



TO: Republican Study Committee Member Offices
FROM: RSC Staff
Date: July 24, 2023
RE: Mayorkas Impeachment & RSC Official Position

RSC's Steering Committee official position on impeachment of Secretary Mayorkas

On March 17, 2023, the RSC's Steering Committee adopted an [official position](#) outlining a policy framework to secure the U.S. southern border. This official position also explicitly supports initiating an official impeachment process for Secretary Alejandro Mayorkas.

The standard for impeachment proceedings

Impeachment stands as a remedy for conduct that is offensive to the Constitution. The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that any civil officer of the United States “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

The Constitution does not provide a clear definition for the phrase “high Crimes and Misdemeanors.” The phrase was adopted from English common law and had been in use for [400 years](#) before our nation's founders accepted it as the Constitutional standard for impeachment. Hundreds of years of precedent and multiple modern impeachments indicate that “high Crimes and Misdemeanors” is not limited to the actual violations of criminal law, but also includes any misconduct that is damaging to the State – which includes betrayals of constitutional order, neglect of duty, and violations of public trust.¹

Accounting for damage to the Constitution and rule of law

Secretary Mayorkas's tenure has been one of willful destruction to the United States, beyond the point of incompetence and maladministration. There is plain evidence that in his role as Secretary of the Department of Homeland Security, Mayorkas has perjured himself before Congress, deceived the public and Congress concerning the scope and nature of the humanitarian and security disaster fomenting at the border, failed to faithfully execute immigration laws enacted by Congress, and even attempted to monitor and police speech that is critical of the Biden administration.

The United States is witnessing an invasion, and, instead of repelling it, Secretary Mayorkas is using any means necessary, including violating the Immigration and Nationality Act, to welcome it. Under Secretary Mayorkas, the United States has suffered record illegal immigration, spikes in fentanyl trafficking and fentanyl poisoning deaths, and ten-fold increases in encounters with illegal aliens on

¹ Alexander Hamilton, [Federalist No. 65](#), describing impeachable offenses as those “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.”

Terrorist Screening Databases. This has resulted in record cartel profits, countless criminal aliens being ferried into cities across the country, increased migrant deaths, and a demoralized Border Patrol.

Actions that warrant the initiation of impeachment proceedings

Recognizing the critical and ongoing oversight conducted by the House Committees on Judiciary, Homeland Security, and Oversight, this memo provides the following examples of Secretary Mayorkas' conduct that has put the integrity of the constitution in crisis and warrant impeachment proceedings.

Secretary Mayorkas perjured himself before Congress.

[18 USC 1621](#) makes it a crime to “willfully and contrary to [an] oath states ... any material matter which he does not believe to be true.” Additionally, [18 USC 1001](#) broadly criminalizes “knowingly and willfully ... make[ing] any materially false, fictitious, or fraudulent statement or representation” on “any matter within the jurisdiction of the executive, legislative, or judicial branch.”

On April 28, 2022, while being questioned by RSC member [Rep. Chip Roy \(R-TX\)](#), Secretary Mayorkas claimed that DHS maintained “operational control” of the border as defined by the Secure Fence Act.² This claim is materially and knowingly false. To date, Secretary Mayorkas's policies have resulted in [5.5 million](#) illegal aliens apprehension at the southern border, at least [1.5 million](#) known “got-a-ways”, and an estimated [20% more unknown got-a-ways](#) who were able to evade immigration law enforcement. Additionally it was recently reported that more than [850,000](#) nonimmigrant visa holders overstayed their visa in FY22 alone. Worse yet, Secretary Mayorkas has reinstated catch-and-release policies which have resulted in [suspected terrorists](#) and [murderers](#) being released into the United States **after** they have been caught by Border Patrol.

Under all evidence, Secretary Mayorkas knew his answers to be untrue and admitted that fact just one week later. On May 4, 2022, Secretary Mayorkas claimed that [“this country has never had operational control.”](#) Additionally, Secretary Mayorkas' claim of operational control was [clearly disputed](#) by then U.S. Border Patrol Chief Raúl Ortiz who decidedly answered “no” when asked if DHS had operational control of the entire border.

As previously stated, “high Crimes and Misdemeanors” does not require actual violations of criminal law or an actual indictment on criminal charges to be presented. Admittedly, we are not likely to see any perjury charges from the Biden Department of Justice (DOJ). In the past, DOJ has shown great restraint in charging federal officials, especially Democrats, with perjury.³ Attorney General Garland has seemingly adopted this two-tiered system of justice approach, and as recently as May 2023, refused to bring charges against a United States Attorney who falsely testified under oath.⁴

² The [Secure Fence Act of 2006](#) requires Secretary Mayorkas to take all “necessary and appropriate [actions] to achieve and maintain operational control” over U.S. borders. The Act further defines “operational control” as “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”

³ [Eric Tucker, Associated Press](#), U.S. closes case against ex-FBI deputy director McCabe with no charges, PBS News, available here: <https://www.pbs.org/newshour/nation/u-s-closes-case-against-ex-fbi-deputy-director-mccabe-with-no-charges>

⁴ The [Department of Justice Office of Inspector General](#) found that Rachel Rollins, former United States attorney for the District of Massachusetts, “falsely testified under oath during her OIG interview when she denied that she was the federal law enforcement source that provided nonpublic, sensitive DOJ information to the Herald reporter about a possible Hayden criminal investigation.” To date, no charges have been brought against Rollins.

Secretary Mayorkas has demonstrated pervasive dishonesty aimed at concealing the size, scope, and impact of the Border Crisis.

Political spin is not a crime, nor is it impeachable. However, when “zealous advocacy” turns into a pattern and practice of deceitful and misleading statements, combined with the implementation of policies that further conceal facts about matters of national importance, such actions can justify impeachment.

This was the view of James Madison, the Father of the Constitution and a strong supporter of including an Impeachment clause in the Constitution. Madison’s view was that the impeachment clause was “indispensable . . . for defending the Community [against] the incapacity, negligence or *perfidy* [*emphasis added*].”⁵ Perfidy is defined as deceitfulness or untrustworthiness. Multiple modern impeachments have included articles charging individuals with making false and misleading statements.⁶

Secretary Mayorkas has a record of deceit in concealing matters of national concern, for example:

- Each time Secretary Mayorkas claims the border is secure, or is “[not open](#)”, he is consciously making a false statement. Secretary Mayorkas has ushered in record amounts of illegal immigration.
- Mayorkas misled the public by repeating false accusations of Border Patrol agents “whipping” migrants after being [notified](#) that the claims were false. Secretary Mayorkas received an email hours before a White House press conference notifying him that whipping never took place. Despite this, Mayorkas still gave credence to the hoax, stating that the “horrific images... do not reflect who we are” and inflammatorily stated that the images invoked “the worst elements of our nation’s ongoing battle against systemic racism.”
- Mayorkas misled the public and Congress about the negative national security consequences of his actions. In the wake of the disastrous withdrawal from Afghanistan, DHS led operations resettling over 80,000 Afghan citizens into the United States. Secretary Mayorkas [testified](#) “we are ensuring that Afghans arriving in the United States have been thoroughly screened and vetted.” This testimony does not reflect the concerning findings of reports from the [DHS Office of Inspector General](#) and [Department of Defense Office of Inspector General](#), discussing vetting failures and identifying at least 50 Afghan’ nationals released with “significant security concerns.”
- Mayorkas misled the public and Congress by claiming that each person released into the U.S. is [screened and vetted](#). A House Judiciary report recently revealed [vetting failures](#) that allowed for an MS-13 member to be released into the U.S. He was recently arrested for sexual assault and murder of a 20-year-old girl. It was also recently revealed that an [illegal alien with pending criminal charges](#) was released into the U.S. and was later arrested for the rape of a 16-year-old girl.

⁵A Background on Impeachment, by Marc Schulman, History Central, available here <https://www.historycentral.com/Civics/ImpeachmentD.html>

⁶ While President Nixon ultimately resigned before he was impeached. During his impeachment inquiry, then House Judiciary Chairman John Conyers, presented a fourth impeachment article against President Nixon charging him with concealing information and making false and misleading statements on Cambodian bombing campaigns connected to the Vietnam war. While this article of impeachment was not ultimately adopted by the House Judiciary Committee, it confirmed Madison’s view that chronic dishonesty, not rising the perjury, is an impeachable offense. Deschler’s Precedents, Volume 3, Chapter 14. Impeachment Powers, available here: <https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/html/GPO-HPREC-DESCHLERS-V3-5-5-2.htm>

- Mayorkas misled the public and Congress by downplaying his responsibility for the illegal immigration surge at the border, attributing the surge in illegal migration to [cartel misinformation](#). In fact, the majority of illegal border crossers believe they are welcomed upon arrival as a result of Secretary Mayorkas' policies.
- Secretary Mayorkas has taken other overt actions to hide the true extent of his self-made border crisis, including: [attempting to stop](#) Chief Border Patrol Agents from testifying before Congress and [imposing](#) flight restrictions on Fox News drones that captured images of 8,200 migrants under a single bridge in del Rio, Texas.
- Finally and most importantly, through the use of the CBP One App, the unlawful abuse of Parole, and the ferrying of illegal immigrants to Points of Entry, Secretary Mayorkas is [attempting to hide](#) the true number of illegal border crossers by making otherwise illegal aliens appear 'legal.'

Secretary Mayorkas has ignored clear articulable rules for operational control, detention, parole, lawful presence, and removal provided by laws enacted by Congress.

Secretary Mayorkas has failed his Constitutional duty to faithfully execute the law. The Department of Homeland Security was founded in the wake of the September 11th terrorist attacks, combining functions of 22 federal departments, making it the third largest federal department in the United States.⁷ The mission of DHS is to “With honor and integrity ... safeguard the American people, our Homeland, and our values.”⁸ Instead, Secretary Mayorkas has wholly violated immigration law in order to implement policies that incentivize illegal immigration and shield vast numbers of illegal immigrants from enforcement, leading to a deteriorated border and an unprecedented number of illegal crossings.

The Secure Fence Act of 2006 requires Secretary Mayorkas to achieve “operational control” of U.S. borders, including the prevention of unlawful entries and smuggling of narcotics and terrorists. Every action taken by Secretary Mayorkas which reduced operational control of the border is an action that is taken in contradiction of his official duty to faithfully to execute the laws enacted by Congress and his oath to “support and defend the Constitution ...[and] faithfully discharge the duties of the office.” Secretary Mayorkas abandoned the successful border security policies of the previous administration, ignored laws requiring detention of certain aliens, reduced detention capacity, ended Migrant Protection Protocols, halted border wall construction, diverted Border Patrol from law enforcement duties, encouraged en masse illegal immigration with the use of easily exploitable credible fear processes, illegally expanded parole, reinstated catch-and-release, and provided illegal aliens valid work permits and public benefits during an economic downturn.

Secretary Mayorkas is ignoring the clear principles of immigration law regarding detention. 8 U.S.C. § 1225(b) provides that aliens “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” Secretary Mayorkas has admitted that this law is not being faithfully executed, [stating that](#), “[w]e have misused detention for many years.” Judge T. Kent Wetherell II, a district judge for the Northern District of Florida, vacated the administrations use of “non-detention policies” [finding](#) that, “[c]ollectively, these actions were akin to posting a flashing “Come In, We’re Open” sign on the southern border.” Judge Wetherell further opined that,

⁷ Press Release, Alejandro Mayorkas Sworn in as Secretary of Homeland Security, DHS, available here: <https://www.dhs.gov/news/2021/02/02/alejandro-mayorkas-sworn-secretary-homeland-security>

⁸ The DHS Strategic Plan, Fiscal Years 2020-2024, available here: https://www.dhs.gov/sites/default/files/publications/19_0702_plcy_dhs-strategic-plan-fy20-24.pdf#page=9

[T]he evidence establishes that Defendants have effectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute—without even initiating removal proceedings.

Secretary Mayorkas is violating the Immigration and Nationality Act’s limits on humanitarian parole. Parole can only be granted for urgent humanitarian reasons or significant public benefit regarding an individual’s “case-by-case basis.” Secretary Mayorkas’ policies have created several classes of “new” categories of parole based on [country of origin](#), [familial status](#), and to prevent [overcrowding](#). By definition, making a “class” of aliens subject to immigration relief that can only be granted on a “case-by-case” basis is unlawful. A Federal Judge recently [found](#) DHS’s parole policy to be “contrary to law” because the purpose of mass parole was “to create a new processing pathway to decompress foreseeably crowded facilities” and that DHS is “not making parole determinations on a case-by-case basis.” Additionally, the court found that “DHS cannot even track the whereabouts of released aliens...”

Secretary Mayorkas further incentivized illegal immigration by refusing to remove illegal aliens from the interior of the country – contrary to laws enacted by Congress. 8 U.S.C. § 1226 and 1231 mandate detention and removal for certain deportable aliens, including certain criminals. Secretary Mayorkas issued a memorandum invoking prosecutorial discretion to greatly limit deportations. Secretary Mayorkas [stated](#) that his enforcement policies “explicitly states that a non-citizen’s unlawful presence in the United States will not, by itself, be a basis for the initiation of an enforcement action.” This memo was eventually [vacated by a federal judge](#) who described the core issue of the non-enforcement memo as “whether the Executive Branch may require its officials to act in a manner that conflicts with a statutory mandate imposed by Congress. It may not.” This decision was [affirmed](#) by the Fifth Circuit Court of Appeals which found that the non-enforcement memo, “represents a disingenuous attempt on behalf of DHS to claim it acts within the bounds of federal law while practically disregarding that law.” Unfortunately, the Supreme Court [ruled](#) that States lacked standing to sue the Biden Administration when it fails to enforce immigration laws. Justice Alito, the sole dissenter in this case, discussed impeachment as a possible avenue to force the Executive Branch to enforce immigration laws. Alito criticized the majority opinion, stating 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’s power to employ the weapons of inter-branch warfare— withholding funds, impeachment and removal, etc.”

Secretary Mayorkas has threatened Americans’ First Amendment rights to free speech.

Benjamin Franklin stated, “Freedom of speech is a principal pillar of a free government: When this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.” Secretary Mayorkas openly flouts the First Amendment.⁹

Despite Secretary Mayorkas’s Disinformation Governance Board¹⁰ being quickly disbanded due to public backlash, the *attempt* to create such an Orwellian government entity may itself be

⁹U.S. Const. Amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”)

¹⁰ Internal [DHS Documents](#) show a large and active role planned for the Disinformation Governance Board, including that it would “lead on [Misinformation, Disinformation, and Malinformation] MDM-related operational responses and other efforts to counter MDM”

impeachable.¹¹ Even more concerning, it is becoming increasingly apparent that DHS targets lawful speech through clandestine relationships with nonprofits and back-channels with big tech companies. DHS [subagencies](#) are actively working in [close consultation](#) with tech companies to continue to police speech online.

Michael Shellenberger [detailed](#) these actions in testimony to the House Select Committee on the Weaponization of the Federal Government. According to testimony, the Cybersecurity & Infrastructure Security Agency (CISA) is recruiting private sector actors to censor information for them. According to this testimony, CISA partnered with the Election Integrity Partnership (EIP) ahead of the 2020 election to counter “misinformation” for election security purposes. EIP themselves recognized that the partnership was “to try to fill the gap of the things that the government could not do themselves” because the government “lacked both kinda the funding and the legal authorizations.” Testimony reveals that EIP played an active role in censorship resulting in “hundreds of millions of individual Facebook posts, YouTube videos, TikToks, and tweets censored for “misinformation.”

More information has been revealed in litigation. On July 4, 2023, a federal judge issued a [preliminary injunction](#) in *Missouri v. Biden*, stating that “the present case arguably involves the most massive attack against free speech in United States’ history.” The court ultimately barred the Cybersecurity and Infrastructure Security Agency (CISA), Secretary Mayorkas, and other defendants, from “threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech.” The court concluded that CISA “met with social-media companies to both inform and pressure them to censor content protected by the First Amendment... [and] encouraged and pressured social-media companies to change their content-moderation policies and flag disfavored content.”

Conclusion

Secretary Mayorkas’ behavior continues to threaten the integrity of the constitution and the rule of law. While Impeachment is an extraordinary measure, it is absolutely necessary when faced with a Cabinet Secretary who willfully acts in subversion of the confines of Congressional authority and the letter of the law. The House of Representatives should thoughtfully pursue impeachment proceedings against Secretary Mayorkas as his actions meet the constitutional standard of “high Crimes and Misdemeanors.”

¹¹ Attempts to commit an impeachable offense are also impeachable. Supreme Court Justice William Johnson stated in 1808: “If an officer attempt[s] an act inconsistent with the duties of his station, it is presumed that the failure of the attempt would not exempt him from liability to impeachment. Should a President head a conspiracy for the usurpation of absolute power, it is hoped that no one will contend that defeating his machinations would restore him to innocence.”