

# [***Opinion: Impeach Mayorkas for gross mismanagement***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B8J-FHP1-JBSS-S05X-00000-00&context=1516831)

CNN Wire

February 6, 2024 Tuesday 6:19 PM GMT

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**Length:** 1299 words

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**Dateline:** (CNN)

**Body**

(CNN) &#8212; **Editor's note:** W. James Antle III is the ***politics*** editor of the Washington Examiner and author of "Devouring Freedom: Can Big Government Ever Be Stopped?" The opinions expressed in this commentary are his own. View [*more opinion*](https://www.cnn.com/opinions) on CNN.

The [*situation at the southern border*](https://www.cnn.com/us/us-mexico-border-texas-military/index.html) has been one of the [*biggest problems*](https://www.cnn.com/2023/12/07/politics/biden-compromise-border-security/index.html) facing President Joe Biden's administration throughout almost the entirety of his term. Migrants have been [*coming in record numbers*](https://www.cnn.com/2023/12/22/politics/border-surge-record-amounts/index.html), [*stretching already strained resources*](https://www.cnn.com/2023/12/20/us/us-mexico-border-analysis-cec/index.html). In fiscal year 2023, there were [*2.4 million encounters*](https://homeland.house.gov/2023/10/26/factsheet-final-fy23-numbers-show-worst-year-at-americas-borders-ever/) - the federal government's term for the total number of people [*apprehended and processed for removal*](https://www.voanews.com/a/encounters-apprehensions-expedited-removal-border-enforcement-explained-/7065786.html) - at the southwest border and some 3.2 million nationwide. There were more than [*300,000*](https://abcnews.go.com/Politics/migrant-encounters-reach-time-high-southwest-border/story?id=106050779) at the southwest borderin December alone.

Voters would like to [*see something done about it*](https://www.bloomberg.com/news/articles/2024-01-07/senate-to-present-funding-package-this-week-lawmakers-say) since the ramifications are felt far [*beyond the Rio Grande*](https://ny1.com/nyc/all-boroughs/politics/2024/01/10/house-gop-invokes-new-york-migrant-surge-while-pursuing-mayorkas-impeachment). Elected officials, including Democrats, have been [*calling for action*](https://www.nytimes.com/2023/08/24/nyregion/hochul-biden-migrants.html).

Among the answers House Republicans have [*proposed*](https://www.cnn.com/2024/01/10/politics/house-impeachment-hearing-mayorkas/index.html): the [*impeachment*](https://www.cnn.com/2024/01/08/politics/house-republicans-plot-swift-mayorkas-impeachment-as-moderates-signal-support/index.html) of Homeland Security Secretary Alejandro Mayorkas. Mayorkas is the Cabinet official with jurisdiction over the border. He oversees the federal agencies responsible for its security. House Republicans [*last week unveiled*](https://www.cnn.com/2024/01/28/politics/mayorkas-impeachment-house-republicans/index.html) articles of impeachment against Mayorkas that the [*House planned a vote for on Tuesday*](https://www.cnn.com/2024/02/06/politics/house-vote-mayorkas-impeachment/index.html).

Some point to the bipartisan [*border crisis legislation*](https://www.cnn.com/2024/02/04/politics/senate-border-bill-takeaways/index.html) proposed in the Senate - which House Republicans oppose - as a better solution than impeachment. But [*Mayorkas' lack of credibility*](https://www.documentcloud.org/documents/24377968-mike-johnson-letter) on border security is part of the reason many view the [*bill as a nonstarter*](https://apnews.com/article/mayorkas-impeachment-border-security-biden-house-93dccd7ac83d42e5b7ecd561eb2d1430). Many [*GOP lawmakers also reject*](https://thefederalist.com/2024/01/30/biden-has-the-power-to-end-the-border-crisis-without-congress-he-just-doesnt-want-to/) the contention that the Biden administration lacks the authority or resources to secure the border without passing a new law. And [*House Republicans have opposed*](https://www.cbsnews.com/news/house-pushes-back-on-immigration-bill/) this basic approach to handling the issue since George W. Bush, a member of their own party, was president.

The [*Constitution gives the House*](https://www.law.cornell.edu/constitution/articlei) "the sole power of impeachment" and the Senate "the sole power to try all impeachments." Under [*Article II, Section 4*](https://www.law.cornell.edu/constitution/articleii#section4), the possibility of impeachment for [*"treason, bribery, or other high crimes and misdemeanors"*](https://constitution.congress.gov/browse/essay/artII-S4-1/ALDE_00000282/#:~:text=Article%20II%2C%20Section%204%3A,other%20high%20Crimes%20and%20Misdemeanors.&text=U.S.%20Const.) applies to "all civil officers of the United States" in addition to the president and the vice president. The Constitution does not define [*high crimes and misdemeanors*](https://www.theatlantic.com/ideas/archive/2019/10/what-does-high-crimes-and-misdemeanors-actually-mean/600343/). Those are ultimately political, rather than purely legal, judgments. Congress could determine that a border failure of this magnitude is a dereliction of duty, an unacceptable abdication of a [*core constitutional responsibility*](https://www.heritage.org/homeland-security/commentary/impeaching-mayorkas-must-he-violated-his-oath-and-committed-high).

Mayorkas' defenders argue that his conduct doesn't approach the high crimes and misdemeanors outlined in the Constitution. These are policy differences, they claim, rather than something approaching bribery or treason. But in Federalist No. 65, Alexander Hamilton [*wrote*](https://avalon.law.yale.edu/18th_century/fed65.asp) that impeachment could stem from "the abuse or violation of some public trust." The mismanagement at the border could certainly be so described.

In fact, the loose language of "high crimes and misdemeanors" had a history in the [*British legal tradition*](https://law.justia.com/constitution/us/article-2/50-impeachable-offenses.html) that specifically went beyond indictable offenses. And while there is continuing legal argument about what constitutes impeachable offenses, in practice [*then-Rep. Gerald Ford*](https://www.americanbar.org/news/abanews/aba-news-archives/2019/10/history-law-suggest-impeachment/) had it right when he said in 1970, "An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."

The situation at the border is unsustainable. If the current team managing border security cannot get it under control, it needs to be replaced with people who can. If the president refuses to appoint a team that will do the job better, the voters need to see this clearly ahead of the election in November.

Indeed, what Mayorkas and his subordinates are doing [*is not working*](https://www.cnn.com/2023/12/29/us/us-mexico-border-migration/index.html). A vote against Mayorkas in the House of Representatives, which wouldculminate in his removal from office if the Senate agrees, is one way to attempt to force a course correction.

Some lawmakers also feel [*Mayorkas' past testimony*](https://www.govinfo.gov/content/pkg/CHRG-117hhrg49702/html/CHRG-117hhrg49702.htm) that the [*border is operationally secure*](https://www.cnn.com/2023/03/15/politics/border-control-hearing/index.html) is not only laughable based on what is taking place there but also incompatible with [*speaking truthfully under oath*](https://www.texastribune.org/2024/01/10/texas-republicans-mayorkas-impeachment/#:~:text=%E2%80%9CMayorkas%20lied%20to%20me%20under,for%20an%20impeachment%20for%20years.).Whether such a potential transgression amounts to an impeachable offense is, again, a political judgment that the Constitution empowers members of Congress to make.

The Department of Homeland Security has [*said*](https://www.dhs.gov/xlibrary/opa/24_0128_OPA_memo.pdf), for its part, that Republicans 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."

One valid concern is that impeaching executive branch officials for being bad at their jobs, or simply pursuing what the opposite party believes is bad policy, will set a dangerous precedent. Indeed, [*until fairly recently*](https://www.cnn.com/2014/08/04/opinion/zelizer-impeachment-gets-dumbed-down/index.html), impeachment of federal officials has been rare. [*Only one previous Cabinet*](https://ballotpedia.org/Impeachment_of_federal_officials) officer [*has been impeached*](https://www.senate.gov/about/powers-procedures/impeachment/impeachment-belknap.htm), over alleged corruption, and he was acquitted. Now, every time the House and the presidency are controlled by different parties, a polarizing or unpopular Cabinet official could be targeted with impeachment. The partisan tit for tat could spiral out of control.

It is undeniable that the parties often behave this way. I share this concern about [*impeaching presidents*](https://www.cnn.com/2023/09/15/opinions/joe-hunter-biden-impeachment-trump-antle/index.html). But impeaching the president raises issues that impeaching a Cabinet officer does not. The president is an elected official, whereas Cabinet members are appointed. An impeached appointee will be replaced by that same president, subject tothe same Senate approval.

Impeaching Mayorkas does not contradict the will of the voters; the voters elected Biden, not him. While the Constitution allows the impeachment of elected officials as well, the bar should be higher under those circumstances. That doesn't apply to Mayorkas, however. Agency heads and Cabinet members are already subject to congressional oversight. They testify regularly before congressional committees in both chambers. They may become targets of congressional committee subpoenas. The president and vice president typically do not answer to such inquiries, underscoring that they should receive a different standard of scrutiny.

Many scholars believe that Congress has seen its role in the federal government [*lessened*](https://www.cato.org/blog/decline-lawmaking-reflects-diminished-congress), often by [*its own actions*](https://www.rstreet.org/commentary/why-does-congress-diminish-itself/), relative to the executive and judicial branches. Impeachment of lesser unelected federal officials might be one way to restore some checks and balances, or at least some real teeth to congressional oversight. It is a constitutionally authorized congressional power, and it ought to be used against the [*administrative state*](https://www.govexec.com/workforce/2023/09/deconstructing-administrative-state-what-cost/390267/) in which unelected bureaucrats end up behaving quasi-legislatively.

And unlike the subject matter in Biden's impeachment inquiry, which focuses on alleged business dealings with his son (the president denies any wrongdoing in regard to his son's business, and even [*some Republicans*](https://www.cnn.com/2023/09/12/politics/ken-buck-impeachment-stance/index.html) have been critical of the impeachment effort), the issue at the heart of the Mayorkas inquiry is at least to some extent a [*bipartisan concern*](https://www.manchin.senate.gov/newsroom/press-releases/manchin-questions-secretary-of-homeland-security-on-solutions-to-securing-our-border). Impeachment can only be successful in our era of closely divided Congresses with the support of both parties.

While some of the policy disputes underlying the border dysfunction can only be adjudicated by the voters in this year's election, Congress can and should hold federal officials accountable for gross mismanagement. If the porous border does not constitute that, it would be difficult to surmise what would.

It is time for Congress, on behalf of its constituents, to take a stand against an ill-regulated and porous border. Impeachment hearings against Mayorkas would be a good place to start.

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**Load-Date:** February 6, 2024

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