

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the preamble.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MARSHALL

Viz:

1 Strike the preamble and insert the following:

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)(i) nearly 10,000,000 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;

(ii) 33 months with more than 150,000 illegal border crossings; and

(iii) 19 months with more than 200,000 illegal border crossings;

(B)(i) the apprehension of 98 individuals that match records within the Terrorist Screening Database at the southern border between ports of entry during fiscal year 2022, which is more such apprehensions than occurred during the previous 5 years combined; and

(ii) the apprehension of 80 such individuals during fiscal year 2023;

(C) U.S. Customs and Border Protection’s April 2022 apprehension and release into the United States of an illegal alien who was on the Federal Bureau of Investigation’s Terrorist Watchlist and who roamed free for 3 weeks before finally being reapprehended;

(D) the 2023 illegal entry into the United States of a group of aliens from Uzbekistan who requested asylum and were later discovered by the Federal Bureau of Investigation to have traveled to the United States border with the aid of a smuggler with ties to the Islamic State of Iraq and Syria; and

(E)(i) 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

(ii) 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 Detention process, which have resulted in the reckless release of more than 1,400,000 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 (referred to in this preamble as “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, 27,000 pounds of illicit fentanyl during fiscal year 2023, and 3,500 pounds of illicit fentanyl in the first 3 months of fiscal year 2024, 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—

(1) more than 107,000 Americans died of drug overdoses in 2021, which exceeded the number of such deaths in any previous year;

(2) more than 109,000 Americans died of drug overdoses in 2022; and

(3) approximately $\frac{2}{3}$ of these overdose 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 mo-

bile 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 1,700,000 known “got-aways”, the record number of potential terror suspects, 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;

(B) participated in a White House press conference during which he publicly and falsely slandered the Border Patrol agents referred to in paragraph (2), calling the images “horri-fying” 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 inci-

dent 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 more than 300,000 enforcement encounters along the southern border in December 2023, which—

(1) is the highest number of such encounters ever recorded in a single month; and

(2) is significantly higher than the average of 36,796 such encounters during each December in the 21-year period ending on September 30, 2020;

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”; and

(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 Secretary Mayorkas by calling him incompetent and telling him, “If you had integrity, you would resign.”;

Whereas Secretary Mayorkas remains determined to quietly continue a concerted effort to undermine immigration enforcement in the interior of the country;

Whereas since his first day in office, Secretary Mayorkas has worked to incentivize illegal aliens to make the dangerous journey to the southern border of the United States by decreasing the likelihood that they will ever be removed;

Whereas one of Secretary Mayorkas’ first official actions was issuing a complete moratorium on removals that was blocked by a Federal judge;

Whereas Secretary Mayorkas issued a detailed memo that established a list of factors that U.S. Immigration and Customs Enforcement (referred to in this preamble as “ICE”) officers are required to consider before investigating, questioning, arresting, detaining, prosecuting, or removing illegal aliens in the United States, which was later expanded to prohibit ICE officers from initiating immigration enforcement actions in a broad list of locations designated as “protected areas”;

Whereas Secretary Mayorkas is developing an alarming new program to be known as Release and Reporting Management (referred to in this preamble as “RRM”), which—

(1) would increase illegal immigration by rewarding lawbreakers and greatly reducing the number of aliens who would be subject to removal RRM;

(2) would apply to the entire non-detained docket population of nearly 6,000,000 illegal aliens, including criminals; and

(3) authorizes the provision of therapeutic services, housing, psychosocial services, and food and clothing for such aliens;

Whereas in 2022, Secretary Mayorkas launched a pilot program, known as the ICE Secure Docket Card Program, to provide illegal aliens with an federally-issued identification card upon release from ICE custody;

Whereas Secretary Mayorkas created and seeks to expand the Case Management Pilot Program, which is overseen by Church World Service (a nongovernmental organization that has advocated for the abolition of ICE), to provide United States taxpayer-funded aid to illegal aliens who are facing removal;

Whereas due to the historic increase of inadmissible aliens at the border, ICE Enforcement and Removal Operations (referred to in this preamble as “ERO”) has been forced to divert its resources and personnel away from interior enforcement (one of its primary areas of focus) to address the crisis at the border;

Whereas Secretary Mayorkas continues to undermine ERO by expanding lawful pathways for inadmissible aliens to be protected from being removed;

Whereas ICE made only 142,580 removals during fiscal year 2023, which is nearly twice as many removals as were made during fiscal year 2022, but is a small fraction of

the nearly 2,500,000 southern border migrant encounters during fiscal year 2023, and a significant decline from the number of annual removals under the previous administration;

Whereas the non-detained docket has nearly doubled during Secretary Mayorkas' watch to more than 6,000,000 aliens, including—

- (1) illegal aliens who have been issued final orders of removal; and
- (2) aliens with pending cases, which includes aliens who have been issued a Notice to Appear;

Whereas participants in the Intensive Supervision Appearance Program, which has proven to be an effective electronic monitoring program to ensure compliance with court appearances and removal orders for those on the non-detained docket, plummeted from 384,119 in December 2022 to 194,427 as of September 30, 2023;

Whereas ICE removed only 212 unaccompanied minors during fiscal year 2023 compared to 137,275 alien minors who arrived at the southern border during that fiscal year;

Whereas ICE removed 139 known or suspected terrorists during fiscal year 2023, which—

- (1) is a significant increase compared to the previous 6 years during which no more than 58 suspected terrorists were removed in any given year; and
- (2) indicates that more terrorist watchlist suspects are arriving at the southern border;

Whereas ICE enforcement during the previous administration was significantly higher despite fewer illegal aliens attempting to cross the southern border, as evidenced by—

(1) a previous administration peak of 851,000 migrant encounters at the southern border during fiscal year 2019; and

(2) back-to-back fiscal years of at least 2,300,000 migrant encounters at the southern border under the leadership of Secretary Mayorkas, with significantly lower removal rates;

Whereas on October 20, 2023, Secretary Mayorkas requested significant supplemental funding for additional immigration detention beds, even though such beds are not being used to maximum capacity;

Whereas ICE only had 36,263 aliens in detention as of December 17, 2023, but had the detention capacity for more than 50,000 if Secretary Mayorkas had permitted ICE to utilize such beds;

Whereas on November 3, 2023, employees at an immigration processing center in Pine Prairie, Louisiana received notices that the facility would cease operations on January 2, 2024; and

Whereas on November 30, 2023, media reports indicated that ICE plans to close a 2,000-bed detention facility in Adelanto, California: Now, therefore, be it