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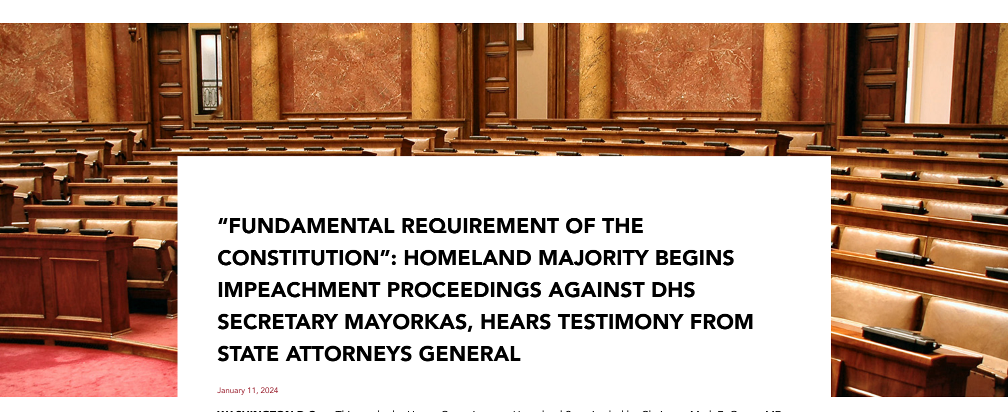


"FUNDAMENTAL REQUIREMENT OF THE CONSTITUTION": HOMELAND MAJORITY BEGINS IMPEACHMENT PROCEEDINGS AGAINST DHS SECRETARY MAYORKAS, HEARS TESTIMONY FROM STATE ATTORNEYS GENERAL

January 11, 2024

WASHINGTON D.C. — This week, the House Committee on Homeland Security, led by Chairman Mark E. Green, MD (R-TN), held its first hearing initiating impeachment proceedings against Department of Homeland Security (DHS) Secretary Alejandro Mayorkas. The hearing evaluated the impacts of the worst border crisis in American history not just on border states, but states throughout the heartland, and how Secretary Mayorkas' refusal to enforce the immigration laws passed by Congress and interpreted by the federal Judiciary is responsible for sparking and perpetuating this crisis.

These proceedings follow the Committee's **nearly year-long investigation** into the causes, costs, and consequences of the unprecedented crisis at America's borders, and how Secretary Mayorkas' actions and decisions are the foundation of the crisis. Witness testimony was provided by Austin Knudsen, Montana attorney general; Gentner Drummond, Oklahoma attorney general; Andrew Bailey, Missouri attorney general; and Frank Bowman, professor emeritus of law at the University of Missouri School of Law. Watch the full hearing **here**. Read Chairman Green's op-ed on the initiation of these proceedings **here**.

In the hearing, the attorneys general outlined the impacts of the devastating homeland security crisis in the states they serve, which are caused by Mayorkas' failure to uphold his oath of office and his abuse of authority, which has resulted in a historic national security, humanitarian, and public-safety catastrophe at our nation's borders. Members questioned the witnesses on the ways in which Secretary Mayorkas has repeatedly disregarded laws passed by Congress, including requirements to detain and remove those who enter the country illegally, and clear limitations on paroling inadmissible aliens into the country. Members and witnesses highlighted that the secretary has also defied federal court orders and repeatedly misled both the American people and Congress.

In their written testimony, each attorneys general detailed how Secretary Mayorkas has failed in his duties, and how that impacts their state:

Knudsen:

"I've heard some claim that this is merely a resource issue—that if Congress would simply appropriate funds for more border patrol agents or immigration judges, we could solve the border crisis. As a prosecutor, I'm always in favor of giving law enforcement the tools they need to succeed. But the reality is that no amount of funding or resources will change the status quo as long as Secretary Mayorkas is in charge. It's not negligence and it's not incompetence. It's ideology and intransigence. By willfully and intentionally failing to enforce our nation's immigration laws, Secretary Mayorkas has violated his oath of office and breached the trust placed in him by the American people…As a prosecutor, I can tell you this: There's an obvious difference between exercising discretion and complete abdication. The courts may not be able to hold Secretary Mayorkas accountable for violating his oath of office, but this body can and should. Impeachment is a serious and solemn process. It isn't to be taken lightly or used to settle mere policy disagreements."

Bailey:

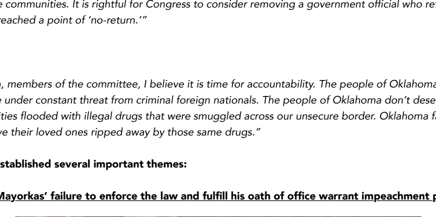
"Secretary Mayorkas swore an oath to faithfully execute the laws of our land, including those intended to protect Americans. Congress has even given DHS ample tools to do its job. But let's be clear: this hearing today is not about resources. It's about Secretary Mayorkas' refusal to use the resources given to him in good faith. That is important. So often, we are told that Congress has the power of the purse and can use it to check failures by the Executive Branch. But the power of the purse means little if executive officials are going to ignore the appropriations laws this body creates. In Missouri, we remove officials who do not do their jobs because we have seen firsthand the catastrophic toll it takes on entire communities. It is rightful for Congress to consider removing a government official who refuses to do his job. We have reached a point of 'no-return.'"

Drummond:

"Mr. Chairman, members of the committee, I believe it is time for accountability. The people of Oklahoma don't deserve to live under constant threat from criminal foreign nationals. The people of Oklahoma don't deserve to have their communities flooded with illegal drugs that were smuggled across our unsecure border. Oklahoma families don't deserve to have their loved ones ripped away by those same drugs."

The hearing established several important themes:

1. Secretary Mayorkas' failure to enforce the law and fulfill his oath of office warrant impeachment proceedings



In his first round of questioning, Chairman Green asked the attorneys general whether Secretary Mayorkas has refused to enforce the laws passed by Congress and upheld his oath of office:

"Do you believe Secretary Mayorkas has failed to enforce or has subverted laws passed by Congress?"

Knudsen, Drummond, and Bailey answered in the affirmative.

Chairman Green then asked:

"Do you believe Secretary Mayorkas has defied court orders issued by the federal courts?"

Knudsen, Drummond, and Bailey answered in the affirmative.

Chairman Green continued:

"Attorney General Merrick Garland acknowledged in testimony to the United States Senate that drug cartels were exploiting the current Mayorkas policies in order to traffic humans and harmful drugs into the United States. Secretary Mayorkas, on March 28, 2023, stated that he was unaware of this. Now we, of course, informed him. Now, armed with this knowledge, Mayorkas, continues the same policies, in fact, doubling down with newer policies that even exacerbate the same horrible outcomes. Do you think Secretary Mayorkas is doing this with full knowledge that these cartels are exploiting his policies?"

Knudsen answered:

"There is no doubt there is ample evidence out there that human trafficking and drug trafficking are increasing at an exponential level at the southern border, yes."

Drummond answered:

"Based on my testimony today and the facts that are well known by the secretary, there's a porous border that is feeding, constantly, illegal actors in Oklahoma."

Bailey answered:

"Yes, his unlawful behavior as it relates to the circumvention rule and subversion of the parole process, exacerbate and encourage the cartels and cede control of the border to the cartels in ways unimaginable prior to these policy positions."

In his closing statement, Chairman Green addressed arguments against the proceedings and those downplaying the historic crisis:

"When we embarked on this investigation almost a year ago, we knew there would be roadblocks and it would be a formidable challenge. No matter how hard this process gets, Homeland Republicans will not back down. The American people deserve answers, accountability, and ultimately an end to the border crisis…The Committee on Homeland Security has made every effort to ensure that this investigation was thorough. We do not take this lightly."

"But let me be clear: No one is impeaching Secretary Mayorkas over policy differences. The impeachable offenses relate to violations of the law. Insisting on enforcing the law as written by Congress is not a policy difference. It is a fundamental requirement of the Constitution."

Subcommittee on Oversight and Accountability Chairman Dan Bishop (R-NC) highlighted the legitimacy of these impeachment proceedings, citing Supreme Court Justice Samuel Alito:

"Last June, two of your colleagues in Texas and in Louisiana had sued Secretary Mayorkas saying that guidelines that he issued to his department blatantly violated commands of Congress in statute to detain any criminal who had committed certain crimes and was released from state custody…they required to detain such persons until they were deported. And persons subject to a final order of deportation required to be detained. Contrary to that order, Mayorkas dismantled the detainment process completely. He said that was going to be subject to discretion, only in cases where the Department or he deems it to imperil our national security or security from additional crime would it be done. Attorneys general sued. And here's what the Supreme Court said: 'You don't have standing. We can't hear from you; we can't settle this.' Here is what Alito said in dissent: 'To put the point simply, Congress enacted a law that requires the apprehension in detention of certain illegal aliens whose release it thought would endanger public safety. The secretary of DHS does not agree with that categorical requirement. He prefers a more flexible policy and the Court's answer today is that the executive policy choice prevails unless Congress by withholding funds, refusing to confirm presidential nominees, threatening impeachment and removal etc., can win a test of strength.' In other words, Alito, in defense, went on and said, 'I don't think this is a wise decision for us to make, but that is the decision the majority made. And if you want the law to be followed, you're going to have to impeach somebody.' You're going to have to, as Justice Alito said, 'the Congress is going to have to go to war with the executive.' Mr. Knudsen, what about that…Isn't that what the Congress is put to, to decide whether to do our duty?"

Knudsen responded:

"Yes, I absolutely agree not only with Justice Alito's dissent, but I would point out also in that case, that the majority also pointed out, to your point, that Congress possesses an array of tools to analyze, influence those policies and those are political checks for the political process. That's exactly what you're dealing with here."

Bishop concluded:

"So much of this isn't about even policy discretion….It is about square violations of law. And they cannot be remedied in court. They will either be dealt with by this Congress to vindicate the rule of law, or we will surrender rule of law to a rule of man."

2. Secretary Mayorkas has indeed refused to enforce the law

House Committee on Foreign Affairs Chairman Michael McCaul (R-TX) drew attention to Secretary Mayorkas' refusal to enforce the Immigration and Nationality Act (INA) and the ensuing impacts on the attorney generals' states:

"In my judgment, he's violated that oath. Federal law provides the government detain and remove aliens convicted of crimes and those who are issued removal orders by immigration courts. This is the very issue that my state took up on appeal to the Supreme Court. He has violated this. On day one, he rescinded Remain in Mexico, Migrant Protection Protocols direct cause and effect opening the floodgates. I marked that provision up in my Committee, Foreign Affairs, and it's now part of H.R.2, but he took that power away from his law enforcement officers…The founders believed impeachable offenses included corrupt administration, neglect of duty, and official misconduct—at the Constitutional Convention they said this. Alexander Hamilton asserted abuse or violation of public trust was impeachable…I find this to be a profound violation of public trust. Alexander Hamilton stated in Federalist Paper 65, 'the subjects of impeachment of our nature, which may be denounced political, as they relate chiefly to injuries done immediately to society itself.' What about the injuries done to society that we've seen?"

Knudsen answered:

"I think the most powerful statistic I can give you from my state is our confirmed state crime lab fentanyl overdose death rate. Since 2019, Montana's confirmed fentanyl overdose deaths have increased 1,700 percent. Congressman, I think that is the absolute strongest indicator. We know where these drugs are coming from. It's not a political statement of mine, it's not an opinion of mine to say that one hundred percent of that fentanyl came from the Mexican drug cartels. We know that to be true. We get that from our federal partners in the DEA, we get that from all of our drug task forces, and all the law enforcement agencies that are under my purview."

Drummond answered:

"We have witnessed a mass collusion between Chinese nationals coming through the southern border in concert with Mexican cartels."

Bailey answered:

"Fifteen hundred fentanyl deaths, 43 children dead from accidental poisoning from exposure to fentanyl. $114 million borne by taxpayers and an increase in healthcare costs."

Subcommittee on Counterterrorism, Law Enforcement, and Intelligence Chairman August Pfluger (R-TX) listed just a few of the open-borders policies implemented:

"I really take no pleasure in the significance of this effort. I've wrestled with the appropriate Constitutional response to what has become a complete failure to enforce the law, to adhere to Congressional directors, to secure the homeland, and the failure to secure the homeland has been so significant, so catastrophic, that Congress must use its power to provide accountability. We must be the check and balance against such an extremely egregious breach of public trust, and that's what this is, and if not this effort, then I ask my Democratic colleagues, what effort? Where is your answer to accountability? Where is your Article One authorities to check the executive branch?…Since January 20 of 2021, President Biden terminated the national emergency at the Southwest border. President Biden issued an executive order further entrenching the DACA program. Biden unveiled the U.S. Citizenship Act which would provide amnesty. The administration issued an executive order ending limitations and restrictions on immigration without certain countries associated with terrorism. Then Secretary Mayorkas delivered remarks effectively explaining the border is open for illegal immigration by stating that DHS folks without processing."

Subcommittee on Emergency Management and Technology Chairman Anthony D'Esposito (R-NY) asked the attorneys general about federal enforcement:

"Do you know of law enforcement agencies that have said that they have lacked notification and information and intelligence sharing from federal partners when it comes to migrants?"

Bailey answered:

"The level of cooperation with the federal DEA, the U.S. attorneys' office in Montana has been very high and very excellent. Customs and Border Protection, I might add. We're a northern tier state, but we work with them a lot. But certainly, the message has come down from Secretary Mayorkas and from on high that [they're] going to just flagrantly ignore portions of federal law."

3. Secretary Mayorkas has refused to detain illegal aliens in keeping with federal law

Subcommittee on Cybersecurity and Infrastructure Protection Chairman Andrew Garbarino (R-NY) asked Drummond how the influx across the Southwest border caused by Secretary Mayorkas' lack of enforcement has enabled human and drug trafficking:

"You've described Oklahoma's challenge with the explosion of unlicensed and illicit drug manufacturing in the state from Secretary Mayorkas becoming the leader of Homeland Security. Can you describe more about the challenges that Oklahoma law enforcement faces in confronting this illegal activity."

Drummond replied:

"Let me give you a tangible example. One recent drug bust at an illegal grow operation—our agents were processing those who had committed felonies and detained and those that were simply being trafficked in labor and sex. One of those was identified as an individual on a HSI detainer for illegal entry. He was supposed to be in Flushing, New York. He was supposed to have on an ankle monitor. When we contacted the field representative in HSI, they said to charge him with a felony, and [they] will come pick him up. But he in fact had not committed a felony. Then we were instructed to direct him to turn himself into the nearest HSI field office, and so we did that and let him go. That happens day in and day out across Oklahoma, where we don't have the resources afforded to detain those that we know are illegal in the state committing crimes or are complicit in the committing of crimes."

Garbarino then asked the attorneys general about human trafficking on Mayorkas' watch, to which they replied:

Bailey:

"Missouri now ranks fourth on the list of the states with the highest rates of human trafficking. In 2021, there were 1,100 reported cases, detected cases of human trafficking in the state of Missouri. 327 victims identified."

Knudsen:

"Human trafficking has increased in my state multiple-hundred percent since 2019."

4. Secretary Mayorkas has wantonly abused parole, using it to mass-release individuals into the country

Rep. Laurel Lee (R-FL) highlighted Secretary Mayorkas' use of mass parole in contravention of the law:

"Attorney General Bailey, I'd like to turn your attention specifically to the question of parole authority. On July 26th, 2023, before the House Judiciary Committee, Secretary Mayorkas testified, 'The Department of Homeland Security has used our parole authority consistent with the law and consistent with past practicesof different administrations.' He also claimed that his department is using the parole authority consistently consistent with the law still.In your opinion, is Secretary Mayorkas' implementation of the parole statute lawful, and is his implementation of this policy affecting the security of the United States?"

Bailey answered:

"His policy implementation is unlawful in violation of the plain text of the statute, thereby forcing a lawsuit from several likeminded attorneys general because of the drastic terrible harm that's occurring on the streets in our communities."

5. The brazen inconsistency of those who oppose Secretary Mayorkas' impeachment proceedings

The Framers intended impeachment to be used to address gross misconduct in office that causes serious harm to our country or constitutional order. Subcommittee Chairman Dan Bishop (R-NC) highlighted the inconsistency in the minority witness's own words concerning the standards for impeachment:

"Mr. Bowman, your opinion has changed in just a few years. In your 2019 book…you have this passage: 'No Congress since that time has ever moved fast enough or thought it worthwhile to actually impeach a subordinate executive branch official. Nonetheless, the latent power to do so remains important. Not only is it useful as a signal of legislative displeasure with administration personnel and policy, but the undoubted authority of Congress to impeach subordinate officials carried with the associated powers of the house to investigate potentially impeachable conduct and for the Senate to try the allegations in articles of impeachment.' Frankly, I agree with you more today and not then. That is to say, I don't think pure policy difference is the basis for impeachment—neither is that what is happening here."

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