

HOUSE REPUBLICANS' UNCONSTITUTIONAL, EVIDENCE-FREE IMPEACHMENT

This markup is just more of the same political games from House Homeland Security Committee (CHS) Republicans. They don't want to fix the problem; they want to campaign on it. That's why they have undermined efforts to achieve bipartisan solutions and ignored the facts, legal scholars and experts, and even the Constitution itself in their quest to baselessly impeach Secretary Mayorkas.

This farce of an impeachment is a distraction from other vital national security priorities and the work Congress should be doing to actually fix our broken immigration laws.

- **NO HIGH CRIMES OR MISDEMEANORS** – Despite the “[sham hearings](#)” they've held, House Republicans have [failed](#) to provide [any legitimate Constitutional grounds](#) for impeachment according to countless [legal experts of diverse political views](#), [House Republicans' own prior impeachment witness](#), and their fellow [GOP Members](#).
- **PREDETERMINED FROM THE START** – They decided to impeach the Secretary before even starting their so-called “investigation.” Just ask Chairman Mark Green, who was [caught on tape](#) fundraising off plans to impeach the Secretary last spring, or Marjorie Taylor Greene who said impeaching Secretary Mayorkas would be her “[beautiful dessert](#)” in exchange for votes on other issues. This impeachment is a transparent attempt to [appease](#) their most extreme Members.
- **CYNICAL & HYPOCRITICAL PROCESS** – CHS Republicans have run a hyper-partisan impeachment that completely [neglected due process and fairness](#), values that they [claimed](#) to [care](#) about in prior impeachments. They [refused](#) to work with the Department to find a date for Secretary Mayorkas to testify since it did not fit into their calculated rush to impeach him. They [set a date](#) for marking up articles of impeachment – and even [announced](#) all CHS Republicans would support impeachment – before allowing the Secretary to respond regarding potential testimony.

Beyond being an illegitimate exercise unworthy of the job Members of Congress were actually sent to Washington to do, the CHS Republicans' impeachment effort is baseless. Secretary Mayorkas is enforcing and utilizing the law to safeguard our homeland exactly as every one of his predecessors did.

FACT CHECKING HOUSE HOMELAND MAJORITY'S BASELESS ATTACKS

In their articles of impeachment, CHS Republicans will repeat the same baseless allegations they've made for the past three years. None are grounds for impeachment, and none are accurate representations of the work the Department does every day to enforce our laws and keep America safe.

Secretary Mayorkas Has Upheld And Enforced Our Laws:

Border Security Efforts & Enforcement:

- Removals – This Administration has removed, returned, or expelled more migrants in three years than the prior Administration did in four years. The [majority of all southwest border migrant encounters](#) throughout this Administration have been removed, returned, or expelled. Total removals and returns since mid-May exceed removals and returns in every full fiscal year since 2015.
- Fentanyl – DHS has [seized more fentanyl and arrested more individuals](#) for fentanyl-related crimes in the last two years than in the previous five years combined.
- Apprehensions – Before 2013, the majority of noncitizens attempting to cross the border entered without being caught. Under this Administration, the estimated annual apprehension rate has averaged 78%, identical to the rate of the prior Administration.

Immigration & Nationality Act (INA)

- Detention:
 - As has been the case for several Administrations now, DHS [adheres](#) to the mandatory detention requirements of the INA to the maximum extent possible, including by detaining those who pose a threat to public safety or national security. No Administration has ever been able to detain every individual who crosses illegally. When the relevant provisions of the INA were passed in 1996, there were [fewer than 10,000 beds](#) while apprehensions were routinely [over 1 million](#). A standard requiring 100% detention would mean that Congress should have impeached every DHS Secretary since the Department was founded.
 - Congress has never provided the funding for detaining every individual who crosses illegally. As the then-ICE Acting Director [testified to Congress](#) last year, in order to detain every individual ICE would need “more beds than probably exist in the public sector and funding we don’t have.”
 - Every Administration has faced this reality. A recent [CATO analysis](#) found that the prior Administration released more than 700,000 migrants pending their immigration proceedings during the final two years of their term – the majority of migrant encounters over that period.
- Parole:
 - Parole processes for defined groups have been used and accepted as lawful for decades. The Haitian Family Reunification Program, Filipino WWII Family Veterans, and Parole in Place for Immigrant Military Families programs were all programs utilized by the prior Administration.
 - DHS has followed the requirements of the INA regarding parole:
 - 1) DHS reviews, on a case-by-case basis, both the biographical and biometric information of every potential parolee and additional information as relevant prior to deciding an individual parole application.
 - 2) DHS clearly identified the significant public benefits and urgent humanitarian reasons in the Federal Register Notices it issued publicly.

Secure Fence Act & Operational Control:

- As the Secretary has [testified](#), the Secure Fence Act statutorily defines operational control as preventing all unlawful entries into the United States. By that definition, no administration has ever had operational control.
- In fact, after the Secure Fence Act passed, Border Patrol under a Republican Administration felt it necessary to clarify its [definition of operational control](#) in its 2007 national strategy as “the ability to detect, respond to, and interdict border penetrations in areas deemed as high priority for threat potential or other national security objectives.”
- By the standard of maintaining operational control as defined by the Secure Fence Act, Congress should have impeached every DHS Secretary since the law’s passage.

Policy Disagreements & Legal Challenges:

- The Majority has pointed to countless policy differences in their arguments for impeachment, but as their [fellow GOP Members](#) and [dozens of legal experts](#) across the political spectrum have made clear, neither policy differences nor alleged “[maladministration](#)” are Constitutional grounds for impeachment.
- As Constitutional experts have explained in testimony to the Committee and publicly, legal challenges to Administration policies are not grounds for impeachment. Impeachment scholar Professor Frank Bowman [testified](#):

*“Legal disputes over the exercises of executive authority are a commonplace in every administration. And every president wins some and loses others. If **the mere existence of such disputes were impeachable, every president and every cabinet officer would be impeachable many times over.**”*

Secretary Mayorkas Is A Dedicated Public Servant Who Has Served America Honorably and Truthfully For Decades:

Refuting False Allegations of Lying About Operational Control During Congressional Testimony:

- Republican Members have themselves refuted the baseless charge that the Secretary lied under oath. Rep. McClintock [stated](#), “I have not seen specific evidence that he has lied” given that the definition of operational control is a “matter of opinion.”
- Secretary Mayorkas has [repeatedly](#) and consistently [testified regarding](#) operational control and the statutory definition of the term, which no Administration has ever met, compared to the Department’s use of the term. There is no basis to accuse him of lying to Congress and Republican Members of Congress have admitted as much.
- In [testimony](#), former Border Patrol Chief Ortiz concurred with the Secretary’s testimony that we do not have operational “based upon the definition you have sir up there” as a poster was shown with the statutory definition. He further clarified his point [stating](#), “the question that was posed during my hearing was the Congressional legislative definition of operational control, where nobody crosses the border. **I’ve been doing this job for 32 years. We’ve never had operational control.**”

Refuting False Allegations of Dereliction of Duty

- Secretary Mayorkas is a dedicated public servant who has spent decades, both as a federal prosecutor and at DHS, working to keep his fellow Americans safe.
- Legal and Constitutional experts have debunked so-called “dereliction of duty” as an invalid legal standard for impeachment. As Professor Claire Finkelstein [explained](#):

“President Biden and Secretary Mayorkas haven’t violated the law. And I suspect that members of the GOP and Congress know that full well, and so they don’t want to use any term that suggests that there may be a legal violation here. And so they’re using this sort of made-up term that has a quasi-military frame to sound vaguely official, but it’s really nothing that corresponds to what we would understand from the history of impeachment as a high crime and misdemeanor as the framers would have conceived.”

DHS Has Provided Historic Levels Of Access And Responsiveness To Committee Requests:

- Secretary Mayorkas has testified before Congress more than any other Cabinet member – 27 times in 35 months, including just two months ago in front of CHS on November 15.
- The Department is committed to and will continue to respond to Congressional oversight requests in good faith. In that effort, DHS has:
 - produced more than 20,000 pages of documents this Congress, including more than 13,000 to CHS alone
 - provided over 75 witnesses in more than 50 hearings across committees in addition to nearly 20 employees for transcribed interviews
 - held more than 200 informational engagements in just 6 months for CHS, including briefings, delegations, roundtables, and meetings
 - responded to over 1,400 congressional letters since January 20, 2021
- Rather than request information for legislative purposes, as the process is intended, CHS floods DHS with an unprecedented and inordinate volume of requests and imposes unrealistic and arbitrary timelines, as part of their political playbook to make up allegations of conflict. This conduct undermines the Department’s ability to respond effectively and provide Congress with information that is truly needed.
- Despite these political games, DHS continues to respond, to produce, to testify, to brief and to inform the Committee in good faith.

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Note: This memo has been updated to correct an error. This Administration has removed, returned, or expelled more migrants in three years than the prior Administration did in four years, not than any Administration.