

SPECIAL REPORT

No. 266 | FEBRUARY 6, 2023

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Hans A. von Spakovsky, Lora Ries, and Steven G. Bradbury

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EDWIN J. MEESE III CENTER FOR LEGAL AND JUDICIAL STUDIES

About the Authors

Hans A. von Spakovsky is Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.

Lora Ries is the Director of the Border Security and Immigration Center at The Heritage Foundation.

Steven G. Bradbury is a Distinguished Fellow at The Heritage Foundation.

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Secretary of Homeland Security Alejandro Nicholas Mayorkas has been deaf to the voice of Americans, blind to the chaos and consequences of his policies and actions in violating the law, and untruthful in his statements to Congress and the American people. Secretary Mayorkas has intentionally undermined the sovereign interests of the United States by evading or violating the law and embracing policies he was warned would result in disaster. As Secretary of the Department of Homeland Security, he bears responsibility for this catastrophic failure. It is time for him to resign or be removed from office—for the protection and good of the men and women of the Department of Homeland Security and the American people and for the preservation of national sovereignty.

Introductory Statement

By his policy decisions and misconduct as Secretary of Homeland Security, Alejandro Nicholas Mayorkas has violated his oath of office, abused the powers of his office, and betrayed the trust of the American people. As a direct result of his actions, the U.S. has become gripped by an unprecedented border, national security, and illegal immigration catastrophe.

Under Secretary Mayorkas's supervision, the Department of Homeland Security (DHS) has failed to protect the sovereignty and security of the United States. Against the warnings of career border security experts, he has orchestrated policies for the mass release of huge numbers of illegal aliens into the U.S. in violation of law. For his first two years in office, he threw open the southern border, creating a humanitarian crisis of historic proportions, and he deliberately encouraged and incentivized more than 6

million aliens from 160 different countries to put their lives in the hands of ruthless cartel members and smugglers as they embarked on the dangerous trek to enter the U.S. illegally.

Secretary Mayorkas's policies and actions have resulted in the expansion of the Mexican drug cartels' operational control of the U.S. border, along with their capacity to increase their vast and complex networks into the U.S. These cartels have put at risk the lives and safety of the dedicated officers who serve under Secretary Mayorkas's charge. He has also orchestrated a system of processing and transporting illegal aliens into and throughout the U.S., rather than detaining and removing them as required by law.

Recently, the uncontrolled flood of illegal aliens crossing the southern border *between* official ports of entry has slowed, as Secretary Mayorkas has shifted to an equally unlawful policy of pre-registering these same aliens outside the U.S. for mass entry and release *through* ports of entry. This new process has allowed Secretary Mayorkas to claim an improvement in the crisis at the border and a lessening of the strain on border officers—but it has institutionalized his violations of law by establishing a new pathway attracting an ever-increasing flood of aliens to gain quick entry into the U.S. and be released *en masse* and dispersed to all parts of the country without regard for the requirements of the U.S. Constitution, immigration laws, or the deleterious effects on local communities.

Secretary Mayorkas's reckless policies of encouraging and facilitating the entry and release of millions of illegal aliens into the U.S. have pulled limited law enforcement personnel off the front lines, away from their national security mission, and have allowed cartels to flood America's communities with fentanyl, violent criminal aliens, gang members, and potential national security threats. Secretary Mayorkas has also acted inexcusably to denigrate and abuse U.S. Customs and Border Protection (CBP) officers, lied to Congress and deceived the public about the nature and consequences of his policies, and acted to suppress the constitutional and statutory rights of Americans.

For these violations, abuses, depredations, and betrayals, Secretary Mayorkas deserves to be impeached, removed from office, and disqualified from holding any further office of honor, trust, or profit under the United States.

While there is overlap in the grounds for his impeachment, Secretary Mayorkas's impeachable offenses are appropriately considered in three categories for purposes of analysis:

1. In Violation of His Oath, Secretary Mayorkas Has Deliberately Defied and Contravened the Laws He Is Charged with Faithfully Executing. Under his policies, direction, and supervision, the DHS has released

tens of thousands of illegal aliens every month into the United States, using, in part, parole in violation of the clear requirements of the immigration statutes he is sworn to enforce.

He has also ignored and failed to uphold the mandatory detention and deportation provisions of the immigration laws. These acts have resulted in the entry of inadmissible aliens and the continued presence of deportable aliens, such as criminals, drug traffickers, human traffickers, and suspected terrorists. And he has defied or acted in violation of other laws and court orders, as detailed herein. The new system he has introduced of pre-registering aliens for mass entry and release into the U.S. continues—and, indeed, institutionalizes—the very same violations of law.

2. Secretary Mayorkas Has Repeatedly Abused the Authority of His Office, Including By, Among Other Conduct, Enticing a Flood of Aliens to Cross the U.S. Southern Border with His Policies and Statements by:

- Treating all comers as “refugees” or “asylum seekers,” even though he knows that most are not coming to flee persecution and are ineligible for asylum under the law;
- Directing and overseeing policies that have created a border, national security, and humanitarian disaster that he knows or should know put the American public in danger not only from over 1.2 million illegal aliens who evaded the Border Patrol, but also from unknown quantities of fentanyl and other deadly drugs that could not be seized by border officers because those officers were directed instead to process and release illegal aliens into the U.S.;
- Denigrating, abusing, and putting in harm’s way the DHS officers who serve under him; and
- Taking actions to suppress the exercise of First Amendment rights by political opponents and the exercise of statutory rights under the immigration laws by American citizens and lawful permanent residents.

3. Secretary Mayorkas Has Betrayed the Trust of the People by Lying to Congress and Withholding Information and Misleading the Public in an Effort to Hide and Suppress the Nature and Consequences of His Abominable Policies.

The violations, abuses, and betrayals perpetrated by Secretary Mayor-
kas fit squarely within the universe of “high Crimes and Misdemeanors”
warranting impeachment of Cabinet officers and other principal civil
officers of the United States, consistent with U.S. history and constitu-
tional traditions.

I. The Constitutional Foundations for Impeachment of Civil Officers

Impeachment refers to the process of removing public officials for
serious misconduct and misbehavior. With roots in 14th-century England,
the U.S. Constitution provides that “[t]he President, Vice President and
all civil Officers of the United States, shall be removed from Office upon
Impeachment for and Conviction of, Treason, Bribery, or other high Crimes
and Misdemeanors.”¹ Impeachment is a crucial component of the checks
and balances infused into the governmental system by the Framers of the
Constitution.

Secretary Mayor-
kas serves as a “civil Officer” of the United States.² He
was appointed by President Joseph Biden with the confirmation of the
Senate to lead a major Cabinet department,³ and his functions and duties
as Secretary of Homeland Security were established by statutes enacted by
Congress. As such, Secretary Mayor-
kas is manifestly subject to the impeach-
ment power of Congress under the Constitution.

A. Historical Understanding of “High Crimes and Misdemeanors”

In providing for impeachment, America’s Founders looked to the his-
tory and legal traditions and practices of England. The British Parliament
first enacted an impeachment statute in 1399, and that statute governed
impeachments of British magistrates for more than four centuries, through
the time of the Founding of the American Republic,⁴ though “recorded inci-
dents of [English] impeachments may have begun as early as 1376, and one
source would place the first in 1283.”⁵

English impeachment had a broad scope: Parliament could impeach any
person for any crime or misdemeanor, and the impeachment “was penal
in nature, with possible penalties of fines, imprisonment, or even death.”⁶
Even in England, however, impeachment was typically “used in individual
cases to reach offenses, as perceived by Parliament, against the system
of government.”⁷ Many impeachment charges “involved abuse of official
power or trust.”⁸

The “constitutional meaning”⁹ of the phrase “high Crimes and Misdemeanors” has a “special historical meaning different from the ordinary meaning of the terms ‘crimes’ and ‘misdemeanors.’”¹⁰ Instead, it is a “category of offenses that subverted the system of government.”¹¹ For more than four centuries, it covered “a wide range of criminal and non-criminal offenses against the institutions and fundamental principles of English government.”¹²

In America, both colonial governments and state constitutions considered impeachment to be “a constitutional remedy to address serious offenses against the system of government.”¹³ As outlined by the Committee on the Judiciary of the U.S. House of Representatives in 2019, when “the Framers deliberated in Philadelphia, [George] Mason posed a profound question: ‘Shall any man be above justice?’” Mason explained that “some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen.”¹⁴ The Impeachment Clause of the Constitution invests Congress with the power to displace such an “unfit magistrate” and to “save the Nation from misconduct that endangers democracy and the rule of law.”¹⁵

As the Constitution’s language shows, impeachment is not a criminal process like the prosecutions carried out by the U.S. Department of Justice. Instead, it is the “first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government,”¹⁶ and it “results only in loss of political power.”¹⁷

One obvious question is whether the phrase “high Crimes and Misdemeanors” within the meaning of the Constitution is limited to criminal offenses. According to the official legal opinions of the U.S. Department of Justice’s Office of Legal Counsel, the answer to that question is a resounding no.¹⁸ The constitutional phrase is a term of art that “must be construed, not according to modern usage, but according to what the framers meant when they adopted [it].”¹⁹ From the English experience, the Framers understood that impeachable misconduct is not defined or constrained by “common law or statutory derelictions or crimes.”²⁰

This view of the Justice Department has been confirmed by the House of Representatives in the impeachments of three Presidents: Richard Nixon, Bill Clinton, and Donald Trump. Some forms of misconduct “may offend both the Constitution and criminal law,” but it is ultimately the House of Representatives that judges “whether a President’s conduct offends and endangers the Constitution itself.”²¹ That same standard applies to all civil officers of the United States who are subject to impeachment.

As the House Judiciary Committee explained in 2019 during the impeachment of President Donald Trump, the term “high Crimes and Misdemeanors” in the Impeachment Clause refers to “acts committed by public officials, using their power or privileges, that inflicted grave harm on our political order.” It is intended to give Congress the power to remove the President and other federal officials “for egregious misconduct” and to remove those officials who have “abused, abandoned, or sought personal benefit from their public trust—and who threatened the rule of law if left in power.” When a “political official uses political power in ways that substantially harm our political system, Congress can strip them of that power.”²²

In *The Federalist* No. 65, Alexander Hamilton wrote that impeachment includes “those offences 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.”²³ As former Congressman and U.S. Attorney Bob Barr has written, the impeachment language in the Constitution “incorporates political offenses against the state that injure the structure of government and tarnish the integrity of the political office [including] breaches of the public trust.”²⁴ According to Harvard Professor Lawrence Tribe, there is “wide agreement” that impeachable offenses include “misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.”²⁵

In 1974, following President Richard Nixon’s resignation, the House Judiciary Committee published a report on the constitutional grounds for impeachment. This report concluded that American impeachments have generally fallen into three broad categories:²⁶

- Exceeding the powers of the office in derogation of those of another branch of government;²⁷
- Behaving in a manner grossly incompatible with the proper functions and purpose of the office;²⁸ and
- Employing the power of the office for an improper purpose or personal gain.²⁹

The Congressional Research Service also has summarized and described conduct that may be impeachable. It concludes that “[w]here the person to be impeached is the President or an executive officer, conduct having

criminal intent, serious abuses of the power of the office involved, failure to carry out the duties of that office, and, possibly, interference with the Congress in an impeachment investigation of the President or other executive official” is enough to support an article of impeachment.³⁰

Failure to “carry out the duties of that office” would certainly include the willful or reckless failure to abide by and enforce the laws that a particular office is charged with enforcing, such as federal immigration laws that are the specific province of the Department of Homeland Security. Under Article II of the Constitution, the President swears an oath to “preserve, protect and defend the Constitution,”³¹ and his primary duty is faithfully to execute the laws enacted by Congress, to exercise his executive powers properly and in accordance with the trust and confidence placed in him by the American people. All civil officers of the executive branch, especially the principal officers who lead the cabinet departments of the federal government, must swear an oath similar to the President’s and are bound by the same obligations in the conduct of their statutory functions and duties.³²

In contrast, the kings of England claimed a royal “prerogative” to “dispense with” the enforcement of a law in particular cases. The Restoration kings, Charles II and James II, removed and replaced numerous judges who refused to recognize and uphold the king’s authorities, until the claim of a royal “dispensing power” reached its zenith with the opinion of the Court of the King’s Bench in *Godden v. Hales* in 1686.³³ In reaction to these assertions of prerogative, during the Glorious Revolution of 1688 and through the adoption of the English Bill of Rights, Parliament sought to restrain the monarch from exercising such powers.³⁴

The Framers of the U.S. Constitution were profoundly influenced by the Glorious Revolution and the English Bill of Rights. When they imposed on the President and subordinate officers of the executive branch the duty to enforce the laws enacted by Congress “faithfully,” the Framers firmly rejected any notion of a general authority in the executive to suspend or refuse to enforce constitutional laws. Ignoring the requirements of the law is inconsistent with the executive officer’s oath of office and is an impeachable offense.

B. Relevant Precedents and Comparisons

History shows that the constitutional order of the U.S. republic cannot be maintained when the civil officers of the United States defy the will of Congress and refuse to enforce the laws they are trusted to uphold—even more so when those officers act in direct violation of those laws. The power

of impeachment is an integral part of the checks and balances of our federal government, and “the Framers recognized...that there would be times when it may not be in the President’s interest to remove a ‘favorite’ from office, even when that individual has violated the public trust.”³⁵

Secretary Mayorkas is plainly a “favorite” of President Joe Biden, who has taken no steps whatsoever to restrain Secretary Mayorkas from acting in contravention of his legal duties. It is exactly situations like this in which the impeachment power of Congress is of paramount importance. Thus, the Framers “dwelt repeatedly on the need of power to oust corrupt or oppressive ministers whom the President might seek to shelter.”³⁶

There have been 20 impeachments in U.S. history under the Constitution. These have included:

- Three Presidents: Andrew Johnson, Bill Clinton, and Donald Trump (all acquitted by trial in the Senate);
- One U.S. Senator: William Blount in 1797 (charges subsequently dismissed);³⁷
- 14 federal judges, the last in 2010 (eight convicted, three acquitted, three resigned);³⁸
- One Justice of the Supreme Court of the United States: Samuel Chase, in 1805 (acquitted);³⁹ and
- One Cabinet secretary: William W. Belknap, Secretary of War, who resigned in 1876 on the same day he was impeached and, subsequently, was acquitted following a trial in the Senate, held notwithstanding his resignation.⁴⁰

The articles of impeachment in the cases of Richard Nixon (who resigned after the articles were approved by the House Judiciary Committee but before an impeachment vote was held by the House of Representatives), Bill Clinton, and Donald Trump provide further guidance for the view of the House of Representatives that such a failure to support the Constitution and a refusal or failure faithfully to discharge the duties of an office to abide by and enforce federal law are proper and recognized grounds for impeachment.⁴¹

The impeachment articles for President Richard Nixon⁴² were based on his having “prevented, obstructed, and impeded the administration of justice,” including “interfering or endeavoring to interfere with the conduct

of investigations” by federal agencies such as the Department of Justice, as well as making “false or misleading public statements for the purpose of deceiving the people of the United States.”

By comparison, Secretary Mayorkas has “prevented” and “impeded” the enforcement of federal immigration law and the implementation of effective border and national security measures in addition to “interfering with the conduct of investigations” into violations of immigration law by aliens who are illegally present. Secretary Mayorkas has also issued “false or misleading public statements”—including in sworn testimony to Congress—about the security of the border, the immigration policies and practices of the Biden Administration, and even the actions of his own agents “for the purpose of deceiving the people of the United States.”

President Bill Clinton was impeached for a course of conduct “designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him.” By comparison, Secretary Mayorkas has engaged in a course of misconduct designed to “cover up and conceal” his policies of preventing the enforcement of immigration law, allowing aliens who must be detained and removed from the United States to remain in the country and maintaining an open border that resulted in more than 5 million illegal alien encounters and approximately 1.2 million “got-aways” (or aliens who successfully evaded the Border Patrol).

Like President Clinton, Secretary Mayorkas “has undermined the integrity of his office, has brought disrepute on the [Department of Homeland Security], has betrayed his trust as [Secretary], and acted in a manner subversive of the rule of law and justice, to the manifest injury of the United States.”⁴³

President Donald Trump was impeached by the House in 2019 for acting “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.” Secretary Mayorkas has certainly acted “in a manner contrary to his trust” as head of the Department of Homeland Security. His defiance of the requirements of federal immigration law and the misleading, false testimony he has submitted to Congress in response to its constitutional oversight authority are “subversive of constitutional government” and the role of Congress. The border security and immigration crisis caused by Secretary Mayorkas’s reckless policies, actions, and directives and the resulting unprecedented influx of aliens crossing into the U.S. illegally, as well as his refusal to detain or remove aliens as required by federal law, have caused “great prejudice of the cause of law and justice” to the “manifest injury” of American citizens.

One other precedent is worth considering. Secretary of War William Belknap was impeached in 1876 based on evidence of personal corruption, but the articles of impeachment specifically included the charge that because (in his case) he was consumed with the pursuit of private gain, he was guilty of “criminally disregarding his duty as Secretary of War.”⁴⁴ In light of his open actions and policies and the mountain of evidence showing clearly that Secretary Mayorkas has deliberately defied, undermined, and contravened the statutory responsibilities and powers he is sworn to uphold, there is every reason for the House of Representatives to conclude that he, too, has acted in flagrant disregard of his duties as Secretary of Homeland Security. That conclusion holds true regardless of the motivations behind Secretary Mayorkas’s conduct—whether political fealty to the President or his own personal ideology, interest, or agenda.

In 2019, the House Judiciary Committee cited renowned Supreme Court Justice Joseph Story, who recognized that “the power of impeachment is not one expected in any government to be in constant or frequent exercise.”⁴⁵ When “faced with credible evidence of extraordinary wrongdoing, however, it is incumbent on the House to investigate and determine whether impeachment is warranted.”⁴⁶

The extraordinary wrongdoing of Secretary Mayorkas makes it incumbent on the House of Representatives to initiate proceedings for the Secretary’s impeachment. In fact, in the face of the Secretary’s wrongdoing, it is the duty of the House of Representatives to do so since “impeachment is part of democratic constitutional governance, not an exception to it.”⁴⁷ When civil officers of the United States “engag[e] in great and dangerous offenses against the Nation—thus betraying their Oath of Office—impeachment and removal by Congress may be necessary to protect our democracy.”⁴⁸

II. The Legal and Factual Grounds for Impeachment of Secretary Mayorkas

Consistent with its constitutional authority and duty, the U.S. House of Representatives has ample grounds to proceed with impeachment of the sitting Secretary of Homeland Security, Alejandro Nicholas Mayorkas. Those grounds are appropriately addressed in three divisions—violation of his oath of office, abuse of the powers of his office, and betrayal of the trust of the American people. The impeachment of Secretary Mayorkas is both warranted and necessary to secure the U.S. homeland, protect the American people, and restore the rule of law.

A. He Has Violated His Oath of Office by Acting in Contravention of the Laws He Was Sworn to Enforce

When Alejandro Mayorkas took the oath of office as Secretary of Homeland Security following his confirmation by the United States Senate on February 2, 2021, he placed his hand upon the Bible and swore as follows:

[T]hat I will *support and defend the Constitution of the United States* against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will *well and faithfully discharge the duties of the office* on which I am about to enter. So help me God.⁴⁹

Secretary Mayorkas has deliberately, systematically, and repeatedly violated this oath by disregarding, defying, undermining, acting inconsistently with, and outright breaching the legal duties and responsibilities of the office to which he was confirmed. Those violations include the following:

Violations of Restrictions on Scope of Parole Under Section 212 of the Immigration and Nationality Act (INA). Secretary Mayorkas has deliberately violated Section 212 of the INA by directing DHS officers who work for him to mass-parole illegal aliens into the United States. INA Section 212(d)(5)(A) clearly provides that parole of aliens seeking admission to the United States may be granted only “*temporarily*” and “*only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.*”⁵⁰

Secretary Mayorkas has used parole as the default tool in several benefit programs DHS has created, each designed to bring large populations of illegal aliens into the U.S. Examples of such programs include:

- The Interagency Task Force on the Reunification of Families,⁵¹
- The Central American Minors Refugee and Parole Program,⁵²
- Immigrant Military Members and Veterans Initiative,⁵³
- Parole in Place,⁵⁴
- The Haitian Family Reunification Parole Program,⁵⁵

- The Cuban Family Reunification Parole Program,⁵⁶ and
- The Filipino World War II Veterans Parole Program.⁵⁷

In addition to the above parole programs, Secretary Mayorkas created “Operation Allies Welcome” as a means to parole 73,000 of the 85,000 Afghans who were brought directly to the U.S. by the Biden Administration.⁵⁸ The DHS Inspector General reported that the Afghans were not adequately screened,⁵⁹ despite Secretary Mayorkas’s contrary statements to Congress⁶⁰ and the American public,⁶¹ and that DHS failed to track Afghans who independently left the U.S. military bases where they were initially housed.⁶² The Inspector General further reported that DHS did not attempt to locate all Afghans who left the bases to verify their compliance with parole conditions.⁶³

Moreover, Secretary Mayorkas has created five additional nationality-based programs using parole to bring large numbers of illegal aliens into the U.S. In April 2022, the DHS announced the “Uniting for Ukraine” parole program, with a commitment to allow 100,000 Ukrainians entry into the U.S.⁶⁴

In October 2022, the DHS created a “Parole Process for Venezuelans” for up to 24,000 beneficiaries, modeled “on the successful Uniting for Ukraine parole process.”⁶⁵ Most recently, in January 2023, the DHS established even more parole programs for 30,000 Cubans, Haitians, and Nicaraguans per month, again “modeled on the successful processes for Venezuelans and Ukrainians.”⁶⁶ Meanwhile, CBP reports that it has been paroling many tens of thousands of illegal aliens into the U.S. each month, including more than 130,000 in December 2022 alone.⁶⁷

Secretary Mayorkas does not have the constitutional or legal authority to create what are effectively new visa programs for up to 360,000 aliens annually from Cuba, Haiti, Nicaragua, and Venezuela.⁶⁸ Only Congress has such authority.⁶⁹ In addition, these parole programs violate the law because they fail each of Section 212’s three limiting factors: They are not case-by-case, they are not for urgent humanitarian reasons, and they advance no significant public benefit.

This policy and practice of using his limited, case-by-case parole authority to effect the mass release of illegal aliens into the U.S. makes a mockery of the limitations prescribed by Congress and demonstrates Secretary Mayorkas’s cynical disregard—really, his blatant *rejection*—of the enforcement duties he assumed when he was sworn into office and of the legal limits on his statutory powers that accompany those duties.

The Fifth Circuit Court of Appeals rebuked DHS’s abuse of parole in its December 2021 decision regarding the Secretary’s termination of the Migrant Protection Protocols.⁷⁰ The court ruled that the parole statute allows only case-by-case parole: “Deciding to parole aliens *en masse* is the opposite of *case-by-case* decisionmaking.”⁷¹ The court further stated that “DHS’s pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power...[is] not *nonenforcement*; it’s *mis-enforcement*, suspension of the INA, or both.”⁷²

Violations of Section 212’s Restrictions on Parole of Refugees. Similarly, Secretary Mayorkas’s mass-parole policy squarely violates Section 212(d)(5)(B), which declares in plain and unambiguous language that he:

*may not parole into the United States an alien who is a refugee unless [he] 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.*⁷³

The policy and practices put in place by Secretary Mayorkas treat most illegal aliens at, or traveling to, the southern border as *de facto* refugees. Under Section 101 of the INA, a refugee is someone “who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁷⁴

The U.S. has a well-established Refugee Admissions Program (USRAP), in which the Departments of State and Homeland Security work together, along with the United Nations High Commissioner for Refugees, at locations around the world to identify, interview, and adjudicate applications for refugee protection.⁷⁵ Only after the applicant is vetted by several law enforcement and intelligence agencies and the DHS grants a refugee application does a refugee then travel to the U.S. and enter as a refugee.

In contrast and comparison, an alien applying for asylum must prove the exact same refugee elements in section 101 of the INA described above. The only difference is where the applicant is physically located: A refugee applicant is located outside the U.S., while an asylum applicant is located at the U.S. border or inside the U.S. Instead of using the USRAP already established abroad for those seeking protection from persecution, Secretary Mayorkas has encouraged millions of aliens to make the dangerous journey to the U.S., subjecting themselves to drug cartels and smugglers along the way, to apply for asylum in the U.S. He has described the masses illegally coming here generally as “asylum seekers” and “people fleeing humanitarian crises,”⁷⁶ including the hundreds of thousands of

unaccompanied alien children crossing the border.⁷⁷ Worse, he has telegraphed to future illegal aliens that they can enter the U.S. “lawfully” if they claim a fear of returning to their home country, thereby encouraging asylum fraud.⁷⁸

The overwhelming majority of the millions of illegal aliens encountered at the U.S. southern border due to Secretary Mayorkas’s policies, however, have come to the U.S. for economic reasons, not from any fear of persecution.⁷⁹ Furthermore, other countries have already offered and provided some of these same aliens safe haven. For example, Ukrainians have been offered safe resettlement and employment authorization in Eastern European countries,⁸⁰ and Chile and Brazil provided resettlement and documentation to Haitians for years.⁸¹ Yet Ukrainians bypassed Eastern Europe for the U.S., and other aliens ditched their South and Central American resettlement documents after crossing the U.S. border to claim a fear of returning to their home countries, knowing that doing so was the way to enter and remain in the U.S. under Secretary Mayorkas’s policies. And some undoubtedly have come for malign and illicit reasons, including drug trafficking for the powerful Mexican and Latin drug cartels, human trafficking, or terrorist purposes. In short, the vast majority of illegal aliens who have come to the southern border neither qualify as refugees nor may lawfully be paroled, as Secretary Mayorkas well knows.⁸²

By paroling tens of thousands of illegal aliens each month, whom he generally views as asylum seekers, Secretary Mayorkas is presuming a need for refugee protection, but in doing so, he is deliberately bypassing the detailed refugee process required under section 207 of the INA. He is not providing “compelling reasons in the public interest with respect to [any] particular alien”—let alone all of them—that they should “be paroled into the U.S. rather than [go through the refugee process and] be admitted as a refugee under section 207.” Thus, Secretary Mayorkas is in violation of section 212(d)(5)(B) of the INA, and all decisions and actions he has taken to advance these mass-parole programs are unlawful.

Other Violations of Section 212 of the INA. In Section 212(a)(2) of the INA, Congress has also provided, with only very narrow exceptions, that aliens who have committed violent crimes, multiple crimes, or specified categories of non-violent crimes; who are drug traffickers or human traffickers; who have engaged in certain types of misconduct or abuse; or who are suspected terrorists or otherwise pose a security threat to the United States are “inadmissible.”⁸³ As a result of Secretary Mayorkas’s decisions to pull border officers away from securing the border and instead to deploy them in processing and paroling illegal aliens into the U.S., current and former

government leaders have publicly stated that the drug cartels, rather than DHS, have operational control of the border.⁸⁴

Secretary Mayorkas is not faithfully complying with or enforcing the requirements of Section 212(a)(2) as they pertain to the legions of illegal aliens he is letting into the country, as well as the 1.2 million gotaways who have evaded the otherwise occupied border agents. Undoubtedly, some unknown number of these illegally entering aliens fall into one or more of the categories of those inadmissible under Section 212(a)(2), including terrorists, drug traffickers, human traffickers, violent criminals, and others who present a serious security and safety threat to American communities.

For example, Secretary Mayorkas has repeatedly stated that unaccompanied alien minors will not be turned back over the border.⁸⁵ These statements have encouraged historic numbers of illegal alien minors to cross unaccompanied,⁸⁶ including teenaged MS-13 gang members, who are then released into the U.S. One such 17-year-old gang member allowed into the country by Secretary Mayorkas has been arrested for strangling 20-year-old Kayla Hamilton in July 2022, only months after being released into the U.S.⁸⁷

In fiscal year (FY) 2022, the U.S. Border Patrol encountered 98 aliens on the Terrorist Screening Dataset (TSDS) between the ports of entry.⁸⁸ In just the first three months of FY 2023, the Border Patrol has already encountered 38 such aliens.⁸⁹ In FY 2021, CBP encountered 16 aliens on the TSDS.⁹⁰ By comparison, CBP had encountered only 3 in FY 2020.⁹¹ With an estimated 1.2 million “gotaways,”⁹² Secretary Mayorkas reasonably should know that known and suspected terrorists have entered the U.S. among the gotaways and currently reside in U.S. communities. Yet he has refused to enforce the law or return to successful policies to secure the border.

Similarly, in FY 2022, CBP arrested 40,359 individuals with criminal convictions or who were wanted by law enforcement,⁹³ and in FY 2021, CBP made 28,213 such arrests.⁹⁴ By comparison, CBP arrested 18,609 criminal aliens in FY 2020.⁹⁵ Secretary Mayorkas knows or should know that his policies have allowed an increasingly large number of dangerous criminals to pass over the border and infiltrate cities, towns, and communities across the nation, putting America’s families at risk.

What could possibly qualify as a more serious violation of the oath of office of a Secretary of Homeland Security?

Violations of Section 235 of the INA. Secretary Mayorkas has willfully violated the mandatory detention and removal requirements set forth in Section 235(b)(1) of the INA. That section provides that any alien attempting to enter the U.S. who does not have a visa or other proper immigration

papers shall be screened by an immigration officer at the border and removed from the country unless the alien indicates an intention to apply for asylum or a fear of persecution, in which case the alien shall be referred for an interview by an asylum officer, which may also occur at the border.

Unless the asylum officer determines that the alien has a well-founded fear of persecution, the officer shall order the alien removed without further hearing.⁹⁶ At that point, the alien may seek review of the asylum officer's determination by an immigration judge.⁹⁷ Pending the outcome of any review by an immigration judge, the alien is subject to "*mandatory detention*"—specifically, Section 235(b)(1)(B) declares that the alien "*shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, *until removed*."⁹⁸

Secretary Mayorkas's policy and practice of treating the vast majority of the illegal aliens at the southern border as asylum seekers, knowing most are not eligible under the law, and his policy of promptly releasing these aliens into the U.S. without detention⁹⁹ defy the mandatory requirements of Section 235 and treat the statute with contempt and derision. In short, his policies and actions in this regard are lawless.

The results of those policies are predictable. In just his first year in office, Secretary Mayorkas authorized the release of at least 47,000¹⁰⁰ known illegal aliens who were required to be detained under the INA, and he did so with certain knowledge that those released aliens would disappear into the United States and would not be removed. Objective observers can only conclude that that was his intention. The U.S. Border Patrol reports that it has been paroling tens of thousands of aliens with alternatives to detention (ATD) each month, including over 95,000 in September 2022.¹⁰¹ U.S. Immigration and Customs Enforcement (ICE) reports that as of January 14, 2023, more than 355,000 deportable aliens are in an ATD program.¹⁰² By comparison, 91,000 deportable aliens were in ATD in January 2020.¹⁰³

The DHS has repeatedly reported that aliens who are continuously detained are most likely (97 percent) to be removed.¹⁰⁴ Meanwhile, most illegal aliens (82 percent) who were not removed directly by CBP or continuously detained by ICE remained in the U.S. years later.¹⁰⁵ The DHS has further reported that illegal aliens who are not removed within 12 months of being encountered are "rarely repatriated after that."¹⁰⁶

The States of Texas and Missouri sued Secretary Mayorkas for violating section 235's mandatory detention when he terminated the Migrant Protection Protocols (MPP) (the "Remain in Mexico Program") in 2021.¹⁰⁷ The U.S. District Judge for the Northern District of Texas agreed with the states, finding that Secretary Mayorkas did not even consider whether the DHS

could meet its statutory obligation to detain illegal aliens seeking asylum when he terminated the MPP:

Not once did the [DHS] June 1 Memorandum discuss DHS's mandatory detention obligation. In fact, a perusal of the *entire* administrative record shows *zero* evidence of DHS's detention capacity. By failing to consider an important aspect of the problem, the Secretary acted arbitrarily and capriciously.¹⁰⁸

Institutionalizing His Violations of the Law. In January 2023, at the direction of Secretary Mayorkas, the DHS implemented a new process of pre-registering aliens who are located outside the U.S. for mass entry and release into the country by parole or as asylum applicants using a mobile app known as “CBP One.” The DHS has orchestrated the pre-registration of tens of thousands of these aliens, including with the assistance of non-governmental organizations (NGOs) and foreign governments.¹⁰⁹ The aliens who have pre-registered using the app are then left to find their way to a U.S. point of entry, including along the southern border, in many cases presumably with the assistance of drug cartels or smugglers.

This new system has resulted in at least an initial reduction in the number of illegal border crossings between points of entry, as the flow of aliens is channeled through official entry points,¹¹⁰ which has slightly improved the humanitarian crisis at the border, and it has also relieved some of the strain on the Border Patrol—both positive developments. But, at the same time, this system is institutionalizing Secretary Mayorkas's unlawful policies of mass parole and mass release without detention. The new process has simply shifted the origin and flow of the unlawful pathway so as to regularize it and thereby eliminate the distressful scenes of daily uncontrolled border incursions. Notwithstanding its DHS public-relations label, this new process is not an “enforcement measure”,¹¹¹ it furthers and facilitates Secretary Mayorkas's existing policies of non-enforcement. The illegal flow of aliens into the U.S. remains unabated and, in fact, is increasing, while the new, more orderly processing system gives Secretary Mayorkas a much greater ability to conceal his actions and the effect of his policies from the American people.

There is also substantial reason to believe that the DHS is applying this mass-release, pre-registration process to many more aliens than the four national groups (Cubans, Haitians, Nicaraguans, and Venezuelans) cited in the Department's January 25 press release.¹¹²

Violations of Section 237 of the INA. Secretary Mayorkas has also restricted DHS personnel from deporting most of the deportable aliens who

have come into the U.S. as a result of his policies.¹¹³ In a memorandum to his relevant component heads, Secretary Mayorkas encouraged the exercise of prosecutorial discretion (not enforcing the law), stating “We do not have the resources to apprehend and seek the removal of every one of these [11 million deportable aliens]. Therefore, we need to exercise our discretion and determine whom to prioritize for immigration enforcement action.”¹¹⁴ He added, “The fact an individual is a removable [alien] therefore should not alone be the basis of an enforcement action against them.”¹¹⁵

This directive flies in the face of Section 237(a)(1) of the INA, which provides that any alien who is present in the U.S. in violation of the immigration laws or any alien found to have committed one of several types of crimes, terrorist activity, drug or human trafficking, or other misconduct “*is deportable*.”¹¹⁶ But the memo had its intended effect. During FY 2021, ICE conducted only 59,011 deportations,¹¹⁷ the lowest total since 1995, despite the fact that illegal alien apprehensions in FY 2021 hit record highs.

The U.S. District Court for the Southern District of Texas vacated Secretary Mayorkas’s enforcement memo in June 2022.¹¹⁸ The number of deportations in FY 2022 then rose slightly to 72,177.¹¹⁹ In comparison, ICE deported 185,884 aliens in FY 2020, an unusually low number because of the COVID-19 pandemic.¹²⁰ Despite Secretary Mayorkas’s claim that he prioritizes DHS resources for the removal of the most serious criminal offenders, the number of removals of convicted felons has dropped under his tenure from 36,000 in FY 2020 to 27,000 in FY 2021.¹²¹ His policies also resulted in a 71 percent decline in removals of deportable aliens who came to ICE’s attention as a result of a local criminal arrest.¹²²

Secretary Mayorkas has openly and unabashedly implemented these policies, publicly bragging that the Biden Administration has “fundamentally changed” interior immigration enforcement,¹²³ including by eliminating an alien’s illegal status as a sole basis for deportation. Indeed, he has authorized and encouraged ICE attorneys to misuse prosecutorial discretion to dismiss or administratively close cases as an improper means to avoid prosecuting removal cases.¹²⁴ Despite the court order vacating his underlying enforcement memorandum,¹²⁵ Secretary Mayorkas has continued to encourage ICE attorneys to misuse prosecutorial discretion rather than prosecute cases,¹²⁶ thereby ignoring Section 237 and the intent of the court order. This action allows removable aliens to continue living in the U.S. indefinitely in defiance of the law.

Once again, there can be no doubt that some potentially large number of the myriad illegal aliens who have entered the U.S. under Secretary Mayorkas’s watch, and who are moving freely within the country because he

has directed DHS personnel not to take the actions prescribed in Section 237 to deport them, are known or suspected terrorists, violent criminals, or dangerous drug or human traffickers. This is an inexcusable breach of homeland security.

Unlawful Suspensions of the Immigration Laws. Through the policies and actions detailed above, Secretary Mayorkas has, in effect, arrogated to himself a sweeping power to suspend key provisions of the immigration laws he is entrusted with faithfully enforcing. This wide-open suspending power, applied by Secretary Mayorkas to huge categories of aliens with no real case-by-case consideration whatsoever, is, in fact, much broader than the infamous “dispensing power” claimed by the Restoration kings of England, which the Founders refused to grant to the President and executive officers of the republic.

In defending Secretary Mayorkas’s efforts to suspend the requirements of the INA as a means to effectuate his mass-release policies, the Department of Justice has argued that he is somehow acting within the scope of his “case-by-case” enforcement discretion because of the extraordinary volume of illegal aliens attempting to enter the U.S., the humanitarian issues presented, and the Secretary’s need to allocate and manage limited resources in response.

These are empty arguments. It is Secretary Mayorkas’s own decisions, policies, and actions that have attracted the record-high number of inadmissible and deportable aliens to the border and enabled and facilitated the massive flow of these aliens into and throughout the U.S. Furthermore, Secretary Mayorkas has not even attempted to use all the enforcement resources available to him to respond to this influx, particularly detention beds and local law enforcement agencies that are willing to assist the DHS.

Violation of Section 103 of the INA. As head of the DHS, Secretary Mayorkas has acted in contravention of Section 103(g) of the INA, which states:

The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of [the Homeland Security Act].¹²⁷

Both preceding enactment of the Homeland Security Act and since its passage in 2002, the Executive Office for Immigration Review has been the agency with jurisdiction to review asylum officers’ findings of credible fear.

Notwithstanding the requirements of INA Section 103 and the Homeland Security Act, Secretary Mayorkas approved the promulgation of an interim final rule asserting asylum officer jurisdiction over asylum officer’s findings of credible fear, removing immigration judges, ICE attorneys, and the adversarial process from credible fear asylum cases.¹²⁸ In the interim final rule, Secretary Mayorkas generally adopts the discussion in his Notice of Proposed Rulemaking, where he used his own policy-created border crisis and his encouraged surge of asylum cases to justify a need to “streamline” the credible fear asylum process.¹²⁹

Without an adversarial process, the predictable outcome from this statutory and jurisdictional violation will be increased grants of asylum by DHS, which will encourage even more illegal aliens to submit fraudulent asylum claims.

Violations of Section 235 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Secretary Mayorkas has acted in contravention of Section 235 (“Enhancing Efforts to Combat the Trafficking of Children”) of the TVPRA¹³⁰ each and every time an unaccompanied child, released into the U.S. under his policies, becomes a sex trafficking victim.¹³¹ Although he has misleadingly labeled his policies “safe, orderly, and humane,” he well knows (or has willfully blinded himself to the fact) that these policies have enticed an uncontrolled stream of illegal aliens to cross into the U.S., including a record number of unaccompanied children. In FY 2021, CBP encountered approximately 147,000 unaccompanied children,¹³² and in FY 2022, more than 152,000.¹³³ By comparison, CBP encountered just over 33,000 unaccompanied children in FY 2020.¹³⁴ It is common sense that by increasing the number of unaccompanied children by over 400 percent, the number of trafficking victims will likewise significantly increase.

Additional Violation of Court Order. Finally, Secretary Mayorkas has further shown his contempt and disregard for the rule of law by refusing to follow another federal court order—the order of the U.S. District Court for the Northern District of Texas,¹³⁵ which required him to reinstate the “Remain in Mexico” Program, pending the final outcome of the litigation.

In August of 2021, the district court ordered Secretary Mayorkas to

enforce and implement Remain in Mexico *in good faith* until such a time as it has been lawfully rescinded in compliance with the [Administrative Procedures Act] and until such a time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention under section 1225 without releasing any aliens *because of* a lack of detention resources.¹³⁶

To “ensure compliance with this order,” the court required Secretary Mayorkas to file monthly data reports with the court, including DHS’s total detention capacity, as well as current usage rate; the total monthly number of applicants for admission paroled into the United States; and the total monthly number of applicants for admission released into the United States, paroled or otherwise.¹³⁷

Despite the court’s order, the DHS did not enroll *any* aliens in MPP during the months of September¹³⁸ or October of 2021.¹³⁹ The Department enrolled 16 aliens in MPP in November 2021, 96 in December, and gradually increased to a high of 1,264 aliens in July of 2022, before its last month of 151 enrollees in August 2022.¹⁴⁰ Meanwhile, in its monthly reports filed with the court from September 2021 through July 2022,¹⁴¹ DHS reported an average monthly ICE detention usage rate of 78.9 percent, while paroling an average 34,839 aliens per month into the U.S. and releasing into the U.S., paroled or otherwise, an average of 76,291 aliens per month.

These court reports show that Secretary Mayorkas delayed reinstating MPP and then put forth only a very limited effort to comply with the court order. Meanwhile, he continued to parole and release tens of thousands of illegal aliens into the country each month without fully using available ICE detention resources.

B. He Has Abused the Power of His Office, and in Doing So Has Created a Border and Humanitarian Crisis, Endangered the American People, and Harmed the Dedicated Officers of the Department of Homeland Security (DHS)

Each of the violations of legal duties detailed above also constitutes an abuse of power by Secretary Mayorkas. In addition to those abuses catalogued in the previous section, which are incorporated by reference here, Secretary Mayorkas has further egregiously abused the powers of his office through the following conduct:

Putting Lives at Risk and Creating a Humanitarian Crisis by Recklessly Enticing Aliens, Including Unaccompanied Children, to Cross the Southern Border. By his statements and policies, Secretary Mayorkas has deliberately enticed aliens to cross the southern border in vast numbers, precipitating a foreseeable humanitarian crisis. Most egregiously, he has callously urged parents and families to send unaccompanied alien children illegally across the border by repeatedly assuring them in his public statements that such children would not be turned back.¹⁴² In doing so, he has knowingly endangered those children by exposing them to the

risks of succumbing to the elements, drowning, rape, and violent assault by vicious cartel members and smugglers who transport the children to and across the border.

As stated above, enticing record numbers of unaccompanied alien minors to cross the border foreseeably results in some minors becoming sex trafficking victims once they are turned over to “sponsors,” and it provides a clear pathway for teen gang members to be released into the U.S. Secretary Mayorkas’ conduct regarding unaccompanied minors has been nothing short of reckless, abusive, and unconscionable in the extreme.

By telegraphing to future illegal aliens that claiming fear at the border (or now through the CBP One app) will virtually guarantee a “lawful” path to enter and remain in the U.S., and by referring to the masses who illegally come to the border as refugees or “asylum seekers,” Secretary Mayorkas has recklessly encouraged aliens to enter and remain in the United States in violation of federal immigration law. In addition, he has knowingly encouraged aliens to claim asylum status when they do not meet the requirements set forth in Section 208 of the INA, which strictly limits the conditions upon which asylum can be granted.¹⁴³ Secretary Mayorkas is, of course, aware that the majority of illegal aliens are not statutorily eligible for asylum, and thus his encouragement of asylum fraud is reckless and only exacerbates the violation of law and the consequent humanitarian crisis he has created.

As a result of his actions, Secretary Mayorkas has presided over the deadliest border in American history. In FY 2022, 853 aliens died, exceeding the prior year’s record of 546 alien deaths at the border.¹⁴⁴ It is important to note that these numbers do not include additional deceased aliens recovered by other agencies or those who died in Mexico or the Darien Gap during the journey. From 1998 to 2019, CBP recorded an average of 354 border deaths per year, for comparison.¹⁴⁵

His inhumane policies have also caused a shocking increase in search-and-rescue emergencies at the border. In FY 2022, CBP conducted 22,461 search-and-rescue efforts,¹⁴⁶ and in FY 2021, 13,256.¹⁴⁷ In FY 2020, CBP conducted only 5,255.¹⁴⁸ These emergency efforts have endangered the lives and safety of Border Patrol, Air and Marine, and other law enforcement officers as they have sought to save aliens in danger and distress, who were enticed, abused, and exploited by Secretary Mayorkas’s open-border policies.

Endangering the Security, Safety, and Health of Americans. Through his policy directives and refusal to enforce immigration requirements, Secretary Mayorkas has put all Americans in danger of violence, crime, terrorism, drug cartels, and human trafficking, as described above. The flow of deadly drugs has been especially devastating. Under his

leadership of the DHS, record volumes of poisonous drugs—including fentanyl—have flowed across the southwest border, devastating communities and injuring and killing Americans, while providing huge financial profits that strengthen the power of dangerous Mexican drug cartels.¹⁴⁹ According to the Centers for Disease Control and Prevention, opioid overdose is now the leading cause of death¹⁵⁰ for Americans ages 18–45. A record number of more than 107,000 individuals died from drug overdoses in 2021, and fentanyl was the cause of death for more than 71,000 of those Americans.¹⁵¹ As Drug Enforcement Administration Director Anne Milgram stated¹⁵² in April of 2022, “Fentanyl is killing Americans at an unprecedented rate.”

Secretary Mayorkas has further endangered the health and safety of Americans during the declared COVID-19 pandemic by allowing hundreds of thousands of illegal aliens to enter the U.S. untested and unvaccinated for the disease, all while vaccine, testing, and mask mandates continued for Americans.¹⁵³

Secretary Mayorkas facilitated termination of an effective border wall,¹⁵⁴ thereby encouraging continuous illegal border crossings that endanger Americans and subject them to increases in crime and drugs and to the increased risk of terrorist activity. He then attempted quietly to close certain border gaps in Arizona for partisan political purposes, to assist the re-election efforts of a Democratic candidate,¹⁵⁵ while ignoring numerous other widespread gaps in the security of the border.

Secretary Mayorkas has, knowingly and with reckless disregard of the fact that aliens have come to, entered, and remained in the United States in violation of the law, directed DHS staff to transport and contract with NGOs to transport illegal aliens to destinations across the United States, in mockery of Section 274 of the INA, thereby using taxpayer funds to subsidize the criminal operations that are responsible for smuggling many of these aliens across the border by ensuring these aliens complete their journey into the country’s interior.¹⁵⁶

This directed transportation has often occurred clandestinely and under the cover of night¹⁵⁷ to hide the Secretary’s machinations from the American people. Through this clandestine network of DHS and NGO movements, illegal and likely criminal aliens have now been dispersed from the southern border to all districts of the continental United States, thereby making every one of these states and every district a border state and border district.¹⁵⁸

Finally, Secretary Mayorkas has knowingly and deliberately authorized¹⁵⁹ illegal aliens to bypass Transportation Security Administration (TSA) security screenings that apply to all citizens and legal aliens, allowing them to fly on airlines throughout the United States using DHS arrest warrants,¹⁶⁰ rather than the verified identification documents required by law.¹⁶¹ These

actions are not only inconsistent with federal law, but they also endanger the lives and safety of the flying public.

He also recklessly depleted the department's volunteer force sent to the border to help CBP deal with the crisis and resorted to sending air marshals to the border, which put aviation security at further risk, especially during the holiday seasons.¹⁶²

Denigrating, Disrespecting, and Abusing DHS Officers. Secretary Mayorkas abused and violated the civil rights of CBP horse patrol officers in Del Rio, Texas, following the debunked "whipping" narrative¹⁶³ by lying to the media and the American people and saying that he was "horrified" by the incident and that the agents had "weaponize[d] a horse to aggressively attack a child," despite uncontradicted evidence that he had been briefed and informed that no such actions had occurred.¹⁶⁴

The border crisis that Secretary Mayorkas has inflicted on this country has resulted, tragically but inevitably, in the deaths of a significant number of border officers. Thirty-five officers were killed in the line of duty in 2021.¹⁶⁵ It is important to note as well that 14 other border officers committed suicide in 2022.¹⁶⁶

Acting to Suppress the Constitutional and Statutory Rights of Americans. Secretary Mayorkas has overseen the politicization and weaponization of DHS components in a concerted effort to censor the speech of political opponents and those disagreeing with policies of this Administration. Despite announcing an end to the unconstitutional "Disinformation Governance Board,"¹⁶⁷ the DHS has continued to collaborate with Big Tech social media companies and platforms and the "Election Integrity Partnership" for the purpose of identifying and censoring content on COVID-19 and elections.¹⁶⁸ This effort includes having DHS staff report so-called misinformation on a portal developed by Big Tech for the purpose of censorship of disfavored information, opinions, and viewpoints.¹⁶⁹ Secretary Mayorkas testified that the DHS intended to focus on the spread of supposed "disinformation" ahead of the 2022 midterm elections.¹⁷⁰ Thus, he has personal responsibility for directing and coordinating with private companies to violate Americans' constitutional right to free speech, including by censoring their views and opinions on elections and election rules and procedures.¹⁷¹

He has unfairly prioritized the processing of illegal aliens into the U.S. over adjudicating immigration benefit applications submitted by U.S. citizens and lawful permanent resident sponsors and employers. This skewed prioritization has led to a rapid increase in the backlog of unadjudicated applications and petitions to more than 8.7 million¹⁷² cases at the U.S. Citizenship and Immigration Services.

C. He Has Betrayed the Public Trust by Lying to Congress and Deceiving the American Public

The many violations and abuses set forth in the preceding sections also constitute unforgiveable betrayals of the public trust. In addition to those actions previously described, which are incorporated by reference here, Secretary Mayorkas has further betrayed the trust of the American people by lying to Congress and intentionally deceiving the public as part of his efforts to hide and cover up the truth about his ruinous immigration policies and the terrible consequences they have had for the nation and its sovereignty and security.

He has falsely assured Congress¹⁷³ and the American people on many occasions that “[t]he border is secure.” Here are just a few examples: In March 2021, he stated in a media interview that “The border is secure. The border is closed,”¹⁷⁴ even though the illegal alien encounters on the southern border had jumped from 78,000 in January 2021 to more than 101,000 in February to more than 173,000 in March.¹⁷⁵ More than a year later, when illegal alien encounters exceeded 200,000 for five consecutive months,¹⁷⁶ Secretary Mayorkas falsely asserted at the Aspen Security Forum, “Look, the border is secure.”¹⁷⁷ And as recently as November 15, 2022, before the House Committee on Homeland Security, he testified that yes, the border is secure.¹⁷⁸

At the same hearing, FBI Director Christopher Wray immediately contradicted Secretary Mayorkas’s secure border response with testimony that the FBI sees “significant criminal threats coming from south of the border.... We see transnational criminal organizations that are sending their drugs here and that are using street gangs here to distribute it, and that contributes to the violent crime crisis here.”¹⁷⁹ Director Wray highlighted just one Phoenix interdiction example in which the FBI seized in one vehicle “enough fentanyl to kill the equivalent of the entire state of Pennsylvania.”¹⁸⁰ The Members of Congress and the American people simply do not believe Secretary Mayorkas when he testified in the same hearing that “we prioritize national security and public safety in our immigration enforcement efforts.”¹⁸¹

Secretary Mayorkas lied when he testified to Congress that DHS had “operational control of the border” in April of 2022.¹⁸²

Secretary Mayorkas has also lied regarding his own CBP horse patrol officers in order to continue the false narrative that they whipped aliens illegally crossing the border—and he has publicly supported the wrongful investigation of those officers for an act he knew did not occur when he

made his first public statements from the White House press room.¹⁸³ He subsequently had the temerity to state in the November 2022 congressional hearing described above, no less to a Member of Congress who is a wife of a border patrol agent, that:

Our heroic border patrol agents are indeed under intense pressure and indeed under intense challenge. We are very dedicated to providing them with resources and support that they need to fulfill their responsibilities and to ensure their wellness. That is a commitment that we have and it is an unwavering one and our highest priority.¹⁸⁴

As discussed above, Secretary Mayorkas misrepresented to Congress and the public the facts pertaining to DHS's security screening of tens of thousands of Afghans brought directly to the U.S. after the Biden Administration's reckless withdrawal from Kabul.¹⁸⁵ The DHS Inspector General subsequently found that the DHS admitted or paroled evacuees into the U.S. who were not adequately investigated and vetted.¹⁸⁶

Secretary Mayorkas has also deliberately withheld from release¹⁸⁷ the annual ICE Enforcement and Removal Operations Report for FY 2021 to keep the American people in the dark about the true state of border security, including the effects of his intentional policy of not enforcing federal immigration law and not removing aliens who are illegally in the country. Instead, he had ICE include only limited enforcement information in its general annual ICE report,¹⁸⁸ which showed that the 2021 enforcement figures dropped dramatically¹⁸⁹ because of his policies.

Finally, Secretary Mayorkas's deceit continues unfolding with his newly announced system for pre-registering aliens for mass entry and release into the U.S. He has instructed illegal aliens to use the CBP One app to apply for an appointment at a port of entry, where they will then be paroled or released as asylum applicants into the country.¹⁹⁰ These programs are unlawful for the reasons set forth above, but Secretary Mayorkas is using this process to make it *appear* that the number of illegal aliens encountered at the border is decreasing. The DHS has already pointed to the "dramatic drop" in Venezuelans that the CBP's *Border Patrol* has seen since announcing the Venezuela parole program in October 2022.¹⁹¹ Furthermore, with a week remaining in January 2023, Secretary Mayorkas began pointing to lower January border encounter numbers to claim falsely that his new border "enforcement measures" are working.¹⁹²

Secretary Mayorkas will repeat this deceitful statement when all of the January 2023 Southwest Land Border Encounters are published.¹⁹³ What

the Secretary is doing, however, is shifting these tens of thousands of illegal aliens each month to the CBP's *Office of Field Operations* at the ports of entry.¹⁹⁴ Congress and the American people should not let Secretary Mayorkas claim “victory” in decreasing crossings between the ports of entry when his refusal to secure the border or enforce U.S. immigration laws renders the entire border as one big, wide-open “port of entry.”

D. Summation

Secretary of Homeland Security Alejandro Nicholas Mayorkas has instigated, presided over, and perpetuated the worst border crisis in American history. Since the Biden Administration took office, U.S. Customs and Border Protection has recorded over five million¹⁹⁵ illegal alien encounters at the border and over 1.2 million “got-aways”¹⁹⁶ as a result of the Secretary's policies to ignore and restrict enforcement of federal immigration laws and to mass release aliens who are not admissible under the laws passed by Congress.

The nation's border has experienced such a crisis that 17 Texas counties declared a *de facto* invasion across the southern border.¹⁹⁷ With the deliberate, systematic transportation and transfer of illegal aliens throughout the entire continental United States—which has been organized by the Department of Homeland Security under the personal supervision of Secretary Mayorkas—every city and town in America has now become a frontline border town.¹⁹⁸

An executive branch official and civil officer of the United States who is entrusted by Congress with responsibility to secure the homeland and enforce the nation's federal immigration laws and who, in every action he takes, ignores and abuses the law, as Secretary Mayorkas has done, is unfit to be the Secretary of Homeland Security. Secretary Mayorkas has been deaf to the voice of Americans, blind to the chaos and consequences of his policies and actions, and untruthful in his statements to Congress and the American people. It is time for a reckoning. His disgraceful conduct warrants impeachment and removal from office.

III. Proposed Articles of Impeachment

The law and facts as laid out above amply support approval by the House of Representatives of the following proposed Resolution and Articles of Impeachment:

Resolution

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

Article I: Violations of Oath of Office

Secretary Mayorkas has violated his oath of office by deliberately failing to enforce the laws he is charged with faithfully executing and by using the power of his office to act in contravention or direct violation of those laws, including by (1) approving policies and giving directions for granting mass parole and release to large numbers of aliens, treating them as refugees or “asylum seekers” without the effective case-by-case assessments of their eligibility for refugee protection that are required by statute; (2) directing his subordinates at the Department of Homeland Security not to detain aliens who are required by law to be detained pending resolution of their asylum reviews and not to pursue deportation of large numbers of aliens who are in the United States illegally and who are by law deportable, many of whom pose a danger to the public and to the safety and security of the U.S. homeland; (3) effectively suspending key requirements of the laws he is sworn to enforce without a lawful basis; (4) inducing alien minors to come to the border unaccompanied, with knowledge that they risk becoming the victims of human traffickers in violation of federal law; (5) improperly asserting jurisdiction over claims that by law are required to be under the jurisdiction of the Department of Justice; and (6) defying binding court orders.

Article II: Abuses of Power

Secretary Mayorkas has abused the power of his office and has acted in reckless disregard of the consequences of his actions to the profound detriment of the American people, including by (1) adopting policies, engaging in conduct, and making public statements that have enticed aliens, including unaccompanied minors, to seek asylum claims that he knows or should know are meritless, thereby precipitating a border, national security, and humanitarian crisis at the southern border; (2) putting American communities and the American public in danger through the mass release, refusal to deport, and organized transport and dispersion of illegal aliens to every district of the country, without effective screening and without regard to whether they

are criminals, drug traffickers, or human traffickers; (3) putting the health and safety of Americans at dire risk by allowing a flood of fentanyl and other poisonous drugs into the United States through his open-border policies and failing to screen illegal aliens for COVID-19; (4) enabling illegal aliens to travel by plane within the U.S. without adequate TSA protocols; (5) straining the resources of his department through his reckless border policies to such an extent as to endanger the public, including by compromising security personnel in the nation's aviation system; (6) endangering the American public through his actions to terminate the construction of an effective border wall along the southern border; (7) denigrating and abusing the dedicated officers of the DHS and putting them recklessly at risk because of the unfolding border disaster that he has caused; (8) acting to suppress the constitutional right of free speech of his political opponents through a censorship effort in coordination with major technology companies; and (9) unduly delaying American citizens and lawful permanent residents the ability to have their immigration benefit applications for themselves, members of their family, or potential employees adjudicated because he has given priority to the processing of aliens who have entered the country illegally.

Article III: Betrayals of Trust

Secretary Mayorkas has betrayed the trust of the American people, including by (1) lying to Congress and in his public statements about the nature, extent, and causes of the disaster at the border and the failure of his department, at his direction, to screen aliens adequately and to enforce the requirements of the immigration laws; (2) lying to Congress about his department's security screening of Afghan evacuees following the U.S. withdrawal from Afghanistan; and (3) deceiving the public with misleading statements or through the withholding of information to hide and cover up the nature and consequences of his disastrous open-border policies.

Endnotes

1. U.S. Const. Art. II, § 4.
2. See U.S. Department of Justice, *Officers of the United States Within the Meaning of the Appointments Clause*, Office of Legal Counsel, Memorandum Opinion for the General Counsels of the Executive Branch, April 16, 2007, <https://www.justice.gov/file/451191/download> (accessed December 16, 2022).
3. Mayorkas was confirmed by all Senate Democrats plus six Republicans (Senators Shelley Moore Capito (WV), Susan Collins (ME), Lisa Murkowski (AK), Rob Portman (OH), Mitt Romney (UT), and Dan Sullivan (AK)) in a 56–43–1 vote to become Secretary of Homeland Security. Senator Patrick Toomey (R–PA) did not vote. U.S. Senate, Roll Call Vote, 117th Cong., 1st Sess., February 2, 2021, https://www.senate.gov/legislative/LIS/roll_call_votes/vote117/vote_117_1_00012.htm (accessed January 19, 2023).
4. *Constitutional Grounds for Presidential Impeachment*, H. Rep. 28–959, 93rd Cong., 2nd Sess., February 1974, p. 5, <https://docs.house.gov/meetings/JU/JU00/20160622/105095/HHRG-114-JU00-20160622-SD004.pdf> (accessed December 16, 2022) (hereafter *Constitutional Grounds* 1974).
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10. *Constitutional Grounds* 1974, p. 22.
11. *Ibid.*, p. 23.
12. *Ibid.*
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14. *Constitutional Grounds for Presidential Impeachment*, H. Rep. 38–513, 116th Cong., 1st Sess., December 2019, p. 2, <https://www.congress.gov/116/meeting/house/110281/documents/HHRG-116-JU00-20191204-SD001.pdf> (accessed December 16, 2022) (hereafter *Constitutional Grounds* 2019).
15. *Ibid.*
16. *Constitutional Grounds* 1974, p. 24.
17. *Constitutional Grounds* 2019, p. 2.
18. U.S. Department of Justice, Office of Legal Counsel, *Legal Aspects of Impeachment: An Overview*, February 1974, p. 7, https://www.governmentattic.org/24docs/DOJolcLegAsplmpeach_1974.pdf (accessed December 16, 2022).
19. *Constitutional Grounds* 1974, p. 12. See also *ibid.*, p. 4 (“a unique phrase used for centuries in English parliamentary impeachments, for the meaning of which one must look to history”).
20. *Ibid.*, p. 7.
21. *Constitutional Grounds* 2019, p. 5.
22. *Ibid.*
23. Alexander Hamilton, *The Federalist* No. 65 (emphasis in original). While conduct need not be criminal to be impeachable, impeachment has no effect on whether or when an official may be prosecuted for conduct that is also criminal. See Alexander Hamilton, *The Federalist* No. 69 (the President “would afterwards be liable to prosecution and punishment in the ordinary course of law.”).
24. Bob Barr, “High Crimes and Misdemeanors: The Clinton–Gore Scandals and the Question of Impeachment,” *Texas Review of Law and Politics*, Vol. 2, No. 1 (Fall 1997), pp. 9–10.
25. Lawrence Tribe, *American Constitutional Law* (Mineola, NY: Foundation Press, 1978), p. 217.
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27. *Constitutional Grounds* 1974, pp. 18–19.

28. *Ibid.*, pp. 19–20.
29. *Ibid.*, pp. 20–21.
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31. U.S. Const. Art. II, § 1, cl. 8.
32. 5 U.S.C. § 3331.
33. *Godden v. Hales*, 2 Show KB 475; (1686) 89 ER 1050. The case involved the king’s refusal to enforce the Test Acts, which imposed religious requirements on government officers. The court reasoned that the king, as sovereign over the laws, had full authority to make exceptions to the requirements of a law whenever he, in his discretion, decided it was necessary to do so.
34. See Carolyn A. Edie, “Revolution and the Rule of Law: The End of the Dispensing Power, 1689,” *Eighteenth-Century Studies*, Vol. 10, No. 434 (Summer 1977).
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36. *Ibid.*
37. The charges against Senator William Blount were dismissed by the Senate for lack of jurisdiction when it was decided that a U.S. Senator is not a “civil officer” within the meaning of the Constitution. This decision established the principle that Members of Congress are not subject to impeachment, although they can be expelled under Article I, Section 5, Clause 2 of the Constitution, which ultimately happened in the case of Senator Blount. U.S. Senate, “Art and History: Expulsion Case of William Blount of Tennessee (1797),” https://www.senate.gov/about/powers-procedures/expulsion/Blount_expulsion.htm (accessed December 16, 2022).
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39. See William H. Rehnquist, *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (William Morrow & Co., 1992).
40. Cole and Garvey, “Impeachment and the Constitution,” table 1, pp. 56–57. Belknap was accused of accepting bribes in return for the sale of Indian trading posts, and the Senate decided that it still had authority to hold a trial even though Belknap had resigned. See U.S. Senate, “Impeachment Trial of Secretary of War William Belknap, 1876,” <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-belknap.htm> (accessed December 16, 2022).
41. Richard Nixon resigned prior to a vote by the House of Representatives on the articles of impeachment approved by the House Judiciary Committee on July 27, 1974. The House of Representatives approved articles of impeachment for Bill Clinton on December 19, 1998, and for Donald Trump on December 18, 2019. See H. Res. 611, Articles of Impeachment Against William Jefferson Clinton, U.S. House of Representatives, 105th Cong., 2nd Sess., December 19, 1998, <https://www.congress.gov/105/bills/hres611/BILLS-105hres611enr.pdf> (accessed December 16, 2022), and H. Res. 755, Articles of Impeachment Against Donald John Trump, U.S. House of Representatives, 116th Cong., 1st Sess., December 18, 2019, <https://www.congress.gov/116/bills/hres755/BILLS-116hres755enr.pdf> (accessed December 16, 2022).
42. See “Articles of Impeachment,” <https://watergate.info/impeachment/articles-of-impeachment> (accessed December 16, 2022).
43. See H. Res. 611, Articles of Impeachment Against William Jefferson Clinton, U.S. House of Representatives, 105th Cong., 2nd Sess., December 19, 1998, <https://www.congress.gov/105/bills/hres611/BILLS-105hres611enr.pdf> (accessed December 16, 2022).
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68. Twenty states have sued Secretary Mayorkas, arguing that: (1) he and the department have unlawfully created these immigration benefit programs without congressional legislation; (2) the programs violate the limits Congress has placed multiple times on parole; (3) the department did not engage in notice-and-comment rulemaking under the Administrative Procedures Act, “substituting instead its unilateral judgment to bring into the United States hundreds of thousands of aliens who otherwise have no other authority to enter”; and (4) the plaintiff states face “substantial, irreparable harms from the Department’s abuses of its parole authority, which allow potentially hundreds of thousands of additional aliens to enter each of their already overwhelmed territories.” *Texas v. U.S. Department of Homeland Security*, Civ. No. 6:23-cv-00007 (S.D. Tex. 2023).
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