

118TH CONGRESS
2D SESSION

H. RES. 863

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2024

Received

RESOLUTION

Impeaching Alejandro Nicholas Mayorkas, Secretary of
Homeland Security, for high crimes and misdemeanors.

1 *Resolved*, That Alejandro Nicholas Mayorkas, Sec-
2 retary of Homeland Security of the United States of
3 America, is impeached for high crimes and misdemeanors,
4 and that the following articles of impeachment be exhib-
5 ited to the United States Senate:

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

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

3 The Constitution provides that the House of Rep-
4 resentatives “shall have the sole Power of Impeachment”
5 and that civil Officers of the United States, including the
6 Secretary of Homeland Security, “shall be removed from
7 Office on Impeachment for, and Conviction of, Treason,
8 Bribery, or other high Crimes and Misdemeanors”. In his
9 conduct while Secretary of Homeland Security, Alejandro
10 N. Mayorkas, in violation of his oath to support and de-
11 fend the Constitution of the United States against all en-
12 emies, foreign and domestic, to bear true faith and alle-
13 giance to the same, and to well and faithfully discharge
14 the duties of his office, has willfully and systemically re-
15 fused to comply with Federal immigration laws, in that:

16 Throughout his tenure as Secretary of Homeland Se-
17 curity, Alejandro N. Mayorkas has repeatedly violated
18 laws enacted by Congress regarding immigration and bor-
19 der security. In large part because of his unlawful conduct,
20 millions of aliens have illegally entered the United States
21 on an annual basis with many unlawfully remaining in the
22 United States. His refusal to obey the law is not only an
23 offense against the separation of powers in the Constitu-
24 tion of the United States, it also threatens our national
25 security and has had a dire impact on communities across

1 the country. Despite clear evidence that his willful and
2 systemic refusal to comply with the law has significantly
3 contributed to unprecedented levels of illegal entrants, the
4 increased control of the Southwest border by drug cartels,
5 and the imposition of enormous costs on States and local-
6 ities affected by the influx of aliens, Alejandro N.
7 Mayorkas has continued in his refusal to comply with the
8 law, and thereby acted to the grave detriment of the inter-
9 ests of the United States.

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

12 (1) Alejandro N. Mayorkas willfully refused to
13 comply with the detention mandate set forth in sec-
14 tion 235(b)(2)(A) of the Immigration and Nation-
15 ality Act, requiring that all applicants for admission
16 who are “not clearly and beyond a doubt entitled to
17 be admitted...shall be detained for a [removal] pro-
18 ceeding...”. Instead of complying with this require-
19 ment, Alejandro N. Mayorkas implemented a catch
20 and release scheme, whereby such aliens are unlaw-
21 fully released, even without effective mechanisms to
22 ensure appearances before the immigration courts
23 for removal proceedings or to ensure removal in the
24 case of aliens ordered removed.

1 (2) Alejandro N. Mayorkas willfully refused to
2 comply with the detention mandate set forth in sec-
3 tion 235(b)(1)(B)(ii) of such Act, requiring that an
4 alien who is placed into expedited removal pro-
5 ceedings and determined to have a credible fear of
6 persecution “shall be detained for further consider-
7 ation of the application for asylum”. Instead of com-
8 plying with this requirement, Alejandro N. Mayorkas
9 implemented a catch and release scheme, whereby
10 such aliens are unlawfully released, even without ef-
11 fective mechanisms to ensure appearances before the
12 immigration courts for removal proceedings or to en-
13 sure removal in the case of aliens ordered removed.

14 (3) Alejandro N. Mayorkas willfully refused to
15 comply with the detention set forth in section
16 235(b)(1)(B)(iii)(IV) of such Act, requiring that an
17 alien who is placed into expedited removal pro-
18 ceedings and determined not to have a credible fear
19 of persecution “shall be detained...until removed”.
20 Instead of complying with this requirement,
21 Alejandro N. Mayorkas has implemented a catch
22 and release scheme, whereby such aliens are unlaw-
23 fully released, even without effective mechanisms to
24 ensure appearances before the immigration courts

1 for removal proceedings or to ensure removal in the
2 case of aliens ordered removed.

3 (4) Alejandro N. Mayorkas willfully refused to
4 comply with the detention mandate set forth in sec-
5 tion 236(c) of such Act, requiring that a criminal
6 alien who is inadmissible or deportable on certain
7 criminal and terrorism-related grounds “shall [be]
8 take[n] into custody” when the alien is released
9 from law enforcement custody. Instead of complying
10 with this requirement, Alejandro N. Mayorkas issued
11 “Guidelines for the Enforcement of Civil Immigra-
12 tion Laws”, which instructs Department of Home-
13 land Security (hereinafter referred to as “DHS”) of-
14 ficials that the “fact an individual is a removable
15 noncitizen...should not alone be the basis of an en-
16 forcement action against them” and that DHS “per-
17 sonnel should not rely on the fact of convic-
18 tion...alone”, even with respect to aliens subject to
19 mandatory arrest and detention pursuant to section
20 236(c) of such Act, to take them into custody. In
21 *Texas v. United States*, 40 F.4th 205 (2022), the
22 United States Court of Appeals for the Fifth Circuit
23 concluded that these guidelines had “every indica-
24 tion of being ‘a general policy that is so extreme as
25 to amount to an abdication of...statutory responsibil-

ities’” and that its “replacement of Congress’s statutory mandates with concerns of equity and race is extralegal...[and] plainly outside the bounds of the power conferred by the INA”.

(5) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 241(a)(2) of such Act, requiring that an alien ordered removed “shall [be] detain[ed]” during “the removal period”. Instead of complying with this mandate, Alejandro N. Mayorkas issued “Guidelines for the Enforcement of Civil Immigration Laws”, which instructs DHS officials that the “fact an individual is a removable noncitizen...should not alone be the basis of an enforcement action against them” and that DHS “personnel should not rely on the fact of conviction...alone”, even with respect to aliens subject to mandatory detention and removal pursuant to section 241(a) of such Act.

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

1 (A) Alejandro N. Mayorkas paroled aliens
2 *en masse* in order to release them from manda-
3 tory detention, despite the fact that, as the
4 United States Court of Appeals for the Fifth
5 Circuit concluded in *Texas v. Biden*, 20 F.4th
6 928 (2021), “parol[ing] every alien [DHS] can-
7 not detain is the opposite of the ‘case-by-case
8 basis’ determinations required by law” and
9 “DHS’s pretended power to parole aliens while
10 ignoring the limitations Congress imposed on
11 the parole power [is] not *nonenforcement*; it’s
12 *misenforcement*, suspension of the INA, or
13 both”.

14 (B) Alejandro N. Mayorkas created, re-
15 opened, or expanded a series of categorical pa-
16 role programs never authorized by Congress for
17 foreign nationals outside of the United States,
18 including for certain Central American minors,
19 Ukrainians, Venezuelans, Cubans, Haitians,
20 Nicaraguans, Colombians, Salvadorans, Guate-
21 malans, and Hondurans, which enabled hun-
22 dreds of thousands of inadmissible aliens to
23 enter the United States in violation of the laws
24 enacted by Congress.

1 (7) Alejandro N. Mayorkas willfully exceeded
2 his release authority set forth in section 236(a) of
3 such Act that permits, in certain circumstances, the
4 release of aliens arrested on an administrative war-
5 rant, in that Alejandro N. Mayorkas released aliens
6 arrested without a warrant despite their being sub-
7 ject to a separate applicable mandatory detention re-
8 quirement set forth in section 235(b)(2) of such Act.
9 Alejandro N. Mayorkas released such aliens by
10 retroactively issuing administrative warrants in an
11 attempt to circumvent section 235(b)(2) of such Act.
12 In *Florida v. United States*, No. 3:21-cv-1066-TKW-
13 ZCB (N.D. Fla. Mar. 8, 2023), the United States
14 District Court of the Northern District of Florida
15 noted that “[t]his sleight of hand – using an ‘arrest’
16 warrant as a de facto ‘release’ warrant – is adminis-
17 trative sophistry at its worst”. In addition, the court
18 concluded that “what makes DHS’s application of
19 [236(a)] in this manner unlawful...is that
20 [235(b)(2)], not [236(a)], governs the detention of
21 applicants for admission whom DHS places
22 in...removal proceedings after inspection”.
23 Alejandro N. Mayorkas’s willful and systemic refusal
24 to comply with the law has had calamitous consequences

1 for the Nation and the people of the United States, includ-
2 ing:

3 (1) During fiscal years 2017 through 2020, an
4 average of about 590,000 aliens each fiscal year
5 were encountered as inadmissible aliens at ports of
6 entry on the Southwest border or apprehended be-
7 tween ports of entry. Thereafter, during Alejandro
8 N. Mayorkas's tenure in office, that number sky-
9 rocketed to over 1,400,000 in fiscal year 2021, over
10 2,300,000 in fiscal year 2022, and over 2,400,000 in
11 fiscal year 2023. Similarly, during fiscal years 2017
12 through 2020, an average of 130,000 persons who
13 were not turned back or apprehended after making
14 an illegal entry were observed along the border each
15 fiscal year. During Alejandro N. Mayorkas's tenure
16 in office, that number more than trebled to 400,000
17 in fiscal year 2021, 600,000 in fiscal year 2022, and
18 750,000 in fiscal year 2023.

19 (2) American communities both along the
20 Southwest border and across the United States have
21 been devastated by the dramatic growth in illegal en-
22 tries, the number of aliens unlawfully present, and
23 substantial rise in the number of aliens unlawfully
24 granted parole, creating a fiscal and humanitarian
25 crisis and dramatically degrading the quality of life

1 of the residents of those communities. For instance,
2 since 2022, more than 150,000 migrants have gone
3 through New York City’s shelter intake system. In-
4 deed, the Mayor of New York City has said that “we
5 are past our breaking point” and that “[t]his issue
6 will destroy New York City”. In fiscal year 2023,
7 New York City spent \$1,450,000,000 addressing
8 Alejandro N. Mayorkas’s migrant crisis, and city of-
9 ficials fear it will spend another \$12,000,000,000
10 over the following three fiscal years, causing painful
11 budget cuts to important city services.

12 (3) Alejandro N. Mayorkas’s unlawful mass re-
13 lease of apprehended aliens and unlawful mass grant
14 of categorical parole to aliens have enticed an in-
15 creasing number of aliens to make the dangerous
16 journey to our Southwest border. Consequently, ac-
17 cording to the United Nations’s International Orga-
18 nization for Migration, the number of migrants in-
19 tending to illegally cross our border who have per-
20 ished along the way, either en route to the United
21 States or at the border, almost doubled during the
22 tenure of Alejandro N. Mayorkas as Secretary of
23 Homeland Security, from an average of about 700
24 a year during the fiscal years 2017 through 2020,

1 to an average of about 1,300 a year during the fiscal
2 years 2021 through 2023.

3 (4) Alien smuggling organizations have gained
4 tremendous wealth during Alejandro N. Mayorkas's
5 tenure as Secretary of Homeland Security, with
6 their estimated revenues rising from about
7 \$500,000,000 in 2018 to approximately
8 \$13,000,000,000 in 2022.

9 (5) During Alejandro N. Mayorkas's tenure as
10 Secretary of Homeland Security, the immigration
11 court backlog has more than doubled from about
12 1,300,000 cases to over 3,000,000 cases. The ex-
13 ploding backlog is destroying the courts' ability to
14 administer justice and provide appropriate relief in
15 a timeframe that does not run into years or even
16 decades. As Alejandro N. Mayorkas acknowledged,
17 "those who have a valid claim to asylum...often wait
18 years for a...decision; likewise, noncitizens who will
19 ultimately be found ineligible for asylum or other
20 protection—which occurs in the majority of cases—
21 often have spent many years in the United States
22 prior to being ordered removed". He noted that of
23 aliens placed in expedited removal proceedings and
24 found to have a credible fear of persecution, and
25 thus referred to immigration judges for removal pro-

1 ceedings, “significantly fewer than 20 percent...were
2 ultimately granted asylum” and only “28 percent of
3 cases decided on their merits are grants of relief”.
4 Alejandro N. Mayorkas also admitted that “the fact
5 that migrants can wait in the United States for
6 years before being issued a final order denying relief,
7 and that many such individuals are never actually
8 removed, likely incentivizes migrants to make the
9 journey north”.

10 (6) During Alejandro N. Mayorkas’s tenure as
11 Secretary of Homeland Security, approximately
12 450,000 unaccompanied alien children have been en-
13 countered at the Southwest border, and the vast ma-
14 jority have been released into the United States. As
15 a result, there has been a dramatic upsurge in mi-
16 grant children being employed in dangerous and ex-
17 ploitative jobs in the United States.

18 (7) Alejandro N. Mayorkas’s failure to enforce
19 the law, drawing millions of illegal aliens to the
20 Southwest border, has led to the reassignment of
21 U.S. Border Patrol agents from protecting the bor-
22 der from illicit drug trafficking to processing illegal
23 aliens for release. As a result, during Alejandro N.
24 Mayorkas’s tenure as Secretary of Homeland Secu-
25 rity, the flow of fentanyl across the border and other

1 dangerous drugs, both at and between ports of
2 entry, has increased dramatically. U.S. Customs and
3 Border Protection seized approximately 4,800
4 pounds of fentanyl in fiscal year 2020, approxi-
5 mately 11,200 pounds in fiscal year 2021, approxi-
6 mately 14,700 pounds in fiscal year 2022, and ap-
7 proximately 27,000 pounds in fiscal year 2023. Over
8 70,000 Americans died from fentanyl poisoning in
9 2022, and fentanyl is now the number one killer of
10 Americans between the ages of 18 and 45.

11 (8) Alejandro N. Mayorkas has degraded public
12 safety by leaving wide swaths of the border effec-
13 tively unpatrolled as U.S. Border Patrol agents are
14 diverted from guarding the border to processing for
15 unlawful release the heightening waves of appre-
16 hended aliens (many who now seek out agents for
17 the purpose of surrendering with the now reasonable
18 expectation of being released and granted work au-
19 thorization), and Federal Air Marshals are diverted
20 from protecting the flying public to assist in such
21 processing.

22 (9) During Alejandro N. Mayorkas's tenure as
23 Secretary of Homeland Security, the U.S. Border
24 Patrol has encountered an increasing number of
25 aliens on the terrorist watch list. In fiscal years

1 2017 through 2020 combined, 11 noncitizens on the
2 terrorist watchlist were caught attempting to cross
3 the Southwest border between ports of entry. That
4 number increased to 15 in fiscal year 2021, 98 in
5 fiscal year 2022, 169 in fiscal year 2023, and 49 so
6 far in fiscal year 2024.

7 Additionally, in *United States v. Texas*, 599 U.S. 670
8 (2023), the United States Supreme Court heard a case
9 involving Alejandro N. Mayorkas’s refusal to comply with
10 certain Federal immigration laws that are at issue in this
11 impeachment. The Supreme Court held that States have
12 no standing to seek judicial relief to compel Alejandro N.
13 Mayorkas to comply with certain legal requirements con-
14 tained in the Immigration and Nationality Act. However,
15 the Supreme Court held that “even though the federal
16 courts lack Article III jurisdiction over this suit, other fo-
17 rums remain open for examining the Executive Branch’s
18 enforcement policies. For example, Congress possesses an
19 array of tools to analyze and influence those policies [and]
20 those are political checks for the political process”. One
21 such critical tool for Congress to influence the Executive
22 Branch to comply with the immigration laws of the United
23 States is impeachment. The dissenting Justice noted,
24 “The Court holds Texas lacks standing to challenge a fed-
25 eral policy that inflicts substantial harm on the State and

1 its residents by releasing illegal aliens with criminal con-
2 victions for serious crimes. In order to reach this conclu-
3 sion, the Court...holds that the only limit on the power
4 of a President to disobey a law like the important provi-
5 sion at issue is Congress' power to employ the weapons
6 of inter-branch warfare...". As the dissenting Justice ex-
7 plained, "Congress may wield what the Solicitor General
8 described as 'political...tools'—which presumably means
9 such things as...impeachment and removal". Indeed, dur-
10 ing oral argument, the Justice who authored the majority
11 opinion stated to the Solicitor General, "I think your posi-
12 tion is, instead of judicial review, Congress has to resort
13 to shutting down the government or impeachment or dra-
14 matic steps...". Here, in light of the inability of injured
15 parties to seek judicial relief to remedy the refusal of
16 Alejandro N. Mayorkas to comply with Federal immigra-
17 tion laws, impeachment is Congress's only viable option.

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

24 Wherefore Alejandro N. Mayorkas, by such conduct,
25 has demonstrated that he will remain a threat to national

1 and border security, the safety of the United States peo-
2 ple, and the Constitution if allowed to remain in office,
3 and has acted in a manner grossly incompatible with his
4 duties and the rule of law. Alejandro N. Mayorkas thus
5 warrants impeachment and trial, removal from office, and
6 disqualification to hold and enjoy any office of honor,
7 trust, or profit under the United States.

8 ARTICLE II: BREACH OF PUBLIC TRUST

9 The Constitution provides that the House of Rep-
10 resentatives “shall have the sole Power of Impeachment”
11 and that civil Officers of the United States, including the
12 Secretary of Homeland Security, “shall be removed from
13 Office on Impeachment for, and Conviction of, Treason,
14 Bribery, or other high Crimes and Misdemeanors”. In his
15 conduct while Secretary of Homeland Security, Alejandro
16 N. Mayorkas, in violation of his oath to well and faithfully
17 discharge the duties of his office, has breached the public
18 trust, in that:

19 Alejandro N. Mayorkas has knowingly made false
20 statements, and knowingly obstructed lawful oversight of
21 the Department of Homeland Security (hereinafter re-
22 ferred to as “DHS”), principally to obfuscate the results
23 of his willful and systemic refusal to comply with the law.
24 Alejandro N. Mayorkas engaged in this scheme or course
25 of conduct through the following means:

1 (1) Alejandro N. Mayorkas knowingly made
2 false statements to Congress that the border is “se-
3 cure”, that the border is “no less secure than it was
4 previously”, that the border is “closed”, and that
5 DHS has “operational control” of the border (as
6 that term is defined in the Secure Fence Act of
7 2006).

8 (2) Alejandro N. Mayorkas knowingly made
9 false statements to Congress regarding the scope
10 and adequacy of the vetting of the thousands of Af-
11 ghans who were airlifted to the United States and
12 then granted parole following the Taliban takeover
13 of Afghanistan after President Biden’s precipitous
14 withdrawal of United States forces.

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

19 (4) Alejandro N. Mayorkas knowingly made
20 false statements supporting the false narrative that
21 U.S. Border Patrol agents maliciously whipped ille-
22 gal aliens.

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

1 (6) Alejandro N. Mayorkas delayed or denied
2 access of DHS Office of Inspector General (herein-
3 after referred to as “OIG”) to DHS records and in-
4 formation, hampering OIG’s ability to effectively
5 perform its vital investigations, audits, inspections,
6 and other reviews of agency programs and oper-
7 ations to satisfy the OIG’s obligations under section
8 402(b) of title 5, United States Code, in part, to
9 Congress.

10 Additionally, in his conduct while Secretary of Home-
11 land Security, Alejandro N. Mayorkas has breached the
12 public trust by his willful refusal to fulfill his statutory
13 “duty to control and guard the boundaries and borders
14 of the United States against the illegal entry of aliens”
15 as set forth in section 103(a)(5) of the Immigration and
16 Nationality Act. Alejandro N. Mayorkas inherited what his
17 first Chief of the U.S. Border Patrol called, “arguably the
18 most effective border security in our nation’s history”.
19 Alejandro N. Mayorkas, however, proceeded to abandon
20 effective border security initiatives without engaging in
21 adequate alternative efforts that would enable DHS to
22 maintain control of the border and guard against illegal
23 entry, and despite clear evidence of the devastating con-
24 sequences of his actions, he failed to take action to fulfill
25 his statutory duty to control the border. According to his

1 first Chief of the U.S. Border Patrol, Alejandro N.
2 Mayorkas “summarily rejected” the “multiple options to
3 reduce the illegal entries...through proven programs and
4 consequences” provided by civil service staff at DHS. De-
5 spite clear evidence of the devastating consequences of his
6 actions, he failed to take action to fulfill his statutory duty
7 to control the border, in that, among other things:

8 (1) Alejandro N. Mayorkas terminated the Mi-
9 grant Protection Protocols (hereinafter referred to
10 as “MPP”). In *Texas v. Biden*, 20 F.4th 928
11 (2021), the United States Court of Appeals for the
12 Fifth Circuit explained that “[t]he district
13 court...pointed to evidence that ‘the termination of
14 MPP has contributed to the current border
15 surge’...(citing DHS’s own previous determinations
16 that MPP had curbed the rate of illegal entries)”.
17 The district court had also “pointed out that the
18 number of ‘enforcement encounters’—that is, in-
19 stances where immigration officials encounter immi-
20 grants attempting to cross the southern border with-
21 out documentation—had ‘skyrocketed’ since MPP’s
22 termination”.

23 (2) Alejandro N. Mayorkas terminated con-
24 tracts for border wall construction.

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

5 In all of this, Alejandro N. Mayorkas breached the
6 public trust by knowingly making false statements to Con-
7 gress and the American people and avoiding lawful over-
8 sight in order to obscure the devastating consequences of
9 his willful and systemic refusal to comply with the law and
10 carry out his statutory duties. He has also breached the
11 public trust by willfully refusing to carry out his statutory
12 duty to control the border and guard against illegal entry,
13 notwithstanding the calamitous consequences of his abdi-
14 cation of that duty.

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

MIKE JOHNSON,
Speaker of the House of Representatives.

Attest: KEVIN F. MCCUMBER,
Clerk.