

H. Res. 863

In the House of Representatives, U. S.,

February 13, 2024.

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

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

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

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that civil Officers of the United States, including the Secretary of Homeland Security, “shall be removed from Office on Im-

peachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”. In his conduct while Secretary of Homeland Security, Alejandro N. Mayorkas, in violation of his oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, to bear true faith and allegiance to the same, and to well and faithfully discharge the duties of his office, has willfully and systemically refused to comply with Federal immigration laws, in that:

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

ply with the law, and thereby acted to the grave detriment of the interests of the United States.

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

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

(2) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 235(b)(1)(B)(ii) of such Act, requiring that an alien who is placed into expedited removal proceedings and determined to have a credible fear of persecution “shall be detained for further consideration of the application for asylum”. Instead of complying with this requirement, Alejandro N. Mayorkas implemented a catch and release scheme, whereby such aliens are unlawfully released,

even without effective mechanisms to ensure appearances before the immigration courts for removal proceedings or to ensure removal in the case of aliens ordered removed.

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

(4) Alejandro N. Mayorkas willfully refused to comply with the detention mandate set forth in section 236(c) of such Act, requiring that a criminal alien who is inadmissible or deportable on certain criminal and terrorism-related grounds “shall [be] take[n] into custody” when the alien is released from law enforcement custody. Instead of complying with this requirement, Alejandro N. Mayorkas issued “Guidelines for the Enforcement of Civil Immigration Laws”, which instructs Department of Homeland Security (hereinafter referred to as “DHS”)

officials that the “fact an individual is a removable non-citizen...should not alone be the basis of an enforcement action against them” and that DHS “personnel should not rely on the fact of conviction...alone”, even with respect to aliens subject to mandatory arrest and detention pursuant to section 236(c) of such Act, to take them into custody. In *Texas v. United States*, 40 F.4th 205 (2022), the United States Court of Appeals for the Fifth Circuit concluded that these guidelines had “every indication of being ‘a general policy that is so extreme as to amount to an abdication of...statutory responsibilities’” and that its “replacement of Congress’s statutory mandates with concerns of equity and race is extra-legal...[and] plainly outside the bounds of the power conferred by the INA”.

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

rely on the fact of conviction...alone”, even with respect to aliens subject to mandatory detention and removal pursuant to section 241(a) of such Act.

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

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

(B) Alejandro N. Mayorkas created, re-opened, or expanded a series of categorical parole programs never authorized by Congress for foreign nationals outside of the United States, including for certain Central American minors, Ukrainians, Venezuelans,

Cubans, Haitians, Nicaraguans, Colombians, Salvadorans, Guatemalans, and Hondurans, which enabled hundreds of thousands of inadmissible aliens to enter the United States in violation of the laws enacted by Congress.

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

sion whom DHS places in...removal proceedings after inspection”.

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

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

(2) American communities both along the Southwest border and across the United States have been devastated by the dramatic growth in illegal entries, the number of aliens unlawfully present, and substantial rise in the number of aliens unlawfully granted parole, cre-

ating a fiscal and humanitarian crisis and dramatically degrading the quality of life of the residents of those communities. For instance, since 2022, more than 150,000 migrants have gone through New York City’s shelter intake system. Indeed, the Mayor of New York City has said that “we are past our breaking point” and that “[t]his issue will destroy New York City”. In fiscal year 2023, New York City spent \$1,450,000,000 addressing Alejandro N. Mayorkas’s migrant crisis, and city officials fear it will spend another \$12,000,000,000 over the following three fiscal years, causing painful budget cuts to important city services.

(3) Alejandro N. Mayorkas’s unlawful mass release of apprehended aliens and unlawful mass grant of categorical parole to aliens have enticed an increasing number of aliens to make the dangerous journey to our Southwest border. Consequently, according to the United Nations’s International Organization for Migration, the number of migrants intending to illegally cross our border who have perished along the way, either en route to the United States or at the border, almost doubled during the tenure of Alejandro N. Mayorkas as Secretary of Homeland Security, from an average of about 700 a year during the fiscal years 2017 through 2020, to an

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

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

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

on their merits are grants of relief”. Alejandro N. Mayorkas also admitted that “the fact that migrants can wait in the United States for years before being issued a final order denying relief, and that many such individuals are never actually removed, likely incentivizes migrants to make the journey north”.

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

(7) Alejandro N. Mayorkas’s failure to enforce the law, drawing millions of illegal aliens to the Southwest border, has led to the reassignment of U.S. Border Patrol agents from protecting the border from illicit drug trafficking to processing illegal aliens for release. As a result, during Alejandro N. Mayorkas’s tenure as Secretary of Homeland Security, the flow of fentanyl across the border and other dangerous drugs, both at and between ports of entry, has increased dramatically. U.S. Customs and Border Protection seized approximately 4,800 pounds of fentanyl in fiscal year 2020, approxi-

mately 11,200 pounds in fiscal year 2021, approximately 14,700 pounds in fiscal year 2022, and approximately 27,000 pounds in fiscal year 2023. Over 70,000 Americans died from fentanyl poisoning in 2022, and fentanyl is now the number one killer of Americans between the ages of 18 and 45.

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

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

Additionally, in *United States v. Texas*, 599 U.S. 670 (2023), the United States Supreme Court heard a case involving Alejandro N. Mayorkas’s refusal to comply with certain Federal immigration laws that are at issue in this impeachment. The Supreme Court held that States have no standing to seek judicial relief to compel Alejandro N. Mayorkas to comply with certain legal requirements contained in the Immigration and Nationality Act. However, the Supreme Court held that “even though the federal courts lack Article III jurisdiction over this suit, other forums remain open for examining the Executive Branch’s enforcement policies. For example, Congress possesses an array of tools to analyze and influence those policies [and] those are political checks for the political process”. One such critical tool for Congress to influence the Executive Branch to comply with the immigration laws of the United States is impeachment. The dissenting Justice noted, “The Court holds Texas lacks standing to challenge a federal policy that inflicts substantial harm on the State and its residents by releasing illegal aliens with criminal convictions for serious crimes. In order to reach this conclusion, the Court...holds that the only limit on the power of a President to disobey a law like the important provision at issue is Congress’ power to employ the weapons of inter-branch warfare...”. As the dissenting Justice explained, “Congress may wield what the Solicitor General described as

‘political...tools’—which presumably means such things as...impeachment and removal”. Indeed, during oral argument, the Justice who authored the majority opinion stated to the Solicitor General, “I think your position is, instead of judicial review, Congress has to resort to shutting down the government or impeachment or dramatic steps...”. Here, in light of the inability of injured parties to seek judicial relief to remedy the refusal of Alejandro N. Mayorkas to comply with Federal immigration laws, impeachment is Congress’s only viable option.

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

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

ARTICLE II: BREACH OF PUBLIC TRUST

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

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

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

(2) Alejandro N. Mayorkas knowingly made false statements to Congress regarding the scope and ade-

quacy of the vetting of the thousands of Afghans who were airlifted to the United States and then granted parole following the Taliban takeover of Afghanistan after President Biden's precipitous withdrawal of United States forces.

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

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

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

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

Additionally, in his conduct while Secretary of Homeland Security, Alejandro N. Mayorkas has breached the public trust by his willful refusal to fulfill his statutory "duty to

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

(1) Alejandro N. Mayorkas terminated the Migrant Protection Protocols (hereinafter referred to as “MPP”). In *Texas v. Biden*, 20 F.4th 928 (2021), the United States Court of Appeals for the Fifth Circuit explained that “[t]he district court...pointed to evidence that ‘the termination of MPP has contributed to the current bor-

der surge’...(citing DHS’s own previous determinations that MPP had curbed the rate of illegal entries)”. The district court had also “pointed out that the number of ‘enforcement encounters’—that is, instances where immigration officials encounter immigrants attempting to cross the southern border without documentation—had ‘skyrocketed’ since MPP’s termination”.

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

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

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

Wherefore Alejandro N. Mayorkas, by such conduct, has demonstrated that he will remain a threat to national and border security, the safety of the American people, and to the Constitution if allowed to remain in office, and has acted in

a manner grossly incompatible with his duties and the rule of law. Alejandro N. Mayorkas thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Attest:

Clerk.