

118TH CONGRESS
1ST SESSION

S. RES. 169

Expressing the sense of the Senate that Secretary of Homeland Security Alejandro Nicholas Mayorkas does not have the confidence of the Senate or of the American people to faithfully carry out the duties of his office.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2023

Mr. MARSHALL (for himself, Mr. BRAUN, Mr. CRAPO, Mr. CRUZ, Mr. HAWLEY, Mr. RISCH, Mr. SCOTT of Florida, Mr. SCHMITT, Mr. JOHNSON, Ms. LUMMIS, Mr. LEE, Mr. RUBIO, Mr. VANCE, Mrs. BLACKBURN, and Mr. BUDD) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs

RESOLUTION

Expressing the sense of the Senate that Secretary of Homeland Security Alejandro Nicholas Mayorkas does not have the confidence of the Senate or of the American people to faithfully carry out the duties of his office.

Whereas, while serving as Secretary of Homeland Security, Alejandro Nicholas Mayorkas, in violation of his constitutional oath, has engaged in a pattern of conduct that is incompatible with his constitutional and statutory duties as Secretary of Homeland Security, including by—

(1) failing 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”, as required under section 2(a) of the Secure Fence Act of 2006 (8 U.S.C. 1701 note), which includes “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband”, as evidenced by—

(A) more than 5,500,000 illegal aliens crossing the United States southern border during Secretary Mayorkas’ term in office, including aliens encountered by U.S. Customs and Border Protection and known got-aways, and 20 consecutive months with more than 150,000 illegal border crossings;

(B) the apprehension of 98 individuals that match records within the Terrorist Screening Database at the southern border during fiscal year 2022, which is more such apprehensions than occurred during the previous 5 years combined, and the apprehension of 80 such individuals during fiscal year 2023 to date, which may lead to a higher rate of apprehensions of such individuals during fiscal year 2023 than took place during fiscal year 2022; and

(C) the failure of the Department of Homeland Security, under the leadership of Secretary Mayorkas, to comply with provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), which require the detention of inadmissible aliens arriving in the United States or aliens who are physically present in the United States without inspection until processed, and the implementation by Secretary Mayorkas of unlawful and misguided catch-and-release directives, such as the Notice to Report process and the parole plus Alternatives to Deten-

tion process, which have resulted in the reckless release of more than 1,000,000 illegal aliens into the interior of the United States; and

(2) gravely endangering the national security of the United States, undermining the operational control of our southern border, and encouraging illegal immigration by—

(A) terminating contracts for additional border wall construction for which Congress appropriated funding; and

(B) issuing memoranda rescinding the Migrant Protection Protocols (commonly known as “Remain in Mexico”), which was an indispensable tool to address the border crisis and restore integrity to the immigration system;

Whereas Secretary Mayorkas, in the memorandum announcing the termination of the Migrant Protection Protocols program (MPP) on June 1, 2021, acknowledged, “some removal proceedings conducted pursuant to MPP were completed more expeditiously than is typical for non-detained cases”;

Whereas Federal authorities seized more than 14,000 pounds of illicit fentanyl along the southwest border during fiscal year 2022 and 13,800 pounds of illicit fentanyl during fiscal year 2023 to date, which is evidence of increased efforts by transnational criminal organizations to traffic dangerous substances into the United States;

Whereas, according to the Centers for Disease Control and Prevention, more than 107,000 Americans died of drug overdoses in 2021, which exceeds the number of such deaths in any previous year, and $\frac{2}{3}$ of such deaths were caused by synthetic opioids (primarily fentanyl);

Whereas, under the leadership of Secretary Mayorkas, the Department of Homeland Security formally opposed efforts to keep in place the order of suspension issued by the Director of the Centers for Disease Control and Prevention under section 362 of the Public Health Service Act (42 U.S.C. 265) as a result of the public health emergency relating to the COVID–19 pandemic (commonly known as the “title 42 order”) in order to prevent a crisis on the southern border;

Whereas with the termination of the title 42 order, the Department of Homeland Security is planning to reroute asylum and parole applicants through the CBP One mobile application and formal parole programs in order to obscure border encounter numbers;

Whereas on multiple occasions while serving as Secretary of Homeland Security, Alejandro Nicholas Mayorkas, in violation of his constitutional oath, has willfully provided perjurious, or false and misleading testimony to Congress, including—

(1) on April 28, 2022, during a hearing of the Committee on the Judiciary of the House of Representatives, by responding to Congressman Chip Roy’s question, “Will you testify under oath that we have operational control of the border?”, with “Yes we do”, despite the fact that, the term “operational control” has been 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”; and

(2) on November 15, 2022, during a hearing of the Committee on Homeland Security of the House of Representatives, by responding to Congressman Dan

Bishop’s question, “Do you continue to maintain that the border is secure?”, with “Yes, and we are working day in and day out to enhance security, Congressman.”;

Whereas section 1621 of title 18, United States Code, clearly states that anyone under oath who “willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true” is guilty of perjury and shall be fined or imprisoned not more than 5 years, or both;

Whereas the record-breaking number of illegal alien encounters, including more 1,000,000 known “got-aways”, and the record seizures of deadly fentanyl and other contraband, confirm that Secretary Mayorkas has not taken all actions necessary to ensure operational control of the southern border, as required by law;

Whereas U.S. Border Patrol Chief Raul Ortiz, in a field hearing before the Committee on Homeland Security of the House of Representatives, stated that U.S. Border Patrol does not have operational control of the border, which directly contradicts Secretary Mayorkas’ April 2022 testimony to the Committee on the Judiciary of the House of Representatives;

Whereas, in September 2021, while Alejandro Nicholas Mayorkas was serving as Secretary of Homeland Security—

(1) approximately 15,000 Haitian migrants crossed the border from Mexico into the United States and were concentrated in an encampment underneath the international bridge between Mexico and the Del Rio, Texas, Port of Entry and in surrounding areas;

(2) mounted Border Patrol agents and troopers with the Texas Department of Public Safety dispersed a large

group of migrants gathered near a boat ramp located in the United States along the Rio Grande River, approximately 500 yards east of the Del Rio Port of Entry and then attempted to stop the flow of all migrants illegally crossing the Rio Grande River into the United States at that location;

(3) within hours of the incident described in paragraph (2)—

(A) images and video surfaced on social media that showed multiple Border Patrol agents on horseback using their horses to keep several illegal immigrants from entering the United States after crossing the Rio Grande in Del Rio, Texas;

(B) extremist liberal activists rushed to judgement and falsely accused the agents of whipping the illegal immigrants with their horse reins, in spite of a statement by the photographer that the pictures were misconstrued as showing abusive behavior; and

(C) some activists made the disgusting false equivalency to slavery; and

(4) Secretary Mayorkas, after Assistant Secretary of Homeland Security for Public Affairs Marsha Espinosa emailed to him a news article explaining that the photographer who took the images did not see the agents whipping anyone—

(A) misled the general public by publicly supporting the Biden administration's false narrative that Border Patrol agents whipped Haitian migrants; and

(B) participated in a White House press conference during which he publicly and falsely slandered the Border Patrol agents referred to in para-

graph (2), calling the images “horrifying” and an example of “systemic racism”;

Whereas a 511-page report by the U.S. Customs and Border Protection’s Office of Personal Responsibility found “no evidence that [Border Patrol agents] involved in this incident struck, intentionally or otherwise, any migrant with their reins”;

Whereas the National Border Patrol Council, which is the labor union representing Border Patrol agents and support staff, is considering supporting the impeachment of Secretary Mayorkas;

Whereas the actions of Secretary Mayorkas’ department have encouraged foreign nationals to attempt to illegally enter the United States at historic levels, as evidenced by 251,012 enforcement encounters along the southern border in December 2022, which is the highest number of encounters ever recorded in a single month;

Whereas a major component of these failed immigration enforcement policies is the Department of Homeland Security’s disregard for its responsibility to enforce Federal immigration laws, including Secretary Mayorkas’ abuse of discretion in granting humanitarian parole, which, according to section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A), is only to be used on a “case-by-case basis for urgent humanitarian reasons or significant public benefit”, and has been used by Secretary Mayorkas’ department to grant parole en masse on multiple occasions, including new “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans”, which was announced in October 2022 and expanded in January 2023;

Whereas the policies of the Department of Homeland Security, under the leadership of Secretary Mayorkas, have encouraged increased numbers of unaccompanied migrant children to enter the United States during the 2-year period immediately preceding the date on which this resolution was introduced, with large numbers of such children revealed by the New York Times to have been forced into dangerous jobs in violations of child labor laws;

Whereas, on March 28, 2023, Ranking Member Senator Lindsey Graham, during a hearing of the Committee on the Judiciary of the Senate, pointed out that under Secretary Mayorkas’ watch—

(1) the southern border of the United States “has gone from the lowest illegal crossings in December 2020 to all-time highs with over 2,000,000 last fiscal year”;

(2) “fentanyl is coming in at a pace we have never seen”; and

(3) “more terrorists on the watch list are coming than any time since we’ve been measuring these things”;

Whereas, during the same hearing, Senator Josh Hawley—

(1) compared the CBP One mobile application used to schedule appointments and request humanitarian parole and asylum to “a concierge service for illegal immigrants”;

(2) commented to Secretary Mayorkas, “rather than building a wall, Mr. Secretary, you have built Ticketmaster for illegal immigrants”; and

Whereas during the same hearing—

(1) Secretary Mayorkas told Senator Ted Cruz that he did not recognize wristbands abandoned along the border, which cartels commonly use for human smuggling and trafficking and which act as a sort of registration

system, with different colors and patterns denoting the cartel responsible, how many times a person has attempted to cross, and how much they owe to the cartel; and

(2) Senator Cruz replied in frustration to Senator Mayorkas by calling him incompetent and telling him, “If you had integrity, you would resign.”:

Now, therefore, be it

1 *Resolved,*

2 That it is the sense of the Senate that Secretary
3 Alejandro Nicholas Mayorkas no longer holds the con-
4 fidence of the Senate or of the American people to faith-
5 fully carry out his duties as Secretary of Homeland Secu-
6 rity.

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