

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4606**

March 16, 2022

Dear Republican House Colleagues,

While the world's attention has been directed toward Ukraine, the border of the United States is more dangerous, broken, and unsecure than ever. It demands our immediate attention and collective call for the impeachment of the Secretary of the Department of Homeland Security, Alejandro Nicholas Mayorkas.

Attached for your consideration is a memorandum making that case. My team & I distributed a draft last October to my Texas colleagues. It is now updated – including the recent release of both the FY21 ICE report & CBP February numbers – and available to the entire House Republican Conference and public.

The U.S. Senate confirmed Secretary Mayorkas just over one year ago & he subsequently took an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic” and to “well and faithfully discharge the duties of the office.” Yet, following the orders of President Biden or acting on his own – he has embarked on the purposeful abandonment of the laws of the United States and the successful policies of the previous administration to secure our borders and protect our people.

His actions have resulted in the death and endangerment of Americans, damage to property and communities across the border, loss of operational control of our border to dangerous cartels imprisoning thousands of migrants sold into human trafficking, and the fueling of deadly drug poisonings of thousands of Americans.

It is most certainly a “high crime or misdemeanor” for a public officer to purposefully endanger Americans while willfully ignoring one’s oath to enforce our laws. Impeaching Secretary Mayorkas is our duty. We should call for it now – despite Democrat control of the House – and make the case for immediate border security better than any speeches we can give or bills we can introduce.

Sincerely,



Chip Roy  
Member of Congress

Enclosure: Rep. Chip Roy, the Case for Impeachment of Secretary Alejandro Mayorkas  
cc: The Honorable Kevin McCarthy, Minority Leader  
House of Representatives

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4606**

**MEMORANDUM**

**To:** House of Representatives Colleagues  
**From:** Congressman Chip Roy  
**Date:** March 16<sup>th</sup>, 2022  
**Re:** Case for Impeachment of Secretary Mayorkas

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Department of Homeland Security Secretary Alejandro Nicholas Mayorkas (“Mayorkas”) has failed to secure our borders and has endangered Americans in the process, and in so doing, has violated his oath to the Constitution, failing to defend it and failing to faithfully execute the laws of the United States. Because his continued service would further undermine the security of our country and endanger Americans, Secretary Mayorkas should be impeached by the House of Representatives.

The same case for impeachment regarding border security failures can be made against President Biden, whose policies Secretary Mayorkas has implemented in failing to execute the laws and defend the Constitution.

**I. CASE FOR IMPEACHMENT**

Impeachment does not require a criminal offense or a specific violation of statute, though it is worth noting that Mayorkas has violated many laws in letter and in spirit. The Constitution uses the phrase “high crimes and misdemeanors” to describe impeachable conduct. The founders understood that term to include offenses such as misappropriating government funds, appointing unfit subordinates, not prosecuting cases, not spending money allocated by Parliament, disobeying an order from Parliament, neglect, abusing the power of office, or simply being unfit to serve.<sup>1</sup>

In the simplest of terms, Mayorkas has failed to do his job to secure the border of the United States, and his failure has caused severe harm to thousands of Americans and migrants. Secretary Mayorkas’s actions exhibit impeachable conduct as the founders understood it. Secretary Mayorkas has willfully chosen to ignore his oath to defend the Constitution and to faithfully execute the laws of the United States.

**a. Failure to Faithfully Execute the Laws of the U.S.**

Article II of the Constitution requires that the President “take care that the laws be faithfully executed.”<sup>2</sup> Though “faithfully executing the laws” is not explicitly written to apply to cabinet secretaries, their duties and the responsibility of the President to faithfully execute the laws are intertwined – thus, each Cabinet secretary must likewise fulfill the President’s duty to faithfully execute the laws.<sup>3</sup>

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<sup>1</sup> <https://files.eric.ed.gov/fulltext/ED432493.pdf>; see also Alexander Hamilton, *The Federalist, No. 65* (“The subjects of its jurisdiction are those offenses 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”).

<sup>2</sup> [https://constitution.congress.gov/browse/essay/artII\\_S3\\_1\\_3\\_1/](https://constitution.congress.gov/browse/essay/artII_S3_1_3_1/)

<sup>3</sup> Alexander Hamilton, *The Federalist, No. 70* (explaining that unity in the executive promotes accountability because subordinates wield the president’s power and the president is responsible for the conduct of subordinates’ performance).

## **b. Violation of Oath to Defend the Constitution & to Faithfully Discharge the Mandated Duties of His Office**

Executive branch officials take an oath upon entering office to “support and defend the Constitution of the United States against all enemies, foreign and domestic.”<sup>4</sup> This oath requires them to defend our Constitution by standing up to those who disparage and willfully disregard the laws of the United States to meet a political end.

Moreover, the Secretary’s oath requires the Secretary to “well and faithfully discharge the duties of the office on which [he/she is] about to enter.”<sup>5</sup> The United States Congress – the representatives of the people – have enacted immigration and border security laws that require the Secretary of Homeland Security to maintain operational control of the border and to detain and expel aliens who do not have a legal right to be here. These laws exist for the protection of American citizens and the migrants who seek to come here.

The Secretary of the Department of Homeland Security (DHS) has a duty as required by law to “take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.”<sup>6</sup> Secretary Mayorkas has not only failed to maintain operational control of the border, defined in law 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,”<sup>7</sup> but his actions have also actively facilitated the loss of it – he is an accomplice to the violation of our laws and our national sovereignty.

Those laws, established by Congress and ordered by the courts, are being ignored to achieve a specific desired outcome not supported by the law: *establishing a wide-open border to issue legal status to as many illegal migrants as possible.*

To accomplish this objective, he has refused to spend congressionally appropriated dollars, has disobeyed our immigration and border security laws, failed to prosecute cases as the law requires, violated court orders to carry out his duty to secure our borders, and has actively mislead the American people and Congress in working to disclose the extent of the border crisis. Specifically, he:

- Terminated construction of the border wall, despite Congressional appropriation
- Caused CBP to become dangerously overwhelmed and unable to execute its statutory duties by failing to utilize readily available legal tools to avert the border crisis
- Released migrants, ignoring his duty and the law, into the interior of the United States
- Refused, purposefully, to enforce interior immigration laws and removal requirements
- Lied to the American people and to Congress in saying the southern border was “closed”

## **c. Secretary Mayorkas has willfully, actively, and unnecessarily put Americans in danger**

Secretary Mayorkas’s impeachable conduct is harming Americans in at least five ways:

- Recklessly and with willful blindness is empowering criminal drug cartels
- Impairing the health of Americans with communicable diseases and lethal drugs

<sup>4</sup> <https://www.law.cornell.edu/uscode/text/5/3331>

<sup>5</sup> Id.

<sup>6</sup> <https://www.congress.gov/bill/109th-congress/house-bill/6061/text>

<sup>7</sup> Id.

- Damaging U.S. economic health and wasting the hard-earned money of taxpayers
- Allowing illegal migrants to destroy private property
- Placing American citizens at imminent risk of physical harm

## II. ANALYSIS

### a. Secretary Mayorkas has broken his oath and failed to faithfully execute the laws

The U.S. Senate confirmed Secretary Mayorkas on February 2, 2021. Nearly each month since taking office, border encounters and enforcement actions have increased. There were roughly 1.96 million enforcement actions in FY 2021.<sup>8</sup> The total known encounters at our southern border during fiscal year 2021 surpassed 1.73 million. From the date of his confirmation vote to the end of December, roughly 2,406,987 migrants were encountered at the southern border, with U.S. border patrol ending the 2021 calendar year by encountering 178,840 migrants in December – the highest December encounter number in the history of the Department of Homeland Security (DHS). This is more than the past three Decembers combined. In fact, under Mayorkas’s purview, DHS has broken multiple records including in FY 2021 by “encountering” more migrants at our southern border than any previous year in DHS history, and in July 2021 when we saw the highest monthly total in the history of the Department of Homeland Security with over 213,000 encounters.<sup>9</sup>

A federal court filing from the Assistant Secretary for Border and Immigration Policy at the Department of Homeland Security lays out just how bad the July number was: “over the first 29 days of July, Customs and Border Protection (CBP) encountered an average of 6,779 individuals per day, including 616 unaccompanied children and 2,583 individuals in family units... July also likely included a record number of unaccompanied child encounters, exceeding 19,000, and the second-highest number of family unit encounters, at around 80,000.”<sup>10</sup> Indeed, 18,954 unaccompanied alien children and 83,499 family units were encountered by Customs and Border Patrol in July 2021.<sup>11</sup>

Moreover, it must be noted that, while the number of encounters is exorbitant, it is significantly lower than the total number of migrants who illegally enter the United States. It has been credibly estimated that encounters make up less than 70% of illegal border-crossers; the remainder are not encountered, much less apprehended.<sup>12</sup> That is, the Biden policies which Secretary Mayorkas is carrying out, in blatant violation of his duty to execute the laws faithfully, have encouraged hundreds of thousands of migrants to enter illegally and settle in the United States – with no vetting for criminal background or infectious disease.<sup>13</sup> If we apply a 70 percent estimate to the official data from Secretary Mayorkas’s leadership at DHS (February 2021 to February 2022), this would mean over 975,820 migrants illegally crossed the border without being encountered since he took office.

Secretary Mayorkas’s refusal to faithfully execute the laws has drawn hundreds of thousands of illegal migrants to the border each month – creating a completely avoidable border crisis. The former DHS Secretary under President Obama, Jeh Johnson, who served as Secretary when Secretary Mayorkas served as Deputy Secretary, said in 2019 that 1,000 apprehensions was a crisis. We have seen more than six times as many daily apprehensions since Mayorkas took office.<sup>14</sup> Far from developing policies to stem the flow, Mayorkas’s DHS continues to exacerbate this crisis.

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<sup>8</sup> <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>

<sup>9</sup> <https://abcnews.go.com/Politics/cbp-encounters-highest-monthly-number-migrants-attempting-cross/story?id=79240996>

<sup>10</sup> <https://storage.courtlistener.com/recap/gov.uscourts.dcd.225870/gov.uscourts.dcd.225870.113.1.pdf>

<sup>11</sup> <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

<sup>12</sup> <https://cis.org/Arthur/Report-Just-68-Illegal-Border-Crossers-Get-Caught>

<sup>13</sup> Id.

<sup>14</sup> <https://www.heritage.org/immigration/commentary/fact-checking-dhs-chiefs-dishonest-statement-border-crisis>

*i. Terminated construction of the border wall, despite Congressional appropriation*

On President Biden’s first day in office, he released an executive order to immediately halt the construction of fencing at our southern border.<sup>15</sup> Secretary Mayorkas has carried out this unlawful directive and has taken no steps to counter it.

The Secure Fence Act of 2006 requires the Secretary of DHS to take all actions the Secretary determines “necessary and appropriate to achieve and maintain operational control” of our borders, including but not limited to “physical infrastructure enhancements to prevent unlawful entry by aliens into the United States...”<sup>16</sup> Secretary Mayorkas may argue that in his determination, additional border fencing is not needed, but if it is not needed then what is? Such an irrational determination could only be explained as a political decision as CBP leaders and agents have even said in past crises that the wall is the best way to end the humanitarian crisis on our southern border, calling it the “only humane and permanent solution to the crisis at the border.”<sup>17</sup> Building additional fencing along the border shouldn’t be controversial. In fact, President Joe Biden himself voted for the Secure Fence Act of 2006 which required building certain additional fencing.<sup>18</sup> Then Senator Joe Biden was joined by 25 other Democrat Senators in doing so.

Further, after President Trump originally requested funding for a border wall, Congress provided almost \$4.47 billion for border barrier construction through appropriations.<sup>19</sup> During 2020, \$1.375 billion was appropriated for border barriers as part of the \$1.4 trillion consolidated appropriations act for FY 2021.<sup>20</sup> Furthermore, in 2019, the Trump Administration redirected \$6.1 billion in FY 2019 defense funds for border barrier construction projects identified by DHS.<sup>21</sup> The Trump Administration also made \$3.6 billion available by indefinitely deferring ongoing military construction projects, authorized by 10 U.S.C. §2808, following the declaration of a national emergency by the President in February 2019.<sup>22</sup> Though some argue – as it has been argued in the courts<sup>23</sup> – the limitations of the Executive powers to transfer congressionally appropriated funds, Secretary Mayorkas and the Executive do have a requirement to follow through on direct appropriations by Congress to build border fencing.

Budget law requires the government to spend appropriated funds, and Secretary Mayorkas has willfully refused to do so. And though the Biden Administration’s own Government Accountability Office (GAO) found the Administration did not violate the Impoundment Control Act due to “programmatic delays,”<sup>24</sup> this has yet to be determined by the Courts or Congress, thus providing no defense to the Biden Administration for continuing to halt funds. The “delay” in building border fencing as required and appropriated by Congress is not a delay but a refusal.

Additionally, many contracts have already been awarded to build the wall. For example, in September 2020, multiple contracts were awarded for roughly 40 miles of border wall in the Laredo sector,<sup>25</sup> however due to the “leadership” of Secretary Mayorkas, and despite Congressionally appropriated funds, future fence procurements have stopped. As a result, the Laredo sector border patrol will have

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<sup>15</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>

<sup>16</sup> <https://www.congress.gov/bill/109th-congress/house-bill/6061/text>

<sup>17</sup> <https://bpunion.org/media-relations/news-stories/op-ed-by-nbpc-president-brandon-judd-trumps-wall-is-the-best-way-to-end-the-humanitarian-crisis-on-our-southern-border/>

<sup>18</sup> [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=2&vote=00262](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00262)

<sup>19</sup> <https://sgp.fas.org/crs/row/IN11193.pdf>

<sup>20</sup> <https://thehill.com/policy/finance/531088-congress-to-approve-1375-billion-for-border-wall-in-2021>

<sup>21</sup> <https://sgp.fas.org/crs/row/IN11193.pdf>

<sup>22</sup> Id.

<sup>23</sup> <https://www.scotusblog.com/case-files/cases/biden-v-sierra-club-2/>

<sup>24</sup> <https://www.gao.gov/press-release/press-statement-appropriations-law-decision-regarding-border-wall>

<sup>25</sup> <https://www.cbp.gov/newsroom/national-media-release/contract-awards-additional-border-wall-system-laredo-texas-1>

to continue managing this crisis with major gaps in our border infrastructure. Further, the Rio Grande River sector has only 76 miles of border wall to cover the 320 miles of river.<sup>26</sup> This sector was slated to receive another 89 miles of border fencing before the Biden Administration suspended construction, and in October 2021, DHS moved to terminate all remaining contracts for border barrier construction in the Rio Grande Valley sector.<sup>27</sup> Worse yet, the already purchased fence materials – roughly \$100 million worth at one site in Texas alone – are piling up and rusting while paid-for contracts idle away unused.<sup>28</sup>

The border is undeniably unprotected, left open to dangerous cartels, human trafficking, deadly narcotics, and bad actors as the gaping holes in border infrastructure are ignored.<sup>29</sup> Since becoming Secretary of DHS, Secretary Mayorkas has done nothing to restart construction of fencing on our southern border, and his department has terminated multiple contracts funded with DHS FY 2020 appropriations.<sup>30</sup>

*ii. **Caused CBP to become dangerously overwhelmed and unable to execute its statutory duties by failing to utilize readily available legal tools to avert the border crisis***

The Secretary of Homeland Security is required to establish operational control of the border and defend the homeland generally. This requires a mix of hard assets, personnel, and policies enabling agents to carry out their duties. However, the policies chosen by Secretary Mayorkas on behalf of the President's agenda are preventing the establishment of physical barriers at the border and are prohibiting enforcement of the laws – all causing the massive, yearlong, migrant surge that has led to CBP becoming overwhelmed.

Secretary Mayorkas has established an endless cycle, perpetuating a lawless and dangerous border. These policies include but are not limited to failing to build additional border fencing as stated above, but also refusing to enforce Title 42 authority, and not only slow walking, but actively rejecting the successful Migrant Protection Protocols program. By failing to use these available tools, Secretary Mayorkas has forced CBP to become overwhelmed, making CBP unable to execute their statutory duties.

*A. Title 42 and Migrant Protection Protocols*

Immediately upon taking office, President Biden unveiled a series of Executive Orders that halted policies and solutions that were providing a more secure border and preventing crises such as we see today. Since taking office, Secretary Mayorkas has done nothing to implement or even reimplement sound policies that would mitigate this current crisis and provide operational control of the border and prevent future crises from coming to fruition. For example, two policies that could immediately stem the flow of illegal migrants at the border – full enforcement of Title 42 authority and the full reimplementation of the Migrant Protection Protocols (“Remain in Mexico policy” or MPP) – have not only been diminished by this Administration but have been relentlessly attacked.

Secretary Mayorkas has the ability to enforce the CDC public health order 42 U.S. Code § 265 “Title 42” and is actively choosing not to do so for tens of thousands of illegal migrants - leading to the processing, detainment, and release of thousands of migrants with COVID-19 positive tests into the interior of the U.S.<sup>31</sup> In fact, and occurring in multiple months since Mayorkas took office, more illegal

<sup>26</sup> <https://www.washingtonexaminer.com/news/migrant-smugglers-driving-through-school-zones-shake-border-patrol>

<sup>27</sup> <https://www.dhs.gov/news/2021/10/08/dhs-terminate-border-barrier-contracts-laredo-and-rio-grande-valley>

<sup>28</sup> <https://www.dailymail.co.uk/news/article-10081753/Footage-shows-miles-unused-steel-lying-desert-Biden-cancelled-border-wall-contracts.html>

<sup>29</sup> <https://www.cbp.gov/border-security/along-us-borders/border-wall-system>

<sup>30</sup> <https://www.dhs.gov/news/2021/07/23/dhs-cancel-laredo-sector-border-barrier-contracts>

<sup>31</sup> <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

migrants at our southern border were brought into the United States under Title 8 than turned away under Title 42 – most recently in December 2021 when over 90,000 were brought in under Title 8 compared to fewer than 80,000 that were turned away under Title 42.<sup>32</sup> Since Mayorkas became DHS Secretary, fewer than 60% of migrants have been turned away under Title 42.<sup>33</sup> This is compared to more than 80% turned away prior to his role as Secretary.<sup>34</sup> In December 2021 fewer than 45% of migrants were turned away under Title 42.

Further, President Biden immediately stopped the successful “Remain in Mexico” policy upon taking office. Though this policy change predated the confirmation of Secretary Mayorkas, the Secretary has done nothing – that isn’t mandated by a court – to restart the policy and has outright attacked the program. In August 2021, a federal Judge in Texas, Judge Kacsmaryk, required the Biden Administration to restart the “Remain in Mexico” policy,<sup>35</sup> and the Supreme Court declined to stay the order.<sup>36</sup> With this ruling, the Biden Administration was required to restart the Remain in Mexico Policy in “good faith.”

However, the Biden Administration has not only slow-walked the reimplementation, taking until January 2022 to restart the program in South Texas, but DHS also announced in October 2021 the intention to issue a new memo to “terminate MPP”<sup>37</sup> which DHS “will implement as soon as practicable.”<sup>38</sup> Secretary Mayorkas does not have the “good faith” intention to reimplement MPP, but rather has the intention to terminate the program entirely. Additionally, though the Administration may have recently taken steps to partially reimplement the program until they can fully terminate it, it is a little too late. Hundreds of thousands of illegal migrants have been let through or found their way across our border due to halting this crucial policy.

Secretary Mayorkas’s refusal to use the obvious and immediate tools and policies at his disposal in order to secure the border provides that he is completely unfit to serve in his role as Secretary, if not in any position within the Department of Homeland Security. Secretary Mayorkas’s decision to evade his duty and abandon the southern border crisis has created damages that are not reconcilable and have jeopardized the ability of CBP to properly do their jobs.

#### *B. Customs and Border Protection Agents are Overwhelmed and Unable to Do Their Jobs*

By halting the Remain in Mexico Policy and refusing to fully enforce Title 42 authority among other policy decisions, incredibly high numbers of migrants have been entering the country, causing border patrol agents to spend more time caring for migrants than patrolling the border. One former border patrol agent has said at times 60 to 70 percent of agents’ time has been spent on attention and paperwork toward just Unaccompanied Alien Children (UACs) and families.<sup>39</sup> Secretary Mayorkas is fully aware of the dire circumstances caused by preoccupied agents. Drug traffickers take advantage of surges, moving narcotics and humans in one area while CBP agents handle large groups of migrants in another – a devastating fact that Secretary Mayorkas knows endangers Americans and migrants.

For example, in September 2021, Del Rio, Texas saw roughly 15,000 migrants arrive at the border – mostly Haitian – forcing CBP to move at least 600 CBP agents, officers, and volunteer personnel to the sector. This is in addition to the current agents, and the assistance from the Texas Department of

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<sup>32</sup> <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> <https://www.cbsnews.com/news/judge-orders-u-s-to-reinstate-trump-era-remain-in-mexico-asylum-policy/>

<sup>36</sup> <https://apnews.com/article/mexico-courts-immigration-us-supreme-court-a3fe33081fa2909c17e8c08a2c37f818>

<sup>37</sup> <https://www.dhs.gov/news/2021/09/29/dhs-announces-intention-issue-new-memo-terminating-mpp>

<sup>38</sup> <https://www.dhs.gov/migrant-protection-protocols>

<sup>39</sup> [https://www.washingtonpost.com/national/migrant-families-border/2021/03/28/355c59a2-8d70-11eb-aff6-4f720ca2d479\\_story.html](https://www.washingtonpost.com/national/migrant-families-border/2021/03/28/355c59a2-8d70-11eb-aff6-4f720ca2d479_story.html)

Public Safety.<sup>40</sup> Each agent moved to address the spike of encounters in Del Rio is one fewer agent to oversee the rest of the southern border. Reportedly, the Del Rio spike left 224 miles of the Rio Grande River border unpatrolled – this is a magnet for illegal activity.<sup>41</sup>

### C. Migrants Have Been Endangered in Violation of Federal Law

Secretary Mayorkas has created unsafe and unhealthy shelter for migrants beyond statutory authority as a result of the massive influx of illegal migrants and the deficient resources offered by DHS. For example, while in office as the secretary of DHS, migrants have been held in CBP facilities beyond statutory authority. Current law requires UACs in the custody of CBP to be transferred to the Secretary of Health and Human Services not later than 72 hours after determining that such a child is an unaccompanied alien child, “except in the case of exceptional circumstances.”<sup>42</sup>

Since Secretary Mayorkas has taken office, news reports have indicated that UACs have been held much longer than 72 hours. In March 2021, roughly 4,276 unaccompanied migrant children were spending an average of 117 hours in detention facilities - far longer than the 72 hours allotted by the law.<sup>43</sup> Secretary Mayorkas may claim “extraordinary circumstances” are to blame for the prolonged stays in CBP custody; however, any claim of “extraordinary circumstances” can be attributed to the Secretary’s own malfeasance. Secretary Mayorkas should have avoided any theoretical extraordinary circumstance by using the available tools to prevent these conditions in the first place.

Furthermore, and as a result of our unsecured border, federal agents have been holding migrants in facilities that have breached capacity limitations. For example, in March 2021 it was reported that the Donna CBP Facility, which was supposed to house no more than 250 migrants due to COVID-19 protocols, was holding more than 4,100 migrants - more than 16 times the capacity of the facility.<sup>44</sup> This report also indicated that 39 unaccompanied children at the facility had been held for over 15 days, again far longer than 72 hours. In August 2021, it was reported that Border Patrol facilities were over 700% capacity.<sup>45</sup> In June 2021, it was also reported that migrant facilities have lacked basic sanitation and human needs such as un-spoiled food and clean clothing.<sup>46</sup>

Additionally, preoccupied and overrun CBP agents have directly impacted the lives of migrants - or rather the deaths of migrants. Data shows that more migrants die after crossing the border illegally in South Texas than anywhere else in the United States.<sup>47</sup> One study has estimated – though likely still inconclusively – that over the last 22 years, more than 3,253 people have lost their lives attempting to enter the United States in South Texas, with rates increasing in recent years.<sup>48</sup> In fact, CBP recorded 557 southwest border deaths during FY 2021 – this is up from 254 deaths recorded in FY 2020 and 300 deaths recorded in FY 2019.<sup>49</sup> In just Brooks County alone, which is 40 miles from the southern border, they found at least 108 dead migrant bodies in dirt, on ranches, and hanging from trees in FY 2021 – this is compared to 34 deaths in 2020.<sup>50</sup> Further, the International Organization for Migration estimates at least 650 migrants died attempting to cross the southern border in 2021 – the most since the agency began documenting deaths in 2014.<sup>51</sup>

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<sup>40</sup> <https://www.cnn.com/2021/09/22/politics/border-patrol-resources-del-rio-june/index.html>

<sup>41</sup> <https://www.foxnews.com/politics/response-haitian-migrant-surge-border-unsecured-unguarded>

<sup>42</sup> <https://www.law.cornell.edu/uscode/text/8/1232>

<sup>43</sup> <https://www.npr.org/2021/03/16/977853878/young-migrants-held-by-border-patrol-far-longer-than-allowed-document-shows>

<sup>44</sup> <https://www.cbsnews.com/news/immigration-border-patrol-migrant-holding-facility-over-capacity/>

<sup>45</sup> <https://www.ktvq.com/union-head-says-migrant-surge-is-overwhelming-border-agents>

<sup>46</sup> <https://www.reuters.com/world/americas/migrant-children-report-overcrowding-spoiled-food-depression-us-shelters-2021-06-22/>

<sup>47</sup> <https://time.com/6091742/migrant-deaths-texas-documentary/>

<sup>48</sup> [https://www.strausscenter.org/wp-content/uploads/Migrant\\_Deaths\\_South\\_Texas-1.pdf](https://www.strausscenter.org/wp-content/uploads/Migrant_Deaths_South_Texas-1.pdf)

<sup>49</sup> <https://www.cnn.com/2021/12/09/politics/migrants-dying-crossing-us-mexico-border/index.html>

<sup>50</sup> <https://www.newsweek.com/remains-migrant-found-hanging-tree-80-miles-border-texas-1634852>

<sup>51</sup> <https://www.cnn.com/2021/12/09/politics/migrants-dying-crossing-us-mexico-border/index.html>

Secretary Mayorkas's refusal to fulfill his duties and secure the border have forced stretched resources and created an impossible situation for the safety of migrants – both for those seeking to come to the U.S. and for those who are brought in by this irresponsible Administration.

*iii. Released migrants, ignoring his duty and the law, into the interior of the United States*

Generally, any individual who illegally crosses our southern border is required by congressional statute to be detained and placed in removal proceedings.<sup>52</sup> In fact, the Immigration and Nationality Act (INA) authorizes, and in many cases requires, DHS to detain illegal migrants and render them removable from the United States, however Secretary Mayorkas's DHS has done everything to circumvent the statutes.<sup>53</sup> For example, the removal process for an alien begins with DHS filing a Notice to Appear (NTA) in immigration court. NTAs are statutory requirements for general removal proceedings.<sup>54</sup> However, Mayorkas's DHS has refused to issue NTAs to many migrants being released into the interior by DHS. In fact, according to the fiscal year 2021 Immigration and Customs Enforcement (ICE) report, under Secretary Mayorkas's DHS policies, 47,755 aliens were arrested – 32% of whom were of people initially apprehended by United States Border Patrol and issued a Notice to Report (NTR) instead of an NTA.<sup>55</sup> This inexcusable dereliction conveys to millions of would-be migrants that our government is not serious about enforcing our laws.

According to reports, DHS has been releasing migrants into the interior without an NTA under the guise of “prosecutorial discretion.”<sup>56</sup> This is an absurd distortion of that doctrine. Prosecutorial discretion is a simple resource allocation that permits the executive, on a case-by-case basis, to decline to file charges in order to focus finite law-enforcement resources on more serious offenses or offenders. It is not license to decline enforcing the laws against categories of offenses and offenders – that is a dereliction of the duty to enforce the laws faithfully. Nor is it authority to provide ineligible individuals with positive legal benefits (such as enabling migrants who have crossed out borders illegally, and whom the law requires to be detained, to be at liberty inside our country) – that is a usurpation of congressional authority.

One report from July indicated that of the roughly 50,000 illegal migrants who had been released into the United States without a court date between mid-March and July – though they are told to show up to an ICE office – roughly 6,700 migrants had actually shown up (13%).<sup>57</sup> In July, roughly 16,000 illegal migrants had not shown up and had passed the 60-day reporting window they were given.<sup>58</sup> Another report from April indicated migrants were being released into the interior without any paperwork at all.<sup>59</sup>

These horrendous reporting numbers from the summer should have given Secretary Mayorkas firsthand cause to stop releasing more illegal migrants that circumvent our laws. However, and according to written correspondence from DHS, from July 2021 to December 10, 2021, over 54,000 illegal migrants were released under Secretary Mayorkas's version of prosecutorial discretion through the “alternative detention pathway” (ADP) of “parole” and over 17,000 had not shown up to ICE.<sup>60</sup> This is in addition to the over 44,000 illegal migrants of the more than 148,000 illegal migrants that were released under ADP from March 2021 to December 10, 2021.<sup>61</sup> In this, between March 2021 and

<sup>52</sup> Title 8, U.S. Code, §1225(b)(1)(B)(iii)(IV) (“Mandatory Detention: Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”)

<sup>53</sup> <https://sgp.fas.org/crs/homesec/R45915.pdf>

<sup>54</sup> <https://www.law.cornell.edu/uscode/text/8/1229#a>

<sup>55</sup> <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2021.pdf>

<sup>56</sup> <https://wwwaxios.com/border-patrol-rio-grande-valley-release-migrant-families-67e8cdc1-d549-47e1-aba3-8baca26025d8.html>

<sup>57</sup> <https://wwwaxios.com/migrant-release-no-court-date-ice-dhs-immigration-33d258ea-2419-418d-abe8-2a8b60e3c070.html>

<sup>58</sup> Id.

<sup>59</sup> <https://apnews.com/article/migrants-freed-without-court-notice-paperwork-9ace3e41e0acadac7cece17c83a8f7ff>

<sup>60</sup> <https://twitter.com/RepChipRoy/status/1486786130699857921?s=20&t=Re0zDERu8ws3wH3hj74n1A>

<sup>61</sup> Id.

December 2021, at least 62,000 illegal migrants were released by Secretary Mayorkas's DHS who failed to present themselves to federal authorities and therefore whose locations are unknown. And in January 2022, it was reported that of the roughly 154,000 illegal migrant encounters, ICE and CBP released more than 62,000 that month alone.<sup>62</sup>

Further, consolidated border surges are rapidly increasing the pace of "catch and release" into the interior. For example, the September surge of "Haitian" migrants in Del Rio moved DHS to release another 12,000 migrants into the interior.<sup>63</sup> In many cases, illegal migrants are being released into the interior upon claiming "credible fear," the first step in the asylum process – but again, they are being released prior to any judicial proceeding or confirmation of persecution and legitimacy of their asylum claim. Secretary Mayorkas has also shown through an August 2021 rule proposing to exclude immigration judges from asylum proceedings that his goal is to more expeditiously provide positive credible fear determinations and prevent detention all together,<sup>64</sup> contrary to Congress's clear requirements to "be detained for further consideration of the application for asylum."<sup>65</sup>

This proposed rule is also intended to expand parole eligibility – allowing more migrants to be released into the interior. Current statute allows parole authority to be used for migrants with specific needs, temporarily, and is meant to be used on a case-by-case basis.<sup>66</sup> However, and as stated above, the Biden Administration released more than 54,000 illegal migrants under parole from July 2021 to December 10, 2021, more than 30,000 of whom were released from just August 2021 to October 2021.<sup>67</sup> But it's not enough for Secretary Mayorkas to exaggerate the limited use of this authority. Secretary Mayorkas also included in his proposed rule expanded parole authority to allow for parole "because detention is unavailable or impracticable."<sup>68</sup> The crisis Secretary Mayorkas has created by his failure to enforce our laws, thus creating crowded detention facilities, is the very reasoning he is using for his proposed rule that violates our immigration statutes. Indeed, the proposal of such rules implicitly concedes that the current practices of Secretary Mayorkas's DHS, which the proposed rules would green light, violate the law.

Secretary Mayorkas's goal is clear. He strives to bring in as many migrants as possible to feed President Biden's agenda by bolstering the numbers under the guise of a "right" to asylum despite our laws that require scrutiny of these claims. The United States cannot sustain a functioning asylum system if our laws are not upheld. Without proper enforcement of our asylum laws, we can only expect this crisis to get worse as asylum claims become more frequent. Today, the world sees over 4.1 million asylum seekers.<sup>69</sup> In 2000, there were fewer than 1 million. With relaxed enforcement of our immigration laws, Secretary Mayorkas will only draw more asylum seekers, whether legitimate or not, to our border where CBP will continue to be overwhelmed and the Biden Administration will continue to release them into the interior.

#### **iv. *Refused, purposefully, to enforce interior immigration laws and removal requirements***

On his first day in office, President Biden's DHS halted deportations for 100-days sending a clear signal to Americans and migrants illegally present in the U.S. that the standing laws of the U.S. are discretionary to this Administration.<sup>70</sup> Under the early guise of Secretary Mayorkas's leadership, ICE

<sup>62</sup> <https://www.foxnews.com/us/sheriffs-want-dhs-to-notify-them-if-illegal-immigrants-moved-to-their-counties>

<sup>63</sup> <https://nypost.com/2021/09/26/homeland-security-admits-to-allowing-12k-haitian-migrants-into-us/>

<sup>64</sup> <https://www.dhs.gov/news/2021/08/18/dhs-and-doj-publish-notice-proposed-rulemaking-make-asylum-process-more-efficient>

<sup>65</sup> <https://www.law.cornell.edu/uscode/text/8/1225>

<sup>66</sup> <https://www.law.cornell.edu/cfr/text/8/212.5>

<sup>67</sup> <https://www.foxnews.com/politics/leaked-border-patrol-docs-release-immigrants-us-biden-administration>

<sup>68</sup> <https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>

<sup>69</sup> <https://www.unhcr.org/en-us/figures-at-a-glance.html>

<sup>70</sup> [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf)

deportations – though no longer halted<sup>71</sup> – had fallen to record lows. In May it was reported that April deportations fell to the lowest monthly level on record, dropping below 3,000 for the first time.<sup>72</sup> This is in comparison to December 2020, when ICE arrests were roughly 6,000. Secretary Mayorkas never picked up the pace for removals. According to the FY 2021 ICE report, officers working for ICE’s Enforcement and Removal Operations (ERO) made roughly 74,082 arrests during FY 2021 – this is down from 104,000 during FY 2020 and the average of 148,000 annually from 2017 through 2019.<sup>73</sup> This means for the roughly 6,000 ERO enforcement officers, only roughly 1 arrest was made per month.<sup>74</sup> Further, according to the FY 2021 ICE report, 59,011 noncitizens were removed in FY 2021 and roughly half of these (30,334) occurred under Trump DHS operations. The FY 2021 removals are the lowest on record since 1995, and the lowest in ICE history.<sup>75</sup>

In September 2021, DHS also recently issued new “immigration enforcement priorities,” setting forth guidelines for ICE to use prosecutorial discretion of our immigration laws toward removing illegal migrants as DHS “strives to provide them with a path to a status.”<sup>76</sup> Under this new policy, Secretary Mayorkas has said it is not enough for DHS to remove an individual solely for being unlawfully present in the U.S.<sup>77</sup> Secretary Mayorkas bases this on the false goal of deporting all of the roughly 11 million unlawfully present aliens, attesting to not having the resources to do so, despite the very counterintuitive nature of his statement as he continues to let more people into the United States.<sup>78</sup> The consequences of Secretary Mayorkas’s policies are devastating; for example, DHS reportedly dropped a removal request for an illegal migrant who was under the influence of alcohol and killed a teenager in Texas in a hit-and-run accident because the illegal migrant was no longer seen as a “priority.”<sup>79</sup>

Additionally, Secretary Mayorkas’s lackadaisical approach to interior enforcement has led to fewer arrests, fewer removals, and more criminals still on our streets. According to the FY 2021 ICE report, criminal offenses associated with the FY 2021 removals (59,011) included: 1,506 homicide-related offenses (this is down from 1,837 in FY 2020 and 1,923 in FY 2019), 3,415 sexual assaults (this is down from 4,385 in FY 2020 and 5,061 in FY 2019), 19,549 assaults (this is down from 37,247 in FY 2020 and 45,804 in FY 2019), 2,717 robberies (this is down from 3,816 in FY 2020 and 4,736 in FY 2019 and 1,063 kidnappings (this is down from 1,637 in FY 2020 and 1,833 in FY 2019).<sup>80</sup>

Secretary Mayorkas’s upfront disregard for enforcing U.S. deportation laws in order to maximize amnesty for millions of illegal immigrants is an abuse of his power that will only motivate migrants to illegally cross the border where they will likely be released into the interior and subsequently not be deported.

#### **v. Lied to the American people and to Congress in saying the southern border was “closed”**

Insidious policies put forth by Secretary Mayorkas have caused the escalation of illegal migrants at our southern border and have exacerbated this border crisis. He has put forward policies that attract illegal migrants, bad actors, and illicit activities. However, Secretary Mayorkas has not only used U.S. immigration law to levy a political agenda against the very Americans he swore to protect, but he has actively misled and lied to the American people and to Congress in working to disguise the crisis his actions have caused. For example, Secretary Mayorkas said in a public interview in March 2021, that

<sup>71</sup> <https://apnews.com/article/joe-biden-immigration-texas-barack-obama-51688033e490d50867e52ef9c8ec574f>

<sup>72</sup> [https://www.washingtonpost.com/national/biden-ice-deportations-record-low/2021/05/05/522ee35c-adb8-11cb-8109-f8ba1ea2ceab\\_story.html](https://www.washingtonpost.com/national/biden-ice-deportations-record-low/2021/05/05/522ee35c-adb8-11cb-8109-f8ba1ea2ceab_story.html)

<sup>73</sup> <https://www.washingtonpost.com/national-security/2022/03/11/ice-report-deportations-arrests/>

<sup>74</sup> [https://www.washingtonpost.com/national/ice-arrests-biden-trump/2021/10/25/f33130b8-35b5-11ec-9a5d-93a89c74e76d\\_story.html](https://www.washingtonpost.com/national/ice-arrests-biden-trump/2021/10/25/f33130b8-35b5-11ec-9a5d-93a89c74e76d_story.html)

<sup>75</sup> <https://www.washingtonpost.com/national-security/2022/03/11/ice-report-deportations-arrests/>

<sup>76</sup> <https://www.dhs.gov/news/2021/09/30/secretary-mayorkas-announces-new-immigration-enforcement-priorities>

<sup>77</sup> [https://www.washingtonpost.com/immigration/ice-deportations-migrants-guidelines/2021/09/30/8c110ecc-21ee-11ec-8200-5e3fd4c49f5e\\_story.html](https://www.washingtonpost.com/immigration/ice-deportations-migrants-guidelines/2021/09/30/8c110ecc-21ee-11ec-8200-5e3fd4c49f5e_story.html)

<sup>78</sup> [https://www.washingtonpost.com/immigration/ice-deportations-migrants-guidelines/2021/09/30/8c110ecc-21ee-11ec-8200-5e3fd4c49f5e\\_story.html](https://www.washingtonpost.com/immigration/ice-deportations-migrants-guidelines/2021/09/30/8c110ecc-21ee-11ec-8200-5e3fd4c49f5e_story.html)

<sup>79</sup> <https://www.daillywire.com/news/dhs-cancels-deportation-request-for-illegal-immigrant-hit-and-run-driver-who-killed-teenager>

<sup>80</sup> <https://www.foxnews.com/politics/ice-fy-2021-report-drop-arrests-deportations-biden-rules>

the “the border is closed, the border is secure” despite his messaging to potential illegal migrants to “not come.”<sup>81</sup> Further, in a September 2021 Senate Homeland Security hearing, Secretary Mayorkas reaffirmed – under oath – when asked if he “honestly believe[s] that our borders are closed”, that he does when he answered “Senator, I do...”.<sup>82</sup> Lying to Congress is a criminal offense under 18 U.S.C. 1001<sup>83</sup> and lying under oath is a criminal offense under 18 USC 1621.<sup>84</sup> Notably, this reaffirmation under oath came just one day after Secretary Mayorkas said in his speech in Del Rio, Texas during a migrant “surge” that “if you come to the United States illegally, you will be returned” – an obvious rhetorical deflection from the true path his policies have created.<sup>85</sup>

## **b. Secretary Mayorkas’s impeachable conduct is harming Americans in at least four ways**

### **i. Recklessly and with willful blindness is empowering criminal drug cartels**

Through Secretary Mayorkas’s actions and in failing to execute the laws and defend the United States from national security threats, he has empowered dangerous criminal organizations – most profoundly, the criminal drug cartels in Mexico. These cartels are known for nothing less than drug trafficking, human trafficking, human smuggling, kidnappings, rapes, and killings, including vulnerable migrants making their way to the United States.<sup>86</sup> In fact, according to “Human Rights First” at least 6,356 migrants have been victims of kidnappings, abuses, or attacks since January 2021.<sup>87</sup>

These cartels have been wholly empowered by Secretary Mayorkas. In October 2021, it was reported that the Texas Department of Public Safety’s Lt. Chris Olivarez said Mexican drug cartels were murdering people and dumping their bodies on the U.S. side of the border – including a woman who had been raped, mutilated, and tortured before her death.<sup>88</sup> These types of killings are often carried out as a “message to rival cartels.” Lt. Chris Olivares said they are noticing these killings happening more and more on the U.S. side of the border.<sup>89</sup>

Additionally, these cartels are responsible for the illicit drug operations that plague our border and are killing American citizens, especially through increased production and distribution of fentanyl.<sup>90</sup> Further, these cartels not only run human trafficking and smuggling operations, but they are actively profiting off illegal migration to the U.S. By one estimate, cartels are charging between \$8,000 and \$15,000 per head to smuggle illegal migrants across the border.<sup>91</sup> Reports have also indicated that with the large demand, cartels are even convincing teenage U.S. citizens through social media to smuggle migrants across the border – including drivers as young as 13 years old.<sup>92</sup>

Cartels do not take our DHS or U.S. law enforcement seriously – they know the power Secretary Mayorkas has given them. For example, in October 2021, Mexican cartel members reportedly stood wearing tactical vests with AK-47 rifles, taunting Texas Army National Guard soldiers assigned to the southern border.<sup>93</sup> Not surprisingly, one week later, reports indicated that Texas National Guard soldiers were fired upon across the border by suspected cartel gunmen.<sup>94</sup> These direct aggressions from cartel members to U.S. citizens tasked with defending our borders is unprecedented. However,

<sup>81</sup> <https://thehill.com/homenews/sunday-talk-shows/544201-dhs-secretary-the-message-is-quite-clear-do-not-come>

<sup>82</sup> <https://nypost.com/2021/09/21/dhs-chief-cant-give-ballpark-estimate-on-illegal-immigration-numbers/>

<sup>83</sup> <https://www.law.cornell.edu/uscode/text/18/1001>

<sup>84</sup> <https://www.law.cornell.edu/uscode/text/18/1621>

<sup>85</sup> <https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx>

<sup>86</sup> <https://www.nbcnews.com/news/latino/migrants-returned-mexico-describe-horror-kidnapping-torture-rape-rcna2300>

<sup>87</sup> <https://www.nbcnews.com/news/latino/migrants-returned-mexico-describe-horror-kidnapping-torture-rape-rcna2300>

<sup>88</sup> <https://nypost.com/2021/11/12/texas-authorities-claim-mexican-cartels-murdering-people-on-us-soil/>

<sup>89</sup> <https://www.dailymail.co.uk/news/article-10193831/Texas-cops-reveal-cartels-committing-murders-border.html>

<sup>90</sup> <https://www.npr.org/2021/12/21/1066163872/mexican-cartels-turning-to-meth-and-fentanyl-production>

<sup>91</sup> <https://www.borderreport.com/hot-topics/border-crime/border-patrol-cartels-cash-in-on-billion-dollar-human-smuggling-business/>

<sup>92</sup> <https://www.foxnews.com/politics/cbp-criminal-gangs-recruiting-teens-social-media-smuggle-migrants>

<sup>93</sup> <https://www.foxnews.com/us/cartel-gunmen-ak-47s-southern-border-texas-national-guard>

<sup>94</sup> <https://www.foxnews.com/us/texas-national-guard-fired-border-cartel>

Secretary Mayorkas has done nothing to show these cartels they do not have “operational control” of our border, and in fact he has shown them they do.

*ii. **Impairing the health of Americans with communicable diseases and lethal drugs***

*A. Coronavirus*

Our unsecure border is not only problematic for the purposes listed above, but this crisis is happening at the time of a global pandemic when the health and safety of both Americans and migrants should be prioritized. Overall, CBP has had over 23,500 federal employees test positive for COVID-19, and at least 64 have unfortunately died as a result of the virus.<sup>95</sup> Reports have indicated that CBP facilities have seen concentrated rates of COVID-19. It was reported in August 2021 that more than 18% of migrant families and 20% of unaccompanied minors who recently crossed the U.S. border tested positive for COVID-19 on leaving Border Patrol custody over the prior two to three weeks.<sup>96</sup> According to reports from March 2021, roughly 7.4% of tests given to unaccompanied minors in the past year turned out positive, with certain UAC facilities showing 10% positive results.<sup>97</sup> On trip to the Rio Grande Valley in August 2021, border patrol shared that the Donna Facility had recently seen 40% of occupants positive with COVID-19.

According to reports from August 2021, flights scheduled to deport migrants had more than 25% of passengers test positive before departure, leading to ICE further detaining migrants for quarantine.<sup>98</sup> In July 2021 it was reported that coronavirus infections were also surging in ICE facilities, which had seen the number of migrants nearly double within months as border apprehensions increased. More than 26,000 people were in facilities at the beginning of July 2021 - this is compared to 14,000 in April.<sup>99</sup> The report found that more than 7,500 new cases of coronavirus have been reported in facilities during this same time frame representing more than 40% of all coronavirus cases in ICE facilities since the start of the pandemic.

The unsecured southern border has led to avoidable cases of COVID-19 on U.S. soil, but worse than these cases in facilities are the reported cases that have been let loose into the interior. Reporting shows that more than 7,000 COVID-19 positive migrants had been released from February 2021 to July 2021 in McAllen, Texas with just 1,500 of them being released during the last week of July.<sup>100</sup> The September 2021 release of 12,000 “Haitian” migrants in Del Rio within the interior were not even required to be tested for COVID-19 prior to their release.<sup>101</sup> In August 2021, in Laredo, Texas it was reported that 40% of migrants released tested positive for COVID, this is compared to a 4% positivity rate in April 2021.<sup>102</sup> Known COVID-19 positive individuals have even been housed in hotels in Texas border towns.<sup>103</sup>

*B. Drugs*

Since Secretary Mayorkas has been in charge at DHS, over 11,200 pounds of fentanyl have been seized by federal agents at the southern border – this is well more than FY 2019 and 2020 combined (roughly 7,500 pounds).<sup>104</sup> CBP seized roughly 11,201 pounds of fentanyl in FY 2021 – this is more than the

<sup>95</sup> <https://www.cbp.gov/newsroom/coronavirus>

<sup>96</sup> <https://www.nbcnews.com/politics/immigration/18-percent-migrant-families-leaving-border-patrol-custody-tested-positive-n1276244>

<sup>97</sup> <https://wwwaxios.com/border-crisis-migrant-children-covid-ae67b4b8-938d-4eb7-8593-f639bdb45b22.html>

<sup>98</sup> <https://www.nbcnews.com/politics/immigration/18-percent-migrant-families-leaving-border-patrol-custody-tested-positive-n1276244>

<sup>99</sup> <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>

<sup>100</sup> <https://www.foxnews.com/politics/texas-border-city-covid-positive-migrants-released-february-last-week>

<sup>101</sup> <https://nypost.com/2021/09/26/homeland-security-admits-to-allowing-12k-haitian-migrants-into-us/>

<sup>102</sup> <https://www.yahoo.com/now/forty-percent-migrants-released-texas-212400073.html>

<sup>103</sup> <https://www.valleycentral.com/news/la-joya-police-say-hotel-is-housing-migrants-with-covid-19-release-by-border-patrol/>

<sup>104</sup> <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

past three years combined. Though thousands of pounds have been seized, these numbers also allude to the mass amounts of fentanyl that are flowing across our border undetected by DHS. Texas Department of Safety (DPS) seizures have also increased - providing a glimpse of the fentanyl not being intercepted by DHS. According to reports, from January 2021 to July 2021, Texas DPS seized more than 320 pounds of fentanyl<sup>105</sup> - this is enough to kill 7.2 million people. In just the first four months of 2021, Texas DPS saw an 800% increase in the amount of fentanyl seizures over last year.<sup>106</sup> Seizures never slowed down, and by December 2021, Texas DPS had seized at least 886 pounds of fentanyl – enough to kill 200 million people.<sup>107</sup> If not for Texas DPS, much of the hundreds of pounds seized would be circulating within Texan and other American communities.

Fentanyl overdoses are increasing in the U.S. In 2019, there were 70,630 overdose deaths and more than half of those, 36,359, involved fentanyl.<sup>108</sup> In 2020, U.S. overdose deaths hit a record 93,000.<sup>109</sup> Even more alarming, the Centers for Disease Control and Prevention (CDC) recently reported that in the 12-month period ending in April 2021, U.S. drug overdoses topped 100,000 annually for the first time – driven by fentanyl.<sup>110</sup> In fact, fentanyl is now the number one cause of death for adults ages 18-45.<sup>111</sup> These deaths are a direct result of our unsecured border. According to the Drug Enforcement Administration (DEA), “Mexican cartels are increasingly responsible for producing and supplying fentanyl to the U.S. market.”<sup>112</sup> Without a secure border, and without intercepting fentanyl flowing in, we can expect a rising opioid epidemic and more avoidable deaths in our communities.

### *iii. Further damaging U.S. economic health & wasting the hard-earned money of taxpayers*

Secretary Mayorkas’s unwillingness to fulfill his duty has left both the federal taxpayer and states to fund a crisis that was and is completely avoidable. For example, it has been reported that the Biden Administration is spending \$2 billion – \$3 million a day – to stop the building of a border fence.<sup>113</sup> It is costing U.S. taxpayers roughly the same amount to not build a border fence as it would to build a border fence – one of these expenditures makes America safer, the other does not. Further, it has been reported that just from February 2021 to May 2021, the federal government spent at least \$3 billion on sheltering UACs at the border.<sup>114</sup> In April 2021, it was reported that roughly \$62 million was being spent per week to care for these children, and due to the pandemic capacity limits, the daily cost of sheltering UACs is more than double.<sup>115</sup>

Federal taxpayers are not the only ones accruing fiscal damages; for example, just the state of Texas, which is undeniably dealing with the brunt of this crisis, spends more than \$850 million each year on costs associated with illegal immigration.<sup>116</sup> This includes, between \$579 million and \$717 million for public hospital districts to provide uncompensated care for illegal aliens, \$152 million to annually house illegal criminal aliens, between \$62 million and \$90 million to include illegal aliens in the state Emergency Medicaid program, and between \$31 million and \$63 million to annually educate UACs.<sup>117</sup> In September 2021, the Governor of Texas signed a nearly \$2 billion bill, on top of the over \$1 billion already allocated to border security, nearly tripling the state’s border security budget as a result of

<sup>105</sup> <https://www.khou.com/article/news/local/texas/texas-governor-abbott-signs-fentanyl-bill-in-houston/285-83896b9f-482b-4812-8dca-28517461e94f>

<sup>106</sup> <https://www.khou.com/article/news/verify/have-fentanyl-seizures-skyrocketed-at-the-us-mexico-border/285-fac8f869-b09c-4549-8239-1e8891b311ac>

<sup>107</sup> <https://nypost.com/2021/12/10/texas-seized-enough-fentanyl-to-kill-200-million-people-this-year-alone-officials-say/>

<sup>108</sup> <https://www.rollcall.com/2021/06/11/bidens-border-policies-are-worsening-the-opioid-crisis/>

<sup>109</sup> <https://apnews.com/article/overdose-deaths-record-covid-pandemic-fd43b5d91a81179def5ac596253b0304>

<sup>110</sup> [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2021/20211117.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm)

<sup>111</sup> [https://www.abc12.com/news/fentanyl-number-one-cause-of-death-for-adults-18-45-recent-government-data-says/article\\_ed0bfe28-5f79-11ec-8aa0-af36cbff03c.html](https://www.abc12.com/news/fentanyl-number-one-cause-of-death-for-adults-18-45-recent-government-data-says/article_ed0bfe28-5f79-11ec-8aa0-af36cbff03c.html)

<sup>112</sup> <https://www.dea.gov/press-releases/2021/03/02/dea-releases-2020-national-drug-threat-assessment>

<sup>113</sup> <https://nypost.com/2021/07/24/biden-spending-over-2b-to-halt-border-wall-construction-amid-migrant-crisis/>

<sup>114</sup> <https://nypost.com/2021/05/07/bidens-migrant-plan-has-cost-taxpayers-at-least-3b-records/>

<sup>115</sup> <https://www.cnn.com/2021/04/09/politics/biden-unaccompanied-children/index.html>

<sup>116</sup> <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-illegal-immigration-costs-texas-taxpayers-over-850-million-each-year>

<sup>117</sup> *Id.*

Secretary Mayorkas's dereliction of duty.<sup>118</sup> Additionally, finding dead migrants that were not intercepted by CBP also has a cost that goes beyond loss of life. For example, when factoring in autopsies, burials, and special equipment to retrieve individuals, a migrant death can cost a county upwards of \$13,100 by one estimate<sup>119</sup> – again, Brooks County saw more than 108 dead bodies in FY 2021.

Increasing numbers of illegal migrants poses a risk to the nations' fiscal health, including that of individual states and counties. Multiple states have also sent National Guardsmen to the southern border to assist in managing the border crisis since Secretary Mayorkas took office.<sup>120</sup> Due to the unprecedented numbers of illegal migrants crossing our border during a pandemic, this current border crisis will likely cost more than any border crisis in history.

*iv. Allowing illegal migrants to destroy private property*

Ranchers and Americans along the border have been forced to protect their land against illegal migrants who trespass and deface property whilst trekking from the U.S. border. For example, it was reported that one south Texas rancher spent roughly \$30,000 repairing breaks in his fences surrounding his property due to illegal crossings from just January 2021 to April 2021. Another South Texas rancher, and Kinney County attorney, has sustained at least \$60,000 worth of damages to his property.<sup>121</sup> In May 2021, a Carrizo Springs, Texas rancher reported that chases and “bailouts” – when migrants jump out of a vehicle and run away – had been happening on her property 2-3 times per week consistently since January 2021, often leaving damages to her property.<sup>122</sup>

In addition to property damages, many ranchers along our border feel unsafe on their own land. For example, a couple from Kinney County, Texas that have sustained property damages reported in October 2021, that when looking out on their property “you just don’t know who’s watching you...” and after one run in with illegal migrants in April 2021, they have regularly carried guns on their own property out of precaution.<sup>123</sup> In Arizona, one rancher said in September 2021, she felt “hopeless” about the crisis.<sup>124</sup>

*v. Placing American citizens at imminent risk of physical harm*

Due to the increasing bandwidth issues of CBP agents, and the open state of our southern border, it was reported in April 2021 that roughly 1,000 people per day were sneaking into the United States without being identified or taken into custody.<sup>125</sup> According to the former CBP Chief, by October 2021 there had been over 400,000 known illegal gotaways in FY 2021.<sup>126</sup> This number ballooned to roughly 500,000 by January 2022.<sup>127</sup> Per a DHS briefing in late September 2021, during the Del Rio border surge, there were roughly 1,600 known gotaways in one day. CBP bandwidth issues also pose a major threat to proper vetting. For example, one 24-year-old migrant posed as a UAC, and in October 2021, in Florida, murdered the 46-year-old father who had taken him in.<sup>128</sup> None of these data points account for the unknown gotaways.

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<sup>118</sup> <https://www.texastribune.org/2021/09/17/texas-border-wall-security-budget-abott/>

<sup>119</sup> [https://www.strausscenter.org/wp-content/uploads/Migrant\\_Deaths\\_South\\_Texas-1.pdf](https://www.strausscenter.org/wp-content/uploads/Migrant_Deaths_South_Texas-1.pdf)

<sup>120</sup> <https://www.washingtonexaminer.com/news/6-states-sending-military-and-police-respond-to-border-crisis>

<sup>121</sup> <https://www.foxnews.com/media/texas-rancher-illegal-immigrants-property-damage-border-crisis>

<sup>122</sup> <https://www.newsweek.com/border-farmers-caught-between-migrant-surge-damage-migrant-labor-shortage-1595272>

<sup>123</sup> <https://www.foxbusiness.com/politics/texas-ranchers-pummeled-by-bidens-border-crisis-fear-for-their-lives>

<sup>124</sup> <https://www.wsj.com/articles/arizona-border-crisis-public-safety-health-crossings-illegal-alien-immigrant-covid-terrorist-11631304060>

<sup>125</sup> [https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258ae-9302-11eb-9af7-fd0822ae4398\\_story.html](https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258ae-9302-11eb-9af7-fd0822ae4398_story.html)

<sup>126</sup> <https://www.washingtonexaminer.com/news/many-sneaked-over-southern-border-and-got-away-in-past-year>

<sup>127</sup> <https://nypost.com/2022/02/04/the-border-stampede-isnt-a-biden-a-failure-its-exactly-what-he-and-dems-want/>

<sup>128</sup> <https://nypost.com/2021/11/04/illegal-immigrant-who-posed-as-minor-while-crossing-border-charged-with-murder/>

Unfortunately, due to the very nature of the problem, we do not know who these people are, or where they are. This poses a major safety risk to Americans. To look at this problem further, we have to look at cases of individuals we have caught. CBP data shows that roughly 10,763 “criminal noncitizens” were arrested by border patrol in FY 2021, and at least 3,662 have been arrested thus far in FY 2022.<sup>129</sup> The combined timeframes include roughly 85 convictions of manslaughter or homicide, 604 sexual offenses, and 2,892 convictions of illegal drug possession and trafficking.<sup>130</sup> Multiple illegal migrants have also been encountered who are on the terrorist watch list – posing a major national security issue.<sup>131</sup> Based on reports, at least 14 illegal migrants who were on the terrorist watchlist were stopped at the southern border in FY 2021. And based on the FY 2021 ICE report, we know there are more known or suspected terrorists already in the United States. According to the report, ICE removed 34 known or suspected terrorists – just up from 31 in FY 2020 and dramatically below the 58 removed in FY 2019.<sup>132</sup> Logic further explains that those working overtime to evade encountering CBP are the very people we should be most worried about getting into the U.S., and the data shows us that they can.

### III. CONCLUSION

Secretary Mayorkas has demonstrably failed his responsibility to defend the Constitution’s requirement of the Executive to faithfully execute the laws of the United States that Congress has created, and the courts have ordered. Secretary Mayorkas has also refused to perform his role as Secretary of DHS, which requires him to “achieve and maintain” operational control of our southern border. This dereliction of duty and impeachable conduct has put Americans and migrants in harm’s way for crass political purposes.

For these reasons, and for the undeniable and avoidable damages imposed to Texans and Americans as a whole, Secretary Alejandro Mayorkas should be impeached for high crimes and misdemeanors in his role as the Secretary of the United States Department of Homeland Security.

It is my recommendation that we draft articles of impeachment, present them, and make the case for his removal or to begin impeachment proceedings in the House.

Sincerely,



Chip Roy  
Member of Congress

<sup>129</sup> <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics>

<sup>130</sup> Id.

<sup>131</sup> <https://www.reuters.com/article/us-usa-border-security/u-s-arrested-two-yemenis-on-terror-watchlist-who-tried-to-cross-border-from-mexico-idUSKBN2BS1XO>

<sup>132</sup> <https://www.foxnews.com/politics/ice-fy-2021-report-drop-arrests-deportations-biden-rules>