

Mark Dannels
Sheriff

Tom Alinen
Chief of Staff

Office of the Sheriff

Cochise County



United States Congress

January 18, 2024

The Committee on Homeland Security

Hearing Topic

**“Voices for the Victims:
The Heartbreaking Reality of the Mayorkas Border Crisis”**

Sheriff Mark J. Dannels

Opening Statement

Good Afternoon Chairman (Mark) Green, Ranking Member (Bennie) Thompson and the Honorable members of both subcommittees. On behalf the citizens of Cochise County and the State of Arizona, and my fellow Sheriffs, Thank You for having me.

I have served our border communities for 40 years and prior to that, as a member of our military serving in the U.S. Army stationed at Fort Huachuca located within Cochise County. I have always been a genuine believer in my Oath of Office to protect my Country, and now my County as the duly elected Sheriff for the past 12 years. I am the past-President of the Arizona Sheriffs Association, Chair of the National Sheriffs Association Border Security, the Executive Board for Western States Sheriffs and past leadership positions with the Southwest Border Sheriffs.

All these associations share 3-Objectives:

Public Safety, National Security and Humanitarian.

In my submitted brief, I have shared with you all an overview of Cochise County and the history of our border. I have personally experienced the good, the bad and the ugly of being a border county. My office has always addressed border-related crimes, smuggling of both illicit drugs, humans, weapons and cash by our Transnational Organizations i.e. Criminal Cartels.

I am proud of our relationships with all our law enforcement partners that serve our communities.

To begin, I want to “Thank” our Customs & Border Patrol Officers and Agents who have worked tirelessly and diligently to protect this great nation. I want to “Thank” our Governors; Ducey and Hobbs and our State Congressional Members for all their support. The men and women of the Cochise County Sheriff’s Office for their dedication and commitment in keeping our communities safe. To all my fellow Sheriffs that stand united for the Rule of Law in the protection of their communities. And, finally, I want to “Thank” my citizens for their patience and support in a time of crisis and disarray.

To best understand my presentation is to understand where we were over 3 years ago. My county was one on the safest border counties based on our collective governmental efforts, prioritization, messaging and yes, enforcement efforts supported by the Rule of Law.

The direct impact to my county/office:

My citizens and law enforcement address mostly Got-Aways “Fight & Flight” in my County versus those giving up.

100% Camouflaged migrants being illegally smuggled by the Cartels, price tag per UDA begins at \$7000 and up.

These smugglers include juveniles being recruited via social media by the Criminal Cartels.

Border Related Booking (Detention) Costs over the last 24 months is \$9.4 million, absorbed by my local and state taxpayers.

Border-related Crime at an all-time high:

Death/Murder investigations, Illicit Drug Poisonings, Aggravated acts against my citizens, Failure to Yields, Search and Rescue/Recovery and yes, assaults against law enforcement officials.

My deputies/law enforcement continue to be placed in life-threatening scenarios as the Cartels shows no regard for my citizens and/or those that wear a badge.

Agents, Troopers, Deputies and Officers are addressing dangerous scenarios/criminals as a direct result of an “Open Border” exploited by these criminal cartels for Violence, Fear and Greed.

Cochise County Sheriff’s Office Detention Bookings related to Border:

In calendar years 2022/2023:

- 2884 Suspects booked into my jail for border-related crimes.
- 566 Smugglers (state law violation)
- 414 Failure to Yields
- 154 Non-Citizens
- \$9.4 Million Cost to local/state

Fentanyl continues to poison/kill Americans at an alarming rate leaving families and communities devastated. Arizona efforts by law enforcement are remarkable, but the War on Drugs must be a priority topic and not deserted by political rhetoric. Arizona fentanyl seizures accounts for 51% of

all the fentanyl seized in the country. In federal fiscal year 2022 Arizona seized over 60 million Fentanyl pills. The 4-Arizona border counties seized 35 million Fentanyl pills with an anticipated increase for 2023 Federal fiscal year.

In closing, my fellow Sheriffs and I have tried to partner with this administration to include the President of the United States with high hopes to share a **Collective Message, Collective Action Plan, Support the Rule of Law, Prioritize our southern border and provide updates reference Community Impacts and Concerns with little to no success.**

By allowing our border security mission and immigration laws to be discretionary, these Criminal Cartels continue to be the true winners, their exploitation of mankind is simply “Modern Day Slavery”; allowing thousands of pounds of illicit drugs into our country that continue to erode the core-values of families, schools and subsequently killing Americans on an average of 290 every day is completely unacceptable at any level. Experiencing migrant deaths without a reasonable process while members of our U.S. Congress and this Administration intentionally avoids reality is gross negligence.

Our voice of reason has been buried during what I call an “Intellectual Avoidance” by this Administration and yes, members of U.S. Congress. Communities have been neglected and abandoned relying on our own local and state resources to address a border that is in crisis mode.

Our southern border, against all public well-designed statements out of Washington D.C. is in the worst shape I have ever seen it. When one looks at Public Safety, National Security, and Humanitarian, our southern border is the largest crime scene in the country.

The morale of agents is extremely low, and the collective frustration is very high amongst law enforcement at all levels and most important, our citizens.

I am a true believer that Customs and Border Patrol are the experts of Border Security while Sheriffs and Police Chiefs are the experts of community, together, this is a Recipe of Success for all communities!

I will leave you with this final statement, we all serve the priorities of Americans based on our shared Oaths of Office to keep them Safe, enhance their Quality of Life and Support the Rule of Law absent political affiliation or the concern of reelection; I ask each one of you to reflect on this statement as you make your next decision to vote.

Once again, I thank this committee for the invite and opportunity and now, stand ready to answer any questions by members.

Before I begin, I wish to thank you for the gift of your time. I want to thank you for allowing me to share my beautiful daughter's story. As painful as this is for me to do, I wish to spare as many parents the unfathomable pain and debilitating grief I carry every single day. My daughter left this Earth 967 days ago. Today would have been her 29th birthday.

In the next five minutes you will see many beautiful photos of Ashley. Photos are all my family and I have left of her. That is not true I guess we do have a small urn with some of her ashes and we do have our memories.

In the same five minutes that I get to share her story, someone else's loved one in the United States will die from Fentanyl. Over the next 24 hours 190 loved ones will die. Today, in my state. The beautiful state of Arizona alone 5 people will lose their lives to this weapon of mass destruction.

While you see her beautiful smile and almond shaped eyes scroll across the screen, more often than not I remember her differently. Every time I close my eyes. I see all of the tubes. When it is quiet, I hear all of the machines working to keep her alive. You see, my husband and I sat with her for 86 hours in the ICU. We were begging God for her to just come back to us. Pleading. Bargaining.

Over the last 32 months, Ashley did not celebrate her beautiful son's 5th, 6th or 7th birthday. She did not watch him graduate from Kindergarten. She did not celebrate the 4th of July's, Thanksgivings, Christmas' New Year's days. She did her birthdays because she will forever be 26 years old.

The only reason for her absence is she died of Fentanyl poisoning on May 26, 2021. She spent over 30 minutes on the floor of her bathroom between the commode and the bathtub. She lay waiting for her "friends" to clean up her home before calling 911 requesting paramedics. The Good Samaritan Act did not save her.

Her murderer, a convicted, repeat drug distribution offender, a 44 year old career drug dealer/trafficker calculated the value of Ashley's life to equate to a mere \$40. This dealer has 14 prior convictions for drug sales. "Dawn the dealer" even went so far as warning Ashley of the possibility of her death. These facts are clearly documented in Ashley's phone. That phone was surrendered to the honorable officers of PANT because a search warrant was issued.

As Ashley laid in the ICU at YRMC in Prescott her Father and I prayed at her bedside for her to just breathe. You see, Ashley never took another breath on her own. At her bedside, her father and I were faced with the unbearable decision to discontinue all mechanical life saving measures after 86 grueling hours of begging and pleading she just survive this poisoning. That she just breathed.

Instead one half of ONE PILL that contained 5 mg of Fentanyl killed her.

Her dealer cannot be prosecuted for Ashley's death. Nor can she even be charged. Ashley's son, Her father and I are not even considered victims of "Dawn the dealer's" actions. We do not even have the ability to provide a victim impact statement in Ashley's traffickers case. The evidence is clear in Ashley's phone. Toxicology report states 5mg of Fentanyl. Nothing can be done. She knowingly sold poison to our daughter which caused her death. Yet she will not be charged.

Before you decide how you feel about this legislation and our fight to raise awareness about Fentanyl and drugs in general I wish to remind you no family is immune from being touched by Fentanyl. Fentanyl is poison. My fight to pursue and see drug dealers prosecuted, poison peddlers in prison and the murders for quick money will only end when I take my last breath.

I do not wish to bore you with statistics except for the following:

In the United States, every 5 minutes of every day of the week, someone dies from OVERDOSE/POISONING. Yes, you read that correctly. That is something I never wanted to know. Please take a moment and thank God right now, if your family has not been touched or changed by addiction, or death because of addiction, or death from fentanyl/opioid poisoning. All street drugs are potentially laced with fentanyl these days.

So by the time my testimony is over, someone will have died from an opioid overdose/poisoning. Maybe someone you know. Someone's child. Someone's Mother. Someone's spouse. Someone's parents. Someone's friend. Someone's aunt/uncle. Let that sink in. Ashley Dunn was my "someone". She will not die in vain.

Ashley had brown hair and beautiful almond shaped eyes. Ashley, with One smile would steal your heart. Ashley had a kind heart and gentle soul. Ashley had a personality that would light up every room. She paid the ultimate price by losing her life because of ONE pill.

Ashley was a daughter and a granddaughter. She was a sister and an Aunt. She was a wife and a Mother. She was a cousin. She was a friend and animal lover. She was an artist. She was a painter.

So the paradigm needs to change. Public awareness needs to change.

My hope is this email humbles you and your judgement of who might take one pill. The people dying from fentanyl are high school students, first time users, recreational users and long time addicts. These people come from all walks of life.

Fentanyl doesn't discriminate. I will forever advocate for each and every person that dies from fentanyl overdose/poisoning because those people deserved every bit of space on this earth as we do. Every bit of love and peace and opportunity. Survival from overdose is possible but not for my Ashley. My Ashley has died.

I understand that the Mission of Department of Homeland Security is to secure our nations air, land, sea and borders to prevent illegal activity while facilitating lawful travel and trade. In my humble opinion, Mr Mayorkas, is partially responsible for my daughters death. His wide open

border policy allows massive quantities of poisonous fentanyl into our country. Arizona is the fentanyl SUPERhighway into the United States. I personally feel Mr. Mayorkas is guilty of aiding and abetting the enemy who uses 10 million illegal border crossings since February 2021 to supply Fentanyl , THE WEAPON of Mass destruction that has killed over 100, 000 Americans on our soil for 2 years in a row. This is an invasion, a weapon of mass destruction, and unimaginable death and damage to our country and facilitated by Mr. Mayorkas. His participation in all of this, what I believe is a war is clearly intentional support of the enemy, which disqualifies him from his position. Our country deserves a secure border. We need to close the Fentanyl super highway. Thank you.

Testimony of Tammy Nobles
Committee on Homeland Security
Voices for the Victims: The Heartbreaking Reality of the Mayorkas Border Crisis
January 18th, 2024

Good morning and thank you for having me here today. My name is Tammy Nobles. I am the mother of Kayla Hamilton.

July 24th, 2002, was one of the best days of my life. I gave birth to a beautiful baby girl and named her Kayla Marie. She loved to smile and laugh. She always kept her friends close and never forgot anyone. She was kind, caring, thoughtful and funny. She loved life and God. She showed the world that being yourself was ok and you didn't have to follow everyone else. But sadly, on July 27th, 2022, I received the worst news that a parent doesn't want to hear that my newly 20-year-old daughter Kayla Hamilton was murdered in her own room and left on the floor like trash.

The illegal MS-13 known gang member brutally raped and murdered my daughter by strangling her with a cord and robbed her of \$6.00. During the attack Kayla called her boyfriend for help but went to voicemail. The voicemail of the murderer strangling Kayla was 2 minutes and 30 seconds long.

DHS employees failed to visually inspect the assailant by lifting his shirt to check for gang related tattoos. Had DHS employees performed a visual inspection of the assailant's body, they would have seen MS-13 gang related tattoos on his body, disqualifying him from entering the U.S. DHS employees failed to make a simple phone call to the El Salvador government to verify if assailant was on an MS-13 gang affiliation list. Had they done so, El Salvador government officials would have confirmed that the assailant was a known MS-13 gang member with a prior criminal history. DHS supervisors had failed to train and supervise DHS employees to properly screen minors attempting to enter US soil from El Salvador.

The operational neglect committed by DHS carried over into DHHS whose operational neglect further sealed my daughter's fate. DHHS's operational neglect included its employees violating clearly articulated protocol requiring a minor to be placed with a "verified" relative before entering the US. DHHS employees neglected and recklessly failed to verify a legitimate family member of the assailant or sponsor before allowing him to enter U.S. soil. There were clear inconsistencies in the DHS and DHHS records regarding the identity of the relative to whom the assailant was released. Ultimately, DHHS's failures allowed the MS-13 gang member, as a minor, to rent a room in a trailer park from another individual who was also an illegal immigrant. There was also a lack of transparency by DHS and DHHS, including but not limited to DHHS failure to provide House of Representative Chairman Jim Jordan a copy of its audit report.

Let's take a moment and think about how Kayla felt that day. How scared she must have been that day knowing that she was dying. And if she was going to see her mommy again, her baby sister, her brother or her cat Oreo. Kayla fought for her life that day with all that she had and in the end she lost to an individual that wasn't even supposed to be allowed in the country.

For me this not a political issue this a safety issue for everyone living in the United States. This could have been anyone's daughter. I don't want any other parent to live the nightmare that I am living. I am her voice now and I am going to fight with everything I have to get her story told and bring awareness of the issue at the border.

If we had stricter border policies my daughter would still be alive today. Nothing will bring my daughter back nor fix the pain of not having her here, but I want to prevent this from happening to someone else's child. This isn't about immigration this is about protecting everyone in the United States.

**Statement of
Deborah N. Pearlstein**

**Prepared Testimony to the
Committee on Homeland Security
United States House of Representatives
January 18, 2024**

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Introduction

Chairman Green, Ranking Member Thompson, members of the Committee, thank you for the opportunity to participate in the Committee’s consideration of whether constitutional grounds exist to impeach Alejandro Mayorkas, Secretary of the Department of Homeland Security.

Having been a Professor of Constitutional Law for more than a decade, and a director of two different academic centers focused on the study of constitutional democracy, I have repeatedly had occasion to study, write, and teach about the unique role impeachment plays in our system of government. My expertise is in the field of Constitutional Law, not in immigration policy as such, and my testimony is thus limited to questions of constitutional authority as relevant here. This testimony is offered in my personal capacity and should not be understood to reflect the views of my university employer or of any other institution with which I am affiliated.

In this testimony, I make three points. First, impeachment is a narrow remedy for specific kind of misconduct, limited by the Constitution to the most serious class of offenses against our constitutional system of government: “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. Const., Art. II, sec. 4. The apparent allegations against Secretary Mayorkas described in various Committee Majority Reports I have reviewed do not appear to establish grounds for any of those offenses within the meaning of Article II. Second, impeachment is not and has never been an instrument capable of effecting policy change; impeachment of Secretary Mayorkas in particular can have no impact on the Administration’s exercise of immigration enforcement discretion, a power the Supreme Court has repeatedly

recognized is vested by the Constitution in the Executive Branch. Finally, no branch of government has more power under our Constitution to address matters of border security than Congress. While that authority has gone largely untapped in recent decades, Congress remains the sole branch of government constitutionally empowered to, for example, increase expenditures to bolster counter-fentanyl efforts at the border; accelerate the processing of foreign nationals seeking asylum; or define and establish criminal offenses against the United States. U.S. Const., Art. I, sec. 8. Although impeachment is likewise among the many powers afforded by the Constitution to Congress, there appears to be no constitutional basis for pursuing it here.

I. The Impeachment Power is Specific and Limited

While the Framers of the U.S. Constitution were convinced that impeachment would have to be retained from the British regime they had just overthrown as a remedy against the most egregious offenses of public officers, they were determined to limit the scope of the power to ensure it remained consistent with the new design of our constitutional democracy.¹ Central to our system is the principle of separation of powers: each branch of government remains independent, with none empowered fully to control the members of the others. The Framers believed that it was through such interbranch competition for power, through “[a]mbition [being] made to counteract ambition,” as Madison famously put it, that no one branch of government would be able to assert powers that threatened the democratic nature of government.²

¹ Multiple distinguished scholars and jurists have written influential volumes describing the impeachment power over the years; all reflect this basic historical understanding. *See, e.g.*, MICHAEL J. GERHARDT, IMPEACHMENT: A GUIDE FOR THE ENGAGED CITIZEN (2024); CHARLES L. BLACK, JR. AND PHILIP BOBBIT, IMPEACHMENT: A HANDBOOK 26-28 (2d ed. 2018); LAURENCE TRIBE AND JOSHUA MATZ, TO END A PRESIDENCY: THE POWER OF IMPEACHMENT 39 (2018).

² THE FEDERALIST NO. 51, at 321-22 (James Madison) (Clinton Rossiter ed., 1961).

Because impeachment was a potentially dangerous exception to that overriding principle, the Framers thus significantly narrowed the scope of the impeachment power as it had existed under the law of the regime they had just overthrown.³ Under our Constitution, for example, the consequences of impeachment were limited to disqualification from office; no longer would it carry the other potentially harsh punishments that made it more of a penal sanction under the British King. Likewise, rather than requiring only a simple majority of each chamber of parliament to impeach as had the British, under the U.S. Constitution, no person could be convicted following impeachment without the consent of two-thirds of the Senate. U.S. Const., Art. I, sec. 3. Above all, the Framers significantly narrowed the grounds for which officials could be impeached to “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. Const., Art. II, sec. 4. Then, as now, treason and bribery were recognized as the most serious offenses against a system of government in which the American people were asked to entrust elected leaders with acting in their interest. Treason was a betrayal of the interests of the American people in favor of the interests of a foreign enemy. U.S. Const., Art. III, sec. 3. Bribery involved a public official placing his own interests in personal power or enrichment over the interests of the public.⁴ By labeling the residual category “*other* high crimes and Misdemeanors,” the Framers signaled they meant to include only those offenses that posed a *similarly* severe threat not to the accomplishment of particular political or policy agendas, but to the very system of government that depends on officials acting in good faith on behalf of the people who placed them in office.⁵ Policy differences could be addressed through elections. Impeachment was to be – and largely has been – a last-ditch mechanism to address offenses

³ See, e.g., GERHARDT, *supra* note 1.

⁴ See, e.g., TRIBE AND MATZ, *supra* note 1, at 33.

⁵ See, e.g., BLACK AND BOBBIT, *supra* note 1, at 33-35.

against constitutional democracy that could not be adequately addressed through ordinary channels of government.

Although the incomplete records of the Constitutional Convention only occasionally shed much light on constitutional meaning, here, those records are clear on what impeachment is not: “maladministration,” including malpractice, mismanagement, incompetence, or even unpopular policies. While Virginia delegate to the Convention George Mason had initially suggested limiting impeachable offenses to “treason, bribery or maladministration,”⁶ Madison rejected the last term out of just the separation-of-powers concerns noted above. As Madison put it: “So vague a term will be equivalent to tenure during the pleasure of the Senate.”⁷ It would effectively give Congress a degree of power over the Executive equivalent to that in the parliamentary system the Framers rejected – tying the Executive to the policy preferences of the legislature, rather than maintaining it as the independent, co-equal branch the Framers envisioned. Mason soon agreed to delete “maladministration” in favor of “other high Crimes and Misdemeanors,” the language that remains today.⁸ The legislature should not be able to disable the Executive function, the Framers were convinced, solely because it objects to the administration’s performance in office or disagrees with its policies – even if, and indeed especially when, the White House is controlled by one party and Congress another.⁹

To the extent it is possible to identify from the various impeachment resolutions and reports made public thus far by this Committee’s Majority, the Majority’s allegations against Secretary Mayorkas relate to neither treason nor bribery, but to the suggestion that the Secretary

⁶ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, pp. 550-52 (Max Farrand, ed. 1911).

⁷ *Id.*

⁸ *Id.*

⁹ See, e.g., Various Law Professors, Letter to Background and History of Impeachment: Hearing Before the Subcomm. on the Const. of the House Comm. on the Judiciary, 105th Cong. Rec. 230 (1998) (accessible at https://www.salon.com/1998/11/06/newsf_2/).

has either been derelict in or neglectful of his duties, or that he has in some respect exceeded or abused his lawful authority.¹⁰ On the former claim, there have only been two occasions in U.S. history in which officials were impeached based on allegations related to the failure to carry out their official role: U.S. District Judge John Pickering in 1804, and U.S. District Judge Mark Delahay in 1873.¹¹ In both of those cases, the charges alleged that the officials were either chronically inebriated or mentally incapacitated, or both. In short, neither involved a case in which Congress was simply dissatisfied with the official's performance in office; both involved officials who were at base physically or mentally unable to carry out their duties. No remotely comparable evidence of Secretary Mayorkas' incapacity has been presented here.

The subject of the Majority's other set of allegations, related to the lawful authority of the Secretary of Homeland Security over immigration affairs, has been the subject of extensive litigation in the courts in recent years. As discussed in greater detail below, the courts have found Secretary Mayorkas to have acted within the scope of his constitutional and statutory authority in cases that have categorically rejected many of the precise allegations on which Majority Reports and witnesses appear to rely on in support of their claims to the contrary here. To the extent any such disputes are still pending in the courts, they stand as evidence of why impeachment should be understood as a constitutionally unavailable remedy in this case. Far from a circumstance involving an exercise of power incapable of being addressed by ordinary channels of government in our constitutional democracy, *see supra*, page 5, the grounds for

¹⁰ See, e.g., Committee on Homeland Security Majority Report, DHS Secretary Alejandro Mayorkas' Dereliction of Duty, July 19, 2023.

¹¹ See EMILY FIELD VAN TASSEL, WHY JUDGES RESIGN: INFLUENCES ON FEDERAL JUDICIAL SERVICE, 1789-1992, FEDERAL JUDICIAL CENTER (1993), available at <https://www.fjc.gov/sites/default/files/2012/judgeres.pdf>. Pickering was convicted in the Senate; Delahay resigned before his trial. *Id.*

impeachment here involve the same claims that have been, and in some cases still are, the subject of ordinary dispute resolution in the independent courts.¹²

II. Impeachment Can Have No Impact on Executive Enforcement Discretion

There is only a single case in all of U.S. history in which a federal official other than a judge or a President has been subject to impeachment. Secretary of War William Belknap was impeached almost 150 years ago for allegations that he received financial “kickbacks” from the operation of a trading post controlled by the U.S. military on Indian lands.¹³ The allegations against Secretary Belknap – charged with “basely prostituting his high office to his lust for private gain” – manifestly had nothing to do with his efforts to implement the policies of the presidential administration of which he was a part.¹⁴ Indeed, Belknap’s case presented, in essence, the opposite situation than is presented here – in which Secretary Mayorkas is accused, at base, of *carrying out* immigration policies that have been embraced by the presidential administration in which he serves and has been defended by it in court. In this case, even if Secretary Mayorkas is impeached and removed from office, the President retains the constitutional authority simply to task the Secretary’s successor with pursuing exactly the same set of policies. This reality is almost certainly a central reason why Congress has only once in the history of the United States believed it was worth legislators’ time and taxpayers’ substantial

¹² See, e.g., *M.A. v. Mayorkas*, 2023 WL 5321924 (D.D.C. July 6, 2023).

¹³ U.S. Senate, Impeachment Trial of Secretary of War William Belknap, 1876, available <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-belknap.htm>. Belknap resigned shortly before he was impeached and was later acquitted of these charges in the Senate. *Id.*

¹⁴ Trial of William W. Belknap, 4 CONG. REC. 2 (Apr. 4, 1876). Historians report that President Grant on learning of the scandal personally wrote Belknap’s letter of resignation and referred the case to his Department of Justice for investigation. See JEAN EDWARD SMITH, GRANT 595 (2001); WILLIAM MCFEELY, GRANT: A BIOGRAPHY 433-44 (1981).

expense to pursue the impeachment of a cabinet official notwithstanding the certainty that the official's removal will have no effect on administration policy.¹⁵

To the extent the Majority Reports' allegations against the Secretary are related to those policies, in particular the suggestion that Secretary Mayorkas somehow exceeded the scope of his lawful authority to set priorities for the enforcement of U.S. immigration law, that claim has been rejected most recently by an overwhelming, bipartisan majority of the U.S. Supreme Court – for reasons that came as little surprise to experts in constitutional law. Article II of the Constitution assigns the “executive Power” to the President and provides that the President “shall take Care that the Laws be faithfully executed.” U.S. Const., Art. II, secs. 1, 3. As the Court has made clear on multiple occasions, this power includes the authority to decide “how to prioritize and how aggressively to pursue legal actions against defendants who violate the [criminal] law.”¹⁶ As the Court has equally made clear, most recently in an 8-1 ruling just last year, precisely the same principle applies with even greater force when it comes to the enforcement of immigration laws, a context in which “the Executive’s enforcement discretion implicates not only ‘normal domestic law enforcement priorities’ but also ‘foreign-policy objectives.’”¹⁷

¹⁵ There can be little question that impeachment proceedings drain legislative resources that might be devoted to other matters. For example, during one three-year period, the House pursued three judicial impeachment proceedings that together involved seventeen days of hearings; in two of those, the time from commencement of the investigation until approval of final articles of impeachment exceeded a year. Report of the National Commission on Judicial Discipline and Removal, 152 F.R.D. 265 (1993), available https://judicial-discipline-reform.org/judicial_complaints/1993_Report_Removal.pdf; see Emily Field van Tassel, Why Judges Resign: Influences on Federal Judicial Service, 1789-1992, Federal Judicial Center (1993), available <https://www.fjc.gov/sites/default/files/2012/judgeres.pdf>.

¹⁶ *TransUnion LLC v. Ramirez*, 594 U.S. ___, (2021); see also *United States v. Nixon*, 418 U.S. 683, 693 (1974) (“the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”); *Printz v. United States*, 521 U.S. 898, 922–923 (1997) (Congress cannot constitutionally transfer power to execute federal law to state officials); *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (decisions about enforcement of “the Nation’s criminal laws” lie within the “special province of the Executive”).

¹⁷ *United States v. Texas*, 599 U.S. 670 (2023) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490–491 (1999)).

It was in the very same case, *United States v. Texas*, that the Court noted in rejecting a state challenge to Biden Administration immigration enforcement policies, that the Department of Homeland Security was in key respects exercising discretion in this field in just the same way every past recent administration has during the decades-long period in which Congress has essentially absented itself from the task of immigration policy reform. As Justice Kavanaugh explained for the Court’s majority: “[T]he Executive Branch does not possess the resources necessary to arrest or remove all of the noncitizens covered by [current federal immigration law]. That reality is not an anomaly—it is a constant. For the last 27 years since [these laws] were enacted in their current form, all five Presidential administrations have determined that resource constraints necessitated prioritization in making immigration arrests.”¹⁸ It is precisely that discretion Secretary Mayorkas has exercised during his tenure. Far from amounting to an “abuse” of his powers or “neglect” of his duties, he is carrying out those duties exactly as the Constitution, the Supreme Court, and every one of the past five administrations have contemplated he would.

III. Congress Has Sweeping Constitutional Power to Remedy Border Security

The first and most important remedy the Constitution provides to address perceived failings of the President and the Executive Branch remains the separation of powers – including Congress’ constitutional authority to effect policy change itself. When it comes to immigration in particular, the Supreme Court has long described congressional power in the field as “plenary.”¹⁹ Article I of the Constitution grants Congress a range of both specific authorities – to

¹⁸ *United States v. Texas*, 599 U.S. 670; *see also* *Arizona v. United States*, 567 U.S. 387, 396 (2012) (“Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all”).

¹⁹ *See, e.g., Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (sustaining Congress’s ‘plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden’).

regulate foreign commerce and to set the terms and conditions by which a foreign national may become a U.S. citizen – and sweeping authorities to “provide for the common Defence and general Welfare of the United States,” and to “make all Laws which shall be necessary and proper” for carrying out its duties. U.S. Const., Art. I, sec. 8. And Congress of course may enact legislation delegating some of its own authority to the Executive, tasking it with carrying out statutory duties as interpreted by the courts. Of at least as much significance is the Constitution’s parallel requirement in the Article I, Section 9 Appropriations Clause, providing: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” As reflected in these and other express provisions of the Constitution, Congress’ “power of the purse” is exclusive and is among our democracy’s most fundamental checks on the exercise of Executive power.²⁰

Despite these vast reserves of constitutional authority, Congress has at times allowed its own powers to address pressing national problems to go unused, particularly as it has become increasingly hamstrung by partisan polarization.²¹ As an important task force of the American Political Science Association began documenting a decade ago, nowhere has this effect been more apparent than in Congress’ failure to develop national policy on immigration.²² Informed by the findings of the bipartisan Commission on Immigration Reform, and introduced by bipartisan members of both chambers, the last significant piece of comprehensive immigration legislation passed Congress in 1986. Since then, Congress has established just one other

²⁰ See, e.g., THE FEDERALIST NO. 58, at 297-98 (James Madison) (Ian Shapiro ed., 2009) (describing Congress’ power of the purse “the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure”).

²¹ See, e.g., NOLAN MCCARTY, POLARIZATION (2019).

²² Michael Barber and Nolan McCarty, *Causes and Consequences of Polarization*, in NEGOTIATING AGREEMENT IN POLITICS: TASK FORCE REPORT OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION 39 (Mansbridge & Martin, eds. 2013) (citing The Immigration Reform and Control Act, Pub. L. No. 99–603 (1986)).

bipartisan commission of experts on immigration to examine the problems independently, and based on research and analysis, develop recommendations for reform.²³ While there have been multiple efforts to enact immigration reform legislation since then, including significant bills in 2005, 2006, 2010, and 2013 that garnered bipartisan sponsorship, these bills ultimately foundered in the face of objections from non-moderates in either the House or Senate chamber.²⁴

Without taking a position on the wisdom of any particular policy initiative now under consideration, it is apparent that multiple pieces of legislation with bipartisan sponsorship are today pending in the House,²⁵ and multiple press reports indicate that very active negotiations seeking bipartisan agreement on border security matters are likewise now underway in the Senate.²⁶ While use of the impeachment power here will, for the reasons noted above, address none of the serious policy concerns the Majority Reports raise, use of the legislative power to enact relevant reforms might. The Framers of the Constitution well understood the acute difficulty of embracing compromise with their domestic political opponents. But for the purpose of actually addressing the needs and concerns of the American people, this process remains the most powerful tool the Constitution provides.

²³ The Jordan Commission was established in 1990 and concluded its work by 1997. Commission on Legal Immigration Reform, P.L. 101-649, 104 Stat. 5001, November 29, 1990.

²⁴ *See id.*, at 39-40; *see also* Carmines & Folwer, *The Temptation of Executive Authority*, 24 IND. J. GLOBAL LEGAL STUD. 369 (2017) (describing various legislative initiatives).

²⁵ *See, e.g.*, H.R. 5856 – The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2023 (introduced Sept. 29, 2023).

²⁶ *See, e.g.*, Julia Ainsley, et al., “Negotiators Consider Expanding Expedited Deportations as Border Talks Near ‘Finish Line,’” NBCNEWS, Jan. 13, 2024, available <https://www.nbcnews.com/politics/immigration/negotiators-consider-expanding-expedited-deportations-border-talks-fin-rcna133571>.