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## Republican Abuse of Power: The Sham Impeachment of Secretary Alejandro Mayorkas

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**COMMITTEE *ON* HOMELAND SECURITY**

*Ranking Member Bennie G. Thompson*

# REPUBLICAN ABUSE OF POWER:

The Sham Impeachment of  
Secretary of Homeland Security  
Alejandro Mayorkas

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**UNITED STATES HOUSE OF REPRESENTATIVES**

Committee on Homeland Security

**MINORITY STAFF REPORT**

January 29, 2024

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# KEY FINDINGS

- **Republicans are abusing Congress’ impeachment power.** Impeachment is an extraordinary remedy under the United States Constitution. It is not a tool for 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.
- **The 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.

# I. INTRODUCTION

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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1 U.S. Const. art. 2, §4.

2 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/>.

## REPUBLICAN ABUSE OF POWER

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.

This report documents the failed basis for this sham impeachment effort and provides 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.



## 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.

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3 *The Records of the Federal Convention of 1787* 550 (Max Farrand, ed., 1911).

4 Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 39 (2018) (ebook).

5 U.S. Const. art. 2., § 4.

6 Tribe & Matz, *To End a Presidency*, *supra* note 4, at 41.

7 *Id.*

8 *Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis: Hearing before the H. Comm. on Homeland Security*, 118th Cong. (2024).

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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>

Professor Deborah Pearlstein further elaborated on the conduct required to successfully prosecute impeachment articles alleging violation of the public trust 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 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 regarding impeachment. 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. HOUSE 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

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<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).

<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.”).



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Executive Branch, no matter how intense or high stakes those differences of 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:

[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>

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15 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>.

16 196 Cong. Rec. H5940 (daily ed., Nov. 29, 2023).

17 *Id.*

18 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>.

19 *Id.*

20 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>.

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We are left to conclude that House Republicans, caving to the demands of their most extreme Members, planned 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 was fired by 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 to impeach Secretary Mayorkas 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—it has always been about exacting revenge against Democrats for impeaching Donald Trump.

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 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:

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21 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>.

22 Frank O. Bowman III, *High Crimes and Misdemeanors: A History of Impeachment in the Age of Trump* 122 (2019) (ebook).

23 *Id.*

24 H.Res. 582, 117th Cong. (2021).

25 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).

26 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>.

27 *Id.*

28 *Id.*

29 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/>.

## II. REPUBLICANS' FAILED CASE FOR IMPEACHMENT

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 articles of impeachment under consideration in 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, "[W]e'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 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" 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.

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30 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.")

31 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>.

32 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>.

33 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/alejandro-mayorkas-impeachment-vote-marjorie-taylor-greene/>.

34 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/>.

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>

But even if the Framers were wrong, and House Republicans could impeach Secretary Mayorkas because they think he is doing a bad job, they will not change policy through his 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 if Secretary Mayorkas is impeached. None of these policies will change in the highly unlikely event that the Senate convicts and removes him from office. In fact, if

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35 2 *The Records of the Federal Convention of 1787*, *supra* note 3.

36 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-alejandro-mayorkas-unconstitutional-border-security/>.

37 *Worldwide Threats to the Homeland: Hearing Before the H. Comm. on Homeland Security*, 118th Cong. (2023) (statement of Secretary Mayorkas).

38 *Id.*

39 *See id.*

40 *See id.*

## II. REPUBLICANS' FAILED CASE FOR IMPEACHMENT

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.

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 Donald Trump and his counsel to provide additional testimony and evidence in executive session, if necessary.<sup>44</sup>

In contrast, Chairman Green has denied Secretary Mayorkas meaningful due process. Instead, 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

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41 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>.

42 H. Res. 660, 116th Cong. (2019).

43 *Id.*

44 *Markup of Resolution on Investigative Procedures Before the H. Comm. on the Judiciary*, 116th Cong. (Sept. 12, 2019).

45 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>.

46 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/>.

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such testimony would be open until January 31, 2024, a day after the Committee will mark up the impeachment resolution.<sup>47</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>48</sup> With promises to keep to the most extreme elements of the Republican 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>49</sup> Among other things, the letter noted that in the only 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>50</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.



47 Rule VII(D) of the Rules of the Committee on Homeland Security for the 118th Congress. See 169 Cong. Rec. H861 (daily ed., Feb. 21, 2023).

48 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).

49 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).

50 *Id.* at 2 (citing 3 Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, § 2445, 904 (1907)).

# III. SECRETARY MAYORKAS IS FOLLOWING THE LAW & 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>51</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

### 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>52</sup>

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51 See *supra* Section II.

52 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).

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Therefore, DHS's decisions to release some individuals otherwise subject to INA § 235(b) are 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>53</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>54</sup> despite Congress providing funding to detain only 34,000 people.<sup>55</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.

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>56</sup>

During transcribed interviews before the Committee, Border Patrol officials confirmed that migrants have been released into communities throughout their decades-long careers.<sup>57</sup> Notably, the Trump administration released over 500,000 people at the U.S.-Mexico border,<sup>58</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>59</sup> In addition, 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'

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53 See Brief for the Petitioners at 27-29, *United States v. Texas*, 599 U.S. \_\_\_\_ (2023) No. 22-58.

54 *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>.

55 *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).

56 *Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis: Hearing before the H. Comm. on Homeland Security*, 118th Cong. (2024).

57 *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).

58 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>.

59 *United States v. Texas*, 599 U.S. \_\_\_\_ (2023) (slip op. at 8).



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FY 2024 DHS appropriations bill would fund an ADP of 41,000 migrants<sup>60</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>61</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>62</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>63</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.

### 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>64</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>65</sup> Removing record numbers of migrants from 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—

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60 *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>.

61 U.S. House of Representatives, Roll Call No. 549, Bill Number: H.R. 2617, 117th Cong. (2022), <https://clerk.house.gov/Votes/2022549>.

62 *Florida v. United States*, No. 3:21-cv-1066-TKW-ZCB (N.D. Fla. Mar. 8, 2023).

63 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).

64 *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).

65 *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>.

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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>66</sup> The Biden administration has requested additional funding from Congress for detention and removal, but Republicans refuse to provide it.<sup>67</sup> Setting immigration enforcement priorities is necessary and common, as the Supreme Court stated in its majority opinion in *U.S. v. Texas*.<sup>68</sup>

Notably, Republicans' case against Secretary Mayorkas relies heavily on a Fifth Circuit Court of Appeals procedural decision in *Texas v. United States*.<sup>69</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>70</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.

## 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>71</sup> Mr. Aaron Reichlin-Melnick, Policy Director for 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

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66 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>.

67 *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>.

68 *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)).

69 *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022).

70 *United States v. Texas*, 599 U.S. \_\_\_\_ (2023).

71 8 U.S.C. 1182(d)(5)(A).

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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>72</sup>

Secretary Mayorkas has complied with the case-by-case adjudication requirement for parole applications.<sup>73</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>74</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>75</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>76</sup>

There are no grounds to impeach Secretary Mayorkas for exercising well-established authority to administer parole programs in accordance with the law and long-standing 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 (ACAs), and border wall construction. However, by the time President Biden took office, MPP and the ACAs were already largely in disuse. Moreover, contrary to Republican allegations, the border wall has hardly deterred migrants from attempting to cross into the United States, but 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.

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72 *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).

73 *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>.

74 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/>.

75 *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>.

76 *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).

## 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>77</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>78</sup> That is about five percent of the approximately 1.3 million individuals that Border Patrol encountered during that time period.<sup>79</sup> By January 2021, MPP had been effectively replaced by Title 42, which expired in May 2023.<sup>80</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 35 times as many expulsions as people ever placed into MPP during the Trump administration.<sup>81</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>82</sup> Not only was this program barely utilized during its existence, but when President 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>83</sup>

The MAGA Republican attempt to impeach Secretary Mayorkas over the termination of the ACAs is absurd. The White House announced its plans to terminate the ACAs on February 2, 2021,<sup>84</sup> the

77 Aaron Reichlin-Melnick (@ReichlinMelnick), Twitter (Apr. 5, 2022, 2:59 PM), <https://twitter.com/ReichlinMelnick/status/1511418169348481035>.

78 *Fact Sheet: The "Migrant Protection Protocols"*, American Immigration Council, Jan. 7, 2022, <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

79 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 Dec. 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).

80 Aaron Reichlin-Melnick (@ReichlinMelnick), X (Dec. 21, 2023, 2:47 PM), <https://x.com/ReichlinMelnick/status/1737922679733117106?s=20>.

81 Aaron Reichlin-Melnick (@ReichlinMelnick), X (Jan. 22, 2024, 5:50 PM), <https://x.com/ReichlinMelnick/status/1749565189563818403?s=20>.

82 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 Dec. 31, 2023).

83 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.>

84 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/>.

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same day Secretary Mayorkas was sworn into office.<sup>85</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 by the State Department—not Secretary Mayorkas and DHS. Republicans appear to misunderstand the roles and responsibilities of the State Department and DHS.

#### 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>86</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 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>87</sup> CBP reported that in FY 2022, the border wall was breached over 4,000 times—more than 11 times per day.<sup>88</sup> Parts of it have fallen over during weather events.<sup>89</sup> To repair more than 3,200 holes between 2019 and 2021, the Federal government spent \$2.6 million.<sup>90</sup> Additionally, CBP discovered 40 tunnels from 2017 to 2021.<sup>91</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>92</sup>

Given its questionable security value, funding an ineffective wall that could cost up to \$46 million per mile is fiscally irresponsible and inhumane.<sup>93</sup> Yet it remains a top policy priority for House Republicans.

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85 *Biography of Alejandro Mayorkas*, Dep’t of Homeland Security, <https://www.dhs.gov/person/alejandro-mayorkas> (last updated May 1, 2023).

86 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>.

87 Nick Miroff, *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).

88 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>.

89 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/>.

90 The Week Staff, *Is Trump’s Wall Working?*, The Week (June 3, 2023), <https://theweek.com/immigration/1023983/is-trumps-wall-working>.

91 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>.

92 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>.

93 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.>

Secretary Mayorkas has approved border wall construction and spending on replacement and maintenance updates to the border wall when required by law.<sup>94</sup> The decision to temporarily halt border wall construction while providing technology alternatives was a policy decision, not a breach of the public trust that enriched the Secretary. Policy decisions are not impeachable offenses.

### SECRETARY MAYORKAS' BORDER SECURITY INITIATIVES

Finally, Republicans' 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 at the border;<sup>95</sup> expanding enforcement efforts;<sup>96</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>97</sup>

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, as well as created a safer environment for border patrol agents.<sup>98</sup> The Secretary's actions have also reduced demand for irregular pathways,<sup>99</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

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94 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>.

95 *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>.

96 *2023 Year in Review: Secretary Mayorkas Champions Department-Wide Efforts to Save Lives and Prepare for 21st 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>.

97 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>.

98 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.")

99 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.").

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apprehension rate identical to the apprehension rate under the Trump Administration—77 percent—despite a worldwide migration phenomenon resulting in significantly more people attempting to enter the United States.<sup>100</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>101</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>102</sup> More than half of all arrests under this operation occurred in just the past year.<sup>103</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>104</sup>

#### **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>105</sup>

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100 Data computed from *Department of Homeland Security Border Security Metrics Report: 2022*, Dep't of Homeland Security 13 (Jul. 3, 2023), [https://www.dhs.gov/sites/default/files/2023-07/2023\\_0703\\_plcy\\_fiscal\\_year\\_2022\\_border\\_security\\_metrics\\_report\\_2021\\_data.pdf](https://www.dhs.gov/sites/default/files/2023-07/2023_0703_plcy_fiscal_year_2022_border_security_metrics_report_2021_data.pdf); *Southwest Border Land Encounters*, U.S. Customs and Border Protection <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Jan. 7, 2024); Press Release, *ICYMI: Sen. Marshall Grills Sec. Mayorkas at Homeland Security Hearing: Confirms Over 600K Gotaways In FY'23*, Office of Sen. Marshall, (Oct. 31, 2024), <https://www.marshall.senate.gov/newsroom/press-releases/icymi-sen-marshall-grills-sec-mayorkas-at-homeland-security-hearing-confirms-over-600k-gotaways-in-fy23/>; *Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale*, Dep't of Homeland Security Office of the Inspector General 10 (May 3, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-24-May23.pdf>.

101 *2023 Year in Review: Secretary Mayorkas Champions Department-Wide Efforts to Save Lives and Prepare for 21st 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.>

102 *Hearing Before the Subcomm. on Border Security and Enforcement of the H. Comm. on Homeland Security*, 118th Cong. (2023) (statement of James Mandryck).

103 *ICE Annual Report Fiscal Year 2023*, U.S. Immigration and Customs Enforcement 37 (Dec. 29, 2023), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>.

104 See, e.g., *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); *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).

105 *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 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>106</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>107</sup>

Secretary Mayorkas is doing his job by enacting policies that respond to a worldwide mass migration movement while 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 the detection of illicit goods.<sup>108</sup> Democrats supported the bill.<sup>109</sup> The following year, 200 House Republicans voted against providing increased funding for border security operations in the FY 2023 appropriations act.<sup>110</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>111</sup> The request would provide support to communities receiving migrants and pay for 1,300

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106 *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).

107 *Failure By Design: Examining Secretary Mayorkas' Border Crisis: Hearing Before the H. Comm. on Homeland Security*, 118th Cong. (2023).

108 Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021).

109 U.S. House of Representatives, Roll Call No. 370, Bill Number: H.R. 3684, 117th Cong. (2022), <https://clerk.house.gov/Votes/2021370>.

110 U.S. House of Representatives, Roll Call No. 549, Bill Number: H.R. 2617, 117th Cong. (2022), <https://clerk.house.gov/Votes/2022549>.

111 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>.



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additional Border Patrol agents, 1,000 more CBP officers, 375 new immigration judges, and additional technology to detect drugs at the border.<sup>112</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>113</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>114</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>115</sup> Republicans are 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. 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.

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112 *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>.

113 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/>.

114 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>

115 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*, ABC News (Jan. 18, 2024), <https://abcnews.go.com/Politics/johnson-speaks-trump-frequently-border-negotiations/story?id=106483545>.

### 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>116</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>117</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>118</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>119</sup> Secretary Mayorkas was asked whether DHS had operational control of the U.S. borders and he indicated in the affirmative. However, he 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>120</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 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 border consistent with longstanding 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.

### REPUBLICANS’ NEW-FOUND INTEREST IN COMPLIANCE WITH CONGRESSIONAL OVERSIGHT

The 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 investigations and inquiries. Republicans did not protest. Their clearly performative indignation now 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

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116 Secure Fence Act of 2006, Pub. L. No. 109-367 §2(a), 120 Stat. 2638 (emphasis added).

117 *Id.* §2(b) (emphasis added).

118 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/>.

119 *Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary*: 117th Cong. (2022).

120 *Id.*

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with his confirmation hearing in January 2021<sup>121</sup>—more than any other current Cabinet official.<sup>122</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>123</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>124</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.

#### 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 impeachment charade and work with Mr. Mayorkas to deliver for the American people.<sup>125</sup>



121 Email from Dep't of Homeland Security Staff to H. Comm. on Homeland Security staff (Nov. 13, 2023) (on file with the Committee).

122 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/>.

123 *Id.*

124 *Id.*

125 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>.

## IV. CONCLUSION

After two hearings and a cursory review of relevant law and fact, Committee Republicans are set to approve 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>126</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>127</sup> "Breach of public trust," or "abuse of power," requires conduct so extreme that it "subverts core tenets of the US governmental system,"<sup>128</sup> is "so plainly wrong by current standards that no reasonable official could honestly profess surprise at being impeached,"<sup>129</sup> and serves an official's "own benefit or the benefit of his own power or on behalf of a foreign power."<sup>130</sup> Constitutional law experts have unequivocally concluded Secretary Mayorkas' conduct does not meet that threshold.<sup>131</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>132</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>133</sup> While global migration trends continue to pose challenges, the Secretary has removed record levels of migrants, detained more people than Congress has provided funding for, and prevented record levels of fentanyl from entering our communities.<sup>134</sup>

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126 See *supra* Section II and Section III.

127 See *supra* Section II.

128 Tribe & Matz, *To End a Presidency*, *supra* note 4 at 41.

129 *Id.*

130 *Voices for the Victims*, *supra* note 8.

131 See Section II.

132 See Section III.

133 *Id.*

134 *Id.*

## IV. CONCLUSION

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>135</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>136</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>137</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>138</sup>

The American people deserve better.

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135 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/>.

136 *Voices for the Victims*, *supra* note 8.

137 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>.

138 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>.

