

# [***'Never Been Done Before': Legal Experts, GOP Senators Attack Possible Attempt To Avoid Mayorkas Impeachment Trial***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BRX-4XS1-DXXD-700F-00000-00&context=1516831)

The Daily Caller

April 8, 2024 Monday 10:11 PM EST

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**Section:** DAILY-CALLER-NEWS-FOUNDATION; ***politics***; ***politics***

**Length:** 1029 words

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**Body**

[*Link to Image*](https://cdn01.dailycaller.com/wp-content/uploads/2024/04/GettyImages-1483102285-scaled-e1712350497536.jpg)

Senate Republicans and legal scholars say that a possible Democratic maneuver to avoid an impeachment trial of Homeland Security Secretary Alejandro Mayorkas lacks precedent and would be unconstitutional.

The House of Representatives [*impeached*](https://dailycaller.com/2024/02/13/house-votes-to-impeach-dhs-secretary-alejandro-mayorkas/) Mayorkas in February on [*two articles*](https://www.congress.gov/118/bills/hres863/BILLS-118hres863eh.pdf) - for a “wilful and systemic refusal to comply with the law” and a “breach of the public trust” - following their criticism of him for the influx of foreign nationals entering the United States illegally through the southern border, which has exceeded [*7 million*](https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters) during his term of office. [*Reports*](https://thehill.com/homenews/senate/4573379-senate-schumer-mayorkas-impeachment/) have [*indicated*](https://nypost.com/2024/04/03/us-news/sen-mcconnell-says-he-expects-democrats-to-kill-mayorkas-impeachment-trial/) that Senate Democrats, who hold a slim majority in the body, will seek to dismiss the articles of impeachment against Mayorkas, which Republicans in Congress say they will oppose on constitutional grounds. [***(RELATED: 'It Is What It Is': Mike Gallagher Explains Why He Voted Against Impeaching Mayorkas)***](https://dailycaller.com/2024/02/07/mike-gallagher-explains-vote-no-mayorkas-impeachment/)

“I think it has never been done before in the history of our nation and we're going to vigorously oppose it,” Republican Sen. Lindsey Graham of South Carolina, the ranking member of the Senate Judiciary Committee, told the Daily Caller News Foundation. “I think it is [unconstitutional].”

[*Letter to Charles Schumer From House Impeachment Managers*](https://www.scribd.com/document/720410172/Letter-to-Charles-Schumer-From-House-Impeachment-Managers#from_embed) by [*Daily Caller News Foundation*](https://www.scribd.com/user/292804634/Daily-Caller-News-Foundation#from_embed) on Scribd

“The right thing to do would be to refer it to the Judiciary Committee to conduct a trial and make a report to the full Senate,” Andrew McCarthy, a senior fellow at National Review Institute and Fox News legal contributor, told the DCNF. “[T]hey've calculated that it's better to take some heat for refusing to hold a trial than to allow House Republican impeachment managers and Senate Republicans in the Judiciary Committee make a public record on Biden administration border policy in the high-profile context of an impeachment trial against a Biden cabinet member.”

Senate Minority Leader Mitch McConnell has forecast that Schumer will seek to dismiss the articles quickly. “I expect he will do that, and the Democrats have a majority, so it may not go very long...my preference would be to actually have a trial,” McConnell [*told*](https://twitter.com/mckennahorsley/status/1775574319076151721) reporters in Kentucky on Wednesday.

On March 28, House Speaker Mike Johnson and 11 Republicans who will serve as “impeachment managers” [*wrote a letter*](https://www.speaker.gov/wp-content/uploads/2024/03/Schumer-Letter-from-Impeachment-Managers.pdf) to Senate Majority Leader Chuck Schumer demanding that the Senate hold a full trial for Mayorkas, citing the Senate's “constitutional duty” to do so.

“We call upon you to fulfill your constitutional obligation to hold this trial,” Johnson and the signatories wrote. “To table articles of impeachment without ever hearing a single argument or reviewing a piece of evidence would be a violation of our constitutional order and an affront to the American people whom we all serve.”

Other Republican senators - who will serve as [*sworn members*](https://www.archives.gov/founding-docs/constitution-transcript#1-3) of the jury that renders a verdict in the trial, as required by the Constitution - have attacked the proposal.

“We have a constitutional responsibility to take up that impeachment and render a verdict and just dismissing it I don't think is an adequate way of rendering a verdict,” Republican Sen. Ron Johnson of Wisconsin told the DCNF. “[F]or them to be able to just table it rather than actually go through the process, I think they'll regret it at the end of the day,” Republican Sen. James Lankford of Oklahoma told the DCNF.

“The Constitution, Senate rules and precedent are clear: The Senate has an obligation to vote on articles of impeachment,” [*wrote*](https://www.wsj.com/articles/the-senates-duty-to-put-mayorkas-ontrial-impeachment-e28a8294?mod=hp_opin_pos_3#cxrecs_s) Republican Sens. Ted Cruz of Texas and Mike Lee of Utah in an article published in The Wall Street Journal on Sunday. “[W]hen sitting as a court of impeachment, the chamber operates under special rules that resemble a court's process to preserve justice, protect the accused person's due-process rights, and ultimately render judgment on the charges. The impeachment rules have no provision for a motion to table.”

Currently, the Senate's [*rules regarding impeachment*](https://www.govinfo.gov/content/pkg/SMAN-113/pdf/SMAN-113-pg223.pdf) indicate that it is required to hold a trial after receiving articles from the House.

“The Majority Leader is expected to take the completely unprecedented step of voting to table the impeachment articles and eliminate a trial entirely, in violation of the Constitution,”  Republican Sen. John Cornyn of Texas, a candidate for leadership of the conference, [*remarked*](https://www.youtube.com/watch?v=y3vVCMvYNs4&feature=youtu.be) on the Senate floor on Monday. “This would be the first time in our nation's history that the Senate failed to do its duty to consider evidence, hear witnesses, and allow Senators to vote guilty or not guilty. This would be a dangerous precedent to set.”

Legal experts cast doubt on whether Senate rules may permit a dismissal, though claimed that courts would likely not involve themselves in the matter if disputed.

“There are no direct precedents. The Senate has dismissed some cases without a trial, but those cases all involved someone who had resigned from office after being impeached-the Senate decided that it was not worth it to proceed at that point,” Brian Kalt, a professor of law at Michigan State University, told the DCNF.

“If refusing to consider the House impeachment at all would violate current rules, the Senate can change its rules by majority vote. I don't think courts would question that,” Jeremy Rabkin, a professor at George Mason University's Antonin Scalia Law School, told the DCNF.

“[T]hey're gonna want to run up the flagpole to the [Senate] Parliamentarian make sure they don't get some point of order on which whole thing is forestalled,” Frank Bowman, a professor of law at the University of Missouri, told the DCNF.

Democrats have uniformly opposed Mayorkas' impeachment, with Schumer calling it “[*absurd*](https://thehill.com/homenews/senate/4573379-senate-schumer-mayorkas-impeachment/).” Should Mayorkas face a trial, it would require a vote of two-thirds of all senators to convict and remove him from office.

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**Graphic**

WASHINGTON, DC - APRIL 18: U.S. Secretary of Homeland Security Alejandro Mayorkas speaks during a hearing with the Senate Homeland Security Committee in the Dirksen Senate Office Building on April 18, 2023 in Washington, DC. Mayorkas testified on the Department of Homeland Security's Fiscal Year 2024 budget request and took questions on a range of topics including the U.S. northern and southern borders. (Photo by Anna Moneymaker/Getty Images)

**Load-Date:** April 8, 2024

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