr53028/CHRG-118hhr53028.pdf>)
31. *“Opening the Flood Gates: Biden’s Broken Border Barrier.”* July 18, 2023. H. Comm. on Homeland Sec. (Serial no. 118-24) (<https://www.govinfo.gov/content/pkg/CHRG-118jhr54404/pdf/CHRG-118jhr54404.pdf>)
32. *“Why Expanding Medicaid to DACA Recipients Will Exacerbate the Border Crisis.”* July 18, 2023. H. Comm. on Oversight and Accountability. (Serial no. 118-51) (<https://www.congress.gov/118/chrg/CHRG-118hhr53005/CHRG-118hhr53005.pdf>)
33. *“Biden and Mayorkas’ Open Border: Advancing Cartel Crime in America.”* July 19, 2023. H. Comm. on Homeland Sec. (Serial no. 118-25) (<https://www.govinfo.gov/content/pkg/CHRG-118hhr54482/pdf/CHRG-118hhr54482.pdf>)
34. *“The Real Cost of an Open Border: How Americans are Paying the Price.”* July 26, 2023. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=q2n1h6l1bMg>)\*
35. *“Oversight of the U.S. Department of Homeland Security.”* July 26, 2023. H. Comm. on the Judiciary. (Serial no. 118-39) (<https://www.govinfo.gov/content/pkg/CHRG-118hhr53168/pdf/CHRG-118hhr53168.pdf>)

36. *“Stopping the Exploitation of Migrant Children: Oversight of HHS’ Office of Refugee Resettlement.”* July 26, 2023. H. Comm. on Energy and Commerce. (available at <https://www.youtube.com/watch?v=LYX-L4gpTRU>)\*
37. *“Biden’s Border Crisis and its Effect on American Communities.”* August 8, 2023. H. Comm. on Oversight and Accountability and H. Comm. on the Judiciary. (available at <https://www.youtube.com/watch?v=2m6d8tTF7o0>)\*
38. *“An Unbearable Price: The Devastating Human Costs of the Biden-Mayorkas Border Crisis.”* September 13, 2023. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=rPhbaOTSzHc>)\*
39. *“The Impact of Biden’s Open Border on the American Workforce.”* September 13, 2023. H. Comm. on Education and the Workforce. (available at <https://www.youtube.com/watch?v=MQJK8tMqSnU>)\*
40. *“Terrorist Entry Through the Southwest Border.”* September 14, 2023. H. Comm. on the Judiciary. (Serial no. 118-43) (<https://www.congress.gov/118/chrg/CHRG-118hhr53550/CHRG-118hhr53550.pdf>)
41. *“The Financial Costs of Mayorkas’ Open Border.”* September 20, 2023. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=49LVY4FL2xk>)\*
42. *“Destroying America’s Best Idea: Examining the Biden Administration’s Use of National Park Service Lands for Migrant Camps.”* September 27, 2023. H. Comm. on Natural Resources. (available at <https://www.youtube.com/watch?v=5N1I2KrChwo>)\*
43. *“Securing Our Border, Saving Our National Parks.”* October 18, 2023. H. Comm. on Natural Resources. (available at <https://www.youtube.com/watch?v=q1xkxU5eIe8>)\*
44. *“The Broken Path: How Transnational Criminal Organizations Profit from Human Trafficking at the Southwest Border.”* November 14, 2023. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=mpawtM4Ggos>)\*
45. *“Worldwide Threats to the Homeland.”* November 15, 2023. H. Comm. on Homeland Sec. (available at [https://www.youtube.com/watch?v=yVjgdrpk\\_OE](https://www.youtube.com/watch?v=yVjgdrpk_OE))\*
46. *“The U.S. Border Crisis and the American Solution to an International Problem.”* November 30, 2023. H. Comm. on Foreign Affairs. (available at <https://www.youtube.com/watch?v=rhtn28fLqXc>)\*
47. *“Protecting Our Preparedness: Assessing the Impact of the Border Crisis on Emergency Management.”* December 5, 2023. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=l4dTrDPtVTw>)\*

48. *“Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States.”* January 10, 2024. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=VN-ty-MkypA>)\*
  49. *“The Impact of Illegal Immigration on Social Services.”* January 11, 2024. H. Comm. on the Judiciary. (available at <https://www.youtube.com/watch?v=wWumAXkkkCM>)\*
  50. *“The Biden Administration’s Regulatory and Policymaking Efforts to Undermine U.S. Immigration Law.”* January 17, 2024. H. Comm. on Oversight and Accountability. (available at <https://www.youtube.com/watch?v=zjDX2g9rjtQ>)\*
  51. *“A Threat to Every Community: Assessing the Safety, Health, and Economic Consequences of President Biden’s Border Policies.”* January 17, 2024. H. Comm. on Energy and Commerce. (available at <https://www.youtube.com/watch?v=O9r5Yo76xAg>)\*
  52. *“Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis.”* January 18, 2024. H. Comm. on Homeland Sec. (available at <https://www.youtube.com/watch?v=gsod6sbSHSA>)\*
  53. *“The Southern Border Crisis: The Constitution and the States.”* January 30, 2024. H. Comm on the Judiciary. (available at <https://www.youtube.com/watch?v=CDQRP-CPxcg>)\*
- \* Asterisked items have no official public transcript by the time of writing

APPENDIX D: REPORTS FROM THE GOVERNMENT ACCOUNTABILITY OFFICE  
AND THE DEPARTMENT OF HOMELAND SECURITY OFFICE OF THE  
INSPECTOR GENERAL ON THE DEPARTMENT OF HOMELAND SECURITY AND  
ITS COMPONENT AGENCIES

1. *OIG-22-37: ICE Spent Funds on Unused Beds, Missed COVID-19 Protocols and Detention Standards while Housing Migrant Families in Hotels.* April 12, 2022.
2. *GAO-22-105053: Southwest Border: CBP Should Improve Data Collection, Reporting, and Evaluation for the Missing Migrant Program.* April 20, 2022.
3. *OIG-22-44: ICE Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights.* May 18, 2022.
4. *OIG-22-64: DHS Encountered Obstacles to Screen, Vet, and Inspect All Evacuees during the Recent Afghanistan Crisis (REDACTED).* September 6, 2022.

5. *OIG-22-66: DHS Technology Systems Do Not Effectively Support Migrant Tracking at the Southwest Border.* September 9, 2022.
6. *OIG-22-68: U.S. Border Patrol Faces Challenges Administering Post-Apprehension Outcomes Consistently Across Sectors.* September 13, 2022.
7. *OIG-22-71: U.S. Border Patrol Screened Migrants at the Southwest Border but Could Strengthen Processes.* September 19, 2022.
8. *OIG-22-78: The DHS Unified Coordination Group for Operation Allies Welcome Coordinated Afghan Resettlement but Faced Challenges in Funding and Authority.* September 29, 2022.
9. *OIG-22-79: The Unified Coordination Group Struggled to Track Afghan Evacuees Independently Departing U.S. Military Bases.* September 29, 2022.
10. *GAO-23-106007: Southwest Border: Border Patrol's Missing Migrant Program.* November 15, 2022.
11. *GAO-23-106350: Immigration Detention: ICE Can Improve Oversight and Management.* January 9, 2023.
12. *OIG-23-20: FEMA Should Increase Oversight to Prevent Potential Misuse of Humanitarian Relief Funds.* March 28, 2023.
13. *OIG-23-24: Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale.* May 3, 2023.
14. *OIG-23-27: CBP Facilities in Vermont and New York Generally Met TEDS Standards, but Details to the Southwest Border Affected Morale, Recruitment, and Operations.* May 23, 2023.
15. *OIG-23-31: CBP Released a Migrant on a Terrorist Watchlist, and ICE Faced Information Sharing Challenges Planning and Conducting the Arrest (REDACTED).* June 28, 2023.
16. *OIG-23-39: CBP Outbound Inspections Disrupt Transnational Criminal Organization Illicit Operations (REDACTED).* August 3, 2023.
17. *OIG-23-40: USCIS Has Generally Met Statutory Requirements to Adjudicate Asylum Applications from Paroled Afghan Evacuees.* August 18, 2023.
18. *OIG-23-45: CBP Could Do More to Plan for Facilities Along the Southwest Border.* August 29, 2023.

19. *GAO-23-105607: Facial Recognition Services: Federal Law Enforcement Agencies Should Take Actions to Implement Training, and Policies for Civil Liberties.* September 5, 2023.
20. *OIG-23-47: DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States (REDACTED).* September 6, 2023.
21. *GAO-23-105959: Biometric Identity System: DHS Needs to Address Significant Shortcomings in Program Management and Privacy.* September 12, 2023.
22. *OIG-23-52: ICE Did Not Accurately Measure and Report Its Progress in Disrupting or Dismantling Transnational Criminal Organizations.* September 19, 2023.
23. *OIG 23-59: ICE Should Improve Controls Over Its Transportation Services Contracts.* September 25, 2023.
24. *GAO-24-106219: Federal Contracting: Agencies Can Better Monitor E-Verify Compliance.* October 3, 2023.
25. *GAO-24-106277: Department of Homeland Security: Reporting on Border Security Metrics Could Be Improved.* November 13, 2023.
26. *OIG-24-10: Summary of Previously Issued Recommendations and Other Insights to Improve Operational Conditions at the Southwest Border.* January 9, 2024.

XV. Dissenting Views

## DISSENTING VIEWS

Since its formation in the wake of the terrorist attacks of September 11, 2001, the Committee on Homeland Security (the Committee) has distinguished itself through dedication to serious legislative and oversight work under the leadership of chairmen from both parties. The frantic, partisan rush to consider House Resolution 863, *Impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors*, represents a betrayal of that hard-earned legacy.

Sadly, in the 118th Congress, the willingness of Republicans to waste their credibility on political stunts comes as no surprise. MAGA Republicans have wasted their opportunity to make progress on immigration and border security policy. The challenges at our borders are real—but Republicans have failed even to engage in a conversation about bipartisan legislation to address them. They have failed to provide necessary funding requested by the Department of Homeland Security (DHS). They have failed to provide resources for officers and agents at the border, failed to fund the immigration judges necessary to handle the influx of asylum claims, and failed to condemn the cruel and deceptive acts of State and local Republicans who look to score cheap political points by treating migrants as less than human.

To distract from this abject failure and appease the most extreme elements of the Republican Conference, Republican leadership launched a baseless impeachment investigation into Secretary of Homeland Security Alejandro Mayorkas. This impeachment is without precedent, without basis in the law, and a total waste of time. Among its many fatal flaws, this wholly partisan impeachment effort:

- Fails to articulate any charge that might constitute “Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>1</sup>
- Fails to provide evidence to support the charges, such as they are.
- Fails to name the proper target for impeachment in a policy dispute with the executive branch, if indeed a policy dispute is ever grounds for impeachment.
- Fails to provide due process to Secretary Mayorkas.
- Fails to address any of the real challenges at our Nation’s borders.

Perhaps this shoddy effort is what Democrats should have expected months ago, when Rep. Marjorie Taylor Greene of Georgia insisted to her leadership that “[s]omebody needs to be impeached,” without specifying any particular target or reason for the impeachment.<sup>2</sup>

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<sup>1</sup> U.S. Const. art. 2, §4.

<sup>2</sup> Mike Lillis, *Greene leaning toward yes on ‘s— sandwich’ debt bill — but she also wants impeachment*, The Hill (May 23, 2023), <https://thehill.com/homenews/house/4027240-greene-leaning-towards-yes-on-s-sandwich-debt-bill-but-she-also-wants-impeachment/>.

Instead of working to find commonsense, bipartisan solutions to address immigration reform and border security—which are necessarily and inextricably intertwined—Republicans have, from the very earliest days of Secretary Mayorkas’ time in office, turned to character assassination. Although their inability and unwillingness to enact new policy is to blame, Republicans are angry that the Biden administration has implemented its own border security and immigration policies to enforce the law commensurate with the resources provided by Congress. Secretary Mayorkas is carrying out those policies, as is his duty.

These dissenting views document the failed basis for this impeachment effort and provide the facts behind the Biden administration’s efforts to address the challenges at the southern border in an orderly and humane way, consistent with the law. From the outset, it is important to acknowledge some key findings:

- **Republicans are abusing Congress’ impeachment power.** Impeachment is an extraordinary remedy under the United States Constitution. It is not a tool for resolving policy or political differences, and constitutional scholars and even some Republicans agree. The Framers never intended for the legislative branch to wield its impeachment power to extort policy changes from the executive branch, and they certainly did not intend for the impeachment power to be used to placate extreme factions of Congress.
- **Republicans’ impeachment scheme is a sham.** Republicans’ baseless investigation into Secretary Alejandro Mayorkas is a politically motivated sham to appease extreme MAGA Members and partisan special interest groups. This impeachment has never been about Secretary Mayorkas’ record, as the effort began not long after he was confirmed. In their rush to reach a predetermined outcome, House Republicans have failed to provide the most basic due process considerations to Secretary Mayorkas.
- **Secretary Mayorkas is upholding the law and honoring the public trust.** Secretary Mayorkas has not violated the law, let alone committed “high Crimes and Misdemeanors”—the Constitutional standard for impeachment. Secretary Mayorkas is carrying out President Biden’s policies in good faith within resource constraints. He is following the law and has been responsive to Congress and the American people.
- **Republicans are sabotaging Secretary Mayorkas’ efforts to secure the border.** The Biden administration—including Secretary Mayorkas—is working to solve the challenges at our border in an orderly, humane, and lawful way. Secretary Mayorkas has implemented new initiatives to stop dangerous drugs from entering our communities; cracked down on smugglers and cartels; and increased personnel, technology, and infrastructure at our borders. Unfortunately, Republicans are intentionally sabotaging these efforts by voting against necessary funding because they prefer a political wedge issue to policy solutions.
- **Republicans are perpetuating challenges at the border to help re-elect Donald Trump.** Republicans are using Secretary Mayorkas as a scapegoat for the longstanding challenges at our southern border. They are playing the political blame-game to deflect attention from their failure to take meaningful action on border security and immigration legislation and provide necessary border security funding. Republicans should stop this sham effort and instead work

with Democrats to enact border and immigration legislation and provide the Department of Homeland Security the funding it needs to carry out its mission.

## **II. REPUBLICANS' FAILED CASE FOR IMPEACHMENT**

Impeachment is an extraordinary remedy under the U.S. Constitution. The Framers agreed that impeachment should include “great and dangerous offences” and “[a]ttempts to subvert the Constitution,”<sup>3</sup> but placed limits on the categories of impeachable conduct. After considerable debate between July and September 1787, the Framers sought to “narrow—not expand—the class of impeachable offenses”<sup>4</sup> to “Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>5</sup> To meet the high threshold for impeachment the Framers articulated, accusers must allege conduct that constitutes “corruption, betrayal, or an abuse of power that subverts core tenets of the US governmental system.”<sup>6</sup> Accusers must prove that the accused has done “intentional, evil deeds that risk grave injury to the nation . . . [that] are so plainly wrong by current standards that no reasonable official could honestly profess surprise at being impeached.”<sup>7</sup> Impeachment is intended to be “a last ditch mechanism to address offenses against constitutional democracy by a single individual that can’t be adequately addressed through ordinary channels of government.”<sup>8</sup> Constitutional law experts recently testified before the Committee regarding the specific conduct that does and does not meet the threshold for impeachment. Professor Frank Bowman thoroughly disposed of claims that “refusal to comply with the law,” or maladministration, is a legitimate basis for impeachment under the Constitution:

For over two centuries, students of the Constitution have universally agreed in the words of the great impeachment scholar, Charles Black, that whatever may be the grounds for impeachment and removal, dislike of a president’s policy is certainly not one of them. To be properly impeachable, official conduct must meet a very high threshold of seriousness.

It must also be of a type that corrupts and subverts the political and governmental process, and it ought to be plainly wrong regardless of legal technicalities . . . [I]mpeachable abuse of power involves employing the powers of office for illegal or illegitimate ends, particularly to gain personal, political, or financial advantage, to benefit personal or political allies, or to injure political or personal enemies, and especially when the abusive exercise of official power undermines constitutional values.

Following the policy directives of one’s elected superior in pursuit of that superior’s policy aims is simply not an impeachable abuse of power.<sup>9</sup>

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<sup>3</sup> 2 *The Records of the Federal Convention of 1787* 550 (Max Farrand, ed., 1911).

<sup>4</sup> Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 39 (2018) (ebook).

<sup>5</sup> U.S. Const. art. 2., § 4.

<sup>6</sup> Tribe & Matz, *To End a Presidency*, *supra* note 4, at 41.

<sup>7</sup> *Id.*

<sup>8</sup> *Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis: Hearing before the H. Comm. on Homeland Security*, 118th Cong. (2024).

<sup>9</sup> *Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States: Hearing before the H. Comm. on Homeland Security*, 118th Cong. (2024).

Professor Deborah Pearlstein further elaborated on the conduct required to successfully prosecute certain standards for impeachment in testimony before the Committee:

[O]ffenses against the public trust are instances in which an official is willfully acting for his own benefit or the benefit of his own power or on behalf of a foreign power . . . Having read through the materials, I see no evidence that Secretary Mayorkas has acted on behalf of his own benefit financially or politically.<sup>10</sup>

Indeed, not only do the Republicans fail to provide any evidence the Secretary used his post to benefit his own interests or that of a foreign power, they do not even allege that he did.

Professor Bowman and Professor Pearlstein were the two constitutional law experts to testify before the Committee. Both concluded that Republicans failed to offer any evidence that Secretary Mayorkas engaged in any impeachable conduct.<sup>11</sup> Republicans offered no constitutional law experts to refute these opinions, perhaps because they were unable to find any. At every point, Republicans have failed to meet the high standard required for impeachment.

#### **A. Republicans have failed to articulate a proper charge.**

After a number of false starts, Republicans have landed on “refusal to comply with the law” and “breach of the public trust” as the charges against Secretary Mayorkas. These vague, unprecedented, and fallacious charges amount to policy disputes with the Biden administration—and clearly do not pass muster as legitimate grounds for impeachment under the Constitution.

The Framers specifically rejected proposals extending the impeachment power to matters of policy administration. James Madison worried that such vague grounds for impeachment would “be equivalent to a tenure during the pleasure of the Senate.”<sup>12</sup> To make “administration that did not accord with Congress’s view of good policy” impeachable would “take on the character of a British parliamentary ‘vote of no confidence,’” a concept that was odious to the new constitutional framework.<sup>13</sup> The Framers thus dismissed policy disagreements as a constitutional basis for impeachment.<sup>14</sup>

As a bipartisan group of constitutional scholars recently wrote to the Committee on Homeland Security, “the Constitution forbids impeachment based on policy disagreements between the House and the Executive Branch, no matter how intense or high stakes those differences of

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<sup>10</sup> *Voices for the Victims*, *supra* note 8.

<sup>11</sup> *Havoc in the Heartland*, *supra* note 9 (Prof. Bowman: “Based on all the information available to me, I have not found any indication that [Secretary Mayorkas has] committed high crimes and misdemeanors, no.”); *Voices for the Victims*, *supra* note 8 (Prof. Pearlstein: “I don’t believe the Constitution supports impeachment in this case.”).

<sup>12</sup> 2 *The Records of the Federal Convention of 1787*, *supra* note 3.

<sup>13</sup> Charles L. Black, Jr. & Philip Bobbitt, *Impeachment: A Handbook*, New Edition 28 (2018) (ebook).

<sup>14</sup> Alan Dershowitz, *The Case Against Removing Trump* 27 (2019) (ebook) (Dershowitz, who represented Donald Trump in his second impeachment trial before the U.S. Senate, writing, “It would be dangerous to the stability of our system of government—and in direct defiance of the constitutional text and debates if we could impeach . . . based on mere policy disagreements.”).

opinion.”<sup>15</sup> Republican Rep. Tom McClintock, Chairman of the Committee on the Judiciary’s Subcommittee on Immigration Integrity, Security, and Enforcement, described the attempt to impeach Secretary Mayorkas over policy disagreements as a “perilous path” for future governance.<sup>16</sup> Indeed, Chairman McClintock has argued the redefinition of impeachment found in H. Res. 863 “would utterly destroy the separation of powers at the heart of our Constitution.”<sup>17</sup>

The charges against Secretary Mayorkas are, at base, window dressing for a policy disagreement—not a valid basis for impeachment. Professor Jonathan Turley, a favorite witness for House Republicans in impeachment proceedings, warned against this approach too: “Absent some new evidence, I cannot see the limiting principle that would allow the House to impeach Mayorkas without potentially making any policy disagreement with a cabinet member a high crime and misdemeanor.”<sup>18</sup>

Reasonable people can disagree about the Biden administration’s immigration policies and Secretary Mayorkas’ tenure at DHS—but mere policy disagreements are not legitimate grounds for impeachment. This resolution should fail on these grounds alone.

### **B. House Republicans have failed to provide evidence of “high Crimes and Misdemeanors.”**

The rush to impeach Secretary Mayorkas has been a remarkably fact-free affair. Republicans have highlighted real challenges at the border—mostly without offering any solutions—but they have not demonstrated any evidence that Secretary Mayorkas has committed a crime or a constitutional offense. Again, in the words of Professor Turley:

In my view, Biden has been dead wrong on immigration, but voters will soon have an opportunity to render a judgment on those policies in the election. Mayorkas has carried out those policies. What has not been shown is conduct by the secretary that could be viewed as criminal or impeachable.<sup>19</sup>

And in the words of Michael Chertoff, former Secretary of Homeland Security under President George W. Bush:

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<sup>15</sup> Letter from Constitutional Law Experts on the Impeachment Proceedings Against Secretary of Homeland Security Alejandro Mayorkas to Mike Johnson, Speaker, U.S. House of Representatives and Mark Green, Chairman, Comm. on Homeland Security (Jan. 10, 2024), <https://www.justsecurity.org/wp-content/uploads/2024/01/Mayorkas-Impeachment-Letter.pdf>.

<sup>16</sup> 196 Cong. Rec. H5940 (daily ed., Nov. 29, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> Jonathan Turley, *Homeland Security Chief Alejandro Mayorkas’ Failures Are Not Impeachable*, Daily Beast (Jan. 9, 2024), <https://www.thedailybeast.com/homeland-security-chief-alejandro-mayorkas-failures-are-not-impeachable>.

<sup>19</sup> *Id.*

[A]s a former federal judge, U.S. attorney and assistant attorney general – I can say with confidence that, for all the investigating that the House Committee on Homeland Security has done, they have failed to put forth evidence that meets the bar.<sup>20</sup>

We are left to conclude that House Republicans, caving to the demands of their most extreme Members, intend to impeach Secretary Mayorkas *regardless* of the evidence.

The Framers intended impeachment to be rare. In his seminal work, *Commentaries on the Constitution of the United States*, Justice Joseph Story warned against congressional misuse of impeachment: “[T]he power of impeachment is not one expected in any government to be in constant or frequent exercise.”<sup>21</sup> Congress has largely heeded that warning. Only one Cabinet secretary has ever been impeached—Secretary of War William Belknap for bribery in 1876.<sup>22</sup> In that instance, the case for impeachment was strong, and the charges were not seriously disputed. There was little doubt that Secretary Belknap had accepted bribes, and he did not seriously contest the allegations against him. Secretary Belknap resigned after meeting with President Ulysses S. Grant.<sup>23</sup>

In a dramatic departure from these norms, extreme MAGA Republicans have introduced more than a dozen impeachment resolutions in the 118th Congress, aimed at various executive branch officials. The effort began even before he had much time on the job. On August 10, 2021, while the Biden administration was still grappling with both the COVID–19 pandemic and the fallout from the failed border policies of the last administration, Rep. Andy Biggs of Arizona introduced H. Res. 582 to impeach Secretary Mayorkas,<sup>24</sup> the first of six such resolutions introduced.<sup>25</sup> This impeachment has never been about Secretary Mayorkas’ actual record.

Sadly, the partisan push to oust Secretary Mayorkas—regardless of the facts—found a home at the Committee on Homeland Security. In April 2023, Chairman Green promised Republican donors that he would produce an impeachment case against Secretary Mayorkas.<sup>26</sup> According to a recording of Chairman Green’s remarks to campaign contributors, he said, “On April 19, next week, get the popcorn—Alejandro Mayorkas comes before our committee, and it’s going to be fun.”<sup>27</sup> He added, “That’ll really be just the beginning for him.”<sup>28</sup> Two months prior to the

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<sup>20</sup> Michael Chertoff, *Don’t Impeach Alejandro Mayorkas*, Wall St. J. (Jan. 28, 2024), [https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article\\_copyURL\\_share](https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article_copyURL_share).

<sup>21</sup> 3 Joseph Story, *Commentaries on the Constitution of the United States* 532 (1873), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1104&context=books>.

<sup>22</sup> Frank O. Bowman III, *High Crimes and Misdemeanors: A History of Impeachment in the Age of Trump* 122 (2019) (ebook).

<sup>23</sup> *Id.*

<sup>24</sup> H.Res. 582, 117th Cong. (2021).

<sup>25</sup> See H.Res. 8, 118th Cong. (2023); H.Res. 89, 118th Cong. (2023); H.Res. 411, 118th Cong. (2023); H.Res. 470, 118th Cong. (2023); H.Res. 477, 118th Cong. (2023); H.Res. 863, 118th Cong. (2023).

<sup>26</sup> Karoun Demirjian, *Key Republican Tells Donors He Will Pursue Impeachment of Mayorkas*, N.Y. Times (Apr. 18, 2023), <https://www.nytimes.com/2023/04/18/us/politics/republicans-mark-green-mayorkas-impeachment.html>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

Committee formally announcing its so-called investigation, the Chairman had already promised his Republican backers that he would deliver impeachment charges.<sup>29</sup>

The Chairman made little effort to hide that the outcome of his impeachment investigation was predetermined. The first hearing, held on June 14, 2023, was titled “Open Borders, Closed Case: Secretary Mayorkas’ Dereliction of Duty on the Border Crisis,” underscoring the predetermined outcome of the Republican impeachment scheme. On July 19, 2023, Committee Republicans released the first of five flawed “reports” on Secretary Mayorkas, which were replete with factual errors, partisan rhetoric, and racist dog whistles.<sup>30</sup>

On November 13, 2023, Rep. Marjorie Taylor Greene introduced H. Res. 863, a resolution to impeach Secretary Mayorkas. Like the amended articles of impeachment considered by the Committee on Homeland Security, that resolution fails to assert a single valid impeachable offense. During consideration on the House Floor, Chairman Green voted against a motion to refer H. Res. 863 to the Committee on Homeland Security—in effect, voting to impeach the Secretary without a hearing to consider the evidence—saying he wanted “whatever it takes to get that guy out of office.”<sup>31</sup>

Chairman Green’s cavalier attitude toward impeaching Secretary Mayorkas stands in stark contrast to his views on the impeachment of former President Donald Trump. In 2019, Chairman Green said, “We’re talking about probably the most extreme remedy that our constitution affords for taking someone out of office . . . If he did something I felt was against the law, was a substantial crime, I would support a process. But it would have to be a fair process. He’s got to

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<sup>29</sup> Press Release, *Chairman Green Announces Comprehensive Investigation, Full Committee Hearing to Examine Secretary Mayorkas’ Dereliction of Duty*, H. Comm. on Homeland Security (June 8, 2023), <https://homeland.house.gov/2023/06/08/chairman-green-announces-comprehensive-investigation-full-committee-hearing-to-examine-secretary-mayorkas-dereliction-of-duty/>.

<sup>30</sup> See, e.g., Committee on Homeland Security Majority Staff, *The Historic Costs of DHS Secretary Alejandro Mayorkas’ Open-Border Policies* 21 (2023) (“The costs of providing education services to illegal alien children, or the U.S.-born children of illegal aliens, represent enormous expenditures for the states and the federal government. Simultaneously, the burdens placed on classrooms across the country by these individuals, due to the fact many are limited in their ability to speak or read English, has further stressed America’s education system—particularly as large numbers of school-aged illegal alien children have flooded into American communities throughout the country since the Biden administration took office.”); *id.* at 49 (“It is morally unacceptable that American taxpayer dollars should be funneled to those who violate our laws and demand expansive, taxpayer-funded benefits like education, health care, housing, and more. Many of these individuals will likely represent a drain on American society for the remainder of their days in the United States, constantly absorbing more benefits from the state than they ever contribute—to say nothing of the fact that they have no lawful basis to remain in the country to begin with.”); Committee on Homeland Security Majority Staff, *The Devastating Human Costs of DHS Secretary Alejandro Mayorkas’ Open-Border Policies* 46 (2023) (“Illegal aliens often bring harm and death to innocent Americans while fleeing law enforcement, engaging in human and drug smuggling, or simply disregarding the law through behavior such as driving recklessly or under the influence.”); *id.* at 81 (“The influx of illegal aliens, many from countries lacking adequate public health infrastructure, has risked the spread of other transmissible diseases in American communities.”).

<sup>31</sup> Andrew Solender, *House votes against impeaching DHS Secretary Mayorkas*, Axios (Nov. 13, 2023), <https://www.axios.com/2023/11/14/house-impeachment-dhs-secretary-mayorkas>.

have his day in court.”<sup>32</sup> Chairman Green’s view on the seriousness of impeachment and the necessity for due process in an impeachment proceeding has, at best, evolved.

The rest of the story of this impeachment plays out like a MAGA soap opera. Rep. Marjorie Taylor Greene twice attempted to force the impeachment of Secretary Mayorkas on the House Floor. To placate her, Speaker Mike Johnson and Chairman Green reportedly made multiple “guarantees” to Rep. Greene that the Committee would pursue impeachment—virtually ensuring the outcome of the probe.<sup>33</sup> These promises echo former Speaker Kevin McCarthy’s commitment to impeach either Secretary Mayorkas or President Biden in exchange for Rep. Greene’s vote to increase the debt ceiling.<sup>34</sup> The commitments were made without regard for the evidence or the law.

The Framers never intended for the legislative branch to wield its impeachment power to extort policy changes from the executive branch, and they certainly did not intend for the impeachment power to be used to placate extreme factions of Congress. For these reasons, too, the House should reject this resolution.

### **C. Impeaching the Secretary over policy differences is unconstitutional and would be futile.**

This impeachment effort is doomed to failure in more ways than one. Even if the House impeaches Secretary Mayorkas, and even if the Senate convicts him, it is the President—and not his Cabinet secretaries—who sets policy for the executive branch.

To be clear, a policy disagreement is not a valid constitutional ground for impeachment. The Framers explicitly rejected the inclusion of “maladministration” as a constitutional basis for impeachment. At the Constitutional Convention, James Madison argued that such a vague standard would be “equivalent to a tenure during pleasure of the Senate,” and the Convention voted immediately thereafter to limit the phrase to “high Crimes and Misdemeanors.”<sup>35</sup> In plain terms, the Framers rejected the notion that Congress can remove an official for merely having a different view on public policy. “To ensure that the president could govern—and that he could select a Cabinet to execute his vision—the framers forbade impeachment over policy disagreements, no matter how fierce or consequential.”<sup>36</sup>

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<sup>32</sup> Tommy Crouse, *Rep. Green on impeachment 'I can't imagine the founders would support anything like this'*, NewsChannel 5 Nashville (Oct. 11, 2019), <https://www.newschannel5.com/news/i-cant-imagine-the-founders-would-support-anything-like-this>.

<sup>33</sup> Caitlin Yilek, *Rep. Marjorie Taylor Greene backs off forcing vote on second Alejandro Mayorkas impeachment resolution*, CBS News (Nov. 30, 2023), <https://www.cbsnews.com/news/alejandromayorkas-impeachment-vote-marjorie-taylor-greene/>.

<sup>34</sup> Mike Lillis, *Greene leaning toward yes on 's— sandwich' debt bill — but she also wants impeachment*, The Hill (May 23, 2023), <https://thehill.com/homenews/house/4027240-greene-leaning-towards-yes-on-s-sandwich-debt-bill-but-she-also-wants-impeachment/>.

<sup>35</sup> 2 *The Records of the Federal Convention of 1787*, *supra* note 3.

<sup>36</sup> Joshua Matz & Norman Eisen, *Why impeaching Mayorkas would violate the Constitution*, Wash. Post (Jan. 9, 2024), <https://www.washingtonpost.com/opinions/2024/01/09/impeachment-alejandromayorkas-unconstitutional-border-security/>.

But even if the Framers were wrong, and House Republicans could impeach Secretary Mayorkas because they think he is doing a bad job, they would not change policy through this impeachment.

Secretary Mayorkas is carrying out President Biden’s orders in good faith and to the best of his ability within resource constraints. On November 15, 2023, in his most recent appearance before the Committee on Homeland Security, Secretary Mayorkas laid out the administration’s vision for countering worldwide threats to the homeland.<sup>37</sup> He described how “DHS works closely with our law enforcement, national security, and Intelligence Community (IC) partners to continually improve our ability to identify individuals who pose a national security or public safety threat and who seek to travel to the United States or receive an immigration benefit.”<sup>38</sup> He presented the administration’s work to counter the threat of domestic violent extremists.<sup>39</sup> He outlined the Department’s efforts on cyber threats, border security, human trafficking and child exploitation, and a whole-of-government response to extreme weather events and climate change resilience.<sup>40</sup>

None of these policies will change because of the impeachment of Secretary Mayorkas. None of these policies will change in the highly unlikely event that the Senate convicts and removes him from office. In fact, if Secretary Mayorkas leaves office for any reason, there is good reason to believe the President will appoint a successor to pick up where Secretary Mayorkas left off.

If Republicans were serious about changing border security and immigration policy, which they are clearly not, they would pass bipartisan border security legislation and provide the border funding the Department requested. Instead, Republicans are shirking their responsibility. As former Secretary Chertoff recently put it:

House Republicans are ducking difficult policy work and hard-fought compromise. Impeachment is a diversion from fixing our broken immigration laws and giving DHS the resources needed to secure the border.<sup>41</sup>

In short, even if policy differences were a valid basis for impeachment—and they are not—impeachment would be a *terrible* tool for resolving those differences or changing administration policy in any way.

#### **D. House Republicans have failed to provide basic due process to Secretary Mayorkas.**

In their rush to reach a predetermined outcome, House Republicans have failed to provide the most basic due process considerations to Secretary Mayorkas. Here, too, their impeachment is fatally flawed.

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<sup>37</sup> *Worldwide Threats to the Homeland: Hearing Before the H. Comm. on Homeland Security*, 118th Cong. (2023) (statement of Secretary Mayorkas).

<sup>38</sup> *Id.*

<sup>39</sup> *See id.*

<sup>40</sup> *See id.*

<sup>41</sup> Michael Chertoff, *Don’t Impeach Alejandro Mayorkas*, Wall St. J. (Jan. 28, 2024), [https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article\\_copyURL\\_share](https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article_copyURL_share).

Absent a bona fide emergency, a legitimate impeachment inquiry gives both the Minority in the House and the target of the inquiry an opportunity to answer the charges. In 2019, for example, the House passed H. Res. 660, authorizing the Judiciary Committee to develop rules for the consideration of evidence in the impeachment of President Donald J. Trump.<sup>42</sup> The Ranking Minority Members of the Intelligence and Judiciary Committees were given an opportunity to request additional witness testimony and issue subpoenas with the concurrence of the Chair.<sup>43</sup> Similarly, the Judiciary Committee adopted special rules for the impeachment, permitting President Trump and his counsel to provide additional testimony and evidence in executive session, if necessary.<sup>44</sup>

Chairman Green has denied Secretary Mayorkas basic due process. Finally realizing that the House has an obligation to provide some measure of due process to the target of an impeachment inquiry, Chairman Green sent a letter to the Secretary on January 5, 2024, inviting him to testify before the Committee on January 18, 2024.<sup>45</sup> Secretary Mayorkas—who was scheduled to host Mexican Cabinet officials to address the very border crisis that so aggravates Republicans—asked for an alternate date. Chairman Green turned him down, and instead invited him to submit written testimony for the record of the Committee’s January 18, 2024, hearing.<sup>46</sup> Under Committee rules, the window for submitting such testimony was open until January 31, 2024, a day after the Committee marked up the impeachment resolution.<sup>47</sup> Nevertheless, Secretary Mayorkas wrote Chairman Green ahead of the Committee’s impeachment markup outlining the ways in which the Department, under his leadership, has enforced the Nation’s laws despite Congress’s inability to fix a broken immigration and provide adequate resources and responded to congressional oversight requests—thoroughly dispatching with the baseless accusations contained in the articles of impeachment.<sup>48</sup>

In denying Secretary Mayorkas due process, Chairman Green chose allegiance to extreme MAGA Members over his obligations to the House and its processes as Chairman of the Committee. A Republican memo dated January 10, 2024—the day impeachment proceedings began in the Committee—announced that Republicans would mark up articles of impeachment on January 31, 2024.<sup>49</sup> With promises to keep to the most extreme elements of the Republican

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<sup>42</sup> H. Res. 660, 116<sup>th</sup> Cong. (2019).

<sup>43</sup> *Id.*

<sup>44</sup> *Markup of Resolution on Investigative Procedures Before the H. Comm. on the Judiciary*, 116<sup>th</sup> Cong. (Sept. 12, 2019).

<sup>45</sup> Letter from Mark E. Green, Chairman, H. Comm. on Homeland Security to Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security (Jan. 5, 2024), <https://homeland.house.gov/wp-content/uploads/2024/01/2024-01-05-Mayorkas-Request.pdf>.

<sup>46</sup> Rebecca Beitsch, *GOP backtracks on Mayorkas impeachment appearance, demanding writing testimony*, The Hill (Jan. 17, 2024), <https://thehill.com/homenews/house/4413127-gop-backtracks-on-mayorkas-impeachment-appearance-demanding-written-testimony/>.

<sup>47</sup> Rule VII(D) of the Rules of the Committee on Homeland Security for the 118<sup>th</sup> Congress. *See* 169 Cong. Rec. H861 (daily ed., Feb. 21, 2023).

<sup>48</sup> Letter from Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security, to Mark E. Green, H. Comm. on Homeland Security (Jan. 30, 2024) (on file with the Committee).

<sup>49</sup> Rebecca Beitsch, *GOP memo shows plans for Mayorkas impeachment markup Jan. 31*, The Hill (Jan. 17, 2024), <https://thehill.com/homenews/house/4414805-mayorkas-impeachment-gop-memo/> (Committee Republicans, in fact, moved up their impeachment resolution markup to Tuesday, Jan.30, 2024).

Conference, Chairman Green simply chose not to give the Secretary a meaningful opportunity to respond to the baseless charges against him.

Ranking Member Thompson highlighted these and other departures from House rules and precedent in a January 26, 2024, letter to Chairman Green.<sup>50</sup> Among other things, the letter noted that in the only somewhat analogous impeachment case—that of Secretary Belknap—the House authorized the inquiry and afforded Secretary Belknap the “opportunity to explain, present witnesses, and cross-examine witnesses.”<sup>51</sup>

Chairman Green has failed to provide even a modicum of due process to Secretary Mayorkas. For this reason as well, the impeachment resolution should fail.

#### **E. The Committee’s markup of H. Res. 863 was beneath the dignity of the House.**

Throughout the course of the Committee’s consideration of H. Res. 863, the Committee often descended into chaos. Even the most basic of parliamentary procedures—the notion of written motions reported by the clerk as required under clause 1 of rule XVI of the Rules of the U.S. House of Representatives—seemed to exceed the Chair’s capacity. And Democratic Members had to demand votes on including material for the record on five occasions.

Most troubling, however, was the Majority’s use of the previous question to end debate. Across the eight impeachment proceedings in House committees since 1974, the motion to cut off debate has never been employed as it was in the early morning of Wednesday, January 31, 2024. First, the motion was inappropriately offered when a Democratic Member (Rep. Robert Menendez of New Jersey) had offered a germane amendment that had not been read.<sup>52</sup> Second, following the vote on ordering the previous question, the Chairman immediately put the question on adoption of the amendment in the nature of a substitute, ignoring disposition of all pending amendments in contravention of clause 2(h)(4)(B) of rule XI. Third, the Chair only recognized one of three points of order Democrats made in an attempt to bring some sanity to the chaotic ending of the markup.

Impeachment is a grave and serious undertaking. Extreme MAGA Republicans in charge of the Homeland Security Committee, however, could not even bear to consider 10 amendments to their poorly drafted articles of impeachment before silencing Democrats who attempted to inject fact and reality into the proceedings. Republicans’ unprecedented action belies a lack of faith in their case against the Secretary. Moreover, the haphazard Committee markup demonstrates the Republican scheme to baselessly impeach the Secretary over policy differences has been a pre-determined, political stunt all along. It is shocking, however, that the Majority lacked the courage of their convictions to see their markup to the end.

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<sup>50</sup> Letter from Bennie G. Thompson, Ranking Member, H. Comm. on Homeland Security, to Mark E. Green, Chairman, H. Comm. on Homeland Security (Jan. 26, 2024), [https://democrats-homeland.house.gov/imo/media/doc/due\\_process\\_precedent\\_letter.pdf](https://democrats-homeland.house.gov/imo/media/doc/due_process_precedent_letter.pdf).

<sup>51</sup> *Id.* at 2 (citing 3 Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States*, § 2445, 904 (1907)).

<sup>52</sup> *House Rules and Manual* (118th Cong.), § 792 states: “The motion for the previous question may be applied to a question under debate in committee when it has been read (or considered as read) for amendment in its entirety.”

An appendix at the end of these views includes the amendments Democrats would have offered had the Republicans not shut down debate and even prevented them from being entered into the markup record.

### **III. SECRETARY MAYORKAS IS FOLLOWING THE LAW AND HONORING THE PUBLIC TRUST**

Republicans' sham impeachment resolution wrongly alleges that Secretary Mayorkas has refused to obey immigration law and breached the public trust.<sup>53</sup> He has done neither. Republicans are intentionally mischaracterizing immigration law and the facts at the root of their bogus charges to justify their impeachment scheme. Secretary Mayorkas is implementing border security policies promulgated by President Biden while following the law, commensurate with the funding provided by Congress.

This section will explain why Republicans' allegations are without merit and their impeachment resolution must be defeated. Importantly:

- Secretary Mayorkas is detaining and removing migrants in compliance with the law.
- Secretary Mayorkas is using parole authority in compliance with the law.
- Secretary Mayorkas has implemented new policies to secure the border.
- Secretary Mayorkas has been transparent with Congress and the American people.

The record shows that Secretary Mayorkas is fulfilling his obligations to carry out the administration's policies in service to the American people.

#### **A. Secretary Mayorkas is detaining and removing migrants in compliance with the law.**

##### ***i. Detention***

Republicans wrongly allege that Secretary Mayorkas should be impeached because DHS does not detain everyone apprehended at the border. Republicans misunderstand and mischaracterize the relevant law (the Immigration and Nationality Act (INA)), DHS's actions to comply with the law, and the role of Congress in providing DHS with the resources to detain migrants.

Section 236(a) of the INA states that individuals “*may* [emphasis added] be arrested and detained pending a decision on whether the alien is to be removed from the United States.” This provision of the law does not require detention. Although INA § 235(b) requires detention of individuals with pending asylum applications, courts have recognized that such individuals may be released on parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit.<sup>54</sup> Therefore, DHS's decisions to release some individuals otherwise subject to INA § 235(b) are

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<sup>53</sup> See *supra* Section II.

<sup>54</sup> INA § 235(b); See also *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

lawful. In addition, DHS adheres to the mandatory detention provisions of INA § 236(c), which require the detention of individuals who have committed certain criminal offenses.<sup>55</sup>

Under Secretary Mayorkas' leadership, DHS has been detaining individuals commensurate with the law and the resources provided by Congress. Immigration and Customs Enforcement (ICE) has been detaining more people than Congress dedicated funding for. ICE's average daily population (ADP) for FY 2024 is over 37,000 people,<sup>56</sup> despite Congress providing funding to detain 34,000 people.<sup>57</sup> The administration has also requested additional funding for detention in FY 2024, but Republicans refuse to provide it. Secretary Mayorkas is complying with the law within resource constraints, and his requests for additional resources make clear his commitment to implementing the law as envisioned by Congress. The Secretary has not refused to follow the law, nor has he committed any high crime or misdemeanor.

Moreover, no administration has ever been able to detain all border crossers. As Professor Pearlstein testified:

[T]hese problems have existed through five administrations over decades, largely because Congress has enacted contradictory laws that are impossible to comply with and multiple administrations have struggled to resolve that contradiction.<sup>58</sup>

During transcribed interviews before the Committee, Border Patrol officials confirmed that migrants have been released into communities throughout their decades-long careers.<sup>59</sup> Notably, the Trump administration released over 500,000 people at the U.S.-Mexico border,<sup>60</sup> in part due to lack of detention capacity.

Not only has no administration detained all border crossers, but Congress has *never* appropriated sufficient resources to detain all individuals who could be detained under the law. The U.S. Supreme Court recognized that the executive branch “does not possess the resources necessary to arrest or remove all noncitizens covered by §1226(c) and §1231(a)(2)” of the INA.<sup>61</sup> Congress—not Secretary Mayorkas or the executive branch—sets the minimum ADP for immigration detention for any fiscal year.

Furthermore, Republicans' criticism of DHS's inability to detain all border crossers is hypocritical, as they have not funded the number of detention beds that would be necessary. House Republicans' FY 2024 DHS appropriations bill would fund an ADP of 41,000

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<sup>55</sup> See Brief for the Petitioners at 27-29, *United States v. Texas*, 599 U.S. \_\_\_\_ (2023) No. 22-58.

<sup>56</sup> *Detention FY 2024 YTD, Alternatives to Detention FY 2024 and Facilities FY 2024 YTD, Footnotes*, U. S. Immigration and Customs Enforcement (Jan. 18, 2024), <https://www.ice.gov/detain/detention-management>.

<sup>57</sup> *U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2024 Congressional Justification*, Dep't of Homeland Security O&S 18, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf).

<sup>58</sup> *Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis: Hearing before the H. Comm. on Homeland Security*, 118th Cong. (2024).

<sup>59</sup> *Transcribed Interview of Chief Patrol Agent Aaron Heitke*, U.S. Border Patrol, Dep't of Homeland Security, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (May 9, 2023.).

<sup>60</sup> Office of Immigration Statistics, *2021 Enforcement Lifecycle Report Appendix Tables*, Dep't of Homeland Security (Nov. 2021), <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.

<sup>61</sup> *United States v. Texas*, 599 U.S. \_\_\_\_ (2023) (slip op. at 8).

migrants<sup>62</sup>—a fraction of the capacity needed to detain all eligible migrants. The overwhelming majority of House Republicans also voted against the FY 2023 omnibus appropriations legislation,<sup>63</sup> effectively opposing any funding for immigration detention.

In an attempt to demonstrate that Secretary Mayorkas has “willfully exceeded his release authority,” Republicans point to *Florida v. United States*,<sup>64</sup> a Federal district court case—the lowest level in the Federal court system. Republicans fail to mention that the case has not been finalized. In fact, the Eleventh Circuit Court of Appeals heard oral arguments in that case on January 26, 2024,<sup>65</sup> less than 48 hours before the Republicans released their amended impeachment articles, and no decisions have been made yet by that court. This is a sleight-of-hand that intentionally misleads the public into believing that Secretary Mayorkas has engaged in wrongdoing.

There are no grounds to impeach Secretary Mayorkas over detention levels set and funded by Congress. Secretary Mayorkas has detained more migrants than Congressional appropriations supported, while Republicans have consistently failed to support sufficient funding to achieve significantly higher detention levels.

## *ii. Removals*

Republicans also allege that Secretary Mayorkas should be impeached because DHS is not removing all migrants apprehended at the border. Again, Republicans misunderstand and mischaracterize U.S. law and the resources that would be required for such a large-scale deportation scheme. Secretary Mayorkas has been removing migrants who lack a legal basis to remain in the United States, in accordance with the law and within the resource constraints set by Congress.

Under Secretary Mayorkas’ leadership, DHS has, on average, removed and expelled more migrants from the U.S. each year than any other administration in history.<sup>66</sup> From May 2023 through November 2023 alone, DHS removed more than 400,000 people, which is about as many as the Trump administration removed during all of FY 2019. That is also more than the total removals for each year from 2015 to 2018.<sup>67</sup> Removing record numbers of migrants from

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<sup>62</sup> *Fiscal Year 2024 Homeland Security Appropriations Bill*, House Appropriations Republicans 1, (2023) <https://appropriations.house.gov/sites/republicans.appropriations.house.gov/files/documents/FY24%20Homeland%20Security%20-%20Bill%20Summary.pdf>.

<sup>63</sup> U.S. House of Representatives, Roll Call No. 549, Bill Number: H.R. 2617, 117th Cong. (2022), <https://clerk.house.gov/Votes/2022549>.

<sup>64</sup> *Florida v. United States*, No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023).

<sup>65</sup> Docket Entry No. 67, Oral Argument, *Florida v. Mayorkas*, 23-11644 (11th Cir., Jan. 26, 2024) (consolidated with *Florida v. United States*, No. 23-11528).

<sup>66</sup> See *Yearbook of Immigration Statistics 2022*, Office of Immigration Statistics, Dep’t of Homeland Security (Nov. 2023), [https://www.dhs.gov/sites/default/files/2023-12/2023\\_0818\\_plcy\\_yearbook\\_enforcement\\_fy2022.xlsx](https://www.dhs.gov/sites/default/files/2023-12/2023_0818_plcy_yearbook_enforcement_fy2022.xlsx) (relevant data in Table 39).

<sup>67</sup> *A Review of the President’s Supplemental Request for the Departments of Health and Human Services and Homeland Security: Hearing Before the S. Comm. on Appropriations*, 118th Cong. (2023) (statement of Alejandro Mayorkas); Press Release, *CBP Releases November 2023 Monthly Update*, U.S. Customs and Border Protection (Dec. 22, 2023), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2023-monthly-update#:~:text=In%20November%202023%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail>.

the United States illustrates Secretary Mayorkas' commitment to following the law and securing the border.

Despite this historic level of removals, Republicans point to Secretary Mayorkas' *Guidelines for the Enforcement of Civil Immigration Law*—a memorandum that outlines enforcement priorities for DHS—as proof that he is refusing to enforce the law. Republicans are wrong. The Department does not have enough resources to detain and remove all eligible individuals. Secretary Mayorkas is prioritizing immigration enforcement based on national security, public safety, and border security threats.<sup>68</sup> The Biden administration has requested additional funding from Congress for detention and removal, but Republicans refuse to provide it.<sup>69</sup> Setting immigration enforcement priorities is necessary and common, as the Supreme Court stated in its majority opinion in *U.S. v. Texas*.<sup>70</sup>

Notably, Republicans' case against Secretary Mayorkas relies heavily on a Fifth Circuit Court of Appeals procedural decision in *Texas v. United States*.<sup>71</sup> What Republicans fail to mention is that the Supreme Court heard the case and reversed it on procedural grounds before the Fifth Circuit issued its own decision on the merits of the case.<sup>72</sup> To put it plainly, the Republicans are pretending that the Fifth Circuit did something it did not do: issue a final, binding decision in this case. A first-year law student would know better.

Secretary Mayorkas has enforced the law to the best of his ability given persistent resource constraints. Congress has never dedicated the resources needed to detain and remove all eligible migrants from the United States. Making policy choices on how best to use the finite resources provided by Congress is not refusing to follow the law. This is not an impeachable offense. There are no grounds to impeach Secretary Mayorkas.

## **B. Secretary Mayorkas is using parole authority in compliance with the law.**

Republicans allege that Secretary Mayorkas' use of parole authority is unlawful, but his actions have been lawful and consistent with the historical use of parole. Republicans misunderstand and mischaracterize DHS's use of parole authority and the historical precedent for parole programs like those created by the Biden administration.

The INA requires that the parole of each noncitizen be considered on a discretionary, case-by-case basis for urgent humanitarian reasons or significant public benefit.<sup>73</sup> Mr. Aaron Reichlin-

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<sup>68</sup> Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law*, Dep't of Homeland Security, Sept. 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

<sup>69</sup> *FACT SHEET: Biden-Harris Administration Supplemental Funding Request*, Dep't of Homeland Security (Oct. 20, 2023), <https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request>.

<sup>70</sup> *United States v. Texas*, 599 U.S. \_\_\_\_ (2023) (slip op. at 6) (“Under Article II, the Executive Branch possesses authority to decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’ . . . That principle of enforcement discretion over arrests and prosecutions extends to the immigration context,” (citing *TransUnion LLC, v. Ramirez*, 594 U. S. \_\_\_\_, (2021) (slip op., at 13)).

<sup>71</sup> *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022), overruled by *United States v. Texas*, 143 S. Ct. 1964 (2023).

<sup>72</sup> *United States v. Texas*, 599 U.S. \_\_\_\_ (2023).

<sup>73</sup> 8 U.S.C. 1182(d)(5)(A).

Melnick, Policy Director at the American Immigration Council, described this requirement in testimony to the Judiciary Committee by stating:

A case-by-case adjudication just means taking every application on its own. It doesn't mean that you can only give it to a few people, and in fact in 1996 when Congress passed the IIRAIRA [Illegal Immigration Reform and Immigrant Responsibility Act of 1996], which included the case-by-case requirement, the Congress actually rejected an amendment which would have made parole into a much more narrow program.<sup>74</sup>

Secretary Mayorkas has complied with the case-by-case adjudication requirement for parole applications.<sup>75</sup> DHS's parole programs allow designated populations to apply for parole, with each person's application adjudicated on a case-by-case basis. One of the most successful examples of such a program has been *Uniting for Ukraine*, which has allowed 176,000 individuals fleeing war to temporarily seek refuge in the United States after a case-by-case adjudication of each application.<sup>76</sup>

While Republicans allege that programs making designated populations eligible to apply for parole are unlawful, such programs have longstanding precedent. Previous administrations regularly used parole for groups of individuals while still making case-by-case determinations. For example, President Eisenhower was the first to exercise parole authority when he admitted 30,000 Hungarian nationals fleeing communism.<sup>77</sup> Notably, such parole programs continued through the Trump administration — for example, the Cuban Family Reunification Parole Program, which aims to expedite the reunification of Cuban families facing long waits for immigrant visas.<sup>78</sup>

There are no grounds to impeach Secretary Mayorkas for exercising well-established authority to administer parole programs in accordance with the law and longstanding precedent.

### **C. Secretary Mayorkas has implemented policies to secure the border.**

House Republicans wrongly allege Secretary Mayorkas has breached the public trust by terminating Trump-era policies. Republicans pretend that securing the border requires the implementation of cruel Trump-era policies, such as the Migrant Protection Protocols (MPP), Asylum Cooperative Agreements (ACA), and border wall construction. By the time President Biden took office, MPP and the ACAs were already largely in disuse. Moreover, contrary to

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<sup>74</sup> *The Border Crisis: Is the Law Being Faithfully Executed?: Hearing Before the Subcomm. on Immigration, Integrity, Security, and Enforcement of the H. Comm. on the Judiciary*, 118th Cong. (2023).

<sup>75</sup> *Policy Manual Chapter 1 - Purpose and Background*, U.S. Citizenship and Immigration Services (Jan. 5, 2024), <https://www.uscis.gov/policy-manual/volume-3-part-f-chapter-1>.

<sup>76</sup> Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS (Jan 22, 2024), <https://www.cbsnews.com/news/immigration-parole-biden-administration-1-million-migrants/>.

<sup>77</sup> *Operation Safe Haven: The Hungarian Refugee Crisis of 1956*, U.S. Citizenship and Immigration Services (Dec. 14, 2022), <https://www.uscis.gov/about-us/our-history/history-office-and-library/featured-stories-from-the-uscis-history-office-and-library/operation-safe-haven-the-hungarian-refugee-crisis-of-1956>.

<sup>78</sup> *The Cuban Family Reunification Parole Program*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/humanitarian-parole/the-cuban-family-reunification-parole-program> (last updated Jan. 19, 2024).

Republican allegations, the border wall has hardly deterred migrants from attempting to cross into the United States; the Secretary nevertheless has awarded construction contracts in accordance with the law. Finally, Secretary Mayorkas is taking action to secure the border, but with different, more humane policies. This is not a breach of public trust; it is a policy difference and that is not impeachable.

*i. Migrant Protection Protocols and Asylum Cooperative Agreements*

As an initial matter, few migrants were subject to MPP by January 2021 because Title 42 had largely replaced the program, and evidence suggests MPP may not have been effective.<sup>79</sup> Under MPP, migrants were sent to Mexico to await adjudication of their immigration cases in the United States. Approximately 70,000 asylum-seeking migrants were sent to Mexico under MPP between January 2019 and January 2021, before the program was suspended.<sup>80</sup> That is about five percent of the approximately 1.3 million individuals that Border Patrol encountered during that time period.<sup>81</sup> By January 2021, MPP had been effectively replaced by Title 42, which expired in May 2023.<sup>82</sup> Title 42 was a Centers for Disease Control order that permitted Customs and Border Protection (CBP) to expel undocumented migrants from the United States into Mexico without due process to prevent the spread of COVID-19. There were almost 2.5 million expulsions under Title 42 during Secretary Mayorkas' tenure, which is 35 times as many expulsions as people ever placed into MPP during the Trump administration.<sup>83</sup>

Similarly, the ACAs were not being utilized by January 2021. Under the ACAs, individuals from Guatemala, Honduras, and El Salvador could be removed to one of these countries, as long as it was not their home country, to seek protection there instead of in the United States. The programs for Honduras and El Salvador were *never* implemented, and less than 1,000 people were ever sent to Guatemala.<sup>84</sup> Not only was this program barely utilized during its existence, but when President

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<sup>79</sup> Aaron Reichlin-Melnick (@ReichlinMelnick), Twitter (Apr. 5, 2022, 2:59 PM), <https://twitter.com/ReichlinMelnick/status/1511418169348481035>

<sup>80</sup> *Fact Sheet: The "Migrant Protection Protocols"*, American Immigration Council (Jan. 7, 2022), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

<sup>81</sup> See *CBP Enforcement Statistics FY19*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2019> (last visited December 31, 2023); *CBP Enforcement Statistics FY20*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2020> (last visited December 31, 2023); *Southwest Land Border Encounters*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited December 31, 2023).

<sup>82</sup> Aaron Reichlin-Melnick (@ReichlinMelnick), X (Dec. 21, 2023, 2:47 PM), <https://x.com/ReichlinMelnick/status/1737922679733117106?s=20>.

<sup>83</sup> Aaron Reichlin-Melnick (@ReichlinMelnick), X (Jan. 22, 2024, 5:50 PM), <https://twitter.com/ReichlinMelnick/status/1749565189563818403?s=20>.

<sup>84</sup> Democratic Staff of the S. Comm. on Foreign Relations, *Cruelty, Coercion, and Legal Contortions: The Trump Administration's Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador* 15 (Jan. 18, 2021), <https://www.foreign.senate.gov/imo/media/doc/Cruelty,%20Coercion,%20and%20Legal%20Contortions%20--%20SFRC%20Democratic%20Staff%20Report.pdf>; *Southwest Border Migration FY 2020*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2020> (last modified Sept. 19, 2023); *Nationwide Encounters*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last visited December 31, 2023).

Biden took office, the ACAs had already been paused for 10 months due to the COVID–19 pandemic; no one had been sent to Guatemala since March 2020.<sup>85</sup>

The MAGA Republican attempt to impeach Secretary Mayorkas over the termination of the ACAs is laughable. The White House announced its plans to terminate the ACAs on February 2, 2021,<sup>86</sup> the same day Secretary Mayorkas was sworn into office.<sup>87</sup> Secretary Mayorkas did not hold office during official discussions or negotiations and played no role in the decision to terminate these agreements. Moreover, bilateral agreements are handled, and thus terminated, by the State Department—not Secretary Mayorkas and DHS. Republicans appear to misunderstand the roles and responsibilities of the State Department and DHS.

## *ii. The Border Wall*

On top of erroneous claims related to MPP and the ACAs, Republicans assert that Secretary Mayorkas should be impeached over his decision to largely halt border wall construction, wrongly claiming that it was a breach of the public trust because the decision reduced safety and security along the border and wasted taxpayer dollars.<sup>88</sup> Republicans ignore two critical points that undermine their claim: (1) the wall has been ineffective in providing safety and security; and (2) Secretary Mayorkas has complied with all laws specifically requiring border wall construction.

Contrary to Republican talking points, the billions of dollars spent on Donald Trump’s border wall have not made the border more secure or stopped migrants from arriving at the southern border. Smugglers are using inexpensive and easy-to-purchase materials to defeat the newly constructed wall, including household tools, such as ladders and reciprocating saws that cost less than \$100.<sup>89</sup> CBP reported that in FY 2022, the border wall was breached over 4,000 times—more than 11 times per day.<sup>90</sup> Parts of it have fallen over during weather events.<sup>91</sup> To repair more

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<sup>85</sup> Press Release, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*, U.S. Dep’t of State (Feb. 6, 2021), <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/#:~:text=Transfers%20under%20the%20U.S.%2DGuatemala,the%20U.S.%20border%20is%20open>.

<sup>86</sup> Exec. Order No. 14010, 86 Fed. Reg. 8267 (Feb. 2, 2021); *See also* Creating a Comprehensive Framework to Promote Safe, Orderly Mitigation in North Central America, U.S. Dep’t of State (Feb. 2, 2021)(Secretary Antony Blinken confirmed of the ACAs during a press conference on February 2, 2021), <https://www.state.gov/creating-a-comprehensive-framework-to-promote-safe-orderly-migration-in-north-and-central-america/>.

<sup>87</sup> *Biography of Alejandro Mayorkas*, Dep’t of Homeland Security, <https://www.dhs.gov/person/alejandromayorkas> (last updated May 1, 2023).

<sup>88</sup> *See* Committee on Homeland Security Majority Staff, *The Massive Waste and Abuse Enabled by the DHS Secretary Alejandro Mayorkas 7-14* (2023), <https://homeland.house.gov/wp-content/uploads/2023/12/Phase-5.pdf>.

<sup>89</sup> Nick Mirowski, *Smugglers are Sawing Through New Sections of Trump’s Border Wall*, Wash. Post (Nov. 2, 2019), [https://www.washingtonpost.com/national/smugglers-are-sawing-through-new-sections-of-trumps-border-wall/2019/11/01/25bf8ce0-fa72-11e9-ac8c-8eced29ca6ef\\_story.html](https://www.washingtonpost.com/national/smugglers-are-sawing-through-new-sections-of-trumps-border-wall/2019/11/01/25bf8ce0-fa72-11e9-ac8c-8eced29ca6ef_story.html).

<sup>90</sup> David J. Bier, *Border Wall Was Breached 11 Times Per Day in 2022*, CATO At Liberty (Dec. 30, 2022, 11:05 AM), <https://www.cato.org/blog/border-wall-was-breached-11-times-day-2022-2>.

<sup>91</sup> Adrianna Rodriguez, *Gusty winds blew over a portion of President Trump’s border wall with Mexico in California*, USA Today (Jan. 30, 2020), <https://www.usatoday.com/story/news/nation/2020/01/30/trumps-border-wall-falls-over-high-winds-california-mexico/4618372002/>.

than 3,200 holes between 2019 and 2021, the Federal government spent \$2.6 million.<sup>92</sup> Additionally, CBP discovered 40 tunnels from 2017 to 2021.<sup>93</sup> Individuals who are escaping desperate and deadly situations are willing to go over, through, or under a wall to protect their families. Border walls do not deter migration.<sup>94</sup>

Given its questionable security value, funding an ineffective wall, which could cost up to \$46 million per mile, is fiscally irresponsible and inhumane.<sup>95</sup> Yet it remains a top policy priority for House Republicans. Accordingly, Secretary Mayorkas has approved border wall construction and spending on replacement and maintenance updates to the border wall when required by law.<sup>96</sup> The decision to temporarily halt border wall construction while providing technology alternatives was a policy decision, not a breach of public trust that enriched the Secretary. Policy decisions are not impeachable offenses.

### ***iii. Secretary Mayorkas' Border Security Initiatives***

Finally, the Republicans' clumsy impeachment resolution ignores that Secretary Mayorkas has undertaken a series of ambitious initiatives to secure the border. His efforts include: deploying more personnel, technology, and infrastructure to the border;<sup>97</sup> expanding enforcement efforts;<sup>98</sup> creating pathways for individuals to lawfully enter the United States while disincentivizing illegal crossings; ramping up DHS's efforts to stop dangerous drugs like fentanyl from entering the U.S.; and launching cross-government efforts to target smugglers and cartels.<sup>99</sup>

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<sup>92</sup> The Week Staff, *Is Trump's Wall Working?*, The Week (June 3, 2023), <https://theweek.com/immigration/1023983/is-trumps-wall-working>.

<sup>93</sup> David J. Bier, *CBP Has Found 40 Tunnels under Trump's Border Wall*, CATO At Liberty (Jan. 31, 2023, 1:10 PM), <https://www.cato.org/blog/cbp-has-found-40-tunnels-under-trumps-border-wall>.

<sup>94</sup> Miriam Jordan, *Border Wall Fall Leaves Migrants With Devastating – and Costly – Injuries*, N.Y. Times (Nov. 14, 2023), <https://www.nytimes.com/2023/11/14/us/border-wall-migrant-injuries.html>.

<sup>95</sup> Fact Sheet, *Department of Defense and Department of Homeland Security Plans for Border Wall Funds*, The White House (June 11, 2021), <https://www.whitehouse.gov/omb/briefing-room/2021/06/11/fact-sheet-department-of-defense-and-department-of-homeland-security-plans-for-border-wall-funds/#:~:text=In%20total%2C%20the%20previous%20Administration,to%20%2446%20million%20per%20mile>.

<sup>96</sup> In June 2023, CBP announced it was moving forward with the construction of up to 20 miles of new border barriers in Texas's Starr County, which was specifically appropriated for during the Trump Administration. Press Release, *CBP Moves Forward on RGV Barrier and Yuma Andrade and El Centro Calexico Fence Replacement Projects to Mitigate Immediate Life, Safety and Operational Risks*, U.S. Customs and Border Protection (June 30, 2023), <https://www.cbp.gov/newsroom/local-media-release/cbp-moves-forward-rgv-barrier-and-yuma-andrade-and-el-centro-calexico>.

<sup>97</sup> *2022 Year in Review: DHS Responded to Wide-Ranging Threats and Challenges, Built Capacity for the Future*, Dept. of Homeland Security (Dec. 29, 2022), <https://www.dhs.gov/news/2022/12/29/2022-year-review-dhs-responded-wide-ranging-threats-and-challenges-built-capacity>.

<sup>98</sup> *2023 Year in Review: Secretary Mayorkas Champions Department-Wide Efforts to Save Lives and Prepare for 21<sup>st</sup> Century Security Challenges*, Dep't of Homeland Security (Jan. 9, 2024), <https://www.dhs.gov/news/2024/01/09/2023-year-review-secretary-mayorkas-champions-department-wide-efforts-save-lives#:~:text=In%202023%2C%20the%20Department%20took,natural%20disasters%20and%20cybersecurity%20incidents>.

<sup>99</sup> Fact Sheet, *Counter Human Smuggler Campaign Update*, Dep't of Homeland Security (Oct. 6, 2022), <https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th>.

These policies have been effective. During transcribed interviews, chief patrol agents consistently agreed that the technology, resources, and personnel provided by Secretary Mayorkas assisted their operations in securing the border and created a safer environment for border patrol agents.<sup>100</sup> The Secretary’s actions have also reduced demand for irregular pathways,<sup>101</sup> which has allowed CBP to focus more of its resources on individuals who may pose a security concern and attempt to evade detection. Toward that end, DHS, under Secretary Mayorkas’ leadership, has maintained an average apprehension rate identical to the apprehension rate under the Trump Administration—78 percent—despite a worldwide migration phenomenon resulting in significantly more people attempting to enter the United States.<sup>102</sup>

In addition to addressing migrant flows, the Secretary’s initiatives have successfully reduced illicit trafficking across the border. DHS has seized more fentanyl and arrested more criminals for fentanyl-related crimes in the last two years than in the previous five years combined.<sup>103</sup> Secretary Mayorkas has also invested in *Operation Without a Trace*, an initiative that tackles the illicit trafficking of firearms and ammunition from the U.S. into Mexico. Since its inception in FY 2020, *Operation Without a Trace* has yielded more than 800 criminal investigations, more than 550 arrests, and seizures of more than 723,000 rounds of ammunition and \$16.5 million in illicit currency.<sup>104</sup> More than half of all arrests under this operation occurred in just the past year.<sup>105</sup>

Secretary Mayorkas’ initiatives have also enabled Border Patrol to maintain control of U.S. territory along the southern border. Chief patrol agents consistently agreed during transcribed interviews that it is Border Patrol, not cartels, controlling territory in the United States under Secretary Mayorkas’ tenure.<sup>106</sup> Key excerpts from transcribed interviews include:

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<sup>100</sup> See *Transcribed Interview of Chief Patrol Agent Anthony Scott Good, U.S. Border Patrol, Department of Homeland Security*, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (June 29, 2023) (Chief Patrol Agent Good stating: “Anytime that that migrants can be encouraged to go through the port of entry legally instead of crossing in between the ports of entry illegally is beneficial to the Border Patrol and for border security at large.”).

<sup>101</sup> See *The Broken Path: How Transnational Criminal Organizations Profit from Human Trafficking at the Southwest Border: Hearing Before the Subcomms. on Border Security and Enforcement and Emergency Management and Technology of the H. Com. On Homeland Security*, 118th Cong. (2023) (verbal statement of Terrance “Terry” FitzPatrick: “Increasing the capacity to properly process migrants, can reduce trafficking vulnerability. That’s because long delays at legal points of entry can cause desperate individuals to seek irregular pathways and become trafficking targets.”).

<sup>102</sup> Letter from Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security, to Mark E. Green, H. Comm. on Homeland Security (Jan. 30, 2024) (on file with the Committee).

<sup>103</sup> *2023 Year in Review: Secretary Mayorkas Champions Department-Wide Efforts to Save Lives and Prepare for 21<sup>st</sup> Century Security Challenges*, Dep’t of Homeland Security (Jan. 09, 2024), <https://www.dhs.gov/news/2024/01/09/2023-year-review-secretary-mayorkas-champions-department-wide-efforts-save-lives#:~:text=In%202023%2C%20the%20Department%20took,natural%20disasters%20and%20cybersecurity%20incidents.>

<sup>104</sup> *Hearing Before the Subcomm. on Border Security and Enforcement of the H. Comm. on Homeland Security*, 118th Cong. (2023) (statement of James Mandryck).

<sup>105</sup> *ICE Annual Report Fiscal Year 2023*, U.S. Immigration and Customs Enforcement 37 (Dec. 29, 2023), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>.

<sup>106</sup> See eg *Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Dep’t of Homeland Security*, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (May 9, 2023);

*Chief Patrol Agent Aaron Heitke, San Diego Sector, May 9, 2023:*

Q: But it's correct to say that cartels don't actually control any land on the U.S. side of the border?

A: Correct.<sup>107</sup>

*Chief Patrol Agent Gloria Chavez, Rio Grande Valley (RGV) Sector, September 26, 2023:*

Q: Just to clarify, the cartels don't control territory in RGV north of the U.S. Mexico border. Is that correct?

A: That is correct... it's south of the border in Mexico. There's areas along the river on the Mexico side of the border that they—they have some control over or most control over, that there's a fee that needs to be paid for whatever transactions happen in those areas.<sup>108</sup>

Similarly, Raul Ortiz, then-Chief of the U.S. Border Patrol, testified before the Committee that cartels control territory “south of the United States”—not territory in the United States.<sup>109</sup>

Secretary Mayorkas is doing his job by enacting policies that respond to a worldwide mass migration movement, supporting frontline officers and agents, and leading an unprecedented campaign to combat transnational criminal organizations and stop dangerous drugs from entering the United States. In contrast, Republicans refuse to provide Secretary Mayorkas with the resources he needs to scale up these efforts even further. Secretary Mayorkas' actions do not constitute high crimes and misdemeanors, and the impeachment charges against him must fail.

#### **D. Republicans are sabotaging Secretary Mayorkas' ability to strengthen border security.**

Republicans have undermined the Department's ability to address many of the longstanding challenges at the southern border by refusing to provide critical resources. In 2021, nearly every House Republican voted against the Infrastructure Investment and Jobs Act, which provided additional funding to ports of entry for modernization, which helps with efficient processing and

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*Transcribed Interview of Chief Patrol Agent John Modlin, U.S. Border Patrol, Dep't of Homeland Security H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (July 26, 2023); Transcribed Interview of Chief Patrol Agent Gloria Chavez, U.S. Border Patrol, Dep't of Homeland Security, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (Sept. 26, 2023).*

<sup>107</sup> *Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Dep't of Homeland Security, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (May 9, 2023).*

<sup>108</sup> *Transcribed Interview of Chief Patrol Agent Gloria Chavez, U.S. Border Patrol, Dep't of Homeland Security, H. Comm. on Oversight and Accountability and H. Comm. on Homeland Security (Sept. 26, 2023).*

<sup>109</sup> *Failure By Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Security, 118th Cong. (2023).*

the detection of illicit goods and drugs.<sup>110</sup> Democrats supported the bill.<sup>111</sup> The following year, 200 House Republicans voted against providing increased funding for border security operations in the FY 2023 appropriations act.<sup>112</sup> Again, Democrats supported the bill. Republicans have also refused to consider the \$13.6 billion border supplemental funding request the Biden administration sent to Congress in October 2023.<sup>113</sup> The request would provide support to communities receiving migrants and pay for 1,300 additional Border Patrol agents, 1,000 more CBP officers, 375 new immigration judges, and additional technology to detect drugs like fentanyl at the border.<sup>114</sup>

Most recently, House Republicans have refused to participate in negotiations on a border security bill with the Biden administration and the Senate and instead signaled that any bill the Senate passes would be dead on arrival in the House.<sup>115</sup> Republicans cannot claim to be serious about border security while blocking necessary funding and legislation. And they cannot blame Secretary Mayorkas for challenges at the border while denying him the resources and tools needed to do his job.

Republicans are wasting time and resources on a sham impeachment investigation for political reasons. Rep. Troy Nehls of Texas recently owned up to why Members of his own party are refusing to engage on border security legislation:

Let me tell you, I'm not willing to do too damn much right now to help a Democrat and to help Joe Biden's approval rating. I will not help the Democrats try to improve this man's dismal approval ratings. I'm not going to do it. Why would I?<sup>116</sup>

Donald Trump has given House Republicans, including Speaker Mike Johnson, orders to block border security legislation to help the former President's election bid.<sup>117</sup> Republicans are

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<sup>110</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021).

<sup>111</sup> U.S. House of Representatives, Roll Call No. 370, Bill Number: H.R. 3684, 117th Cong. (2022), <https://clerk.house.gov/Votes/2021370>.

<sup>112</sup> U.S. House of Representatives, Roll Call No. 549, Bill Number: H.R. 2617, 117th Cong. (2022), <https://clerk.house.gov/Votes/2022549>; Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (2022).

<sup>113</sup> Letter from Shalanda D. Young, Director, Office of Management and Budget, to Patrick McHenry, Speaker Pro Tempore, U.S. House of Representatives (Oct. 20, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/10/Letter-regarding-critical-national-security-funding-needs-for-FY-2024.pdf>.

<sup>114</sup> *FACT SHEET: Biden-Harris Administration Supplemental Funding Request*, Dep't of Homeland Security (Oct. 20, 2023), <https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request>.

<sup>115</sup> Al Weaver, *Senate Republicans forge ahead on border bill over Speaker Johnson's opposition*, The Hill (Jan. 17, 2024), <https://thehill.com/homenews/senate/4412413-border-bill-senate-speaker-johnson-opposition/>.

<sup>116</sup> Manu Raju, et. al, *A border deal to nowhere? House GOP ready to reject Senate compromise on immigration*, CNN (Jan. 3, 2024), <https://www.cnn.com/2024/01/03/politics/senate-immigration-negotiations-congress/index.html>.

<sup>117</sup> Jennifer Bendery & Igor Bobic, *Trump Privately Pressuring GOP Senators to 'Kill' Border Deal to Deny Biden A Win*, HuffPost (Jan. 24, 2024), [https://www.huffpost.com/entry/trump-border-deal-republicans-biden\\_n\\_65b18fa0e4b0166fc770ae46?ljac](https://www.huffpost.com/entry/trump-border-deal-republicans-biden_n_65b18fa0e4b0166fc770ae46?ljac); Alexandra Hutzler, et. al, *Speaker Mike Johnson says he speaks with Trump 'frequently' about border negotiations*, ABCNews (Jan. 18, 2024), <https://abcnews.go.com/Politics/johnson-speaks-trump-frequently-border-negotiations/story?id=106483545>.

similarly using the border as a backdrop for political theater in their reckless attempt to impeach Secretary Mayorkas. Instead of solving problems, the Republicans' antics are exacerbating them.

Republicans have failed to articulate a viable claim to impeach the Secretary, and they have attempted to support their meritless claims by blaming the Secretary for challenges that pre-date the Biden administration, which they have refused to play any role in addressing. Neither aiding a Presidential candidate nor distracting the public from an inability to legislate are constitutionally permissible grounds for impeachment, and the Republicans' impeachment resolution must fail.

#### **E. Secretary Mayorkas has been transparent with Congress and the American people.**

Republicans allege that Secretary Mayorkas has breached the public trust by making knowingly false claims about the security of the border and whether DHS has "operational control" over the border. They are misinterpreting and mischaracterizing the Secure Fence Act of 2006 and Secretary Mayorkas' testimony to Congress. More importantly, none of the conduct Republicans describe in their allegation rises to the level of a breach of the public trust.

##### ***i. Republican Confusion Surrounding the Secure Fence Act of 2006***

The Secure the Fence Act of 2006 mandates that the Secretary "take all actions *the Secretary determines necessary and appropriate* [emphasis added] to achieve and maintain operational control over the entire international land and maritime borders of the United States."<sup>118</sup> The law defines "operational control" as "the prevention of *all* [emphasis added] unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."<sup>119</sup> Accordingly, the law does not require the Secretary to achieve operational control. Rather it requires him to take actions he determines to be "necessary and appropriate" to achieve operational control, which he has done. No administration has ever achieved operational control pursuant to the Secure Fence Act definition.<sup>120</sup> To suggest otherwise is false.

Republicans also incorrectly allege that Secretary Mayorkas lied to Congress about having operational control over the border during an April 28, 2022, Judiciary Committee hearing.<sup>121</sup> Secretary Mayorkas was asked whether DHS had operational control of the U.S. borders. He indicated in the affirmative but was interrupted before he could provide a more fulsome response. The Secretary noted that "the Secretary of Homeland Security would have said the same thing in 2020 and 2019."<sup>122</sup> Secretary Mayorkas was using a standard of reasonableness in his response, consistent with how DHS uses a standard of reasonableness in assessing operational control. In fact, Border Patrol's internal definition of "operational control" differs

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<sup>118</sup> Secure Fence Act of 2006, Pub. L. No. 109-367 §2(a), 120 Stat. 2638 (emphasis added).

<sup>119</sup> *Id.* §2(b) (emphasis added).

<sup>120</sup> Maria Ramirez Uribe, *Ask PolitiFact: What is 'operational control' at the border and do cartels have it?*, PolitiFact (Mar. 3, 2023), <https://www.politifact.com/article/2023/mar/03/ask-politifact-what-is-operational-control-at-the/>.

<sup>121</sup> *Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary*, 117th Cong. (2022).

<sup>122</sup> *Id.*

from the statutory definition and has changed over the course of administrations of both parties since enactment of the Secure Fence Act.

Secretary Mayorkas was not attempting to mislead Congress or the American people as to the state of the border; he was characterizing the state of the border consistent with long-standing DHS practice. He has taken “necessary and appropriate” actions to secure the border while being transparent with Congress and the American people about his actions and the state of the border. That conduct is not impeachable.

ii. ***Republicans’ New-Found Interest in Compliance with Congressional Oversight***

Republicans further allege that Secretary Mayorkas is obstructing the Committee’s oversight and legislative work by failing to provide documents and communications, a particularly bold accusation in light of the docile manner in which they tolerated the Trump administration’s utter disregard for Congress. President Donald Trump and his administration notoriously refused to provide information sought by Congress in over 100 congressional investigations and inquiries. Congressional Republicans did not protest. Their clearly performative indignation would be amusing if the impeachment of a long-time, dedicated public servant was not on the line.

At any rate, the Republicans’ allegations are wildly off-base. The Secretary has been candid and forthright with Congress throughout his term. He has testified at 27 congressional hearings starting with his confirmation hearing in January 2021<sup>123</sup>—more than any other current Cabinet official.<sup>124</sup> The Department has turned over 20,000 pages of documents to Congress since January 2023, including 13,000 pages to the Committee on Homeland Security alone.<sup>125</sup> DHS is in the process of producing more than 1 million pages of documents in response to a Committee subpoena requesting information related to the Afghanistan withdrawal, for which DHS had already sent 6,500 pages before the subpoena was even issued.<sup>126</sup> Chairman Green has sent DHS an unprecedented number of requests with unrealistic and arbitrary timelines, and then argued that DHS is not sufficiently responsive. The reality is the opposite—Secretary Mayorkas is responsive to the Committee, to Congress, and to the American people.

iii. ***Secretary Mayorkas Continues to Serve His Country with Integrity***

Secretary Mayorkas is upholding the law and honoring the public trust as he has throughout his more than 30 years of service to our Nation. Former Homeland Security Secretary Chertoff recently praised Secretary Mayorkas’ character, saying:

Despite our different parties, I know Mr. Mayorkas to be fair and honest—dedicated to the safety and security of the U.S. He has represented DHS to the country and to both parties in Congress with integrity. Republicans in the House should drop this

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<sup>123</sup> Email from Dep’t of Homeland Security Staff to H. Comm. on Homeland Security staff (Nov. 13, 2023) (on file with the Committee).

<sup>124</sup> Rebecca Beitsch, *GOP, DHS clash over obstruction claims ahead of Mayorkas impeachment* (Jan. 26, 2024), <https://thehill.com/homenews/house/4430095-gop-dhs-mayorkas-impeachment-obstruction-claims/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

impeachment charade and work with Mr. Mayorkas to deliver for the American people.<sup>127</sup>

#### IV. CONCLUSION

After two hearings and a cursory review of relevant law and fact, Committee Republicans approved sham articles of impeachment against Secretary Mayorkas. They will then urge the full House of Representatives to consider them in short order. In so doing, Committee Republicans are asking their colleagues to set aside both the Framers' intent and over two centuries of precedent to support an impeachment proceeding so unserious and derelict in substance and process that calling it a farce would be far too generous.

Committee Republicans have failed to make a constitutionally viable case to impeach Secretary Mayorkas. Their meritless claims rely on impeachment grounds roundly rejected by impeachment experts, misinterpretations of relevant laws and policies, and an outright rejection of the facts surrounding Secretary Mayorkas' efforts to secure the border.<sup>128</sup>

In a process akin to throwing spaghetti at the wall and seeing what sticks, Committee Republicans have cooked up vague, unprecedented grounds to impeach Secretary Mayorkas: "refusal to follow the law" and "breach of public trust." "Refusal to follow the law," or "maladministration," was deliberately rejected by the Framers as a ground for impeachment.<sup>129</sup> "Breach of public trust," or "abuse of power," requires conduct so extreme that it "subverts core tenets of the US governmental system,"<sup>130</sup> is "so plainly wrong by current standards that no reasonable official could honestly profess surprise at being impeached,"<sup>131</sup> and serves an official's "own benefit or the benefit of his own power or on behalf of a foreign power."<sup>132</sup> Constitutional law experts have unequivocally concluded Secretary Mayorkas' conduct does not meet that threshold.<sup>133</sup>

Nevertheless, throughout this truncated impeachment process, Republicans have ignored the facts to falsely suggest Secretary Mayorkas has refused to follow the law and relied on tortured misinterpretations of the law to justify their impeachment scheme. But the law is clear and so is the Secretary's record.<sup>134</sup> He has leveraged the full range of authorities at his disposal while stretching the resources afforded to the Department by Congress to secure the border.<sup>135</sup> While global migration trends continue to pose challenges, the Secretary has removed record levels of

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<sup>127</sup> Michael Chertoff, *Don't Impeach Alejandro Mayorkas*, Wall St. J. (Jan. 28, 2024), [https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article\\_copyURL\\_share](https://www.wsj.com/articles/dont-impeach-alejandro-mayorkas-misuse-of-process-for-policy-differences-1f0ba02c?st=pldmhthk4laabjo&reflink=article_copyURL_share).

<sup>128</sup> See *supra* Section II and Section III.

<sup>129</sup> See *supra* Section II.

<sup>130</sup> Tribe & Matz, *To End a Presidency*, *supra* note 4 at 41.

<sup>131</sup> *Id.*

<sup>132</sup> *Voices for the Victims*, *supra* note 8.

<sup>133</sup> See Section II.

<sup>134</sup> See Section III.

<sup>135</sup> *Id.*

migrants, detained more people than Congress has provided funding for, and prevented record levels of fentanyl from entering our communities.<sup>136</sup>

Constitutional law experts agree the Secretary has not committed any impeachable offense. Rather, he has faithfully implemented the administration’s border policies—policies Republicans apparently disagree with but refuse to change. Policy differences are not impeachable, and impeaching the Secretary would not change the administration’s policies. House Republicans’ impeachment of Secretary Mayorkas accomplishes nothing, which would be consistent with their abysmal record this Congress.<sup>137</sup>

At a hearing before the Committee on January 18, 2024, Professor Pearlstein opined: “[N]o branch of government has more power under our Constitution to address matters of border security than Congress.”<sup>138</sup> If House Republicans were sincere in wanting to improve conditions along the southern border, they would negotiate comprehensive legislation with the White House and the Senate. But the fact is House Republicans take their marching orders from Donald Trump, who has directed them to oppose efforts to negotiate a bipartisan border bill.<sup>139</sup> The impeachment of Secretary Mayorkas is a spectacle designed to distract the public from the fact that Republicans have ceded their power to a disgraced former President.

The MAGA-led impeachment of Secretary Mayorkas is a baseless sham, and the few rational Republicans left in Congress know that – even if they refuse to admit it.

When Republicans took control of the House, they had an opportunity to work with the White House and the Senate to move the country forward. Instead, they have been consumed by petty infighting during multiple Speaker contests, unforced crises over government shutdowns and debt limits, and futile political exercises like impeachment to satiate the extreme MAGA base. As Democratic Leader Hakeem Jeffries correctly observed: “This is a do-nothing Republican congress of epic proportions.”<sup>140</sup>

The American people deserve better.

BENNIE G. THOMPSON,  
*Ranking Member.*

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<sup>136</sup> *Id.*

<sup>137</sup> Emily Brooks, *Chip Roy gets heated over spending strategy: ‘We’re pissing it all away*, The Hill (Nov. 15, 2023) (lamenting the lack of Republican accomplishments during the 118th Congress, Rep. Chip Roy of Texas exclaimed: “One thing. I want my Republican colleagues to give me one thing – one – that I can go campaign on and say we did – one. Anybody sitting in the complex, if you want to come down to the floor and come explain to me one material, meaningful, significant thing the Republican majority has done.”), <https://thehill.com/homenews/house/4311429-chip-roy-gets-heated-over-spending-strategy-were-pissing-it-all-away/>.

<sup>138</sup> *Voices for the Victims*, *supra* note 8.

<sup>139</sup> Manu Raju, et. al, *GOP senators seethe as Trump blows up delicate immigration compromise*, CNN (Jan. 25, 2024), <https://www.cnn.com/2024/01/25/politics/gop-senators-angry-trump-immigration-deal/index.html>.

<sup>140</sup> Press Release, *Leader Jeffries: This Is a Do-Nothing Republican Congress of Epic Proportions*, Democratic Leader (Jan. 27, 2024), <https://democraticleader.house.gov/media/press-releases/leader-jeffries-do-nothing-republican-congress-epic-proportions>.

## APPENDIX I

The following Democratic amendments to the articles of impeachment were offered during consideration of H. Res. 863 in the Committee on Homeland Security:

[NOTE FOR GPO: Insert page scans of the attached PDF file for Appendix I (Filename: App1OfferedAmdts.pdf), consisting of the Jackson Lee, Correa, Thompson, Swalwell (2), Garcia, Ivey (2), Goldman, and Menendez amendments, here.]

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. JACKSON LEE OF TEXAS**

Page 1, line 13, strike “Article I” and all that follows through page 15, line 20.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. CORREA OF CALIFORNIA**

Page 15, line 21, strike “Article II” and all that follows through page 20, line 11.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       In 1788, Alexander Hamilton wrote: “In many cases  
2 [impeachment] will connect itself with the pre-existing fac-  
3 tions, and will enlist all their animosities, partialities, in-  
4 fluence, and interest on one side or on the other; and in  
5 such cases there will always be the greatest danger that  
6 the decision will be regulated more by the comparative  
7 strength of parties, than by the real demonstrations of in-  
8 nocence or guilt.”. And in that comment in the Federalist  
9 No. 65, Hamilton underscored the need for due process  
10 for impeachment proceedings to be viewed as something  
11 other than a baseless, political stunt.

12       In conducting its purported impeachment pro-  
13 ceedings, however, the Committee on Homeland Security  
14 did not afford Secretary Mayorkas standard due process  
15 rights commonly granted to the accused. For example, the  
16 Committee did not permit Secretary Mayorkas to present  
17 witnesses or cross-examine witnesses, such as was the pro-  
18 cedure for the impeachment of Secretary William W.

1 Belknap in 1876—the first and only precedent for the im-  
2 peachment of a Cabinet secretary.

3 Further, due to the lack of a resolution authorizing  
4 the inquiry adopted by the full House of Representatives,  
5 there was no role for Secretary Mayorkas’s counsel to rep-  
6 resent him before the Committee, which was a right af-  
7 farded former President Donald J. Trump in his first im-  
8 peachment. Indeed, in an exchange of letters with the  
9 ranking minority member of the Committee on January  
10 26, 2024, Chairman Mark E. Green appeared to mistake  
11 the motion to refer this resolution to the Committee on  
12 Homeland Security with an authorizing resolution that  
13 would have afforded Secretary Mayorkas with the stand-  
14 ard due process rights afforded the accused in other im-  
15 peachment proceedings.

16 Notwithstanding the lack of procedural or substantive  
17 due process rights afforded other subjects of impeachment  
18 inquiries, Secretary Mayorkas did agree to testify before  
19 the Committee on Homeland Security in a January 11,  
20 2024, letter to Chairman Green. Through inaction to  
21 schedule an amenable time for such testimony, the Com-  
22 mittee on Homeland Security denied Secretary Mayorkas  
23 the opportunity to testify.

24 The lack of adherence to precedent and the denial  
25 of due process imply that the Committee on Homeland Se-

1 curity has, in the case of Secretary Mayorkas, engaged  
2 in precisely the same kind of political stunt Hamilton  
3 warned would offer no “real demonstrations of innocence  
4 or guilt”.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. SWALWELL OF CALIFORNIA**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       Partisan Republicans are seeking to impeach Sec-  
2       retary Mayorkas for the following reasons:

3               (1) Later this year, United States voters will  
4       choose a President for the next four years. The pre-  
5       sumptive Republican nominee, Donald Trump, is a  
6       narcissistic, hateful liar who was found by a court  
7       of law to have raped and defamed at least one  
8       woman. He is currently facing 91 criminal charges  
9       for a wide variety of alleged offenses, including a fel-  
10      ony conspiracy to defraud the United States. He was  
11      twice impeached by the House of Representatives,  
12      including for inciting a violent insurrection. He is  
13      currently working to foment discord and perhaps a  
14      civil war, encouraging Republican governors to order  
15      national guardsmen to take up arms against the  
16      Federal Government. In a fair election, he will lose,  
17      because the United States people prefer decent, hon-  
18      est civil servants like Joe Biden. Republicans are

1 playing dirty political games, attempting to impeach  
2 Alejandro Mayorkas to distract from their own legal  
3 and electoral problems, score cheap political points,  
4 and appease their cult leader.

5 (2) In the same election, United States voters  
6 will choose their representatives to Congress. Repub-  
7 licans are widely expected to lose control of the  
8 House of Representatives, in part because court rul-  
9 ings have overturned several gerrymandered maps  
10 and returned voting power to disenfranchised citi-  
11 zens. Voters are also witnessing the extent to which  
12 Republicans have failed to govern, as Republican  
13 Members of the House of Representatives have spent  
14 far more time fighting with themselves over who  
15 should serve as speaker than on any meaningful at-  
16 tempts to develop bipartisan solutions to problems  
17 facing our country. The House Republican majority  
18 has accomplished approximately nothing; as Repub-  
19 lican Congressman Chip Roy put it, “We have noth-  
20 ing. In my opinion, we have nothing to go out there  
21 and campaign on. It’s embarrassing.”. As Repub-  
22 licans stare down the increasing likelihood of losing  
23 their grip on power, they are becoming more and  
24 more desperate, grasping at any opportunity avail-  
25 able to potentially increase their poll numbers—even

1 if it means pursuing an unconstitutional impeach-  
2 ment based on flimsy pretexts and dishonest twisting  
3 of the facts.

4 (3) As Republicans sink deeper and deeper into  
5 lawlessness, their greatest fear is being held account-  
6 able. They worry that prosecutors will indict them  
7 for conspiring to overturn elections, inciting violence,  
8 defying subpoenas, and otherwise breaking the law.  
9 Rather than listening to their better angels, Repub-  
10 licans are doubling down on their lawlessness, seek-  
11 ing to undermine norms and institutions so they can  
12 claim every attempt to hold them accountable is  
13 merely a “witch hunt”. They are pursuing impeach-  
14 ment of Secretary Mayorkas—along with President  
15 Biden and others—not because of actual evidence of  
16 high crimes and misdemeanors, but as a method of  
17 cheapening our country’s tools for enforcing ac-  
18 countability. They want people to think impeach-  
19 ment is a political cudgel rather than a legal instru-  
20 ment.

21 (4) Republicans have no shame. They know this  
22 is a fraudulent impeachment, but they are so caught  
23 up in their disinformation bubble that they think the  
24 United States public will not see through the cha-  
25 rade. Unfortunately for them, they are wrong. Amer-

1       icans will continue to demand that representatives of  
2       both parties come together to deliver comprehensive  
3       immigration reform and border security solutions  
4       until it actually happens. Democrats will continue to  
5       stand ready and willing to negotiate real solutions as  
6       long as it takes for Republicans to wake up from  
7       their Trump-inspired fever dream.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. SWALWELL OF CALIFORNIA**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 Under President Trump, several administration offi-  
2 cials failed to comply with subpoenas issued by the Com-  
3 mittee on Homeland Security to appear before Congress  
4 or provide documents, including—

5 (1) former Department of Homeland Security  
6 Official Kevin McAleenan, for failing to appear for  
7 a public hearing on terrorist threats facing the coun-  
8 try;

9 (2) former Department of Homeland Security  
10 Official Chad Wolf, for failing to appear for a public  
11 hearing on worldwide threats to the homeland;

12 (3) former Acting National Counterterrorism  
13 Center Director, Russell Travers, for failing to ap-  
14 pear for a public hearing on terrorist threats facing  
15 the country; and

16 (4) Inspector General of the Department of  
17 Homeland Security, Joseph Cuffari, for failing to  
18 provide documents related to a review of the deaths

1 of two children while in the custody of U.S. Customs  
2 and Border Protection.

3 By contrast, Secretary Mayorkas has testified before  
4 Congress over two dozen times since taking office, more  
5 than any other member of President Biden’s Cabinet. Sec-  
6 retary Mayorkas has testified before the House of Rep-  
7 resentatives Committee on Homeland Security six times  
8 since his confirmation in February 2021, including—

9 (1) March 17, 2021, Secretary Alejandro  
10 Mayorkas testified before the House of Representa-  
11 tives Committee on Homeland Security on “The  
12 Way Forward on Homeland Security”;

13 (2) September 22, 2021, Secretary Alejandro  
14 Mayorkas testified before the House of Representa-  
15 tives Committee on Homeland Security on “World-  
16 wide Threats to the Homeland: 20 Years After 9/  
17 11”;

18 (3) April 27, 2022, Secretary Alejandro  
19 Mayorkas testified before the House of Representa-  
20 tives Committee on Homeland Security on “A Re-  
21 view of the Fiscal Year 2023 Budget Request for  
22 the Department of Homeland Security”;

23 (4) November 15, 2022, Secretary Alejandro  
24 Mayorkas testified before the House of Representa-

1           tives Committee on Homeland Security on “World-  
2           wide Threats to the Homeland”;

3           (5) April 19, 2023, Secretary Alejandro  
4           Mayorkas testified before the House of Representa-  
5           tives Committee on Homeland Security on “A Re-  
6           view of the Fiscal Year 2024 Budget for the Depart-  
7           ment of Homeland Security”; and

8           (6) November 15, 2023, Secretary Alejandro  
9           Mayorkas testified before the House of Representa-  
10          tives Committee on Homeland Security on “World-  
11          wide Threats to the Homeland”.

12          The Department of Homeland Security has further  
13          provided over 20,000 pages of documents to congressional  
14          committees in the 118th Congress, 13,000 of which were  
15          provided to the House of Representatives Committee on  
16          Homeland Security alone.

17          On January 11, 2024, Secretary Mayorkas offered to  
18          make himself available to testify before the House of Rep-  
19          resentatives Committee on Homeland Security during pur-  
20          ported impeachment proceedings.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. ROBERT GARCIA OF  
CALIFORNIA**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       House Republicans’ impeachment inquiry has been a  
2 political crusade to help them politically, aid in donor  
3 fundraising, and harm President Joe Biden. It has not  
4 been a serious impeachment investigation for “Treason,  
5 Bribery, or other high Crimes and Misdemeanors”—the  
6 standard for impeachment under the Constitution. Repub-  
7 licans have pursued impeachment—which will do nothing  
8 to solve the challenges at the border—instead of engaging  
9 in substantive, bipartisan negotiations to develop meaning-  
10 ful solutions.

11       Republicans have repeatedly revealed their motiva-  
12 tions for obstructing border policy negotiations and im-  
13 peaching Secretary Mayorkas through the following:

14           (1) On April 18, 2023, the New York Times re-  
15 ported that Chairman Mark Green—before launch-  
16 ing his impeachment investigation—promised cam-  
17 paign donors behind closed doors he would impeach

1 Secretary Mayorkas. Chairman Green reportedly  
2 said, “On April 19, next week, get the popcorn—  
3 Alejandro Mayorkas comes before our committee,  
4 and it’s going to be fun. That’ll really be just the  
5 beginning for him.”.

6 (2) On May 30, 2023, speaking to reporters  
7 about her begrudging willingness to support a bipar-  
8 tisan debt ceiling bill, Representative Marjorie Tay-  
9 lor Greene reportedly said, “If you have to eat a shit  
10 sandwich, you want to have sides, okay? It makes it  
11 much better. So what I’m looking for is, I’m looking  
12 for some sides and some desserts.”. She then named  
13 the “beautiful dessert” she desired, stating, “Some-  
14 body needs to be impeached.”.

15 (3) On November 13, 2023, Axios reported that  
16 Representative Marjorie Taylor Greene sent a fund-  
17 raising email supporting her impeachment resolu-  
18 tion, asking supporters, “If you can afford to chip  
19 in, please do.”.

20 (4) On January 3, 2024, Representative Troy  
21 Nehls told CNN he would oppose a bipartisan border  
22 negotiation, stating, “Let me tell you, I’m not will-  
23 ing to do too damn much right now to help a Demo-  
24 crat and to help Joe Biden’s approval rating. I will

1 not help the Democrats try to improve this man's  
2 dismal approval ratings. I'm not going to do it.".

3 The findings of the Republicans' so-called impeach-  
4 ment investigation were predetermined. Republicans have  
5 decided to pursue impeachment to boost their campaign  
6 efforts and will let nothing stand in their way—not the  
7 facts, not the constitutional standards for impeachment,  
8 and certainly not basic common sense and decency.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. IVEY OF MARYLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       There is no evidence that constitutes grounds for the  
2 impeachment of Secretary Alejandro N. Mayorkas based  
3 on the constitutional standard for impeachment.

4       At the first impeachment hearing before this Com-  
5 mittee on January 10, 2024, constitutional law professor  
6 Frank O. Bowman, III, of the University of Missouri  
7 School of Law, testified that “the conclusion is universal  
8 among those who have studied this question—[and] has  
9 been so since the time of the founding—that policy dif-  
10 ferences, no matter how severe, no matter how heated, are  
11 simply not grounds for impeachment. [. . .] [A] Cabinet  
12 secretary—like the President—is not impeachable unless  
13 he’s proven to have committed treason, bribery, or other  
14 high crimes and misdemeanors. There’s no suggestion that  
15 I’m aware of that Secretary Mayorkas has committed ei-  
16 ther treason or bribery”.

17       Professor Bowman further elaborated that he had  
18 “seen lots of reports about arguments about policy . . .

1 nothing that rises [to] the level of an impeachable of-  
2 fense”.

3 Professor Bowman further explained to the Com-  
4 mittee that “it’s critical to note that if we could impeach  
5 Cabinet officers, or Presidents for that matter, anytime  
6 there are legal disputes about the application of the law  
7 or their exercise of discretion, then every President and  
8 every Cabinet officer would be impeachable”.

9 At the second and final impeachment hearing before  
10 this Committee on January 18, 2024, constitutional law  
11 expert and Princeton University law professor Deborah  
12 Pearlstein testified that “[p]olicy differences—and I agree  
13 with my colleague at the last hearing—no matter how pro-  
14 found are exactly not what impeachment was meant to be  
15 for. They are policies that the Secretary has pursued  
16 under the current President of the United States, who ap-  
17 pointed the Secretary and was elected to pursue those poli-  
18 cies.”.

19 The solution, Professor Pearlstein testified, lies in  
20 Congress’s legislative power, not its impeachment power:  
21 “[T]he last significant piece of comprehensive immigration  
22 legislation to pass Congress with bipartisan support was  
23 in 1986. The action under consideration here, impeach-  
24 ment, isn’t a tool of policy change—particularly the im-  
25 peachment of a single cabinet official who can be replaced

1 by another official given precisely the same role, [which]  
2 will have no effect on the heartbreaking problems we have  
3 heard described.”.

4 Professor Pearlstein further testified that her  
5 “knowledge—just based on Supreme Court cases . . . that  
6 have arisen surrounding executive actions over border poli-  
7 cies and reading the history there—suggests that these  
8 problems have existed through five administrations over  
9 decades, largely because Congress has enacted contradic-  
10 tory laws that are impossible to comply with, and multiple  
11 administrations have struggled to resolve that contradic-  
12 tion”.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. IVEY OF MARYLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       There is no evidence that constitutes grounds for the  
2 impeachment of Secretary Alejandro N. Mayorkas based  
3 on the constitutional standard for impeachment.

4       The Committee’s failure to satisfy the constitutional  
5 standard, and the complete absence of evidence that could  
6 justify impeachment, is underscored by pre-eminent con-  
7 stitutional law scholar, Harvard Professor Lawrence Tribe  
8 and 24 other constitutional law scholars who wrote in a  
9 January 10, 2024, letter: “Although House Republicans  
10 have offered various justifications for an impeachment, the  
11 underlying basis appears to be their view that Secretary  
12 Mayorkas’s policy decisions have degraded border security  
13 and involved objectionable uses of enforcement discretion.  
14 House Republicans have also publicly asserted that Sec-  
15 retary Mayorkas testified falsely in stating that he is en-  
16 forcing existing federal law and that the southern border  
17 is closed and secure. When the Framers designed the Con-  
18 stitution’s impeachment provisions, they made a conscious

1 choice not to allow impeachment for mere ‘maladministra-  
2 tion’—in other words, for incompetence, poor judgment,  
3 or bad policy. Instead, they provided that impeachment  
4 could be justified only by truly extraordinary misconduct:  
5 ‘Treason, Bribery, or other high Crimes and Mis-  
6 demeanors.’ U.S. Const., art. II, § 4. Thus, as Charles  
7 L. Black, Jr. noted in his influential handbook, impeach-  
8 ment is not permitted for ‘mere inefficient administration,  
9 or administration that [does] not accord with Congress’s  
10 view of good policy.’ Simply put, the Constitution forbids  
11 impeachment based on policy disagreements between the  
12 House and the Executive Branch, no matter how intense  
13 or high stakes those differences of opinion. Yet that is ex-  
14 actly what House Republicans appear poised to undertake.  
15 The charges they have publicly described come nowhere  
16 close to meeting the constitutional threshold for impeach-  
17 ment.”.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. GOLDMAN OF NEW YORK**

Strike page 1, line 1, and all that follows through page 20, line 11, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House shall proceed to the consideration in the House  
3 of the bill (H.R. 6404) to direct the Secretary of Home-  
4 land Security to enhance border security by disrupting the  
5 smuggling of United States-sourced firearms and related  
6 munitions across the land border with Mexico, and for  
7 other purposes. All points of order against consideration  
8 of the bill are waived. The bill shall be considered as read.  
9 All points of order against provisions in the bill are  
10 waived. The previous question shall be considered as or-  
11 dered on the bill and on any amendment thereto, to final  
12 passage without intervening motion except: (1) one hour  
13 of debate equally divided and controlled by the chair and  
14 ranking minority member of the Committee on Homeland  
15 Security or their respective designees; and (2) one motion  
16 to recommit.

1        SEC. 2. Clause 1(c) of rule XIX shall not apply to  
2 the consideration of H.R. 6404.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. MENENDEZ OF NEW JERSEY**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1        Since July 19, 2023, Republicans on the Committee  
2 on Homeland Security have released five flawed “reports”  
3 on Secretary Mayorkas, replete with factual errors and  
4 partisan rhetoric to attempt to legitimize their predeter-  
5 mined decision to impeach the Secretary.

6        In these reports, Republicans cited work and testi-  
7 mony from designated hate groups a total of 57 times.

8        To support their “investigation”, Republicans called  
9 as a witness Tim Ballard, who has been denounced by the  
10 Church of Jesus Christ of Latter-day Saints “for morally  
11 unacceptable behavior” and is facing multiple allegations  
12 of sexual misconduct, including in multiple civil lawsuits  
13 and criminal investigations.

14        To support their “investigation”, Republicans called  
15 as a witness Jessica Vaughan, who is Director of Policy  
16 Studies at the Center for Immigration Studies, a des-  
17 ignated hate group, and who called for prison inmates to  
18 build Trump’s border wall.

1 To support their “investigation”, Republicans called  
2 as a witness Todd Bensman, who is a National Security  
3 Fellow at the Center for Immigration Studies, a des-  
4 ignated hate group, and who once referred to migrants  
5 coming through Mexico as an “Ant Operation”.

6 To support their “investigation”, Republicans called  
7 as a witness Jaeson Jones, a Newsmax correspondent,  
8 who has repeatedly referred to migrants seeking asylum  
9 as an “invasion”, in line with the rhetoric of the Great  
10 Replacement conspiracy theory.

11 To support their “investigation”, Republicans called  
12 partisan Republican politicians as witnesses, including the  
13 Attorney General of Montana, who is facing 41 ethics  
14 charges brought by the Montana Office of Disciplinary  
15 Counsel, and who once said he opposed allow Syrian refu-  
16 gees into the country because “[m]uch of this Muslim cul-  
17 ture is foreign and strange to us”.

18 To support their “investigation”, Republicans called  
19 Mr. Chad Wolf, the unlawfully serving Acting Homeland  
20 Security Secretary under President Trump, as a witness,  
21 who defied a subpoena issued by the Committee on Home-  
22 land Security.

23 In these reports, Republicans called for a transcribed  
24 interview with Thomas Homan, a former Trump adminis-  
25 tration official who has been called the “intellectual father

1 of the family separation” policy in news articles and who  
2 has repeatedly sat for interviews with designated hate  
3 groups.

4 To support their “investigation”, Republicans called  
5 for a transcribed interview from Mark Morgan, a former  
6 Trump administration official who once stated to conserv-  
7 ative news host Tucker Carlson, “I’ve been to detention  
8 facilities where I’ve walked up to these individuals that  
9 are so called minors, 17 or under. I’ve looked at them,  
10 and I’ve looked in their eyes, Tucker, and I’ve said that  
11 this is a soon-to-be MS-13 gang member. It’s unequiv-  
12 cal.”.

13 To support their “investigation”, Republicans did not  
14 cite or call as a witness a single constitutional law expert.



## APPENDIX II

Democratic Members of the Homeland Security Committee were silenced during the markup of H. Res. 863 because extreme MAGA Republicans could not handle the scrutiny of their sham impeachment. The following descriptions are of some of the amendments that would have been offered had the Majority had the courage of their convictions to see the markup through to its natural conclusion:

### **Amendment No. 62 by Rep. Donald M. Payne, Jr., of New Jersey**

During consideration of this pointless impeachment of Secretary Mayorkas, which only serves to placate the whims of extremists in the Republican conference, up to 1,000 children remain separated from their parents because of the policies of the previous administration.

In 2018, former President Donald Trump's Department of Justice implemented a "family separation" policy, also referred to as "zero-tolerance." Then-Secretary of Homeland Security Nielsen oversaw the separation of thousands of migrant children from their families.

Former President Trump's family separation policy had zero heart and zero conscience. And the agencies implementing it had *zero plans* in place to reunite children with their families. The cruelty was the point for this radical policy that went against over 240 years of American values. The truth is that some members in the majority would applaud a return to a policy that puts kids in cages, separated from their families rather than the more humane policies Secretary Mayorkas has in place today.

Ultimately, the legacy of this unconscionable policy is that DHS was unable to properly identify and reunite children *for months*, and it is estimated that up to 1,000 children remain separated from their families *today*. Former President Trump's administration exposed migrant children to unimaginable trauma.

This type of hurt inflicted on children is devastating, particularly because this was absolutely avoidable. But instead of providing resources to reunite children with their families, the Committee has wasted time with a baseless impeachment resolution. And, absurdly, Republicans are trying to impeach the person who President Biden has charged with leading efforts to *reunite* families.

The Biden administration launched its Family Reunification Task Force three years ago, and Secretary Mayorkas has diligently led that Task Force.

The Biden administration should be applauded—and particularly Secretary Mayorkas—for their work to address the horrific family separation policy carried out by former President Trump and his administration.

Continuing efforts to reunite children with their families sends a clear message that family separation does not reflect our values. This amendment would have done just that. It would have

condemned the cruel family separation policy executed by former President Trump and his administration—an important step in remedying the pain his policy caused thousands of people.

### **Amendment No. 63 by Rep. Donald M. Payne, Jr., of New Jersey**

This amendment proposed a real policy solution to the challenges facing the country at the southern border as opposed to the purely political spectacle of impeachment.

The current situation at the border is the unfortunate result of an immigration system that has been broken for decades, and a Congress that has waited far too long to fix it. Yet instead of writing legislation or engaging in bipartisan policy negotiations, the Majority continues to play politics. They know that impeaching Secretary Mayorkas won't address the challenges on our southern border. Yet the Committee and the House have wasted time and taxpayer dollars doing just that.

By contrast, Democrats are committed to doing the hard work of legislating. That is why this amendment provided a rule to consider H.R. 3194, the U.S. Citizenship Act, introduced last year by Rep. Linda T. Sánchez of California. This bill would deliver long overdue legislation to modernize the U.S. immigration system, address the root causes of migration to the U.S.-Mexico border, and protect American values. The U.S. Citizenship Act would create new pathways for lawful immigration and protect the ones that already exist. These are straightforward and reasonable solutions.

Lawful immigration pathways help reduce the number of people who cross between ports of entry illegally. Furthermore, this bill would invest in border technology and narcotics prevention efforts with initiatives to enhance the interdiction of fentanyl, prosecute smugglers, and fight cartels and other criminal gangs. And unlike this useless impeachment process, H.R. 3194 reduces the immigration backlog and supports local communities across the Nation. The U.S. Citizenship Act is one of the boldest pieces of legislation proposed to secure the border and fix a broken immigration system.

The Majority would rather waste time on a pointless and unfounded impeachment given their party leader, the *former* President, has made it clear he wants the border to be a campaign issue. But the Majority's failure to consider policy proposals like the U.S. Citizenship Act demonstrates they have no real interest in helping the men and women of CBP or the vulnerable people that come to American in search of safety and a better life.

### **Amendment No. 21 by Rep. Glenn Ivey of Maryland**

This amendment underscored the fact that legal experts agree there is simply no constitutional basis for the impeachment of Secretary Mayorkas. The actions of Secretary Mayorkas do not rise to the level of high crimes and misdemeanors as constitutional scholars understand them. Even legal experts that historically have been invited by Republicans to testify on impeachment do not agree it is warranted in Secretary Mayorkas' case.

That is why this amendment would have insert sections of an opinion piece written by Jonathan Turley. Mr. Turley is a professor at George Washington University Law School, First Amendment advocate, and frequent legal commentator for FOX News. He has been invited by Republicans to provide testimony for multiple impeachment hearings and removal trials in Congress, including the impeachment of President Bill Clinton and both the first and second impeachments of President Donald Trump. So, suffice it to say that typically Mr. Turley does not traditionally agree with Democratic positions.

In his article on the Mayorkas impeachment, Mr. Turley makes clear that he doesn't agree with the Biden administration's border policies. Yet he maintains that none of those things rise to the level of high crimes and misdemeanors.

There are several points in Mr. Turley's opinion piece to underscore. First, he notes the fact that Congress has only impeached a Cabinet secretary once before, in 1876, and that despite decades of controversial Cabinet members accused of all manner of wrongdoings, Congress has rightly hesitated to cross that line again.

Another point is that House Republicans allege that Mayorkas is violating Federal law in releasing migrants into the country. However, as Mr. Turley notes in his piece, such releases occurred in prior administrations, including the Trump administration, and the merits of these claims are still being argued in court where it has long been recognized that Presidents are allowed to establish priorities in the enforcement of Federal immigration laws. Furthermore, the courts have upheld President Biden's decision to revoke the Migrant Protection Protocols, a Trump-era border policy that was barely used and largely ineffective.

Finally, as to the point Mr. Turley makes about maladministration, he correctly notes that during the Constitutional Convention there was debate regarding what constitutes the grounds for impeachment with George Mason arguing for a broad scope of offenses that could "subvert the Constitution." But this view was rejected by the Framers. Not simply unconsidered but explicitly rejected.

The actions debated do not rise to any level above maladministration, a bar for impeachment that was considered, debated, and ultimately excluded. Republicans may disagree with the President and Secretary Mayorkas' policies on border control, but they cannot in good faith impeach.

This amendment sought to illustrate the blatantly partisan nature of this impeachment effort, and House Republicans should think carefully about the precedent they are setting by lowering the bar in such a way.

#### **Amendment No. 22 by Rep. Glenn Ivey of Maryland**

This amendment would have inserted a valuable perspective about the performative and partisan nature of this impeachment from former Homeland Security Secretary Michael Chertoff, who served under President George W. Bush.

On January 28th, former Secretary Chertoff shared his thoughts about this impeachment in an op-ed that was published by the *Wall Street Journal*. Former Secretary Chertoff wrote, “The Constitution gives Congress the power to impeach federal officials for treason, bribery and other high crimes and misdemeanors. That’s a high bar.” Chertoff asserted, “I can say with confidence that, for all the investigating that the House Committee on Homeland Security has done, they have failed to put forth evidence that meets the bar.”

In the op-ed, Chertoff also offered insight about the impact—if not the motive—of this impeachment, stating, “Impeachment is a diversion from fixing our broken immigration laws and giving DHS the resources needed to secure the border.” He concluded with this admonition: “Republicans in the House should drop this impeachment charade and work with Mr. Mayorkas to deliver for the American people.”

Former Secretary Chertoff’s powerful words— as a Republican who served a Republican President in the same capacity as Secretary Mayorkas—carry great weight and should be heeded. Chertoff’s views were thoughtfully conceived and not impulsive, as they expanded on comments he made on CBS’ *Face the Nation* in 2022 when he referred to the Republicans’ threat to impeach Secretary Mayorkas as a “political stunt.”

Very importantly, this political stunt has dire consequences. This impeachment stunt distracts the Secretary and his staff from addressing the very real issues that affect homeland security, including those on the southern border. Prioritizing meaningful border security operations over political games is a far better use of the Secretary’s time.

Former Secretary Chertoff is not alone in voicing concern about the effect this impeachment stunt has on the Department’s operations and the 260,000 men and women who work to secure our homeland every day. Over two dozen former senior Homeland Security officials who served in both Republican and Democratic administrations wrote a letter this month calling this sham impeachment “a grave mistake with far-reaching consequences for our national security and economic prosperity.”

These officials warn that this impeachment would set a dangerous precedent. They emphasize that all this political theater is nothing more than a distraction from the real issues and does nothing to address the challenges the Department faces on the southern border. The letter from former senior officials also calls out another important point, as it goes to the heart of this Committee’s purpose.

This impeachment stunt is an attempt to distract from the fact that this Republican-led Congress has failed to achieve any meaningful legislative wins.

DHS has long been used as a political football, and that has significantly impaired employee morale while also making it difficult to attract and confirm senior officials. That stain has imposed cascading negative effects on the Department’s ability to effectively secure the border and enforce immigration laws.

As this Department directly impacts the lives of everyday Americans, using the Secretary's policies as a political wedge issue does nothing to help DHS navigate its current challenges. Former Secretary Chertoff and others with a direct understanding of the Department's work have long sounded the warning of the harms this impeachment would cause.

**Amendment No. 49 by Rep. Daniel S. Goldman of New York**

Republicans have outrageously alleged that Secretary Mayorkas has abandoned effective border security initiatives and is a threat to the national security and the safety of the American people. That could not be further from the truth. They clearly do not understand what constitutes a threat. From his first day in office, Secretary Mayorkas has sought to address the harms caused by the Trump administration while supporting frontline officers and agents and rebuilding the immigration infrastructure that President Trump tried to destroy. What did Republicans reward him with? Futile lawsuits.

Lawsuits that attempted to prevent the Department of Homeland Security from accomplishing its missions. These lawsuits, just like this Committee's markup and baseless impeachment investigation, seek to sow chaos. They seek to give Republicans favorable news headlines and talking points. Republicans would rather score political points than find a workable, bipartisan solution. This amendment would have described just some of this administration's policies and efforts to secure the border that have been stymied by Republicans.

For example, Republicans sued Secretary Mayorkas for using his well-established prosecutorial discretion to prioritize enforcement against threats to national security, public safety, and border security. How nonsensical is that? They sued the administration because it set priorities to guide the day-to-day work of DHS officials. These guidelines just help personnel use limited resources well. No administration has ever had the resources to detain and remove everyone undocumented in the country. And as much as Republicans like to talk about H.R. 2, it wouldn't change this. And rarely heard from the Republicans in this matter, the U.S. Supreme Court sided 8 to 1 with Secretary Mayorkas.

The Biden administration used its longstanding parole authority—like every administration since President Eisenhower—to create a pathway for certain populations to come to the United States, like Ukrainians fleeing Russian aggression. Did Republicans support these efforts? No, they sued. They sued despite the fact that Secretary Mayorkas's parole programs were very effective in decreasing U.S. Border Patrol's encounters with Cubans, Haitians, Nicaraguans, and Venezuelans. They tried to come to the United States via a legal pathway instead. Republicans sued despite the program adjudicating each individual on a case-by-case basis, as required by law and has been done with similar parole programs over the past few decades.

When DHS implemented the CBP One app to encourage asylum seekers to use ports of entry, what did Republicans do? They sued. They sued despite President Trump's former Secretary of Homeland Security Kirstjen Nielsen begging asylum seekers to approach ports of entry to present their claim. Secretary Mayorkas just created a way to incentivize this.

And, possibly most egregiously, when Border Patrol agents opted to cut Texas' razor wire to save lives and perform their national security mission near the Rio Grande, Republicans sued again. As expected, they lost. Nevertheless, Texas officials, with the support of some Republican colleagues, are still preventing Border Patrol from accessing parts of Eagle Pass.

They are preventing Border Patrol from accessing these areas, even when they receive distress calls about migrants in need of assistance. And then, Republicans highlight the number of people who have died along the border and blame it on Secretary Mayorkas. The hypocrisy!

This amendment would have highlighted how this administration has made strides to address challenges at the border, yet Republicans have only responded with futile lawsuits since they prefer a political wedge issue to policy solutions.

### **Amendment No. 50 by Rep. Daniel S. Goldman of New York**

This amendment would have provided some context to show how absurd and hypocritical this impeachment stunt truly is. Comparing the articles of impeachment Republicans have drafted for Secretary Mayorkas to those filed last session against President Trump truly underscores how ridiculous it is to suggest that the Secretary's actions rise to the level of high crimes and misdemeanors.

Take, for example, the first Trump impeachment. It included two articles: (1) Abuse of Power, and (2) Obstruction of Congress. These articles provided clear evidence and specific examples of how the former President requested a foreign government interfere in a U.S. Presidential election and how he directed his administration officials to obstruct congressional efforts to investigate this misconduct.

Multiple legal scholars provided testimony on the first Trump impeachment, with one noting: "The president's serious misconduct, including bribery, soliciting a personal favor from a foreign leader in exchange for his exercise of power, and obstructing justice and Congress are worse than the misconduct of any prior president, including what previous presidents who faced impeachment have done or been accused of doing."

By contrast, all the legal scholars that have provided testimony for this Committee's impeachment investigation have unequivocally stated that Secretary Mayorkas' actions do not meet the threshold required for impeachment.

Let us move on to the second Trump impeachment, which included only one article: "Incitement of Insurrection." As this amendment noted, President Trump encouraged his supporters to "fight like hell [or] you're not going to have a country anymore."

Following this encouragement, the January 6th rioters "unlawfully breached and vandalized the Capitol, injured and killed law enforcement personnel, menaced Members of Congress, the Vice President, and Congressional personnel, and engaged in other violent, deadly, destructive, and seditious acts."

Former President Trump is still facing the legal consequences for his actions that day but suffice it to say that incitement of an insurrection to subvert the peaceful transfer of power is far more akin to high crimes and misdemeanors than the policy disagreements detailed in the impeachment articles contained in H. Res. 863.

And make no mistake, what Republicans are calling a “Willful and Systemic Refusal to Comply with The Law” is nothing more than a policy disagreement and a thinly veiled attempt at turning border security into a political football during an election year.

As this amendment noted, the notion that the Secretary should be impeached for his failure to comply with the detention mandate set forth in section 235(b)(2)(A) of the Immigration and Nationality Act is preposterous. By this logic, every Cabinet official responsible for enforcing immigration laws since the enactment of that provision in 1996 should have been impeached because no administration has ever fully complied with this mandate.

Furthermore, the courts have long recognized that Presidents may exercise discretion and establish priorities in the enforcement of Federal immigration laws.

The second article, “Breach of Public Trust,” is similarly baseless and, again, fails to rise to the level of high crimes and misdemeanors. Once again, by this definition, Cabinet officials from across our Nation’s history would have faced impeachment for all manner of accused wrongdoings.

This amendment further underscored the hypocrisy of Republicans on the topic of impeachment. When faced with undeniable proof of President Trump’s abuses of power, obstruction of Congress, and subversion of the 2020 election, they by-and-large voted against impeachment.

Yet now they try to argue that far less serious accusations rise to the level of high crimes and misdemeanors? It’s ridiculous, and any reasonable person can see this political stunt for what it is.

While the Republican Party may be content with trampling on the Constitution, the intent of its Framers, and over 200 years of this country’s history, just to play political games, their hypocrisy and single-minded focus on their own self-interest should not go unremarked upon.

#### **Amendment No. 23 by Rep. Delia C. Ramirez of Illinois**

There is a phrase in Spanish, “no todo lo que brilla es oro”. The phrase, which loosely translates to “not everything that shines is gold,” describes how people are defrauded by being asked to accept things that appear valuable even if they have no substance. For two hearings on this sham impeachment of Secretary of Homeland Security Alejandro Nicholas Mayorkas, Republicans have offered something that appears valuable but is empty and baseless in place of something actually valuable—any policy solutions.

This amendment would have stricken the nonsensical impeachment resolution and instead considered H.R. 1511, *Renewing Immigration Provisions of the Immigration Act of 1929*, which addresses a vital homeland security matter. The original text of the impeachment resolution baselessly claimed Secretary Mayorkas has violated the Secure Fence Act of 2006 by failing to maintain operational control of the border. If Republicans did want to support the Secretary's ability to oversee border operations, they would have supported this amendment that would free up essential resources and funding to help the Department of Homeland Security expeditiously process cases and put more focus on those who could pose a threat to our communities.

H.R. 1511 would expand the Department of Homeland Security's authority and amend the existing Registry statute to legally recognize eight million immigrants who have lived here for years, as members of our communities. Currently, only noncitizens who arrived in the United States before January 1972 are eligible for lawful permanent residence. By eliminating the cutoff date, immigrants—including undocumented immigrants—who have been living in the United States for the last 7 years will have the opportunity to feel relief and a greater sense of peace and stability, reducing backlogs and increasing administrative capacity. By providing a much-needed pathway to a green card, undocumented immigrants covered in this bill would contribute approximately \$121 billion more to the U.S. economy annually and about \$35 billion more in taxes.

Congress should focus on investing in solutions that show promise to address the humanitarian crisis within our borders, the root causes of migration, and protect communities. Offering empty gestures is what some continue to do—whether by choice or incompetence—thus asking Americans to settle for chaos, uncertainty, and political theater. This baseless impeachment resolution will not help solve the humanitarian challenges at the southern border, make the border secure for local communities and asylum seekers, or address the conditions across Latin America that motivate families to migrate across jungles and deserts to the southern border.

On January 18th, during the second impeachment hearing of the Committee, Professor Deborah Pearlstein, an expert in impeachment proceedings, made it clear that impeachments were not an instrument for creating, effecting, or implementing policy change. There must be a rejection of empty performances because they cheat American people of real change that would bring relief to the thousands of immigrants already in our communities; bring hope to desperate families risking their lives to cross the Rio Grande; and bring for communities and small businesses working hands to address the labor shortage, the shrinking tax base, and the solvency of safety net programs.

There is a desperate need for real change. This amendment would have offered a step toward comprehensive, substantive legislation and policy that finally ends more than 30 years of failed border policy and political inaction.

#### **Amendment No. 81 by Rep. Delia C. Ramirez of Illinois**

During the Committee's first impeachment hearing, Professor Frank Bowman, III—an expert in impeachment proceedings—made it clear that policy differences are not a legitimate basis for impeachment. He concluded that, based on the testimonials and the evidence, there was no

evidence of a Federal offense that could lead to the impeachment of Secretary of Homeland Security Alejandro Nicholas Mayorkas. And yet, Republicans believe persecution is an acceptable substitution for policymaking. Because they cannot legislate and their positions are unpopular, they resort to punishing those who do not agree with them. Those spearheading this impeachment have made persecution their go-to strategy to get attention and score cheap political points.

This amendment would have stricken the nonsensical impeachment resolution and instead considered H.R. 6280, *the Smart Border Protection Act*, to authorize additional appropriations for certain U.S. Customs and Border Protection operations, and for other purposes. The original text of the impeachment resolution baselessly claimed Secretary Mayorkas has violated the Secure Fence Act of 2006 by failing to maintain operational control of the border. If Republicans did want to support the Secretary's ability to oversee border operations, they would have supported this amendment that would address the rise in fentanyl coming through ports of entry transported by American citizens.

This amendment would have invested in smart technologies at the border, brought on additional personnel, and improved the quality of infrastructure at ports of entry to ensure border communities are safe. Any funds from this bill must be used within one year of enactment to expeditiously address the issues listed above and are in addition to any other funds made available to the Department of Homeland Security and General Services Administration for these purposes.

Adopting this amendment would have been one way to show Republicans are serious about policy change that address border security. Continuing with the sham impeachment proceedings affirms they are more interested in perpetuating the problems at the border to ensure their own empty reelection and to re-elect Donald Trump. Republicans are using immigrants and Secretary Mayorkas, the first immigrant to serve as Secretary of Homeland Security, as scapegoats for more than 30 years of political inaction and to deflect attention from their failure to govern and pass meaningful policy.

#### **Amendment No. 26 by Rep. Robert Menendez of New Jersey**

This amendment outlined how this sham impeachment has distracted from and prevented action on the myriad threats facing the homeland, ultimately making the homeland more vulnerable to threats.

This Committee has been obsessed with this sham impeachment inquiry which has revolved around what the Republicans' have claimed is Secretary Mayorkas' dereliction of duty on the border crisis. Securing the border is one of many missions the Secretary is charged with and consequently only one of the many issues the Committee is charged with overseeing.

This Committee should be examining all activities relating to homeland security, including: domestic preparedness for the collective response to terrorism and natural disasters; transportation security; cybersecurity; the integration, analysis, and dissemination of homeland security information; matters related to DHS management and workforce issues; and

the interaction of all departments and agencies with DHS—among other things.

While the Committee has held 17 hearings on the border and the sham impeachment of Secretary Mayorkas, it has held zero Full Committee hearings dedicated to emergency preparedness, cyber threats, infrastructure protection, transportation security, Department of Homeland Security management, or information sharing and intelligence efforts. And the Committee is not faring any better when it comes to legislation.

This Committee has marked up only 14 bills thus far this Congress compared to the 36 bills passed out of Committee by this same time last Congress under Democratic control. In almost a year since the Committee adopted its Oversight Plan, the Republicans are stuck on page 2 of their Plan.

Committee Republicans have been derelict in their duty to properly examine the myriad of issues the Committee is charged with overseeing, making our homeland vulnerable and endangering the country. America's adversaries are watching, and they know that this Committee is dangerously preoccupied.

#### **Amendment No. 27 by Rep. Robert Menendez of New Jersey**

This amendment would have substituted new text that provided details on the nature of the sources and witnesses used by Homeland Security Committee Republicans to justify their sham investigation. This impeachment is based on extremism, not on facts and certainly not on any understanding of the Constitution.

In their reports justifying this farce, Republicans cited two different designated hate groups more than 50 times. Republicans want to justify impeaching Secretary Mayorkas based on commentary from the Center for Immigration Studies (CIS)—which the Southern Poverty Law Center has designated as a hate group since 2017 for its repeated publication of white nationalist and antisemitic writers.

CIS has promoted the writings of white nationalist figures, such as Jared Taylor, who wrote, “Blacks and Whites are different. When blacks are left entirely to their own devices, Western civilization — any kind of civilization — disappears”.

CIS has also promoted the writings of antisemite Kevin McDonald, who produced a series of books positing that Jews are genetically driven to destroy western societies.

When CIS went to court to challenge its designation as a hate group by the Southern Poverty Law Center, its complaint was thrown out. The judge found that CIS's complaint was devoid of any allegation that the Southern Poverty Law Center made a false statement in calling CIS a hate group.

Republicans cited this hate group more than 30 times in their reports. And they called two witnesses from CIS to participate in their so-called investigation. One of these witnesses has called for prison inmates to build Trump's border wall. The other once referred to migrants

coming through Mexico as an “Ant Operation.” That’s where this investigation, which has been referred to by the Majority as “methodical” and “comprehensive,” comes from.

Republicans cited another designated hate group—the Federation for American Immigration Reform—a group founded and run by white supremacist John Tanton, who—in a memo to colleagues—asked: “Will Blacks be able to improve (or even maintain) their position in the face of the Latin onslaught?” Republicans cited this group more than 20 times.

Republicans also invited a number of extremist former Trump officials to testify for closed-door interviews to support their investigation. They invited Tom Homan, the “intellectual father of the family separation policy” who compared the Mayor of Oakland, California, to a “gang lookout” and falsely suggested that an undocumented immigrant was responsible for wildfires in Sonoma County, California. They also invited Mark Morgan, who stated of unaccompanied minors, “I’ve walked up to these individuals that are so called minors, 17 or under. I’ve looked at them, and I’ve looked in their eyes, Tucker, and I’ve said that this is a soon to be MS 13 gang member. It’s unequivocal.”

Throughout their numerous border hearings, they also invited a series of extreme witnesses with a long history of vilifying migrants. One of their key witnesses, Tim Ballard, has been denounced by the Church of Jesus Christ of Latter-Day Saints for “morally unacceptable behavior” and is now facing multiple civil lawsuits and criminal investigations. These are the types of people who Republicans have used to justify their baseless attacks on an honorable public servant, Secretary Mayorkas.

In all these many months of so-called investigation, Republicans did not cite or call in a single constitutional law expert. Nor did they call anyone who could provide eye-witness testimony of any high crimes or misdemeanors committed by Secretary Mayorkas.

People deserve to know that the basis of this impeachment is rooted in extremism and devout loyalty to former President Trump. This amendment, which prompted the Majority to aggressively end debate in an unprecedented fashion, would have provided that transparency.

#### **Amendment No. 28 by Rep. Robert Menendez of New Jersey**

Despite their razor-thin majority in the Chamber, House Republicans resist supporting any and all bipartisan, common-sense reforms to improve border security and the U.S. immigration system. Their favored legislation—H.R. 2—is unworkable, extreme, and destined for failure.

During that bill’s markup last April, Republicans voted down every Democratic amendment to fix the bill. These amendments would have helped NGOs prevent tragic deaths on American soil and establish additional authorities to help the Biden administration stop the flow of fentanyl into the country. And Republicans voted against every single amendment—even the ones they knew would make the bill better.

And after H.R. 2, House Republicans have offered no alternatives and aren’t interested in seeking compromises. Unlike Democrats, Republicans don’t want to provide “another dime” to

help DHS with border challenges. Instead of legislating, Republicans bring sham impeachment proceedings that—like H.R. 2—will go nowhere and will solve nothing.

This past November, Republican Representative Chip Roy called on his Republican colleagues to name “[o]ne thing. I want my Republican colleagues to give me one thing — one — that I can go campaign on and say we did. One. Anybody sitting in the complex: if you want to come down to the floor and come explain to me one material, meaningful, significant thing the Republican majority has done.”

The 118th Congress is set to be one of the least productive in history, in part, because House Republicans would rather run sham impeachments proceedings than do their jobs.

A few weeks ago, the Republicans invited some former Trump officials for interviews with this Committee to support this sham impeachment. But these officials seem to have very short memories. Because looking at their Congressional testimony from when Donald Trump was President, they sure supported bipartisan legislation to address border security and immigration.

Here’s what Mark Morgan, former acting head of CBP under Trump, told Congress back in April 2019: “We need Congress to pass new legislation to fix outdated laws and gaps in the DHS authorities”, and “we must also confront our broken legal framework if we are to achieve lasting and effective border security.”

Here is what Mark Morgan told Congress in a few months later in November 2019: “As I sit here today as a law enforcement professional, over 30 years of service to this country, I am absolutely perplexed why Congress cannot come together in a bipartisan manner to fix this”, and “the only winners here by inaction, by not passing meaningful legislation, are the cartels as they continue to thrive and increase their multi-billion-dollar business on the backs of migrants.”

Here’s what Thomas Homan—Trump’s former acting head of ICE had to say about the need for legislation to address border security and immigration back in July 2019: “The biggest problem involves the unwillingness of Congress to address the loopholes that are causing this crisis”, and “Congress, if they don’t like what ICE and CBP do, then do your job. Fix it. Congress has failed the American people for three decades I’ve been doing this job in fixing this.”

These quotes show that Republicans know that bipartisan legislation is necessary to address border security and immigration. And they know that H.R. 2 has no chance of becoming law.

But they are cynically hoping that the American people don’t know that. Republicans are hoping that the impeachment of Secretary Mayorkas will serve as a convenient distraction in an election year from their failure to meaningfully address border security in good faith with Democrats.

#### **Amendment No. 34 by Rep. Yvette Clarke of New York**

This amendment would have sought to address one of the main drivers of record high migration. Instead of continuing to debate the merits of a sham impeachment—which regardless of the

outcome will do absolutely nothing to improve border security—this amendment would offer a legitimate policy proposal.

Globally, severe weather events are creating mass migration of individuals and families. Worsening weather patterns have been identified as causing instability, poverty, and crime and thus climate change is a significant contributing factor in individuals leaving their home countries.

It's clear that Republican would prefer not to address the reasons why people leave their homes, known as push factors. But the fact remains, most people do not make the perilous journey to the southern border unless they truly believe they have no other choice. And unfortunately, the devastating natural disasters caused by worldwide climate change have taken away a lot of choices.

In 2020, Honduras was hit by two back-to-back “once in a lifetime” hurricanes which devastated villages, farmland, and businesses, affecting over 3.9 million people in the country. In 2021, border officials encountered more than 319,000 Hondurans trying to cross into the US, about a fifth more than pre-pandemic figures. But the effects of climate change on migration trends are only beginning to be seen.

The United Nations High Commissioner for Refugees has estimated that by 2050, 200 million people will need humanitarian assistance due to the impacts of climate change. Any realistic solutions to address the border will need to account for the climate-driven migration of individuals and families which is only expected to increase.

This Committee is wasting time on a baseless impeachment rather than working on meaningful policies to address push *and* pull factors. Our border does not exist in a vacuum and even Trump's draconian border policies could not stop rising levels of worldwide migration. Instead of scapegoating a Secretary, Republicans should get serious about creating the policies they want to see and work with Democrats to make change happen. Acknowledging and addressing the impacts of climate change on migration would be a great place to start.

#### **Amendment No. 35 by Rep. Yvette Clarke of New York**

Non-governmental organizations (NGOs) have long served as a crucial ally and partner to the Federal Government, particularly in the care of individuals who come to this country seeking protection and refuge. These NGOs provide what may seem like basic care, such as food, shelter, water, and medicine, but to the individuals who have escaped persecution and often deadly situations, this care is anything but basic.

For U.S. Customs and Border Protection, NGOs provide support and alleviate pressure on CBP facilities during migration surges. This amendment included an acknowledgement stating the importance of Non-Governmental Organizations, underscoring their role as critical partners and allies to the federal government in the support they provide to migrants and people in need. The Federal Government cannot be everywhere at once or provide all the necessary resources to individuals who may need help. Although Border Patrol agents frequently provide lifesaving

services to migrants, they cannot continue to assist once a migrant has been processed and released. That is why the partnership and support of NGOs is so critical. They step in where DHS cannot.

Our Federal agencies have said repeatedly they lean on and depend on these NGOs. That is why it is appalling to hear Republicans continuously demonize NGOs, going so far to say they are facilitating illegal immigration. Even more disturbing is H.R. 2, which would prohibit the Federal Government from providing any funding to charitable organizations who care for migrants—that could include entities like Catholic Charities. Why would Republicans seek to punish such organizations for helping people?

Providing basic humanitarian care to children and adults who are starving, sick, or needing a roof over their heads while they figure out next steps is not facilitating illegal migration. It is appalling—and inconsistent with the Christian values—to demonize these organizations, many of which are faith-based organizations which simply want to help people in need. NGOs also provide support to Border Patrol, helping to ensure facilities don't become overcrowded.

NGOs play a vital role and are not enemies just because they are providing basic care to people in need.

### **Amendment No. 31 by Rep. Yvette Clarke of New York**

Republican attacks on the asylum system, a hallmark of the country, are increasingly concerning. Some have used hateful rhetoric to demonize individuals who are fleeing dangerous and deadly situations at home. But this is not an invasion or some kind of replacement scheme.

Asylum laws have been in place for decades and have contributed to the success of America. This is a nation of immigrants. This amendment would have included an acknowledgment restating Congress's commitment to asylum for anyone who is fleeing persecution.

Such a statement shows the world that the U.S. still believes in asylum. It shows that the country serves as a beacon of hope to those who may feel hopeless. And it shows that at least the Democratic Members of this Committee are focused on the issues that really matter and not just a ridiculous impeachment stunt that does nothing to help migrants or the men and women who protect the country every day.

The success of this great Nation, in large part, has relied upon encouraging people from across the world to come and contribute to the United States. It's part of the promise of America—a beacon of hope for refugees and for those fleeing persecution, war, and violence. It's a dear, sacred promise, and it is why it is so concerning to see Republicans put forth cruel and inhumane proposals that seek to punish individuals seeking a better life while also destroying the asylum system. Destroying the asylum system and looking to deter individuals seeking critical protection goes against what this country was built on.

This amendment would have reaffirmed the importance of maintaining the asylum system and affording all migrants their rights under the law. Going back to the dark days of the previous

administration's immigration policies is not an option. And while Republicans may wish to put politics over policy to impeach a Cabinet secretary without evidence or constitutional justification, this amendment signified that some Members are still committed to upholding the foundations that make this country so great.

#### **Amendment No. 100 by Rep. Dina Titus of Nevada**

Instead of focusing attention on a sham impeachment, the Committee should be focused on actual policy changes that will help communities. This amendment would have provided for consideration of H.R. 1401, Rep. Guest's bill, the *END FENTANYL Act*. The *END FENTANYL Act* requires the Commissioner of U.S. Customs and Border Protection to regularly review and update, at least triennially, the policies and manuals of the Office of Field Operations related to inspections at ports of entry. The purpose is to ensure the consistent implementation of inspection practices that can effectively respond to technological and methodological changes aimed at disguising illegal activities, such as drug and human smuggling, along the border.

Republicans continue to blame Secretary Mayorkas and Democrats for the drugs that are smuggled into the country. But the truth is that under Secretary Mayorkas' leadership, DHS has made significant progress in preventing drugs from entering American communities. Secretary Mayorkas has ramped up DHS efforts to stop fentanyl from entering communities, launched new cross-government efforts to target smugglers, and cartels, and put more personnel, technology, infrastructure, and resources at the borders, and expanded enforcement efforts. DHS has seized more fentanyl and arrested more criminals for fentanyl-related crimes in the last 2 years than in the previous 5 years combined. Although Republicans used to tout drug seizures as a measure of success under the Trump administration, now they hypocritically use these successes as grounds for the impeachment of Secretary Mayorkas.

Republicans are using Secretary Mayorkas as a scapegoat for the longstanding challenges at the Nation's borders, instead of working with Democrats on a real solution to border security like enacting this bill into law. Republicans have had the opportunity to have this bipartisan legislation become enacted into law.

In fact, this bill was previously negotiated to be included in the Fiscal Year 2023 National Defense Authorization Act (NDAA), but because of Republican negligence it was dropped out of conference. It is regrettable that, in a departure from tradition, the Members of the Homeland Security Committee were not named to the NDAA Conference Committee to ensure that crucial bills like this one wouldn't fall by the wayside. It is even more regrettable that this Committee is spending time marking up these sham impeachment articles instead of marking up bills like H.R. 1401.

#### **Amendment No. 101 by Rep. Dina Titus of Nevada**

This amendment would have highlighted the fundamental irony that brings this Committee here today. It adds language detailing violations of Federal law, failures of leadership, failures of integrity, and egregious mismanagement by DHS officials appointed by Donald Trump. Yet, they were not impeached by the House of Representatives.

Here are a few examples: Secretary Kirstjen Nielsen committed perjury and lied to Congress during her short-lived tenure during sworn testimony regarding information on known or suspected terrorists. At that same hearing, she denied limiting the number of asylum seekers processed at ports of entry. However, an Office of Inspector General report later showed that DHS had in fact taken deliberate steps to limit the number of asylum seekers processed. Secretary Nielsen further lied when she stated that DHS “had never had a policy for family separation.” In fact, 8 months earlier, she had signed off on a policy specifically designed to “direct the separation of parents or legal guardians and minors held in immigration detention.” The Government Accountability Office found that Secretary Nielsen also violated and ignored several laws that designated order of succession for the position of Acting Secretary before her resignation.

The problematic pattern did not stop here. The DHS Office of Inspector General also found that Chad Wolf interfered with intelligence reports for political reasons, in addition to his disregard of laws relating to Federal appointments. He unlawfully designated Ken Cuccinelli as his Deputy. Multiple courts upheld GAO’s findings that these officials violated Federal laws to usurp positions in DHS which resulted in their directives being invalidated.

More broadly, impeachment should remain what the Framers intended it to be—a check on power. That’s not what Republicans are doing. Impeachment should stay away from what the Framers’ feared—a tool for partisan removal. In fact, the Framers decided to omit the term “maladministration” from their ultimate standard for impeachment. All of this is to say that there is no real basis for impeachment just because one doesn’t like the policies a Cabinet secretary implements, or just because one thinks it’s a good political sticking point. This argument is backed by constitutional scholars, DHS officials, and even Republicans currently in Congress who think that this sham impeachment is a waste of time.

In comparison with the gravity that Democrats employed when impeaching a dangerous President, these current efforts against the Secretary are wholly unserious, unsubstantiated, and unequivocally for political points. In contrast to Trump’s short-lived and fake secretaries, Secretary Mayorkas was confirmed by the Senate and is carrying out President Biden’s policies in good faith.

### APPENDIX III

The following Democratic amendments to the articles of impeachment were not offered during consideration of H. Res. 863 in the Committee on Homeland Security, because the Republican Majority took the unprecedented step of cutting off debate during committee consideration of articles of impeachment:

[NOTE FOR GPO: Insert page scans of the attached PDF file  
(Filename:App3DemNotOfferedAmdts.pdf) for Appendix III here.]

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Strike “scheme” each place it appears.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Page 17, strike lines 14 through 22.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Strike page 1, line 1, and all that follows through page 20, line 11, and insert the following:

1       That the brave Members of the House Republican  
2 Conference who voted for H.R. 3233, the National Com-  
3 mission to Investigate the January 6 Attack on the United  
4 States Capitol Complex Act, in the 117th Congress de-  
5 serve honor and special recognition.

6       On January 6, 2021, domestic terrorists attacked the  
7 citadel of our democracy—the United States Capitol—in  
8 an attempt to prevent Congress from doing its constitu-  
9 tional duty to certify the results of the 2020 Presidential  
10 election.

11       On May 19, 2021, the House of Representatives  
12 voted to investigate, in a bipartisan manner, the horrific  
13 January 6, 2021, attack on the United States Capitol.

14       Thirty-five House Republicans courageously put poli-  
15 ties aside and voted to establish a bipartisan commission  
16 made up of experts to give Congress and the public an  
17 unvarnished view of what happened on the fateful day of  
18 January 6, 2021, examine why our systems failed, and

1 develop bipartisan recommendations for reforms to ad-  
2 dress any identified gaps.

3 The 35 House Republicans who voted in favor of the  
4 bill included—

5 (1) Representative Don Bacon of Nebraska,  
6 serving from 2017 to the present;

7 (2) Representative Cliff Bentz of Oregon, serv-  
8 ing from 2021 to the present;

9 (3) Representative Stephanie I. Bice of Okla-  
10 homa, serving from 2021 to the present;

11 (4) Representative Liz Cheney of Wyoming,  
12 who served from 2017 to 2023;

13 (5) Representative John R. Curtis of Utah,  
14 serving from 2017 to the present;

15 (6) Representative Rodney Davis of Illinois,  
16 who served from 2013 to 2023;

17 (7) Representative Brian K. Fitzpatrick of  
18 Pennsylvania, serving from 2017 to the present;

19 (8) Representative Jeff Fortenberry of Ne-  
20 braska, who served from 2005 to 2022;

21 (9) Representative Andrew R. Garbarino of  
22 New York, serving from 2021 to the present;

23 (10) Representative Carlos A. Gimenez of Flor-  
24 ida, serving from 2021 to the present;

1           (11) Representative Tony Gonzales of Texas,  
2           serving from 2021 to the present;

3           (12) Representative Anthony Gonzalez of Ohio,  
4           who served from 2019 to 2023;

5           (13) Representative Michael Guest of Mis-  
6           sissippi, serving from 2019 to the present;

7           (14) Representative Jaime Herrera Beutler of  
8           Washington, who served from 2011 to 2023;

9           (15) Representative J. French Hill of Arkansas,  
10          serving from 2015 to the present;

11          (16) Representative Trey Hollingsworth of Indi-  
12          ana, who served from 2017 to 2023;

13          (17) Representative Chris Jacobs of New York,  
14          who served from 2020 to 2023;

15          (18) Representative Dusty Johnson of South  
16          Dakota, serving from 2019 to the present;

17          (19) Representative David P. Joyce of Ohio,  
18          serving from 2013 to the present;

19          (20) Representative John Katko of New York,  
20          who served from 2015 to 2023;

21          (21) Representative Adam Kinzinger of Illinois,  
22          who served from 2011 to 2023;

23          (22) Representative David B. McKinley of West  
24          Virginia, who served from 2011 to 2023;

1           (23) Representative Peter Meijer of Michigan,  
2           who served from 2021 to 2023;

3           (24) Representative Mariannette Miller-Meeks  
4           of Iowa, serving from 2021 to the present;

5           (25) Representative Blake D. Moore of Utah,  
6           serving from 2021 to the present;

7           (26) Representative Dan Newhouse of Wash-  
8           ington, serving from 2015 to the present;

9           (27) Representative Tom Reed of New York,  
10          who served from 2010 to 2022;

11          (28) Representative Tom Rice of South Caro-  
12          lina, who served from 2013 to 2023;

13          (29) Representative Maria Elvira Salazar of  
14          Florida, serving from 2021 to the present;

15          (30) Representative Michael K. Simpson of  
16          Idaho, serving from 1999 to the present;

17          (31) Representative Christopher H. Smith of  
18          New Jersey, serving from 1981 to the present;

19          (32) Representative Van Taylor of Texas, who  
20          served from 2019 to 2023;

21          (33) Representative Fred Upton of Michigan,  
22          who served from 1987 to 2023;

23          (34) Representative David G. Valadao of Cali-  
24          fornia, serving from 2013 to 2019, and again from  
25          2021 to the present; and

1           (35) Representative Steve Womack of Arkan-  
2           sas, serving from 2011 to the present.

3           The following four House Republicans who voted to  
4 investigate, in a bipartisan manner, the horrific January  
5 6, 2021 attack on the United States Capitol are current  
6 Members of the Committee on Homeland Security:

7           (1) Representative Andrew R. Garbarino of  
8           New York;

9           (2) Representative Carlos A. Gimenez of Flor-  
10          ida;

11          (3) Representative Tony Gonzales of Texas; and

12          (4) Representative Michael Guest of Mis-  
13          sissippi.

14          These four Republicans supported a legitimate in-  
15 quiry focused on developing solutions, but unfortunately  
16 they have now reversed course, choosing to act out of par-  
17 tisanship instead of patriotism, supporting a sham im-  
18 peachment inquiry into Secretary Alejandro Mayorkas,  
19 where the findings and course of action were predeter-  
20 mined from the start.

21          The House of Representatives honors patriotism over  
22 partisanship, and therefore commemorates the 35 House  
23 Republicans who courageously put politics aside and voted  
24 to investigate the horrific January 6, 2021 attack on the  
25 United States Capitol.

1       The House of Representatives denounces sham, pre-  
2 determined, partisan, baseless investigations, including  
3 purported impeachment inquiries that distract from and  
4 prevent opportunities to address threats to homeland secu-  
5 rity.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THOMPSON OF MISSISSIPPI**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 Department of Homeland Security Inspector General  
2 Joseph V. Cuffari has committed violations of Federal law  
3 and exhibited failed leadership and egregious mismanage-  
4 ment.

5 During congressional testimony in June 2023, In-  
6 spector General Cuffari admitted to deleting text messages  
7 from his official Government phone on an ongoing basis  
8 and as a “normal practice”, in contravention of Federal  
9 law and Departmental policy.

10 Inspector General Cuffari testified that in February  
11 2022, he discovered the destruction of Secret Service text  
12 messages from the period leading up to and on January  
13 6, 2021. Inspector General Cuffari did not notify Congress  
14 about the destruction of these documents until July 2022  
15 and failed to include information on the missing texts in  
16 a semi-annual report as required by law.

17 A Merit Systems Protection Board deposition tran-  
18 script raises serious concerns about Inspector General

1 Cuffari's possible retaliatory actions, lack of candor, im-  
2 proper use of taxpayer dollars, and lack of truthfulness  
3 in his communications with Congress.

4 In response to multiple years-long investigations into  
5 Inspector General Cuffari's leadership and conduct, In-  
6 spector General Cuffari has repeatedly resisted compliance  
7 and has dedicated a significant amount of effort and tax-  
8 payer money to avoiding accountability.

9 Instead of a baseless impeachment of Secretary  
10 Mayorkas, Inspector General Cuffari should immediately  
11 resign from his position to restore credibility and trust to  
12 the Office of Inspector General within the Department of  
13 Homeland Security.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MS. JACKSON LEE OF TEXAS**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       The House of Representatives condemns the practice  
2 of the State of Texas installing razor wire barriers along  
3 the southwest border for the following reasons:

4           (1) the practice violates international law;

5           (2) the practice prevents the Federal Govern-  
6 ment from managing the border;

7           (3) the practice creates more harmful and dan-  
8 gerous situations for frontline personnel doing their  
9 jobs; and

10          (4) the practice prevents frontline personnel  
11 from having the ability to encounter individuals or  
12 provide life-saving care.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. JACKSON LEE OF TEXAS**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 Secretary Mayorkas inherited a Department of  
2 Homeland Security beleaguered by four years of  
3 politicization and mismanagement. The previous adminis-  
4 tration squandered billions in taxpayer money on a politi-  
5 cally-motivated ineffective border wall, cut lawful means  
6 of immigration, dismantled the United States immigration  
7 infrastructure, and refused to address the underlying  
8 causes of migration.

9 Former President Donald Trump employed cruel, in-  
10 humane policies that put children alone in cages crying  
11 out for their mothers, discriminated against religious mi-  
12 norities, and made threats to international allies about  
13 cutting off foreign aid and closing the border entirely.

14 Now that former President Trump is seeking re-elec-  
15 tion, the former President has encouraged congressional  
16 Republicans to abandon working with Democrats and the  
17 Biden administration on border security reform so that  
18 he can use the issue in his 2024 Presidential campaign.

1        This transparently cynical failure to find policy solu-  
2 tions continues in the baseless impeachment of Secretary  
3 Mayorkas.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. PAYNE OF NEW JERSEY**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       On April 6, 2018, then-Attorney General Jeff Ses-  
2       sions directed Federal prosecutors to adopt a “zero-toler-  
3       ance policy” at the border.

4       Under the “zero-tolerance policy”, adults entering  
5       the United States without authorization were criminally  
6       prosecuted for illegal entry or illegal re-entry. If those  
7       adults entered the country with children, those children  
8       were transferred to the custody of the Department of  
9       Health and Human Services Office of Refugee Resettle-  
10      ment. This inhumane policy had the effect of separating  
11      families.

12      The Trump administration was ill-equipped to deal  
13      with the consequences of its family separation policy and  
14      admitted in court filings it had difficulty identifying sepa-  
15      rated children because ‘data was kept by multiple govern-  
16      ment agencies in different systems.

17      In 2018, the Department of Homeland Security  
18      (DHS) Office of Inspector General released a report that

1 concluded that DHS was not prepared to implement the  
2 zero-tolerance policy and thousands of children were nega-  
3 tively affected.

4 While the family separations have ended, it is esti-  
5 mated that up to 1,000 children remain separated.

6 The Trump administration's family separation poli-  
7 cies inflicted immense pain and trauma on children and  
8 their families.

9 Further, the Trump administration created an envi-  
10 ronment where children suffered from post-traumatic  
11 stress and other critical mental health issues, which can  
12 impact these children for life.

13 The Trump administration failed to protect the most  
14 vulnerable and instead purposefully inflicted suffering,  
15 which the Biden administration and Secretary Mayorkas  
16 have attempted to reverse with humane border security  
17 policies.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. PAYNE OF NEW JERSEY**

Strike page 1, line 1, and all that follows through page 20, line 11, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House of Representatives shall proceed to the consid-  
3 eration in the House of Representatives of the bill (H.R.  
4 3194) to provide an earned path to citizenship, to address  
5 the root causes of migration and responsibly manage the  
6 Southwest border, and to reform the immigrant visa sys-  
7 tem, and for other purposes. All points of order against  
8 consideration of the bill are waived. The bill shall be con-  
9 sidered as read. All points of order against provisions in  
10 the bill are waived. The previous question shall be consid-  
11 ered as ordered on the bill and on any amendment thereto,  
12 to final passage without intervening motion except: (1) one  
13 hour of debate equally divided and controlled by the chair  
14 and ranking minority member of the Committee on Judici-  
15 ary or their respective designees; and (2) one motion to  
16 recommit.

1            Clause 1(c) of rule XIX shall not apply to the consid-  
2    eration of H.R. 3194.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. CARTER OF LOUISIANA**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       On January 10, 2024, the Texas National Guard  
2 blocked U.S. Customs and Border Protection (CBP) from  
3 placing mobile video surveillance inside the Shelby Park  
4 area along the U.S. border in Maverick County, Texas.

5       On January 12, 2024, CBP was notified that a  
6 woman and two migrant children drowned near the Shelby  
7 Park Boat Ramp. They were also notified of a distress  
8 call from migrants.

9       When CBP responded to the location of the  
10 drownings and the distress call, the Texas National Guard  
11 advised CBP that they could not give CBP access to the  
12 Shelby Park area.

13       The Federal Emergency Management Agency admin-  
14 isters the Operation Stonegarden grant program, which  
15 provides funding to local law enforcement for overtime and  
16 equipment to support border security.

17       In fiscal year 2023, out of the \$90,000,000 available  
18 in Operation Stonegarden grant funding, Texas received

1 \$37,600,000, which was 41.1 percent of the total available  
2 for the year, and Maverick County received \$400,000.

3 No State or county receiving Operation Stonegarden  
4 funding should prevent CBP or any other entity of the  
5 Department of Homeland Security from accessing areas  
6 along the border, especially when people are in distress  
7 and require assistance.

8 The House of Representatives condemns Governor  
9 Abbott and the Texas National Guard for allowing mi-  
10 grants to drown and stopping CBP from implementing  
11 measures that would save human lives.

12 The House of Representatives further condemns any  
13 entity which executes such dangerous policies and finds  
14 that such entities should not receive Operation  
15 Stonegarden funding.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. CARTER OF LOUISIANA**

Page 5, after line 21, insert the following:

1       In *Arizona v. Biden*, 31 F.4th 469 (2022), the United  
2 States Court of Appeals for the Sixth Circuit concluded,  
3 “Federal law gives the National Government considerable  
4 authority over immigration policy. . .Congress has tasked  
5 the Secretary of Homeland Security, currently Alejandro  
6 Mayorkas, with establishing ‘national immigration en-  
7 forcement policies and priorities’. . .[and] the Secretary  
8 exercised this power by issuing ‘Guidelines for the En-  
9 forcement of Civil Immigration Law.’”. The Sixth Circuit  
10 reversed a lower court’s decision to issue a preliminary in-  
11 junction blocking the Department from relying on the  
12 DHS guidance. Moreover, the Sixth Circuit found that  
13 “the Guidance, though aiming to focus resources in cer-  
14 tain directions, does not tie the hands of immigration offi-  
15 cers” and “[e]ven the premise that the Guidance has coin-  
16 cided with a fall in immigration enforcement overall does  
17 not lead to the conclusion that the Guidance is the cul-  
18 prit”.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. THANEDAR OF MICHIGAN**

Strike page 1, line 1, and all that follows through page 20, line 11, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House shall proceed to the consideration in the House  
3 of the bill (H.R. 5132) to bolster Department of Home-  
4 land Security efforts to combat cross-border threats posed  
5 by transnational criminal organizations, and for other pur-  
6 poses. All points of order against consideration of the bill  
7 are waived. The bill shall be considered as read. All points  
8 of order against provisions in the bill are waived. The pre-  
9 vious question shall be considered as ordered on the bill  
10 and on any amendment thereto, to final passage without  
11 intervening motion except: (1) one hour of debate equally  
12 divided and controlled by the chair and ranking minority  
13 member of the Committee on Homeland Security or their  
14 respective designees; and (2) one motion to recommit.  
15       SEC. 2. Clause 1(e) of rule XIX shall not apply to  
16 the consideration of H.R. 5132.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. THANEDAR OF MICHIGAN**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       The House of Representatives recognizes that immi-  
2       gration benefits the United States economy and society  
3       and acknowledges the following:

4               (1) The United States was founded upon and  
5       enriched by the contributions of immigrants from  
6       across the globe.

7               (2) Generations of immigrants are responsible  
8       for making the United States the most prosperous  
9       Nation in the world.

10              (3) It is both an American value and tradition  
11       to welcome asylum seekers fleeing persecution and  
12       conflict.

13              (4) Seeking asylum at or between a port of  
14       entry is a human right protected under both U.S.  
15       and international law.

16              (5) President Biden has taken efforts to over-  
17       turn the extreme and cruel immigration policies of  
18       the previous administration.

1           (6) Immigrants make our economic sectors  
2 more innovative and competitive.

3           (7) Unemployment is at record lows, and Amer-  
4 ican businesses yearn for workers—regardless of  
5 their origin—to fill labor shortages across the coun-  
6 try.

7           (8) One in eight residents of the United States  
8 is an immigrant, and most others are descendants of  
9 immigrants.

10          (9) Comprehensive immigration reform would  
11 reduce the deficit, create jobs, and make the United  
12 States safer.

13          (10) Immigrants enhance the resilience and vi-  
14 tality of the United States, and efforts to protect mi-  
15 grants seeking asylum from government persecution,  
16 widespread violence, and conflict are integral to  
17 American principles.

18          (11) The personnel of the Department of  
19 Homeland Security should be commended for their  
20 efforts to enhance processing, screening, and vetting  
21 measures for all migrants.

22          (12) Twice-impeached former President Donald  
23 Trump and MAGA Republicans should be con-  
24 demned for demeaning immigrants and not seeking

- 1 comprehensive immigration reform or negotiating
- 2 border security measures in good faith.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. MAGAZINER OF RHODE ISLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 House Republicans have repeatedly sought to under-  
2 mine Secretary Mayorkas in his work to secure the border.

3 In October 2023, President Biden and Secretary  
4 Mayorkas requested \$14,000,000,000 in supplemental ap-  
5 propriations to secure the border, funding that would en-  
6 able the hiring of 1,300 new U.S. Border Patrol agents  
7 and 1,000 U.S. Customs and Border Protection (CBP)  
8 officers. House Republicans have refused to hold a vote  
9 on this request.

10 The funding requested by President Biden and Sec-  
11 retary Mayorkas would also allow for over 100 inspection  
12 machines to detect fentanyl at ports of entry, new tem-  
13 porary holding facilities and detention beds, new immigra-  
14 tion judge teams to process asylum claims more efficiently,  
15 and funding to conduct robust child labor investigations  
16 and enforcement.

17 When asked why House Republicans will not provide  
18 this funding to secure the border, Representative Troy

1 Nehls of Texas said: “Let me tell you, I’m not willing to  
2 do too damn much right now to help a Democrat and to  
3 help Joe Biden’s approval rating”, demonstrating House  
4 Republicans prioritizing partisan politics over solving the  
5 Nation’s challenges at the border.

6 House Republicans have not only denied additional  
7 resources to secure the border but have actually sought  
8 dangerous cuts to border funding. In August 2023, Rep-  
9 resentative Chip Roy of Texas led 15 colleagues in a letter  
10 threatening to defund the Department of Homeland Secu-  
11 rity.

12 In 2023, House Republicans passed their so-called  
13 “Limit, Save, Grow” Act, which would have cut up to 22  
14 percent from the Department of Homeland Security budg-  
15 et and eliminate 2,400 CBP officers. Every Republican  
16 Homeland Security Committee member voted for this bill,  
17 demonstrating their lack of seriousness with regard to se-  
18 curing the border.

19 While House Republicans gave themselves a  
20 monthlong vacation through the holidays, Secretary  
21 Mayorkas worked diligently with United States Senate Re-  
22 publicans and Democrats on a plan to address challenges  
23 at the Southwest border and provide additional resources  
24 to CBP agents and officers in the field. Rather than work-  
25 ing with Secretary Mayorkas and the Senate to craft a

1 plan to secure the border, House Republicans declined to  
2 participate in talks with the Senate and the Secretary, and  
3 instead have obstructed this attempt to secure the border  
4 at the behest of Donald Trump, who seeks to use the bor-  
5 der as a campaign issue.

6 On Friday, January 26, 2024, Speaker Mike Johnson  
7 declared the Senate attempt at a policy solution “dead on  
8 arrival” in the House without even seeing legislative text.

9 Republicans have wasted time and resources on a  
10 baseless impeachment of Secretary Mayorkas, blaming  
11 him for the situation at the border when in fact they have  
12 blocked his attempts to secure the border at every oppor-  
13 tunity. While Secretary Mayorkas works to keep American  
14 safe, House Republicans have prioritized political stunts  
15 at the behest of Donald Trump ahead of the security of  
16 the American people.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. MAGAZINER OF RHODE ISLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 Secretary Mayorkas has aggressively worked to se-  
2 cure the border and enforce the Nation’s laws, including:

3 (1) Enforcing immigration laws by intercepting  
4 and repatriating undocumented migrants, as dem-  
5 onstrated in the following:

6 (A) Since the beginning of the Biden ad-  
7 ministration through 2023, close to 4 million  
8 individuals have been removed, returned, or ex-  
9 pelled from the country.

10 (B) Under Secretary Mayorkas’ leadership,  
11 the apprehension rate at the Southwest border  
12 has been 81 percent, exceeding the apprehen-  
13 sion rate of 77.9 percent under the Trump ad-  
14 ministration.

15 (C) Under Secretary Mayorkas, migrants  
16 waiting for asylum claims to be heard have been  
17 released into the country at a lower rate than  
18 in the last two years of the Trump administra-

1           tion. In the final two years of the Trump ad-  
2           ministration nearly 713,000 immigrants were  
3           released from detention into the United States,  
4           approximately 52 percent of crossers, compared  
5           to only 48 percent during the Biden administra-  
6           tion.

7           (D) Under Secretary Mayorkas, the De-  
8           partment of Homeland Security has:

9                   (i) Increased the use of expedited re-  
10                   moval, and accelerated asylum adjudica-  
11                   tions to more quickly process and remove  
12                   those that do not qualify.

13                   (ii) Launched a new intelligence unit  
14                   to coordinate and strengthen early warn-  
15                   ings of migrant movements.

16           (2) Leading an unprecedented inter-agency  
17           campaign to combat human smuggling. From FY  
18           2021 to FY 2023, more than 41,532 suspected  
19           human smugglers and other bad actors have been  
20           arrested by Department of Homeland Security under  
21           the leadership of Secretary Mayorkas.

22           (3) Disrupting transnational criminal organiza-  
23           tions, as demonstrated in the following:

24                   (A) In 2021, President Biden, with the as-  
25                   sistance of Secretary Mayorkas, issued Execu-

1           tive Order 14060, establishing the United  
2           States Council on Transnational Organized  
3           Crime. This Executive Order initiated a whole-  
4           of-government effort to target, disrupt, and de-  
5           grade transnational criminal organizations that  
6           threaten our national security.

7                   (B) In 2021, Secretary Mayorkas launched  
8           Operation Sentinel, a collaborative, inter-agency  
9           effort to disrupt the logistical network of crimi-  
10          nal organizations at the border.

11                   (C) In 2021, Secretary Mayorkas launched  
12          Joint Task Force Alpha, to enhance U.S. en-  
13          forcement efforts against human smuggling and  
14          trafficking groups.

15                   (D) In 2023, the Biden administration  
16          launched Operation Blue Lotus and Operation  
17          Four Horsemen, an interagency surge of oper-  
18          ations to seize narcotics, investigate crimes, and  
19          arrest dangerous individuals associated with  
20          transnational criminal organizations, leading to  
21          33,108 criminal arrests and dealing a signifi-  
22          cant blow to transnational criminal operations  
23          and criminals seeking to profit from crime.

24                   (E) In 2023, the Biden administration or-  
25          ganized a ministerial meeting with more than

1           80 countries and international organizations to  
2           launch a Global Coalition to Address Synthetic  
3           Drug Threats, a worldwide effort led by the  
4           United States, to disrupt fentanyl supply chains  
5           and keep synthetic drugs off of American  
6           streets.

7           (F) In 2023, Secretary Mayorkas launched  
8           Operation Artemis, part of a multi-pronged ef-  
9           fort to combat illicit opioids and target the  
10          fentanyl supply chain.

11          (4) Increasing capacity to humanely enforce im-  
12          migration laws:

13                 (A) In 2022, President Biden approved ap-  
14                 propriations of \$16.7 billion for U.S. Customs  
15                 and Border Protection (CBP)—\$1.8 billion  
16                 above the fiscal year 2022 enacted level, includ-  
17                 ing \$88.2 million to increase CBP’s personnel  
18                 capacity at the border between ports of entry.  
19                 All Republicans voted “no”.

20                 (B) In October 2023, the Biden adminis-  
21                 tration requested \$14 billion in its supplemental  
22                 national security request for border manage-  
23                 ment; this request includes resources for an ad-  
24                 ditional 1,300 Border Patrol agents and 1,000  
25                 Customs and Border Protection officers. House

1           Republicans have yet to call a vote on the re-  
2           quest.

3           (C) As part of the Biden administration’s  
4           supplemental funding request, Secretary  
5           Mayorkas requested that Congress provide  
6           funding for 1,600 additional Asylum Officers  
7           and associated support staff to hear migrant  
8           claims and facilitate timely immigration disposi-  
9           tions, including expedited removal for those  
10          without a valid claim, as required by the law.

11          (5) Implementing technology and other re-  
12          sources provided by Democrats in Congress and  
13          President Biden: —

14                 (A) In 2021, President Biden signed the  
15                 Infrastructure Investment and Jobs Act, which  
16                 designated \$3.4 billion to build and modernize  
17                 land ports of entry along the border, including  
18                 six projects on the Southern border. More than  
19                 200 Republicans voted “no” on that measure.

20                 (B) Under Secretary Mayorkas’s leader-  
21                 ship, Customs and Border Protection has en-  
22                 hanced surveillance capacity by adding 81 new  
23                 autonomous surveillance towers since the start  
24                 of FY 2022, deploying over 70 miles of a linear  
25                 ground detection system, dozens of unmanned

1           aerial surveillance drones, and three counter  
2           drone systems across the southwest border.

3           (C) In addition, the Biden Administration  
4           has delivered more than \$1 billion to assist  
5           states and cities with costs associated with mi-  
6           gration, while Republicans are attempting to  
7           zero-out this funding.

8           (6) Following laws passed by Congress and co-  
9           operating with Congressional oversight: —

10           (A) Despite widespread concerns about the  
11           effectiveness and safety of border walls, Sec-  
12           retary Mayorkas has directed border barrier  
13           construction to continue in South Texas, dem-  
14           onstrating full compliance with the law passed  
15           by Congress.

16           (B) Secretary has appeared before Con-  
17           gressional committees, 27 times in three years,  
18           more than any other Cabinet member during  
19           that period, he has directed the Department of  
20           Homeland Security to provide more than 20,  
21           000 pages of documents in response to requests  
22           by the various committees, and he offered to  
23           appear before the Committee on Homeland Se-  
24           curity during its impeachment investigation be-

1 fore committee chairman Mark Green rescinded  
2 his invitation.

3 (C) The United State Supreme Court, by  
4 a vote of 8-1, declined the opportunity to over-  
5 turn the Secretary's policies related to the han-  
6 dling of migrants at the Southern Border.

7 Secretary Mayorkas has carried out these numerous  
8 actions to attempt to secure the Southern border despite  
9 House Republicans' refusal to support the resources the  
10 Secretary has requested to carry out his duties, with  
11 House Republicans instead wasting time and resources on  
12 a baseless impeachment inquiry that has uncovered no im-  
13 peachable offenses.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. IVEY OF MARYLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       There is no evidence that constitutes grounds for the  
2 impeachment of Secretary Alejandro N. Mayorkas based  
3 on the constitutional standard for impeachment.

4       Legal experts agree that there is no valid basis for  
5 impeaching Secretary Mayorkas over policy differences.  
6 Even Jonathan Turley, a Fox News legal commentator  
7 and George Washington University Law School Professor  
8 who has testified at the invitation of Republicans in mul-  
9 tiple impeachment proceedings including the impeachment  
10 of former Presidents Bill Clinton and Donald Trump, has  
11 written that Secretary Mayorkas’s actions have not met  
12 the bar for impeachment.

13       Turley wrote: “I hold no brief for Alejandro  
14 Mayorkas. However, I hold the Constitution more dearly  
15 than I despise his tenure. Absent some new evidence, I  
16 cannot see the limiting principle that would allow the  
17 House to impeach Mayorkas without potentially making  
18 any policy disagreement with a cabinet member a high

1 crime and misdemeanor. That is a slippery slope that we  
2 would be wise to avoid. Indeed, it is precisely the tempta-  
3 tion that the Framers thought they had avoided by reject-  
4 ing standards like maladministration. That is why the case  
5 has not been made to impeach Alejandro Mayorkas.”.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. IVEY OF MARYLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       There is no evidence that constitutes grounds for the  
2 impeachment of Secretary Alejandro N. Mayorkas based  
3 on the constitutional standard for impeachment.

4       Former Secretary of Homeland Security Michael  
5 Chertoff recognized that there is no valid basis for the  
6 impeachment of Secretary Mayorkas and that doing so  
7 would fail to advance border security. On January 28,  
8 2024, Chertoff wrote, "Political and policy disagreements  
9 aren't impeachable offenses. The Constitution gives Congress  
10 the power to impeach federal officials for treason, bribery  
11 and 'other high Crimes and Misdemeanors.' That's a high bar.  
12 [...] As homeland security secretary under President George W.  
13 Bush--and as a former federal judge, U.S. attorney and  
14 assistant attorney general--I can say with confidence that,  
15 for all the investigating that the House Committee on  
16 Homeland Security has done, they have failed to put forth  
17 evidence that meets the bar. This is why Republicans

1 aren't seeking to hold Mr. Mayorkas to the Constitution's  
2 'high crimes and misdemeanors' standard for impeachment.  
3 [...] Impeachment is a diversion from fixing our broken  
4 immigration laws and giving DHS the resources needed  
5 to secure the border. [...] Republicans in the House should  
6 drop this impeachment charade and work with Mr. Mayorkas  
7 to deliver for the American people."



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. GOLDMAN OF NEW YORK**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       Throughout their tenures in office, President Joe  
2 Biden and Secretary of Homeland Security Alejandro  
3 Mayorkas have made significant efforts to address chal-  
4 lenges at the southern border and a broken immigration  
5 system in a humane and orderly manner. At seemingly  
6 every turn, Republican State Attorneys General, Gov-  
7 ernors, and other elected officials have attempted to block  
8 and hamper such efforts. Their frivolous and counter-  
9 productive lawsuits and obstruction seek to sow chaos and  
10 manufacture a crisis for political gain—sometimes at the  
11 cost of human lives:

12           (1) Republicans have attempted to dismantle  
13 longstanding parole authority. To address worldwide  
14 migration at levels unseen since World War II  
15 amidst congressional inaction on comprehensive im-  
16 migration reform, Secretary Mayorkas established  
17 parole processes for certain Cuban, Haitian, Nica-  
18 raguean, and Venezuelan nationals in accordance

1 with precedent. These processes require individuals  
2 to have a U.S.-based sponsor, pass rigorous national  
3 security vetting and screening, and meet certain  
4 health standards before being considered for parole  
5 on a case-by-case basis. Those admitted into the  
6 United States on a temporary basis may receive  
7 work authorization. Despite the program resulting in  
8 substantial decreases in unlawful crossings for these  
9 groups and aligning with historic use of parole for  
10 individuals facing dire humanitarian conditions, 20  
11 Republican-led States sued the Department of  
12 Homeland Security seeking to dismantle the pro-  
13 gram in 2023.

14 (2) Republicans have sought to disrupt enforce-  
15 ment priorities that target threats to public safety  
16 and national security first. In September 2021, Sec-  
17 retary Mayorkas issued a memo titled “Guidelines  
18 for the Enforcement of Civil Immigration Law”  
19 (hereinafter referred to as “Guidelines”). Seeking to  
20 efficiently use the limited resources and personnel of  
21 U.S. Immigration and Customs Enforcement, Sec-  
22 retary Mayorkas prioritized the apprehension and re-  
23 moval of noncitizens who pose a threat to national  
24 security, public safety, and border security. Such  
25 prioritization is needed because Congress has never

1 provided the Department of Homeland Security  
2 enough resources to apprehend and remove all re-  
3 movable noncitizens present in the United States.  
4 The Guidelines also protected longstanding civil  
5 rights and civil liberties abrogated by the previous  
6 administration. Despite this common-sense policy  
7 guidance, the Republican Attorneys General of  
8 Texas and Louisiana challenged the Guidelines in  
9 court. In *U.S. v. Texas*, 599 US \_\_\_\_ (2023), the  
10 U.S. Supreme Court ruled 8 to 1 in favor of the  
11 Biden administration, allowing the Guidelines to re-  
12 main intact.

13 (3) Republicans have impeded the law enforce-  
14 ment activities of U.S. Border Patrol in Eagle Pass,  
15 Texas. Republican officials in Texas ordered the in-  
16 stallation of razor wire barriers along the Rio  
17 Grande River. These barriers are a political tactic  
18 and have done nothing to curb unlawful crossings or  
19 save lives, while endangering U.S. Border Patrol  
20 agents and interfering in their ability to manage the  
21 border. Consequently, U.S. Border Patrol has been  
22 required to cut razor wire to conduct rescue oper-  
23 ations and regular patrol duties. Texas Republicans  
24 sued, alleging that Federal officials were destroying  
25 State property and preventing the State from secur-

1 ing the border. In January 2024, the U.S. Supreme  
2 Court again ruled in favor of the Biden administra-  
3 tion, allowing U.S. Customs and Border Protection  
4 to remove the razor wire barriers. Nevertheless, the  
5 Texas Department of Public Safety continues to pre-  
6 vent U.S. Border Patrol from conducting rescue op-  
7 erations along areas of the Rio Grande. Even in  
8 light of a women and two children drowning in the  
9 Rio Grande, Texas Governor Greg Abbott has re-  
10 fused to allow U.S. Customs and Border Protection  
11 to remove barriers and carry out its border security  
12 mission. Former President Donald Trump and  
13 House Speaker Mike Johnson have encouraged  
14 Texas and other States to create further conflict  
15 with the Federal Government.

16 (4) Republicans have stonewalled efforts to cre-  
17 ate an orderly system at ports of entry. To encour-  
18 age the use of safe, orderly, and lawful pathways for  
19 migration, U.S. Customs and Border Protection im-  
20 plemented the U.S. Customs and Border Protection  
21 One mobile application for noncitizens located in  
22 central or northern Mexico seeking to travel to the  
23 United States. The U.S. Customs and Border Pro-  
24 tection One App allows these individuals to submit  
25 information in advance and schedule an appointment

1 to present themselves at a port of entry. These indi-  
2 viduals are not simply allowed to enter the United  
3 States; undocumented individuals are processed and  
4 placed in removal proceedings. Republicans oppose  
5 policy initiatives as simple as a scheduling tool to re-  
6 lieve U.S. Border Patrol agents between ports of  
7 entry. Republicans in Texas sued the Biden adminis-  
8 tration for using this technology to reduce unlawful  
9 crossings.

10 Republicans' efforts to obstruct the administration's  
11 efforts to secure the border are evidence of their desire  
12 to extenuate and exploit the humanitarian crisis at the  
13 border for their own political gain



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. GOLDMAN OF NEW YORK**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       The House of Representatives impeached former  
2 president Donald John Trump for high crimes and mis-  
3 demeanors on two occasions.

4       The first impeachment resolution (H. Res. 755,  
5 116th Congress) against Donald John Trump, former  
6 President of the United States, for high crimes and mis-  
7 demeanors, included two articles: “Article I: Abuse of  
8 Power” and “Article II: Obstruction of Congress”.

9       The first article, entitled “Abuse of Power”, stated  
10 in part, “Using the powers of his high office, President  
11 Trump solicited the interference of a foreign government,  
12 Ukraine, in the 2020 United States Presidential election.  
13 He did so through a scheme or course of conduct that  
14 included soliciting the Government of Ukraine to publicly  
15 announce investigations that would benefit his reelection,  
16 harm the election prospects of a political opponent, and  
17 influence the 2020 United States Presidential election to  
18 his advantage. President Trump also sought to pressure

1 the Government of Ukraine to take these steps by condi-  
2 tioning official United States Government acts of signifi-  
3 cant value to Ukraine on its public announcement of the  
4 investigations. President Trump engaged in this scheme  
5 or course of conduct for corrupt purposes in pursuit of  
6 personal political benefit. In so doing, President Trump  
7 used the powers of the Presidency in a manner that com-  
8 promised the national security of the United States and  
9 undermined the integrity of the United States democratic  
10 process. He thus ignored and injured the interests of the  
11 Nation.”.

12 The second article, entitled “Obstruction of Con-  
13 gress”, stated in part, “Donald J. Trump has directed the  
14 unprecedented, categorical, and indiscriminate defiance of  
15 subpoenas issued by the House of Representatives pursu-  
16 ant to its ‘sole Power of Impeachment’”. The article de-  
17 scribes how Trump directed the White House and multiple  
18 Executive Branch agencies including the Departments of  
19 State, Energy, and Defense and the Office of Management  
20 and Budget to defy Congress’ lawful subpoenas and docu-  
21 ment production requests. Nine Administration officials  
22 also refused to comply with congressional subpoenas at  
23 Trump’s direction.

24 Not only did Trump obstruct Congress in relation to  
25 its typical oversight duties, but the article asserts that

1 “President Trump sought to arrogate to himself the right  
2 to determine the propriety, scope, and nature of an im-  
3 peachment inquiry into his own conduct, as well as the  
4 unilateral prerogative to deny any and all information to  
5 the House of Representatives in the exercise of its ‘sole  
6 Power of Impeachment’ ”.

7       The first impeachment resolution contained two arti-  
8 cles detailing well-documented, egregious activity that  
9 clearly met the high standard for impeachment. Neverthe-  
10 less, zero Republican Members of the House voted to im-  
11 peach President Trump. In the Senate, Senator Mitt Rom-  
12 ney was the only Republican to vote guilty on the first  
13 impeachment article, and no Republican Senators voted  
14 guilty on the second impeachment article, whereas all 47  
15 Democratic Senators voted guilty on both articles. The  
16 guilty votes did not reach the two-thirds requirement for  
17 conviction, and Trump was not removed from office.

18       Republicans’ failure to put the country over politics  
19 emboldened President Trump to persist in openly abusing  
20 the power of his office for personal political benefit, which  
21 led to the actions for which he was impeached the second  
22 time.

23       The second impeachment resolution (H. Res. 24,  
24 117th Congress) against Donald John Trump, former  
25 President of the United States, for high crimes and mis-

1 demeanors, included one article: “Article I: Incitement of  
2 Insurrection”.

3       The article stated in part, “On January 6, 2021, pur-  
4 suant to the 12th Amendment to the Constitution of the  
5 United States, the Vice President of the United States,  
6 the House of Representatives, and the Senate met at the  
7 United States Capitol for a Joint Session of Congress to  
8 count the votes of the Electoral College. In the months  
9 preceding the Joint Session, President Trump repeatedly  
10 issued false statements asserting that the Presidential  
11 election results were the product of widespread fraud and  
12 should not be accepted by the American people or certified  
13 by State or Federal officials. Shortly before the Joint Ses-  
14 sion commenced, President Trump, addressed a crowd at  
15 the Ellipse in Washington, DC. There, he reiterated false  
16 claims that ‘we won this election, and we won it by a land-  
17 slide’. He also willfully made statements that, in context,  
18 encouraged—and foreseeably resulted in—lawless action  
19 at the Capitol, such as: ‘if you don’t fight like hell you’re  
20 not going to have a country anymore’. Thus incited by  
21 President Trump, members of the crowd he had ad-  
22 dressed, in an attempt to, among other objectives, inter-  
23 fere with the Joint Session’s solemn constitutional duty  
24 to certify the results of the 2020 Presidential election, un-  
25 lawfully breached and vandalized the Capitol, injured and

1 killed law enforcement personnel, menaced Members of  
2 Congress, the Vice President, and Congressional per-  
3 sonnel, and engaged in other violent, deadly, destructive,  
4 and seditious acts.”.

5       The article continues, “President Trump’s conduct  
6 on January 6, 2021, followed his prior efforts to subvert  
7 and obstruct the certification of the results of the 2020  
8 Presidential election. Those prior efforts included a phone  
9 call on January 2, 2021, during which President Trump  
10 urged the secretary of state of Georgia, Brad  
11 Raffensperger, to ‘find’ enough votes to overturn the Geor-  
12 gia Presidential election results and threatened Secretary  
13 Raffensperger if he failed to do so.”.

14       The second impeachment resolution contained one ar-  
15 ticle that, like the two articles of the first impeachment  
16 resolution, detailed well-documented, egregious activity  
17 that clearly met the high standard for impeachment. Nev-  
18 ertheless, only 10 Republican Members of the House voted  
19 to impeach President Trump. In the Senate, 7 Republican  
20 Senators voted guilty, in addition to 50 Democratic Sen-  
21 ators, which was not enough to meet the two-thirds re-  
22 quirement for conviction.

23       Comparing the two impeachment resolutions against  
24 President Trump to the amended impeachment resolution  
25 against Secretary of Homeland Security Alejandro

1 Mayorkas makes evident the hypocrisy and partisan moti-  
2 vations of congressional Republicans who voted against  
3 impeachment articles that clearly met the high standard  
4 for impeachment yet are now pursuing an impeachment  
5 case that clearly does not.

6       The amended impeachment resolution against Sec-  
7 retary Mayorkas includes two articles, entitled, “Article I:  
8 Willful and Systemic Refusal to Comply with The Law”  
9 and “Article II: Breach of Public Trust”. Among its many  
10 fatal flaws, the amended impeachment resolution against  
11 Secretary Mayorkas fails to articulate any charge that  
12 might constitute “Treason, Bribery, or other high Crimes  
13 and Misdemeanors”—the constitutional standard for im-  
14 peachment—and it fails to provide evidence to support the  
15 charges, such as they are.

16       Republicans continue to place politics over country as  
17 they pursue this partisan, pretextual impeachment.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. ROBERT GARCIA OF  
CALIFORNIA**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1 Texas Governor Greg Abbott has implemented some  
2 of the most harmful and extreme measures the country  
3 has ever seen towards migrants.

4 The Abbott administration’s tactics have included—

5 (1) pushing small children and nursing mothers  
6 back into the Rio Grande River;

7 (2) setting up razor wire barriers;

8 (3) blocking U.S. Customs and Border Protec-  
9 tion support to distressed migrants;

10 (4) setting dangerous traps along the border;

11 and

12 (5) transporting migrants to faraway locations  
13 without regard for their well-being.

14 These tactics have been enforced by the State of  
15 Texas without any regard for human life or decency.

16 In an interview, Governor Abbott said, “The only  
17 thing that we’re not doing is we’re not shooting people

1 who come across the border, because of course the Biden  
2 administration would charge us with murder”.

3       The House of Representatives condemns Governor  
4 Abbott’s sadistic words and policies that have led to im-  
5 mense human suffering.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MRS. RAMIREZ OF ILLINOIS**

Strike page 1, line 1, and all that follows through page 20, line 11, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House shall proceed to the consideration in the House  
3 of the bill (H.R. 1511) to amend section 249 of the Immi-  
4 gration and Nationality Act to render available to certain  
5 long-term residents of the United States the benefit under  
6 that section. The bill shall be considered as read. All  
7 points of order against provisions in the bill are waived.  
8 The previous question shall be considered as ordered on  
9 the bill and on any amendment thereto, to final passage  
10 without intervening motion except: (1) one hour of debate  
11 equally divided and controlled by the chair and ranking  
12 minority member of the Committee on the Judiciary or  
13 their respective designees; and (2) one motion to recom-  
14 mit.

15       SEC. 2. Clause 1(e) of rule XIX shall not apply to  
16 the consideration of H.R. 1511.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MRS. RAMIREZ OF ILLINOIS**

Page 1, strike line 1, and all that follows through page 20, line 11, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House shall proceed to the consideration in the House  
3 of the bill (H.R. 6280) to authorize additional appropria-  
4 tions for certain U.S. Customs and Border Protection op-  
5 erations, and for other purposes. All points of order  
6 against consideration of the bill are waived. The bill shall  
7 be considered as read. All points of order against provi-  
8 sions in the bill are waived. The previous question shall  
9 be considered as ordered on the bill and on any amend-  
10 ment thereto, to final passage without intervening motion  
11 except: (1) one hour of debate equally divided and con-  
12 trolled by the chair and ranking minority member of the  
13 Committee on Homeland Security or their respective des-  
14 ignees; and (2) one motion to recommit.

15       SEC. 2. Clause 1(e) of rule XIX shall not apply to  
16 the consideration of H.R. 6280.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MR. MENENDEZ OF NEW JERSEY**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       Republicans’ sham impeachment of Secretary  
2 Alejandro Mayorkas has distracted from and prevented ac-  
3 tion on myriad threats facing the homeland, ultimately  
4 making the homeland more vulnerable and potentially en-  
5 dangering the United States people.

6       House Republicans have operated as if the Depart-  
7 ment of Homeland Security’s mission and Secretary  
8 Mayorkas’s responsibilities consist only of securing the  
9 Southwest border, when in fact both include countering  
10 terrorism, securing cyberspace and critical infrastructure,  
11 strengthening the preparedness and resilience of the Na-  
12 tion in the face of increasing natural disasters, safe-  
13 guarding transportation systems, maintaining waterways  
14 and maritime resources, and securing not just our land  
15 borders but our air and sea ports also.

16       At the start of the 118th Congress, Committee on  
17 Homeland Security Republicans refused to include two  
18 sentences in the Committee’s oversight plan to ensure the

1 Committee examines domestic terrorism threats, which of-  
2 ficials in both the Trump and Biden administrations have  
3 deemed a “persistent and pervasive” threat.

4 Under Republican leadership this Congress, the Com-  
5 mittee on Homeland Security has been far less productive  
6 than in previous Congresses. The Committee has only re-  
7 ported 14 bills out of Committee thus far this Congress,  
8 compared to the 36 bills passed out of Committee in the  
9 same time period under Democratic leadership in the  
10 117th Congress.

11 Under Republican leadership this Congress, the full  
12 Committee has held 17 hearings on border security and  
13 the sham impeachment of Secretary Mayorkas, but it has  
14 held zero full Committee hearings on emergency prepared-  
15 ness, cyber threats, infrastructure protection, transpor-  
16 tation security, Department of Homeland Security man-  
17 agement, or information sharing and intelligence efforts.

18 Republican leadership has put politics over people,  
19 choosing to ignore myriad threats, including threats from  
20 cyber criminals, authoritarian governments, extreme  
21 weather events caused by climate change, and extrem-  
22 ists—both foreign and domestic—thus endangering the  
23 Nation, fellow Americans, and our way of life.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. MENENDEZ OF NEW JERSEY**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1        Since July 19, 2023, Republicans on the Committee  
2 on Homeland Security have released five flawed “reports”  
3 on Secretary Mayorkas, replete with factual errors and  
4 partisan rhetoric to attempt to legitimize their predeter-  
5 mined decision to impeach the Secretary.

6        In these reports, Republicans cited work and testi-  
7 mony from designated hate groups a total of 57 times.

8        To support their “investigation”, Republicans called  
9 as a witness Tim Ballard, who has been denounced by the  
10 Church of Jesus Christ of Latter-day Saints “for morally  
11 unacceptable behavior” and is facing multiple allegations  
12 of sexual misconduct, including in multiple civil lawsuits  
13 and criminal investigations.

14        To support their “investigation”, Republicans called  
15 as a witness Jessica Vaughan, who is Director of Policy  
16 Studies at the Center for Immigration Studies, a des-  
17 ignated hate group, and who called for prison inmates to  
18 build Trump’s border wall.

1 To support their “investigation”, Republicans called  
2 as a witness Todd Bensman, who is a National Security  
3 Fellow at the Center for Immigration Studies, a des-  
4 ignated hate group, and who once referred to migrants  
5 coming through Mexico as an “Ant Operation”.

6 To support their “investigation”, Republicans called  
7 as a witness Jaeson Jones, a Newsmax correspondent,  
8 who has repeatedly referred to migrants seeking asylum  
9 as an “invasion”, in line with the rhetoric of the Great  
10 Replacement conspiracy theory.

11 To support their “investigation”, Republicans called  
12 partisan Republican politicians as witnesses, including the  
13 Attorney General of Montana, who is facing 41 ethics  
14 charges brought by the Montana Office of Disciplinary  
15 Counsel, and who once said he opposed allow Syrian refu-  
16 gees into the country because “[m]uch of this Muslim cul-  
17 ture is foreign and strange to us”.

18 To support their “investigation”, Republicans called  
19 Mr. Chad Wolf, the unlawfully serving Acting Homeland  
20 Security Secretary under President Trump, as a witness,  
21 who defied a subpoena issued by the Committee on Home-  
22 land Security.

23 In these reports, Republicans called for a transcribed  
24 interview with Thomas Homan, a former Trump adminis-  
25 tration official who has been called the “intellectual father

1 of the family separation” policy in news articles and who  
2 has repeatedly sat for interviews with designated hate  
3 groups.

4 To support their “investigation”, Republicans called  
5 for a transcribed interview from Mark Morgan, a former  
6 Trump administration official who once stated to conserv-  
7 ative news host Tucker Carlson, “I’ve been to detention  
8 facilities where I’ve walked up to these individuals that  
9 are so called minors, 17 or under. I’ve looked at them,  
10 and I’ve looked in their eyes, Tucker, and I’ve said that  
11 this is a soon-to-be MS-13 gang member. It’s unequivocal.”  
12 cal.”.

13 To support their “investigation”, Republicans did not  
14 cite or call as a witness a single constitutional law expert.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MR. MENENDEZ OF NEW JERSEY**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       With a Democratic president in the White House, a  
2 Democratic majority in the Senate, and a very narrow,  
3 fractured Republican majority in the House of Represent-  
4 atives, bipartisan negotiations are necessary to develop  
5 any legislation that has any chance of enactment. Yet  
6 House Republicans have failed to work in good faith and  
7 in a bipartisan manner to achieve legislative solutions to  
8 the challenges on the Southwest border, which they repeat-  
9 edly say is a crisis threatening national security.

10       House Committee on Homeland Security Republicans  
11 made no attempt to engage or negotiate with Committee  
12 Democrats on H.R. 2, their border security bill, prior to  
13 introducing the bill and calling it up for consideration in  
14 Committee. During the Committee’s consideration of the  
15 bill, Republicans rejected 43 Democratic amendments. For  
16 many such amendments, Republicans refused to engage  
17 in debate or offer any explanation for their opposition;  
18 they simply voted them all down no matter what they said

1 because they were offered by Democrats. The Committee  
2 then reported H.R. 2 to the House without a single Demo-  
3 cratic vote, and the House passed the bill without a single  
4 Democratic vote.

5 House Republicans have also voted against numerous  
6 Democratic bills designed to improve border security and  
7 increase the efficiency of immigration courts. Almost every  
8 House Republican—including every Republican currently  
9 sitting on the Committee on Homeland Security who was  
10 in Congress at the time—voted against the funding bill  
11 for fiscal year 2023, which included substantial increases  
12 in funding for U.S. Customs and Border Protection.  
13 Those measures were enacted by Democrats despite wide-  
14 spread Republican opposition. This Congress, House Re-  
15 publicans have refused to provide necessary funding re-  
16 quested by the President for asylum officers and immigra-  
17 tion judges so asylum seekers' cases could be processed  
18 more quickly.

19 House Republicans' refusal to work with their Demo-  
20 cratic colleagues to achieve lasting border security and im-  
21 migration reforms is one of the reasons why the 118th  
22 Congress is on track to be the least productive Congress  
23 in the history of the United States.

24 The Republican effort to impeach Secretary  
25 Mayorkas serves as a political distraction from the Repub-

1 licans' intransigence which is blocking bipartisan, com-  
2 prehensive, and commonsense border security and immi-  
3 gration legislation.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. CLARKE OF NEW YORK**

Page 2, line 2, strike “In his” and all that follows,  
and insert the following:

1       The United States is a nation of immigrants. The  
2 success of the country has relied and continues to rely,  
3 in large part, upon welcoming people from around the  
4 world to the United States.

5       America has long offered a beacon of hope and refuge  
6 for those fleeing persecution, war, and violence, exempli-  
7 fied by the Statue of Liberty and its plaque bearing the  
8 text of the poem “The New Colossus” by Emma Lazarus,  
9 which reads in part, “Give me your tired, your poor, your  
10 huddled masses yearning to breathe free”.

11       Over the past century, the United States has joined  
12 most other countries around the world in adopting legal  
13 protections for asylum seekers and refugees.

14       Following the atrocities committed during the Second  
15 World War, the international community convened on  
16 multiple occasions to establish humanitarian laws, trea-  
17 ties, and standards.

1 In 1948, the United Nations General Assembly  
2 adopted the Universal Declaration of Human Rights. Arti-  
3 cle 14 of the Declaration states, “Everyone has the right  
4 to seek and to enjoy in other countries asylum from perse-  
5 cution”.

6 The Geneva Convention of July 28, 1951, Relating  
7 to the Status of Refugees built upon the Universal Dec-  
8 laration of Human Rights’ asylum protections, as did the  
9 Protocol Relating to the Status of Refugees of 1967.

10 In the United States, Congress has codified key com-  
11 mitments and protections relating to asylum and refugees  
12 repeatedly, including through enactment of the Migration  
13 and Refugee Assistance Act (Public Law 87-510) in 1962,  
14 the Immigration and Nationality Act of 1965 (Public Law  
15 89-236), and the United States Refugee Act of 1980  
16 (Public Law 96-212).

17 Despite the long-held commitment of the United  
18 States to upholding asylum protections, congressional Re-  
19 publicans have, in recent years, sought to restrict and  
20 deny such protections.

21 For example, H.R. 2—the border security bill that  
22 House Republicans claim would solve many of the chal-  
23 lenges at the border—would make claiming asylum nearly  
24 impossible.

1       Rather than pursuing a partisan, fraudulent im-  
2 peachment against Department of Homeland Security  
3 Secretary Alejandro Mayorkas, based in part on his re-  
4 fusal to adopt Republican anti-migrant policies, Repub-  
5 licans should join Democrats to develop bipartisan, com-  
6 prehensive immigration and border security reforms that  
7 will appropriately protect asylum rights.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. CLARKE OF NEW YORK**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       The Department of Homeland Security, the Depart-  
2       ment of Defense, the Department of State, the Govern-  
3       ment Accountability Office, and other Federal partners  
4       have identified climate change as a critical national secu-  
5       rity issue.

6       Climate driven extreme weather events have increased  
7       globally.

8       The United Nations High Commissioner for Refugees  
9       has estimated that without more mitigation efforts to re-  
10      duce climate change by the year 2050, 200 million people  
11      annually will need humanitarian support due to the im-  
12      pacts of climate change.

13      Worsening weather patterns are creating instability,  
14      poverty, and crime, and thus climate change is a contrib-  
15      uting factor in individuals leaving their home countries.

16      Countries in Latin America and the Caribbean have  
17      felt many of the impacts of climate change with the region  
18      experiencing hurricanes, storms, droughts, and floods.

1 Climate change is real, and it is already contributing  
2 to increased migration.

3 Unfortunately, House Republicans' response to the  
4 emergence of climate change as a driver of migration has  
5 ranged from denial to confusion. Republican Congress-  
6 woman Marjorie Taylor Greene exemplified such a re-  
7 sponse during an April 26, 2023, Committee on Homeland  
8 Security markup when, in response to Democrats dis-  
9 cussing climate change as a driver of migration, she stat-  
10 ed, "Most people don't buy the climate hoax. It's a hoax  
11 . . . people are not affecting climate change. You're going  
12 to tell me that back in the Ice Age, how much taxes did  
13 people pay and how many changes did government make  
14 to melt the ice?"

15 Republicans must stop denying reality and join  
16 Democrats in addressing climate change.

17 Understanding that climate-driven migration is tak-  
18 ing place, more Federal resources should be dedicated to  
19 planning for, responding to, and mitigating the impacts  
20 of climate change rather than baseless impeachments.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. CLARKE OF NEW YORK**

Page 2, line 2, strike “In his” and all that follows  
through page 20, line 11, and insert the following:

1       The House of Representatives acknowledges that  
2 nongovernmental organizations play a crucial role in sup-  
3 porting individuals who immigrate to this country by pro-  
4 viding them with basic care such as offering food, shelter,  
5 and medicine. Nongovernmental organizations serve as an  
6 important partner with the Federal Government to pro-  
7 vide basic care to individuals seeking refuge in this coun-  
8 try, who often come with nothing but the clothes on their  
9 back in hopes of finding refuge.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.RES. 863  
OFFERED BY MS. TITUS OF NEVADA**

Strike page 1, line 1, and all that follows, and insert the following:

1       That immediately upon adoption of this resolution,  
2 the House shall proceed to the consideration in the House  
3 of the bill (H.R. 1401) to require the Commissioner of  
4 U.S. Customs and Border Protection to regularly review  
5 and update policies and manuals related to inspections at  
6 ports of entry. All points of order against consideration  
7 of the bill are waived. The bill shall be considered as read.  
8 All points of order against provisions in the bill are  
9 waived. The previous question shall be considered as or-  
10 dered on the bill and on any amendment thereto, to final  
11 passage without intervening motion except: (1) one hour  
12 of debate equally divided and controlled by the chair and  
13 ranking minority member of the Committee on Homeland  
14 Security or their respective designees; and (2) one motion  
15 to recommit.

16       SEC. 2. Clause 1(c) of rule XIX shall not apply to  
17 the consideration of H.R. 1401.



**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H. RES. 863  
OFFERED BY MS. TITUS OF NEVADA**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1       When drafting the Constitution, the Framers explic-  
2 itly rejected the term “maladministration” as a ground for  
3 the impeachment of civil officers. James Madison argued  
4 that “[s]o vague a term [would] be equivalent to a tenure  
5 during the pleasure of the Senate”. The Constitutional  
6 Convention agreed to “other high Crimes and Mis-  
7 demeanors” instead.

8       Constitutional law professor Frank O. Bowman III,  
9 of the University of Missouri School of Law, testified: “To  
10 be properly impeachable, official conduct must meet a very  
11 high threshold of seriousness.”. Despite their known fail-  
12 ures and unlawful actions, Department of Homeland Se-  
13 curity officials appointed by former President Donald  
14 Trump were not impeached by the House of Representa-  
15 tives. In fact, congressional Republicans expressed little  
16 to no concern about most such failures and actions, choos-  
17 ing instead to defend such officials at every turn.

1 Department of Homeland Security officials appointed  
2 by former President Donald Trump—including Kirstjen  
3 Nielsen, Kevin McAleenan, Chad Wolf, and Ken  
4 Cuccinelli—committed numerous violations of Federal law  
5 and exhibited multiple failures of leadership and integrity.

6 For example, Secretary Nielsen committed perjury  
7 and lied to Congress during sworn testimony multiple  
8 times.

9 The Government Accountability Office found that  
10 Secretary Nielsen, Kevin McAleenan, and Chad Wolf vio-  
11 lated the Federal Vacancies Reform Act and the Home-  
12 land Security Act of 2002 by ignoring the lawfully des-  
13 igned order of succession for the position of Secretary  
14 of Homeland Security.

15 The Government Accountability Office found that  
16 Chad Wolf violated the Federal Vacancies Reform Act and  
17 the Homeland Security Act of 2002 by ignoring the law-  
18 fully designated order of succession for the position of  
19 Senior Official Performing the Duties of Deputy Secretary  
20 of Homeland Security.

21 Kevin McAleenan and Ken Cuccinelli violated the  
22 Federal Vacancies Reform Act by ignoring the lawfully  
23 designated order of succession for the position of Director  
24 of U.S. Citizenship and Immigration Services.

1           The Office of Special Counsel found that Chad Wolf  
2 knowingly violated the Hatch Act to participate in a cam-  
3 paign-related event for former President Trump.

4           The Department of Homeland Security Office of In-  
5 spector General found that Chad Wolf interfered with in-  
6 telligence reports for political reasons.

7           On January 6, 2021, Chad Wolf failed to defend the  
8 homeland and uphold the Constitution while unlawfully  
9 serving as acting Secretary of Homeland Security.

10          Meanwhile, Secretary of Homeland Security  
11 Alejandro N. Mayorkas, who was lawfully confirmed by  
12 the Senate and has upheld the law and defended the home-  
13 land, now faces a baseless impeachment.



## APPENDIX IV

The following memorandum from staff to Democratic Members of the Committees on Homeland Security and Oversight and Accountability highlights quotes from transcribed interviews with U.S. Border Patrol chief patrol agents charged with overseeing USBP operations along the southern border. These statements reflect a reality at odds with Republican assertions that Secretary Mayorkas and the Biden administration are refusing to secure the southern border and follow relevant laws.

[NOTE FOR GPO: Insert page scans of the attached PDF file (Filename: App4DemTIMemo.pdf) for Appendix IV here.]

**Congress of the United States**  
Washington, DC 20515

**MEMORANDUM**

**July 14, 2023**

**To: Democratic Members of the Committee on Oversight and Accountability and  
Committee on Homeland Security**

**Fr: Democratic Staff**

**Re: Transcribed Interviews of U.S. Border Patrol Chief Patrol Agents**

At the beginning of the 118th Congress, the Oversight and Accountability Committee and Homeland Security Committee Republicans launched investigations into the conditions along the southwest border. As part of this investigation, and in a purported effort to assist the Committees in “fully understanding” the situation at the border, the Chairs of each Committee requested transcribed interviews with the U.S. Border Patrol Chief Patrol Agents charged with overseeing the various sectors of the southwest border.<sup>1</sup> In reality, these investigations have amounted to little more than an embarrassingly transparent effort to find some basis to justify Republican calls to impeach Department of Homeland Security Secretary Alejandro Mayorkas. Homeland Security Committee Chairman Mark Green made this clear when, before conducting a single transcribed interview, he informed donors that he would deliver impeachment charges based on Secretary Mayorkas’s “dereliction of duty and his intentional destruction of our country through the open southern border.”<sup>2</sup> Oversight and Accountability Committee Chairman James Comer revealed in January 2023—just a few weeks after assuming the chairmanship—that he “would vote to impeach Mayorkas right now.”<sup>3</sup>

As part of their partisan investigation, the Committees requested transcribed interviews of U.S. Border Patrol Chief Patrol Agents charged with overseeing sectors of the southwest border

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<sup>1</sup> Letter from Chairman James Comer, Committee on Oversight and Accountability to Troy Miller, Acting Commissioner, Customs and Border Protection (Feb. 27, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/02/23-02-26-Letter-to-CBP-requesting-TIs-of-CPAs.pdf>); Committee on Homeland Security, *Press Release: Chairman Green: Homeland Security Republicans Will Interview Every Border Sector Chief to “Investigate Whether or Not Mayorkas Lied to Congress”* (Mar. 17, 2023) (online at <https://homeland.house.gov/chairman-green-homeland-security-republicans-will-interview-every-border-sector-chief-to-investigate-whether-or-not-mayorkas-lied-to-congress/>).

<sup>2</sup> *Key Republican Tells Donors He Will Pursue Impeachment of Mayorkas*, New York Times (Apr. 18, 2023) (online at [www.nytimes.com/2023/04/18/us/politics/republicans-mark-green-mayorkas-impeachment.html](http://www.nytimes.com/2023/04/18/us/politics/republicans-mark-green-mayorkas-impeachment.html)).

<sup>3</sup> *Rep. Comer Says He Would Vote to Impeach Mayorkas “Right Now,”* Fox News (Jan. 21, 2023) (online at [www.foxnews.com/video/6319038235112](http://www.foxnews.com/video/6319038235112)).

between ports of entry.<sup>4</sup> In light of the Committees' requests to conduct transcribed interviews of the Chief Patrol Agents overseeing the southwest border, six have appeared voluntarily for transcribed interviews before the Committees between April 25, 2023, and July 12, 2023. In addition, two Chief Patrol Agents testified before the Oversight Committee for multiple hours on February 7, 2023.<sup>5</sup> In total, eight of the nine Chief Patrol Agents stationed at the southwest border have appeared before Congress in 2023 to offer their perspectives.<sup>6</sup> These interviews remain ongoing, and the Committees have requested interviews with the remaining Chief Border Patrol Agents.

The statements and first-hand experiences offered by the Chief Patrol Agents reflect a reality at the southwest border that is fundamentally at odds with the radical, false claims asserted by Republicans, including allegations that the southwest border is in "crisis" and that the Biden-Harris Administration is deliberately refusing to secure the southwest border.<sup>7</sup>

Democratic Committee staff is providing this memorandum to share the perspectives of Chief Patrol Agents which Republicans have chosen to ignore because they contradict the false and misleading claims promoted in order to justify efforts to impeach Secretary Mayorkas.

## **I. CHIEF PATROL AGENTS CONFIRMED THAT THE BORDER IS SECURE**

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<sup>4</sup> Letter from Chairman James Comer, Committee on Oversight and Accountability, to Troy Miller, Acting Commissioner, Customs and Border Protection (Feb. 27, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/02/23-02-26-Letter-to-CBP-requesting-TIs-of-CPAs.pdf>); Committee on Homeland Security, *Press Release: Chairman Green: Homeland Security Republicans Will Interview Every Border Sector Chief to "Investigate Whether or Not Mayorkas Lied to Congress"* (Mar. 17, 2023) (online at <https://homeland.house.gov/chairman-green-homeland-security-republicans-will-interview-every-border-sector-chief-to-investigate-whether-or-not-mayorkas-lied-to-congress/>). U.S. Border Patrol divides the national border into three discrete sectors: coastal, northern, and southwest. The southwest border sector, in turn, is divided into nine sub-sectors: San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley. See Customs and Border Protection, *Border Patrol Sectors* (online at [www.cbp.gov/border-security/along-us-borders/border-patrol-sectors](http://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors)) (accessed July 5, 2023). Chief Patrol Agents are charged with overseeing all operations and activities in a single assigned sector along the southwest border.

<sup>5</sup> Committee on Oversight and Accountability, *Hearing on the Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents* (Feb. 7, 2023) (online at <https://oversight.house.gov/hearing/on-the-front-lines-of-the-border-crisis-a-hearing-with-chief-patrol-agents/>).

<sup>6</sup> Committee on Homeland Security, *Hearing on Failure By Design: Examining Secretary Mayorkas' Border Crisis* (Mar. 15, 2023) (online at [www.congress.gov/event/118th-congress/house-event/115476](http://www.congress.gov/event/118th-congress/house-event/115476)); Committee on Homeland Security, *Hearing on Open Borders, Closed Case: Secretary Mayorkas' Dereliction of Duty on the Border Crisis* (June 14, 2023) (online at [www.congress.gov/event/118th-congress/house-event/116092](http://www.congress.gov/event/118th-congress/house-event/116092)). As of the date of this memorandum, the Committees have not conducted an interview with a representative of only one sector along the southwest border—the Yuma sector. A transcribed interview was scheduled to occur with the Chief Patrol Agent of the Yuma sector, Patricia McGurk-Daniels, but was postponed because of her reassignment to a different sector in June 2023.

<sup>7</sup> Committee on Oversight and Accountability, *Biden's Border Crisis* (online at <https://oversight.house.gov/landing/bidens-border-crisis/>) (accessed July 5, 2023); *Comer Calls on Border Officials to Testify on Biden Policies "Fueling" Migrant Crisis*, Fox News (Jan. 19, 2023) (online at [www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis](http://www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis)).

A primary false narrative repeatedly advanced by Congressional Republicans describes a southwest border in crisis as a direct result of the Biden-Harris Administration’s decisions. Speaker of the House Kevin McCarthy, for instance, has explained that “President Biden’s border crisis has spiraled into full-on chaos.”<sup>8</sup> Chairman Comer, during a hearing he convened titled “On the Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents,” stated that “President Biden and his administration have created the worst border crisis in American history.”<sup>9</sup>

During their transcribed interviews, the Chief Patrol Agents presented assessments of border security unequivocally contrary to this Republican narrative. Chief Patrol Agents disagreed that a crisis currently exists at the southwest border and, in their own words, described their operations to obtain border security as successful.

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: Chief Ortiz in the past has described what’s gone on at the southwest border the last couple years as a crisis. Would you agree that there’s a crisis at the southwest border?

A: Speaking for Laredo, I don’t have a crisis going on right now, so—

Q: What about with your experience in [Rio Grande Valley sector]?

A: RGV, there was periods of times when we were overwhelmed, but, like, right now, things are normal. They’re good.<sup>10</sup>

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: And then at our March 2023 hearing for the Committee on Homeland Security, Chief Ortiz stated, quote: “With the investments that this Congress has made into the Border Patrol, CBP as a whole, we have greater situational awareness now than I’ve ever had,” unquote.

Do you agree with that statement?

A: I’m not privy to the specific conversation, and I know that’s just probably a piece of—so I’ll speak for the Del Rio Sector.

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<sup>8</sup> Speaker of the House, *Speaker McCarthy Floor Speech on the Secure the Border Act* (May 10, 2023) (online at [www.speaker.gov/speaker-mccarthy-floor-speech-on-the-secure-the-border-act/](http://www.speaker.gov/speaker-mccarthy-floor-speech-on-the-secure-the-border-act/)).

<sup>9</sup> Committee on Oversight and Accountability, *Press Release: Comer: The State of Our Border is in Crisis* (Feb. 7, 2023) (online at <https://oversight.house.gov/release/comer-the-state-of-our-border-is-in-crisis/>).

<sup>10</sup> Committee on Oversight and Accountability and Committee on Homeland Security, *Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security* (June 1, 2023).

Because we have gotten more detection capability, because we have, as you said, more on the way, we've got the additional processing coordinators, we are in a better situation than we were in years past.<sup>11</sup>

*Chief Patrol Agent Sean McGoffin, Big Bend Sector (Apr. 25, 2023):*

Q: Do you believe that the high flow that Big Bend Sector encountered beginning in 2021 that peaked in May had a negative impact on Border Patrol's ability to reduce the number of got-aways in Big Bend Sector?

A: No, because obviously we reduced the entries and got-aways in Big Bend Sector over the course of the last two years. We've been very successful.

Again, it goes back to how we deploy, what we do to operate. We had an area that had a large number of got-aways. It's down to less than 5 percent got-aways today.

We were able to, again, shape the landscape and the operational environment by how we deploy, being successful, and taking—utilizing operational advantage, making sure that we're being very efficient and effective in our tactics to ensure that we have the most amount of people, agents on the line.

Those are all key things that we're really trying to do. And, again, it does, it shapes the environment and it makes change.

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Q: How would you define success for Border Patrol? Would you say that lowering the number of crossings is success? Or would you say fast-processing everyone that gets here is success?

A: I think lowering as many people—lowering the encounters to the greatest degree is a success. That's what I've done in my sector, and I think it has been successful. I think as we continue to try to, you know, reduce that number, I think we're being successful in what we do.

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<sup>11</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023). In July 2023, Jason Owens assumed the role of Chief of U.S. Border Patrol. See Customs and Border Protection, *Press Release: Statement from Acting Commissioner Troy A. Miller on CBP Leadership Transitions* (June 9, 2023) (online at [www.cbp.gov/newsroom/national-media-release/statement-acting-commissioner-troy-miller-cbp-leadership](http://www.cbp.gov/newsroom/national-media-release/statement-acting-commissioner-troy-miller-cbp-leadership)).

Q: And so would you say that you have been successful in operating a safe and secure border at the Big Bend Sector?

A: You know, I would say that we have operational advantage in Big Bend Sector and we do everything we can to ensure a safe and secure border.<sup>12</sup>

In a similar vein, Republicans have put forth sinister conspiratorial notions that the Biden-Harris Administration has deliberately created a crisis at the southwest border for political gain. Representative Jim Jordan, Chairman of the House Judiciary Committee, explained, “Frankly, I think it’s intentional. I don’t know how anyone with common sense or logic can reach any other conclusion. It seems deliberate, it seems premeditated, it seems intentional.”<sup>13</sup> Chairman Green recently stated, “You can look at every decision they’ve made. It’s to open our border as wide as possible. They created the migration crisis in this region...It’s a travesty, and it’s intentional.”<sup>14</sup> Chairman Comer has also expressed the false belief that “the Biden Administration’s deliberate actions are fueling” a border crisis.<sup>15</sup>

The Chief Patrol Agents, however, clearly explained that they have never received orders or directives to cease operations to secure the southwest border, and policies implemented have remained consistent with the law enforcement duties of U.S. Border Patrol agents.

*Chief Patrol Agent Scott Good, El Paso Sector (June 29, 2023):*

Q: And is it fair to say that the agents that serve under you strive to secure the border every day?

A: They do.

Q: And, given that, you’ve never given them an order to stop securing the border. Is that right?

A: Correct.

Q: And, in your role as chief patrol agent of El Paso, you’ve never received an order to stop securing the border. Is that right?

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<sup>12</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Sean McGoffin, U.S. Border Patrol, Department of Homeland Security (Apr. 25, 2023).

<sup>13</sup> *Rep. Jim Jordan Calls Biden Border Crisis “Intentional” at Judiciary Hearing*, New York Post (Feb. 1, 2023) (online at <https://nypost.com/2023/02/01/bidens-border-crisis-scrutinized-by-house-gop/>).

<sup>14</sup> Committee on Homeland Security, *Chairman Green on Secretary Mayorkas’ Dereliction of Duty at the Border: “The American People Are Not Safe”* (June 15, 2023) (online at <https://homeland.house.gov/chairman-green-on-secretary-mayorkas-dereliction-of-duty-at-the-border-the-american-people-are-not-safe/>).

<sup>15</sup> *Comer Calls on Border Officials to Testify on Biden Policies “Fueling” Migrant Crisis*, Fox News (Jan. 19, 2023) (online at [www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis](http://www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis)).

A: Correct.

Q: You've never received an order to stop securing the border when you were in the Grand Forks Sector. Is that correct?

A: Correct.<sup>16</sup>

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: And have you ever instructed your agents to stop securing the border?

A: No.

Q: In your role as chief patrol agent, have you ever received an order from Secretary Mayorkas to stop securing the border?

A: No.<sup>17</sup>

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: Are there, in your view, changing policies that were—to quote from this inspector general report—that were inconsistent with your law enforcement duties?

A: No.

Q: So you do not share the sentiment of the respondents that were providing responses to this inspector general's audit?

A: I have not had any policy that I have found to be inconsistent with my duties as a Border Patrol agent.<sup>18</sup>

**A. Border Operations Have Not Extended “An Open Invitation to Criminals”**<sup>19</sup>

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<sup>16</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Anthony “Scott” Good, U.S. Border Patrol, Department of Homeland Security (June 29, 2023).

<sup>17</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023).

<sup>18</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023).

<sup>19</sup> U.S. Representative Paul Gosar, *Press Release: Statement Regarding May Illegal Border Crossings* (June 21, 2023) (online at <https://gosar.house.gov/news/documentsingle.aspx?DocumentID=5852>).

Committee Republicans have falsely claimed that Secretary Mayorkas has fostered a culture of lawlessness and President Biden’s border policies are an “open invitation to criminals and drug cartels to cross into our country unchecked.”<sup>20</sup>

Each Chief Patrol Agent explained that U.S. Border Patrol continues to screen individuals it apprehends for criminal backgrounds or suspected ties to terrorist organizations and processed accordingly. In particular, the Chief Patrol Agents made clear that biometric data from apprehended individuals is screened against American law enforcement databases and, in some instances, even information from foreign governments, for various factors. Apprehended individuals who are found to possess a criminal history are not unilaterally released into the United States without diligent consultation with other law enforcement agencies. Moreover, in instances when U.S. Border Patrol agents apprehend a wanted criminal or suspected criminal, that person is referred to the Department of Justice (DOJ), Drug Enforcement Agency (DEA), and/or the Federal Bureau of Investigation (FBI).

*Chief Patrol Agent Aaron Heitke, San Diego Sector (May 9, 2023):*

Q: And, when migrants are detained, they’re screened for their criminal history, whether they’re on a terrorist watch list, anything else in their record. Is that correct?

A: Yes.

Q: And, if someone has a flag, like an outstanding warrant, would they be referred to another law enforcement agency?

A: It depends on the flag, whether we would refer them to another agency or we would handle it ourselves.

Q: Okay. So let’s say, if one someone is wanted for a criminal offense, is it fair to say they’re not just released into the United States, there’s some follow up?

A: Correct.<sup>21</sup>

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: And when migrants are detained, you mentioned before they’re screened, for example, for criminal history. When there’s a flag, like an outstanding warrant, would they be referred to another law enforcement agency?

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<sup>20</sup> *Id.*

<sup>21</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Department of Homeland Security (May 9, 2023).

A: Yes.

Q: And if someone is wanted for a criminal offense, they're not just released into the United States. Is that correct?

A: No. If they have anything in their background that is of concern, we work to—with our investigative partners and our local law enforcement partners and, if needs be, they are turned over to them for action before they return to the immigration process, or they remain—in the immigration process and they're removed back to their country of origin.<sup>22</sup>

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: And when a migrant is detained, are they screened for criminal history, for being on the watch list, for anything that might be in their record?

A: Yes.

Q: Okay. And that's—everyone—is screened, correct?

A: Yes.

Q: Okay. And I know you touched on this a bit before, so my apologies, but when someone has a flag, say an outstanding warrant, would they be referred to another law enforcement agency.

A: They'd be referred to the agency that placed that flag on them, yes.

Q: Okay. And if someone is wanted for a criminal offense, is it correct to say they're not just released into the United States?

A: That's correct.<sup>23</sup>

*Chief Patrol Agent Scott Good, El Paso Sector (June 29, 2023):*

Q: And if someone is caught, attempting to smuggle through one of these vehicle checkpoints, they'd be arrested. Correct?

A: Yes.

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<sup>22</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023).

<sup>23</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023).

Q: And would you mind shedding more light on what happens when Border Patrol arrests someone for attempting to smuggle? For example, would that person be detained and then referred to a prosecuting agency?

A: Yes.

Q: And then if people are detained after arrest, are they screened for prior criminal history or kind of do they undergo biometric screening, as well?

A: They do.<sup>24</sup>

## **B. U.S. Border Patrol Continues to Effectively Interdict Illicit Drugs**

Republicans have vocally promoted the fictitious claim that deadly narcotics, including fentanyl, are flowing freely into the United States through the southwest border. Chairman Comer has stated that, “Everyday, the Biden Administration is making the drug cartel richer” and “enabling drugs such as fentanyl to flow into American communities.”<sup>25</sup>

In contrast, the Chief Patrol Agents emphasized that U.S. Border Patrol has robust and successful enforcement operations to combat cartel activity and seize the illicit narcotics and other contraband that cartels attempt to smuggle into the United States.

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: Okay. What other strategies are available to Border Patrol that can help dictate cartel movement and strategy?

A: In addition to the conventional law enforcement efforts that we’re talking about—and this is the agents out on patrol—we have a very robust targeted enforcement effort where we work hand in hand with our investigative partners to actually disrupt, degrade, and dismantle those networks and those pipelines that are the smugglers. So the ability to go after them and deliver a consequence for being involved in that smuggling enterprise is huge, as much as being able to actually interdict the flow that they’re responsible for.

Q: What are the consequences that are typically used against the smugglers?

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<sup>24</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Anthony “Scott” Good, U.S. Border Patrol, Department of Homeland Security (June 29, 2023).

<sup>25</sup> *James Comer Warns Against Mexican Cartels As Border Crisis Rages On: Can’t “Turn a Blind Eye”*, Fox News (Mar. 7, 2023) (online at [www.foxnews.com/video/6322078436112](http://www.foxnews.com/video/6322078436112)); *Comer Calls on Border Officials to Testify On Biden Policies “Fueling” Migrant Crisis*, Fox News (Jan. 19, 2023) (online at [www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis](http://www.foxnews.com/politics/comer-calls-border-officials-testify-biden-policies-fueling-migrant-crisis)).

A: When we're able to leverage a multitude of agencies, we're able to bring several different authorities and consequences. At the end of the day, whether we charge them with 8 U.S.C. 1324 and they go to jail for that, or whether they go to jail for a State charge or a local charge, or whether they go to jail for tax evasion or money laundering, it doesn't matter as long as they are taken out of action and they are sent to jail because that's what's disrupting that pipeline and reducing the flow as a result. The ability to work hand in hand with those partner agencies and those investigative efforts is critical.<sup>26</sup>

*Chief Patrol Agent Sean McGoffin, Big Bend Sector (Apr. 25, 2023):*

Q: Do Border Patrol agents in Big Bend routinely interdict and arrest these people who are attempting to smuggle illicit drugs?

A: Yes.

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Q: And so is it possible that the fentanyl flow may be occurring between the ports of entry, that flows, and that helps a success rate to explain that rarity of interdiction?

A: I can't speak beyond the Big Bend Sector. But in the Big Bend Sector, the majority of all narcotics is marijuana.

Q: Is it your testimony that you don't believe that fentanyl flows between the ports of entry in the Big Bend Sector?

A: No. I just merely pointed out that the evidence doesn't show that there's a lot of fentanyl coming through between the ports of entry.<sup>27</sup>

### **C. Republicans Rely on an Unachievable Standard to Measure Border Security**

Congressional Republicans have repeatedly touted the misleading claim that there is no "operational control" of the border.<sup>28</sup> "Operational control," as defined in statute, represents an

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<sup>26</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023).

<sup>27</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Sean McGoffin, U.S. Border Patrol, Department of Homeland Security (Apr. 25, 2023).

<sup>28</sup> Chairman Jordan, for example, has stated that "the Biden administration does not have operational control of the border." *Republicans Slam Biden's Handling of the US-Mexico Border in First Congressional*

inherently unachievable standard: the prevention of all unlawful entries into the United States. As the Chief Patrol Agents explained, no administration in the decades they have served with U.S. Border Patrol has ever achieved “operational control.”

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: Now, this paragraph reads: "OPERATIONAL CONTROL DEFINED. In this section, the term ‘operational control’ means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

Chief Martinez, based on your tenure and knowledge of Border Patrol operations throughout your career since 1992, has there been a year during your career where Border Patrol has prevented all unlawful entries into the United States?

A: No.

Q: And you would agree, then, based on your answer there, as defined by the Secure Fence Act, operational control has never been achieved under any administration?

A: Correct.<sup>29</sup>

*Chief Patrol Agent Aaron Heitke, San Diego Sector (May 9, 2023):*

Q: Chief Heitke, based on your tenure and knowledge of Border Patrol operations, has there been a year during your career where Border Patrol has prevented all unlawful entries into the United States?

A: No.

Q: And to your knowledge, has Border Patrol ever prevented all unlawful entries into the United States?

A: No.

Q: Based on your answers there, you would agree then that operational control as defined here in the Secure Fence Act has never been achieved.

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*Hearing*, CNN (Feb. 1, 2023) (online at [www.cnn.com/2023/02/01/politics/border-policies-hearing-house-judiciary/index.html](http://www.cnn.com/2023/02/01/politics/border-policies-hearing-house-judiciary/index.html)).

<sup>29</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023).

A: Correct.

Q: Outside of the 2006 Secure Fence Act, which we just reviewed here, over the years Border Patrol and the Department of Homeland Security have internally used different metrics to review operational success at the border. Is that correct?

A: Yes.<sup>30</sup>

During their transcribed interviews, the Chief Patrol Agents further revealed that U.S. Border Patrol's own, internal definition of "operational control" has historically differed from the statutory definition.

*Chief Patrol Agent Aaron Heitke, San Diego Sector (May 9, 2023):*

Q: Based on these exhibits and what we just walked through, you would agree with me that operational control has been an evolving metric internally at Border Patrol. Is that right?

A: Yes.

Q: And you would agree that operational control has taken on different meanings over the years. Is that right?

A: Yes.

Q: Based on these definitions, would you agree that Border Patrol has operated under different definitions of operational control than what is listed in the Secure Fence Act?

A: Yes.<sup>31</sup>

## **II. BIDEN-HARRIS ADMINISTRATION POLICIES ARE SUCCESSFULLY REDUCING MIGRANT ENCOUNTERS**

On May 11, 2023, the Biden-Harris Administration terminated the Title 42 Public Health Order ostensibly implemented to mitigate the effects of the COVID-19 pandemic.<sup>32</sup> Prior to the

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<sup>30</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Department. of Homeland Security (May 9, 2023.).

<sup>31</sup> *Id.*

<sup>32</sup> *Title 42 Has Ended. Here's What It Did, and How US Immigration Policy is Changing*, Associated Press (May 12, 2023) (online at <https://apnews.com/article/immigration-biden-border-title-42-mexico-asylum-be4e0b15b27adb9bede87b9bbefb798d>).

expiration of Title 42, Republicans claimed that lifting the order would create an unprecedented migration surge to the southwest border and, in turn, completely overwhelm U.S. Border Patrol capabilities. Republicans made alarmist assertions that “the cartels have planned to overwhelm the system” after Title 42 expires, and that the resulting migration surge “will be unlike anything we’ve ever seen.”<sup>33</sup> Senator John Cornyn echoed this fearmongering, noting, “If you think things are bad now, they’re going to get worse come May 11th. What is now a flood is going to turn into a tsunami.”<sup>34</sup>

In reality, the Chief Patrol Agents explained, there has thus far been a *reduction* in migrant encounters since the end of Title 42. Each Chief Patrol Agent interviewed after May 11, 2023, indicated that they have experienced no surges in migrant encounters and have faced no capacity issues handling the migrants they do encounter. Chief Patrol Agent Joel Martinez of the Laredo sector summarized this fact succinctly.

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: Has the expiration of Title 42 caused any sort of capacity issues for you?

A: No.<sup>35</sup>

All Chief Patrol Agents interviewed since the expiration of Title 42 have experienced reduced migrant encounters within their sectors since May 11, 2023. Their experiences in the line of duty corroborate Customs and Border Protection (CBP) data demonstrating that U.S. Border Patrol encountered significantly more migrants prior to the expiration of Title 42.<sup>36</sup>

The Chief Patrol Agents interviewed by the Committees also explained that policies implemented by the Biden-Harris Administration have been successful in reducing the number of people who attempt to cross the southwest border unlawfully. These policies include a return to pre-COVID-19 pandemic enforcement tools, under Title 8 of the United States Code, which levies steep consequences for individuals who attempt to cross the border unlawfully, including a five-year ban on re-entry and possible prison time for repeated apprehensions. In addition, enhanced parole options for individuals fleeing Venezuela, Nicaragua, Haiti, and other countries experiencing economic and political turmoil have remained effective and have worked to

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<sup>33</sup> *Trump Said Ending Title 42 Would Be “Day of Infamy” for Immigration at Border and... Oh, Wait*, USA Today (May 20, 2023) (online at [www.usatoday.com/story/opinion/columnist/2023/05/20/title-42-end-not-migrant-surge-trump-republicans-predicted/70232324007/](http://www.usatoday.com/story/opinion/columnist/2023/05/20/title-42-end-not-migrant-surge-trump-republicans-predicted/70232324007/)).

<sup>34</sup> *Republicans Warn of Impending Disaster as Border Braces for Title 42 End*, ABC 27 WHTM (May 3, 2023) (online at [www.abc27.com/news/republicans-warn-of-impending-disaster-as-border-braces-for-title-42-end/](http://www.abc27.com/news/republicans-warn-of-impending-disaster-as-border-braces-for-title-42-end/)).

<sup>35</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023).

<sup>36</sup> Customs and Border Protection, *Press Release: CBP Releases May 2023 Monthly Operational Update* (June 20, 2023) (online at [www.cbp.gov/newsroom/national-media-release/cbp-releases-may-2023-monthly-operational-update](http://www.cbp.gov/newsroom/national-media-release/cbp-releases-may-2023-monthly-operational-update)).

increase the number of people entering the U.S. lawfully at ports of entry, instead of between the ports.<sup>37</sup>

*Chief Patrol Agent Scott Good, El Paso Sector (June 29, 2023):*

Q: Okay. And Title 8 authorities impose criminal consequences on people who enter the U.S. without inspection. Is that right?

A: Yes.

Q: Can you explain what some of those criminal consequences are and what they might look like?

A: So the expedited removal would mean they're flown to their country of origin or to Mexico. And there's also prosecutions for 8 U.S.C. 1325, entry without inspection; and 1326, reentry; and, if they're smugglers, then 8 U.S.C. 1324 for smuggling.

Q: Okay. And then, under those authorities, Border Patrol agents can detain migrants who attempt to enter illegally, correct, just to be clear on that?

A: Agents can detain anyone illegally entering the United States in between the ports of entry.

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Q: And under Title 8, just to confirm, an individual being removed would face a number of severe consequences, including potentially being barred from entry into the United States for a period of years, and also potentially face a criminal prosecution if they did violate that order not to enter. Is that correct?

A: Yes.

Q: And would you agree that with the implementation of those more severe consequences under Title 8 we have seen a drop of the number of individuals encountered?

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<sup>37</sup> Department of Homeland Security, *Press Release: Secretary Mayorkas Remarks at a White House Press Briefing Ahead of Lifting of the Title 42 Public Health Order* (May 11, 2023) (online at [www.dhs.gov/news/2023/05/11/secretary-mayorkas-remarks-white-house-press-briefing-ahead-lifting-title-42-public](https://www.dhs.gov/news/2023/05/11/secretary-mayorkas-remarks-white-house-press-briefing-ahead-lifting-title-42-public)).

A: That is one reason, yes.<sup>38</sup>

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: Does Border Patrol strive to issue a consequence for every illegal entry in the Laredo sector?

A: We do.<sup>39</sup>

*Chief Patrol Agent Aaron Heitke, San Diego Sector (May 9, 2023):*

Q: And you talked about—you talked about the importance of consequences.

A: Yes.

Q: So, in making sure that, you know, there are consequences, do you agree that things like increasing detention capacity, increasing the speed of removal of migrants who are deemed not to have a lawful basis to remain, those are all things that are helpful to your mission?

A: Yes.<sup>40</sup>

*Chief Patrol Agent Gregory Bovino, El Centro Sector (July 12, 2023):*

Q: And these low apprehension figures in your sector since you've been there, what would you say has caused those low apprehension figures?

A: The lower apprehension rates, I'll give you a figure from a couple of weeks ago. We apprehended 14 individuals approximately last week in 1 day, and that was 14. The sectors to the east and west of us were in the several hundred category.

So over the past 3 years, those low apprehension figures have followed that trend in the El Centro Sector, not only because we're the premier

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<sup>38</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Anthony “Scott” Good, U.S. Border Patrol, Department of Homeland Security (June 29, 2023).

<sup>39</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023). *See also* Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Gregory Bovino, U.S. Border Patrol, Department of Homeland Security (July 12, 2023).

<sup>40</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Department of Homeland Security (May 9, 2023).

sector in the Border Patrol—and I hope you remember that more than anything, but because we provide something called a consequence to these individuals that come across the border.

Whether that consequence is in Mexico or the criminal prosecutions that you asked about, or the CVB ticket-writing, or the fact that we have ferreted out fake family groups trafficking in kids and things like that.

Those consequences have been ongoing and continuous....

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Q: Right. And so it sounds—I'm just trying to make sure I understand what you're saying, but the efforts of you and your agents in applying consequences under U.S. law have been the key to your successful operations in the El Centro district?

A: They have contributed to that, yes.<sup>41</sup>

### **III. INCREASED RESOURCES PROVIDED BY THE BIDEN-HARRIS ADMINISTRATION HAVE BOLSTERED U.S. BORDER PATROL OPERATIONS**

Contrary to Republican claims, the Biden-Harris Administration has allocated an unprecedented volume of resources to the southwest border to bolster border security. During their transcribed interviews, Chief Patrol Agents detailed the wide range of additional resources that have been provided to the sectors since the beginning of 2021.

For example, the fiscal year (FY) 2023 Omnibus Appropriations bill, signed into law by President Biden in December of 2022, increased Customs and Border Protection funding by \$3.2 billion over the prior year.<sup>42</sup> Among other items, the bill included:

- \$7.153 billion for the U.S. Border Patrol for operations, hiring, and southwest border surge requirements—a 17% increase above FY 2022;
- \$65 million specifically designated for 300 additional Border Patrol agents; and
- \$230 million for between-the-ports technology such as autonomous surveillance towers.<sup>43</sup>

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<sup>41</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Gregory Bovino, U.S. Border Patrol, Department of Homeland Security (July 12, 2023).

<sup>42</sup> Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (2022).

<sup>43</sup> *Id.*

Despite their vocal calls for increased border security, 200 House Republicans voted *against* providing this robust funding in the FY 2023 appropriations omnibus legislation.<sup>44</sup>

The Chief Patrol Agents described the additional resources deployed to the southwest border by the Biden-Harris Administration, including technology to aid in the detection and apprehension of individuals seeking to unlawfully enter the United States—such as unmanned aerial surveillance systems and communication systems— and additional personnel, including processing coordinators to assist in processing activities that allow U.S. Border Patrol agents to return to field operations. The Chief Patrol Agents consistently agreed that the resources provided by the Biden-Harris Administration assisted their operations in securing the border, created a safer environment for U.S. Border Patrol agents, and improved morale among agents.

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: So I'd like to turn to the most recent funding that Congress provided to Border Patrol.

So the 2023 omnibus, which passed in December, provided funding for 300 new Border Patrol agents in the workforce, which is the first increase since 2011.

Do you think these additional agents will be helpful in the role—in the job of securing the border?

A: Absolutely. We always need more agents.<sup>45</sup>

*Chief Patrol Agent Sean McGoffin, Big Bend Sector (Apr. 25, 2023):*

Q: Do you use non-law enforcement personnel, such as border processing coordinators—

A: Yes.

Q: —or other individuals?

A: We have Border Patrol processing coordinators.

Q: And when did you start using those?

A: Last year, I believe. So we got our first one sometime last year.

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<sup>44</sup> U.S. House of Representatives, Roll Call No. 549, 117th Cong. (2022).

<sup>45</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023).

Q: So in response to the high flow you obtained border processing coordinators?

A: We were provided Border Patrol processing coordinators, yes.

Q: And can you explain the tasks that those non-law enforcement personnel would perform that would free up a Border Patrol agent to spend more time patrolling the border?

A: So they're processing individuals, helping to not only do that, but they might be remote processing, things of that nature, to help us make sure that we're having the data input that we need, reduces the amount of agents that are needed in our processing areas.

And I think we've been very successful with that. We're currently about—roughly 16 percent of our agents are actually processing as a whole. So that really helps our morale. Our morale is doing well in Big Bend Sector. And, again, a lot of factors with that as well.

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Q: And while you've been in the Big Bend Sector, have you seen more communication devices or more of the detection technology deployed in your sector?

A: Yes, we have.<sup>46</sup>

*Chief Patrol Agent Aaron Heitke, San Diego Sector (May 9, 2023):*

Q: And you just mentioned they're new. About when did San Diego start receiving processing coordinators?

A: About a year ago.

Q: And, in your opinion, has the rollout of this position, these people been helpful to your agents?

A: Yes.

Q: And has that allowed agents to return to the field, having these processing coordinators in your facilities?

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<sup>46</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Sean McGoffin, U.S. Border Patrol, Department of Homeland Security (Apr. 25, 2023).

A: Yes.

Q: And, just to be clear, getting agents back in the field, would you say that's allowed for improved border security operations?

A: Yes.

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Q: And would you say these towers, these autonomous surveillance towers, are helpful for your sector?

A: Yes.

Q: And, since your arrival in the San Diego Sector, has the number of these autonomous surveillance towers employed in your sector increased?

A: I believe so, yes.

Q: Are you aware of plans to further increase the number of towers in your sector?

A: Yes.<sup>47</sup>

*Chief Patrol Agent Joel Martinez, Laredo Sector (June 1, 2023):*

Q: Okay. Fair enough. I did have one quick follow-up question about the deployment of [autonomous surveillance towers]. You were quoted as saying there's—that the towers are really popular with the field agents. Quote—I think it was in January of this year—"There are no surprises. The agents know exactly what they're walking into. It's a game changer."

Does that still hold true?

A: That still holds true.

Q: And those towers were really only deployed over the course of the last two years?

A: The majority of them, yes.

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<sup>47</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Aaron Heitke, U.S. Border Patrol, Department of Homeland Security (May 9, 2023).

Q: Okay. Fair. Does the deployment of these technologies give your agents really significantly improved situational awareness?

A: They do. We can see if they have—if the person that we are encountering has a weapon on them or not.

Q: That's great.

A: That's the biggest.

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Q: And help might look like more agents, but also I think you've talked about how processing coordinators have helped, how the professional caretakers and medical support contractors have helped; data processing contractors have helped.

Is that fair to say, that all those things help you fulfill your mission at the border?

A: Yes.

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Q: Now, Chief Martinez, earlier today we discussed the most recent funding Congress provided to Border Patrol in the fiscal year 2023 omnibus appropriations package. The package included \$24.6 million for suicide prevention and workforce wellness efforts as well as childcare services.

As a sector chief, how important is funding like that to supporting the well-being of your frontline workforce?

A: It's extremely important.

Q: Can you elaborate? Why is that important?

A: The resiliency program for one, the suicide prevention, you can't put a price tag on it. We're all sons and daughters, mothers and fathers, and some of the stuff that we see out in the field takes its toll on us eventually. So that is a very important program, very important funding that y'all—that the Congress gave us. So, yeah, that's very important to us.<sup>48</sup>

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<sup>48</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Joel Martinez, U.S. Border Patrol, Department of Homeland Security (June 1, 2023).

*Chief Patrol Agent Gregory Bovino, El Centro Sector (July 12, 2023):*

Q: Just back on the—I know we touched on Border Patrol morale, the report that you hadn't read. What is the current state of morale in your sector among agents?

A: The current state of morale in the El Centro Sector, the premier sector in the U.S. Border Patrol, is one of what I would term optimal morale given current conditions because our agents are focused on providing consequences. And a majority of our agents are focused on patrolling that border, doing the things that they signed up to do, such as catch bad people and bad things. That portends a positive morale amongst the agents.<sup>49</sup>

#### **IV. REPUBLICANS' REPEATED TRANSCRIBED INTERVIEWS HAVE PULLED CHIEF PATROL AGENTS FROM THEIR DUTIES AT THE BORDER**

The transcribed interviews demanded by Republicans have taken Chief Patrol Agents away from their responsibilities at the southwest border. Each of the six Chief Patrol Agents spent numerous hours answering the questions of Committee staff. Moreover, the Chief Patrol Agents explained that multiple hours of preparation were required prior to participation, in order to ensure efficient and productive interviews in which they would be in a position to provide fulsome and accurate information in response to the Committees' questions. One Chief Patrol Agent explained that he spent approximately nine hours preparing for his transcribed interview.<sup>50</sup> Collectively, the Republican-led transcribed interviews amounted to dozens of hours where Chief Patrol Agents were removed from their duties in the sectors they oversee.

*Chief Patrol Agent Jason Owens, Del Rio Sector (May 5, 2023):*

Q: Good morning. I wanted to circle back to the time spent preparing for this interview.

So in your own estimation, how long would you say that you spent preparing for this today?

A: Maybe 8 hours.

Q: Okay. And is it safe to say that transcribed interviews generally are not a typical part of your duties as Chief Patrol Agent?

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<sup>49</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Gregory Bovino, U.S. Border Patrol, Department of Homeland Security (July 12, 2023).

<sup>50</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Anthony "Scott" Good, U.S. Border Patrol, Dept. of Homeland Security (June 29, 2023).

A: Definitely.

Q: So if you hadn't been preparing for this interview today, how would you have been spending your time as Chief Patrol Agent?

A: I would have been back at my sector doing the duties of the Chief Patrol Agent.<sup>51</sup>

In light of the repeated misrepresentations regarding the southwest border by Chairmen Comer and Green, and their failure, thus far, to publicly release the full interview transcripts, the Committees' Democratic staff will endeavor to provide ongoing updates to all Democratic Members on the status of these investigations to ensure the Committees' work is carried out in a transparent fashion.

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<sup>51</sup> Committee on Oversight and Accountability and Committee on Homeland Security, Transcribed Interview of Chief Patrol Agent Jason Owens, U.S. Border Patrol, Department of Homeland Security (May 5, 2023).