

# [***World Awaits Israeli Response to Iran Attack; Interview With Former U.S. Central Command Commander Gen. Kenneth McKenzie; Interview With Rep. Chip Roy (R-TX); Senate Ends Impeachment Trial of Homeland Security Secretary Alejandro Mayorkas***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BTT-S651-F072-X001-00000-00&context=1516831)

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**Body**

NEIL CAVUTO, FOX NEWS ANCHOR: All right you're looking live on the floor of the United States Senate.

For 2.5 hours, senators have been involved in their third impeachment trial now in, what, less than four years. This time, the focus is on Homeland Security Alejandro Mayorkas. You might know that Republicans say that he has failed to fulfill his duties in upholding the immigration law. They're pushing for full Senate trial of the case against him.

But that's kind of looking dicey, because Senate Democrats, who technically have control of the Senate, are poised to dismiss what they consider these basis allegations. And on and on we go.

Welcome, everybody. I'm Neil Cavuto. This is "Your World."

Let's get right to it then, will we, with Chad Pergram. He can tell us a little bit what's going on now and really gauge how long this goes on, because this could also be the shortest impeachment trial ever.

CHAD PERGRAM, FOX NEWS CONGRESSIONAL CORRESPONDENT: Yes, this could wrap up here in the next couple of hours.

It could be extended into the evening a little bit. And the reason that is the case is, Republicans have now made eight motions, various motions to adjourn or postpone the trial. And a motion to adjourn, that goes to the top of the legislative list here. So they can do that ad nauseam.

Right now, they tried to kind of terminate the trial to go to executive session. I want to go back to a key vote just a bit ago, and this has been the most consequential vote that we have had all afternoon since they really got into the meat and potatoes of this trial, is Chuck Schumer had a motion to declare the first article of impeachment -- this is the one that says that Alejandro Mayorkas violated the trust of the United States here - - unconstitutional.

And this was the vote, 51 yeas, 48 nays, and Lisa Murkowski, a Republican of Alaska, she voted present. So this is what Patty Murray, the Republican -- Democratic center from Washington state, the president pro tem, who's presiding over the trial, said.

She said -- quote -- "The point of order is well-taken and the article falls."

So what that means -- and we have never really been in this parliamentary situation before -- that that article is done, finis. We had talked about motions to dismiss or something like that. They might not have to do that because of how they handled that first article.

Now, they have not done that with the second article. And Republicans continue to come up with these different dates to adjourn. Roger Marshall, the Republican senator from Kansas, he wanted to postpone the trial until 7:00 in the morning on November 6, right around the election, important date here on the political calendar here.

They voted against this, but at some point here, this is going to end. And then there's a final vote to not dismiss the articles of impeachment necessarily, but to dissolve the Senate as a court of impeachment. The Senate is kind of meeting in a very unique parliamentary structure right now as a court of impeachment.

They have sworn in all 100 senators as jurors. They had to sign a book earlier this afternoon. And so that's kind of where we are right now. But the general consensus on Capitol Hill is that this probably wraps up some time in the next couple of hours.

And the important thing to note, Neil, is there's not going to be a final vote on guilt or innocence or exoneration for Alejandro Mayorkas. Again, they have already voted, the Senate has already voted to deem that first article of impeachment for Mayorkas unconstitutional.

The other article that he broke the law, they might deal with that in a similar fashion. And then Chuck Schumer, he could terminate the trial by saying, OK, let's have a vote on a motion to dissolve the court of impeachment here this afternoon.

So there's been a little bit of back-and-forth between the Democrats and Republicans. There was a move by Ted Cruz, Republican of Texas earlier, to get the Senate into a private session under Senate impeachment Rule 24. You can meet in private and debate in private. You cannot debate on the floor unless they have agreed to do so.

There was a moment where Mike Lee, the Republican senator from Utah, indicated a little bit earlier -- he was trying to explain his motion and kind of kept going on and on and on. And Patty Murray gaveled him down because it sounded a little bit like debate.

So you can't actually debate. So we're watching right now. Right now, they're voting on a motion by John Thune. He's the Republican whip to table Schumer's point of order here to get rid of the second article of impeachment -- back to you.

CAVUTO: Now, Mitt Romney is among those Republicans who didn't sign on to even having this in the first place. But he did say, I will let it go on if we can get at least two hours of debate.

Is this what counts as debate?

PERGRAM: It does not count as debate. And there was a proposal earlier in the afternoon by Chuck Schumer to allow one hour of debate on the first article and one hour on the second article and actually do that on the floor.

If you remember in the previous two impeachment trials, they didn't really do that. They heard from the impeachment managers with President Trump, President Clinton, they heard from the defense counsel. The senators sat at their desks and submitted written questions, which were then read before the Senate, and the counsel on both sides answered. They haven't really done that in this case.

Debate is only allowed in a closed session in an impeachment trial. And, again, that why that was going too far afield for Chuck Schumer, which is why the Senate voted against that in two different occasions now this afternoon.

CAVUTO: You know, this -- I know -- I understand the first article, that seems to be gone, finis, as you put it. But this second article, is that as easy to get rid of?

The reason why I ask you is, that's the one about whether Mayorkas consistently and repeatedly made false statements to Congress, avoiding lawful oversight in order to obscure -- quote -- "devastating consequences of his willful and systemic refusal to comply with the law and carry out his statutory duties."

Now, of course, he has always argued, I'm a servant of the president of the United States, I'm carrying out his wishes.

But I'm just wondering, is that a trickier one to just disband?

PERGRAM: Not necessarily, because Democrats think that none of this rises to the level of impeachment high crimes and misdemeanors.

You talk to even moderates like Joe Manchin, somebody like John Fetterman, the Democrat from Pennsylvania, who has sided with Republicans on some issues. In fact, he said he wanted to get this over as quickly as possible because it meant more time that he had to wear a suit. His de rigueur is to wear a hoodie here on Capitol Hill.

So most Democrats have said, let's get this done as soon as possible. The only defection that we have seen came from Lisa Murkowski, as I indicated, on that one critical vote that we had earlier.

CAVUTO: One final question. You have been so patient with from all of us, Chad, as this process has ensued.

In the end, it's an uphill battle to get rid of the homeland security secretary. You need 67 votes to do it, right?

PERGRAM: Two-thirds. That's right.

CAVUTO: That's not there, right?

PERGRAM: They're never going to get to that final vote on that. Whether or not to remove or convict, 67 votes, two-thirds is required in the Constitution.

What this is really about, Neil, is ***politics***. And the Republicans want to set this up and put people who are vulnerable Democratic senators facing tough reelections this fall, Jon Tester in Montana, Tammy Baldwin in Wisconsin, Jacky Rosen in Nevada, Sherrod Brown in Ohio, on the record here and say, you voted against extending this impeachment trial, you're not treating the border seriously, you didn't take the potential transgressions, the alleged transgressions, of Alejandro Mayorkas seriously.

And we're going to cut ads and run them in their states based on what happened on the floor this afternoon.

CAVUTO: So, history is proving itself out again. You can get impeached in the House. Getting convicted in the Senate is another matter entirely, isn't it?

PERGRAM: Pretty rare. We have had that happen.

There were convictions in the late 80s of Walter Nixon and Alcee Hastings, the later, now late congressman from Florida. They were federal jurists. They were removed from the bench. This also happened with Thomas Porteous, who was a federal judge, in 2009.

CAVUTO: You're a walking encyclopedia. You know that right, Chad?

Thank you very...

PERGRAM: Well, this is what we do. We study this.

CAVUTO: All right. Right.

PERGRAM: We're supposed to know this stuff.

(LAUGHTER)

CAVUTO: Well, you were on the top of the milk thing. And I was -- that blew me away. Chad, thank you very much.

Chad Pergram

PERGRAM: Thank you.

CAVUTO: We will be going back to him when we get more on this.

Congressman Chip Roy of the beautiful state of Texas joins us right now.

Congressman, obviously, Democrats are keen on wrapping this up quickly and making it go away. They might succeed. If that is the case, what do you think?

REP. CHIP ROY (R-TX): Well, Neil great to be on.

It's not surprising that our Democrat colleagues over in the Senate want to get this off of the Senate floor. The last thing they want to have is a full trial exposing the actual truth to the American people of what is happening to our nation and the shirking of responsibility, in fact, the dereliction of responsibility by the secretary of homeland security.

Whether it's on his own or on behest of the president of the United States is immaterial. The fact is, the secretary swears an oath to the Constitution and follow the law, and he's not doing that.

We're bearing the brunt of that in Texas, in particular, and throughout the country. We have already -- we have seen the headline cases like Laken Riley. We have seen a staffer of a Democratic member of Congress who was unfortunately killed by a drunk driver who was here illegally.

We have seen countless, bodies that are washing up in Texas along the Rio Grande. We had 24,300 Chinese nationals just this fiscal year, which is more than all of last year. So, in six months, we have already surpassed last year, 85 percent of whom are single adults.

Let's compare that to the 381, not thousand, 381 in President Trump's last year in office. This is purposeful. We were right to impeach him. He lied to me under oath. He said that they were -- had operational control of the border. I put the statute right up in front of him.

He then went and testified in a different way in another committee. He's trying to obscure the truth. The Democrats do not want the American people to see this. They're getting killed in the polls.

But this isn't political. I take issue. Chad does a great job, by the way. He does a really fabulous job reporting on the Hill. But I take issue with him that it's political. This is important for the American people to understand.

The second time in American history, we have impeached a sitting Cabinet secretary, and in this case because he has violated his oath to carry out his duty.

CAVUTO: So, Congressman, let me ask you this.

Obviously, the DHS secretary, Alejandro Mayorkas himself, is not commenting on this, but the DHS office is...

ROY: Right.

CAVUTO: ... saying all of these allegations are baseless.

And I quote here: "Congressional Republicans should stop wasting time with unfounded attacks and instead do their job by passing bipartisan legislation to properly fund the department's vital national security missions and finally fix our broken immigration system."

So, cutting to the chase, Congressman, they seem to say, this is on you, not you specifically, but Republicans.

ROY: Yes. Well, of course they are, right?

They have been passing sham bills over in the Senate. Democrats have no interest in owning their responsibility here in having wide-open borders, endangering the American people. The secretary of homeland security, Alejandro Mayorkas, knows precisely what he's doing. He's trying to cast blame where it doesn't belong under Republicans, because we won't advance legislation that is sham legislation that would have no chance of actually securing the border.

The president of the United States and the secretary could secure the border if they chose to do so, or at least they mostly could. We could pass some laws to help them, and we have done that, H.R.2. It's sitting on the desk in the Senate, and Chuck Schumer refuses to pass it.

It's not what they claim it to be, that it's somehow some wild-eyed bill. Literally, what the bill says, so every American knows this, the bill says, if you're here illegally, or even if you have a claim, as our law requires now, you should be detained.

That's pretty much what the bill says, detain people who are here. If they have got a claim, adjudicate them, and then remove them if they don't have a legitimate claim. If we did that, the flow would slow down to a small, manageable number. Anybody with a legitimate claim would get processed, and we could secure the border.

They refuse to do that. The secretary is trying to mislead the American people, as he always does, which is one of the reasons he was impeached properly by the U.S. House.

CAVUTO: Real quickly, I want to ask you. This is a more dumb question than anything meaningful, but he's not going to be impeached. It's -- I'm sorry. He's not going to be convicted, I should say. He's been impeached in the House.

But it doesn't look like 67 U.S. senators are going to convict him. But let's say that's wrong. Let's say it does happen. The president is going to appoint a new homeland security secretary, who I'm betting will do exactly what Mayorkas has done. Do you go after him too? Do you keep impeaching guys?

ROY: Well, first of all, we have a duty in the House to have appropriate oversight. We have tried to conduct that

As you noted in the second article of impeachment that they're debating over in the Senate right now, he has been untruthful. He has obfuscated the facts. So we have not been able to conduct that oversight. So we hold him accountable.

CAVUTO: But his successor will be the same way, right, right, Congressman?

ROY: Well...

CAVUTO: His successor will probably do the same thing, and he would serve at the pleasure of the president and do exactly the same thing.

So will this change anything, if it even got to the point of him being convicted and he's done?

(CROSSTALK)

ROY: Well, first of all, he should be convicted. Look, when I was a former federal prosecutor, if I wanted to take something, get an indictment because I thought somebody had violated the law and I looked at the statutes, you take it, you get the indictment.

Then you go to trial. Let the jury decide. If the Senate doesn't want to convict -- and this is not the same as a jury, right?

CAVUTO: Yes.

ROY: This is political. Most of these no-votes are because Democrats have decided not to do it because it's political. That's the actual truth.

CAVUTO: Got it.

Congressman, thank you very much, Chip Roy of Texas.

Again, this second article of impeachment is what is being debated right now, I believe.

But let's go to Chad Pergram on this.

Chad, where are we on this?

PERGRAM: What they just had on the floor was a vote to declare the second article of impeachment unconstitutional. They just went through the alphabet A to W. We have senators not with the Z, but with W here in the Senate.

And any minute here, you're going to have Patty Murray, the present pro tem of the Senate, who's presiding over this impeachment trial, announce the total. Now, if history is our guide, what happened a couple of hours earlier, the Senate voted 51-48, with one senator voting present, Lisa Murkowski of Alaska, Republican, that the first article of impeachment was unconstitutional.

Murkowski on this roll call vote has voted no. So if it's party line here, it's going to be 51-49. Why is this important? This is the second most important vote that we have had this afternoon, because they voted to render the first article of impeachment unconstitutional.

And Patty Murray declared from the chair saying the article falls, meaning it's not in play anymore. That's very important. And if we have a similar outcome here, she will probably say the same thing. That could effectively mean the end of this trial.

The one thing they have to do, though, is vote to end the court of impeachment. The Senate is meeting as a special court right now just for these impeachment trials. They have only done this 22 times in American history.

And I keep looking here to see if there's any movement on the dais here, as Patty Murray would get the slip of paper from the Senate clerk and then announce what the vote total is. But that's going to be very important here, again, because we're in slightly uncharted waters here.

We don't think that they have to have a vote to dismiss. Why is that important? Earlier, I talked about these vulnerable Democrats, Sherrod Brown and Jon Tester. You could argue, if you're a Democrat and running for reelection in the competitive state, say, I didn't vote to dismiss the trial. I didn't vote to dismiss the articles. I voted that those articles were unconstitutional.

And keep in mind, when this came over from the House of Representatives, you even had three House Republicans, Tom McClintock of California, Mike Gallagher of Wisconsin, and let's -- here's Patty Murray right now. We should give her an ear.

CAVUTO: All right.

SEN. CHUCK SCHUMER (D-NY): Madam President.

SEN. PATTY MURRAY (D-WA): Majority leader is recognized.

SCHUMER: I move to adjourn the impeachment trial of Alejandro N. Mayorkas sine die, and I ask for the yeas and nays.

MURRAY: Is there a sufficient second?

UNIDENTIFIED MALE: There is.

MURRAY: There is a sufficient second. Clerk will call the roll.

CLERK: Ms. Baldwin.

SEN. TAMMY BALDWIN (D-WI): Aye.

CLERK: Mr. Barrasso.

SEN. JOHN BARRASSO (R-WY): No.

CLERK: Mr. Bennet.

SEN. MICHAEL BENNET (D-CO): Aye.

UNIDENTIFIED FEMALE: Did he say aye?

PERGRAM: Come back to me. I will explain. They're ending the trial.

CAVUTO: Back to you.

Let's explain it. It looks like they're trying to wrap this puppy up?

PERGRAM: Yes, that was it.

So, again, what they have done now on both of these articles of impeachment, they have not voted to dismiss. What the Senate has voted on the first article of impeachment, 51-48, with Lisa Murkowski voting present, they have voted that the article was unconstitutional.

On this roll call vote here, they have voted 51-49 that that article was unconstitutional. So what happens, and if you listen closely, as I said, to Patty Murray's verbiage, the presiding officer here, she says the article falls. So you can't consider and continue to debate something in the Senate if it's not relevant, it's not germane, it's not in play.

So the Senate has voted twice now on both of these respective articles to say that they're out of play. So the only thing then to do is to vote to end the trial. And that's precisely what Chuck Schumer, the majority leader, just announced there, that they are voting to terminate the court of impeachment.

The Senate is meeting as this special court here on the impeachment trial of Alejandro Mayorkas. And he used a term there, sine die. You often hear that at the end of a Congress, that the Congress has adjourned sine die.

Well, it's Latin for meaning without end, meaning we don't come back. So the Congress ends. You hear that every January 3 when they end the Congress here. This afternoon, they are ending the impeachment trial. Again, this will probably be a party-line vote, 51-49, since the Democrats have 51 senators who caucus with their side. And that's it.

There's no final judgment here on Alejandro Mayorkas because the Senate voted that both articles were unconstitutional, Neil.

CAVUTO: Now, Republicans no doubt will say this is very unfair. The two articles of the impeachment along largely party lines were voted down. So they were deemed unconstitutional. So they have nothing to do. There's no way to proceed.

But is that the history of these things? I know this might be a special case. Republicans might argue we didn't even get a chance to debate whether they merited that.

PERGRAM: Right.

Well, the Republicans, they kind of like the fact that they have this issue now, because they know that the border is an issue that's very popular and very important to many voters, especially in swing states. They're going to use this, weaponize these roll call votes against these senators, these Democrats.

And I mentioned several of them before, Rosen in Nevada, Tester in Montana, Bob Casey in Pennsylvania, Sherrod Brown in Ohio, and say, look, they're not taking the border seriously. And there will probably be a lot of press conferences here in the next couple of days where Republicans can say, can you believe for the first time that we did not actually have a full trial?

Now, I said a couple of hours ago on our air here, what constitutes a full trial? This was not what we have seen in the past couple of years and even what we saw going back to the 1999 trial with President Clinton, where you had the impeachment managers, the House members who served as prosecutors presenting the case, defense counsel for the presidents, be it Trump or Clinton, presenting their defense there, and then senators submitting questions to counsel for both sides.

There's usually not debate in a Senate trial. You don't do this the way -- again, I keep using this term court of impeachment. You can only do that in private session. And, twice today, the Senate voted against going to a secret session, a private, a closed-door session to debate the articles of impeachment against Alejandro Mayorkas.

CAVUTO: But, Chad, hadn't Democrats, even those who were leery of this whole process, said there's a big difference between being concerned at the border and being concerned about what they call a sham impeachment process against the homeland security secretary?

That, they said, was something they're proud to stand behind, that it was stupid, in their eyes, but the border and what's happening is very real. That's how some of them would thread that needle. What do you think?

PERGRAM: Yes, you're right. There's a needle to be threaded there.

And this is the kind of parliamentary cocktail that Senate Majority Leader Chuck Schumer came up with to say, we're not going to vote to dismiss the trial. We're going to vote to rule that these articles of impeachment are unconstitutional.

Again, there were problems. They had trouble impeaching Mayorkas the first time in the House of Representatives. There were three House members who voted that they were unconstitutional. They didn't think that this rose to the level of impeachment, argued that this was not high crimes and misdemeanors.

And so there is a needle to be threaded with the voters of Ohio that Sherrod Brown is courting and Bob Casey in Pennsylvania and Jon Tester in Montana to say, I didn't -- I'm not taking -- I'm not not taking the border seriously. I just didn't think what the House of Representatives had done rose to that level. And that's why I voted not to dismiss, but say what they were trying to do was unconstitutional.

Now, whether or not that holds water with some of these voters, that's going to be very challenging.

CAVUTO: Right.

PERGRAM: We will know in November. And Republicans are going to beat this horse all the way to November because the polling shows that the border and Mayorkas, that is a lightning rod issue with the electorate this fall.

CAVUTO: Yes, and it remains to be seen whether addressing it this way with trying to impeach Mayorkas is the way to do that. But that might be a moot point very soon.

As they go through these names, this will be a vote on essentially whether we can go forward with this.

PERGRAM: Right.

CAVUTO: It looks like, after this vote, no, we can't. Then what happens?

PERGRAM: Yes, they will be done. So, here, I don't -- I can't hear the floor right now.

CAVUTO: Sure.

PERGRAM: So I don't know where they are in the alphabet. But, at the end there, Patty Murray again will announce the total, and they will adjourn as this trial of impeachment.

And that's when those of us in the press corps will probably be chasing Mike Lee down a hallway and people like Sherrod Brown or Jon Tester and saying, hey, what are you going to do here? But that's it, at least parliamentarily, in the Senate.

And keep in mind that Chuck Schumer, he offered them earlier in the day, and Republicans rejected this, to have debate. You can enter into an agreement where you have a framework for some debate if the Senate agrees to that. And they rejected that. And so Chuck Schumer can say, hey, I offered you that you rejected that. So we ended this rather abruptly here.

But that's it. It's done. It goes down as the 22nd impeachment trial in history. And, again, I'm going to note that this will have a little bit of an asterisk next to it because they didn't actually get to final judgment. We know what happened with President Trump in his two impeachment trials.

We know what happened with President Clinton. We even know what happened with a federal judge in 2009, Thomas Porteous. But, here, there was no final judgment rendered.

CAVUTO: This is delves into the ***politics*** part of it, as we go through these final Senate names and then their votes.

But, Ted, the other issue that could come up is that people might not be aware of the mechanics of this as you are, but they will know or you will have Chuck Schumer and others bragging about the fact that we stopped this ridiculous train.

And it might give a hint to some Americans, well, wait a minute, this stuff at the border is bad. You essentially relinquished any actions against the guy who was in charge of it. So it could boomerang on them still, couldn't it?

PERGRAM: It's dangerous politically for the Democrats. Again, this has been a toxic issue for them, and Republicans know it.

It was argued, I remember last summer asking at a press conference in July, I think it was, last summer, when then-House Speaker Kevin McCarthy indicated that he was going to go ahead with impeachment of President Biden, at least an impeachment inquiry.

And I asked Ralph Norman and Bob Good, who's now the chairman of the Freedom Caucus from Virginia, I said, who do you want to impeach? Is it -- because we had heard the president, we had heard Attorney General Garland, we had heard Mayorkas, we heard Wray, the FBI director, the D.C. U.S. attorney.

It was a laundry list, and Ralph Norman's answer to me at the time was all of them. And at the time, it was like Republicans were kind of struggling to figure out who they wanted to impeach. And you will notice that they have not gone through all the way with an impeachment trial for President Biden. They don't have the votes to impeach him.

They landed on the target that they had the votes for. And don't forget, in February, they had to take a mulligan in the House of Representatives. The first vote in the House to impeach Alejandro Mayorkas because they failed. They were able to get Steve Scalise, the majority leader, who had been out for cancer treatments, back, and he voted yes and they sent this over.

So they finally landed on at least the one target they thought they could go through and at least get it to the stage in the Senate.

CAVUTO: Amazing. So that mulligan was a reference, a golf reference, which is your way of saying that, if you're Alejandro Mayorkas, you're out of the rough?

PERGRAM: Yes.

Well, and this impeachment trial is going to be over in a few minutes.

CAVUTO: Right.

PERGRAM: They're definitely going to be out of the rough for Mayorkas very soon.

CAVUTO: All right, no more sand traps, I guess. That's -- I'm done. I'm done with those references.

Hang in there Chad. I do want to get to you.

I want to go to Andy McCarthy right now.

Again, just to bring you up to date of what's going on here, the Senate has already deemed to take both articles of impeachment against Alejandro Mayorkas, the head of the Department of Homeland Security, as unconstitutional, voted each one, saying it was unconstitutional, thereby, in the Democrats' eyes, making this a moot point and this whole hearing, event, whatever you want to call it, trial, a done deal.

It's not happening.

I want to go to Andy McCarthy on that.

Andy, it is a special case. This is not a court of law, as you have been reminding me and others, but that's essentially it, right? Shot down constitutionally, this is done.

ANDY MCCARTHY, FOX NEWS CONTRIBUTOR: That's right, Neil, in terms of the political outcome formally in the Senate, but because this is a political process, it's hardly -- I wouldn't say that it's done in terms of its consequences.

CAVUTO: Right. Right.

MCCARTHY: Because, let's remember, there was no way that Mayorkas was actually going to be convicted and removed, even if they had a full trial.

The purpose of this was to put the crisis at the border, which has spread throughout the country...

(CROSSTALK)

CAVUTO: Hold on. Hold on, Andy. I just want to go to Patty Murray.

MCCARTHY: Yes.

CAVUTO: She's going to sort of detail what we just learned here.

SCHUMER: ... members, there are no further votes today. Now, I will remind all members that we have very serious business ahead of us in the next few days, and we will keep you informed as to schedule, as things can get scheduled.

MURRAY: Republican leader is recognized.

The Senate will be in order. Would senators please take their conversations to the Cloakroom?

SEN. MITCH MCCONNELL (R-KY): Madam President, we have set a very unfortunate precedent here. This means that the Senate can ignore, in effect, the House's impeachment.

It doesn't make any difference whether our friends on the other side thought he should have been impeached or not. He was. And by doing what we just did, we have in effect ignored the directions of the House, which were to have a trial. Had no evidence, no procedure. This is a day that's not a proud day in the history of the Senate.

MURRAY: (INAUDIBLE)

(APPLAUSE)

SEN. MIKE LEE (R-UT): Madam President.

MURRAY: The senator from Utah is recognized.

LEE: Madam President, I ask unanimous consent to enter into a colloquy with my Republican colleagues.

MURRAY: Without objection, so ordered.

LEE: Madam President...

MURRAY: If the senator from Utah would hold, we do not have order in the Senate. I would ask all senators who -- to take their conversations to the Cloakroom, as well as the staff.

If the senator would just hold until we have order, please.

Senator from Utah is recognized.

LEE: Thank you, Madam President.

What we have witnessed today is truly historic. This has never occurred. Nothing like this has ever occurred. Under Article 1, Section 3, Clause 6, we have been given a duty. We have been given the sole, exclusive power to try all impeachments, try all impeachments, not some of them, not just those with which we have happened to agree, not just those that we are happy that the House of Representatives undertook to prosecute, but all.

The word try is also significant. It refers to the word trial. It's the same word. It's a proceeding in which the law and the facts are presented to finders of fact in front of judges in order to reach an ultimate disposition.

In a criminal proceeding, it would be an ultimate disposition culminating in a verdict of guilty or not guilty. We were precluded from doing that job today, and we were precluded from doing so in a way that is not only ahistoric and unprecedented, but also counterconstitutional.

Nothing could be further from the plain structure, text, and history of the Constitution than that. So let's look at the arguments that we would have heard, that we could have heard, that we should have heard today had things unfolded as they were supposed to, had things unfolded in a manner consistent with the oath that we took, first when we were sworn in as United States senators.

We were all required to take the same oath to the Constitution when we did that, but also the oath that we took just a few hours ago in this very chamber, in this very case, to decide this case impartially.

What would we have heard? Well, first and foremost, regardless of what you think about what a trial consists of or how different people might cleverly define the term, a trial will always, at a minimum, involve lawyers, involve lawyers. Unless the person is proceeding pro se, you will always have lawyers there.

At least one side will always be represented by lawyers, and in 99.9 percent of all cases, both sides will. You will hear from lawyers. We didn't hear that today. We didn't hear from the committee of individuals appointed by the House of Representatives to be the House impeachment managers or prosecutors.

What else would you expect to hear? Well, you would hear evidence. Evidence would be brought in. Sometimes, trials in the Senate involve bringing in evidence in a documentary form. Other times, you might have witnesses. We didn't have any witnesses. We didn't have any documentary evidence, other than that which was charged.

So let's talk about what was charged and what evidence we could have, would have and should have heard had we done our job today. Well, the accusations in this impeachment trial can be fit into two categories. Category one is found in article one of the articles of impeachment.

Article one alleges that Secretary Mayorkas repeatedly, defiantly did the exact opposite of what federal law requires, namely, that under, myriad circumstances, eight or nine different statutory provisions that he violated, he was required to detain people whom he did not detain. But it's not just that he didn't do what the law required.

He did the exact opposite of that. Instead of holding them until such time as they could be removed or alternatively adjudicated to have the status, whether under impeachment -- whether, in the context of immigration...

CAVUTO: All right, we're continuing to monitor Senator Lee, not at all pleased that this thing has just gone away.

In case you just joined us, the Senate has essentially dismissed the two impeachment charges against Alejandro Mayorkas, the homeland security secretary. This essentially ends the Republican effort to remove the Cabinet secretary from his office. This was expected. I don't know if it was expected to end quite this way. It was deemed to be something that would be quick, essentially taking the two charges against Mayorkas and deeming whether they were constitutional or not.

In the end, almost along party lines exactly, they decided along party lines that they were unconstitutional and that essentially made a moot point of the whole thing.

Chad Pergram, what do you make of this and where we go now?

PERGRAM: Well, the ***politics*** are already starting and the spin is already starting.

Chuck Schumer, the Democratic leader, he's going to hold a press conference here at the Capitol at 5:00. And just within the past couple of seconds, we have gotten a statement here from the House Republican leadership run by House Speaker Mike Johnson.

And I will tell you what he says here. He says -- quote -- "By voting unanimously to bypass their constitutional responsibility, every single Senate Democrat has issued their full endorsement of the Biden administration's dangerous open border policies. Tragically, Senate Democrats don't believe this catastrophe merits their time or discussion the floor."

So, as we said earlier, that's kind of exactly what we expected from the Republicans, to weaponize the quick disposition of this against the Democrats and say they are not taking this seriously and start to target some of these individual Democratic senators.

And, at large, some of the House members as well saying, look, Democrats and President Biden, they're just not serious about the border. They have a homeland security secretary, who we think is out of alignment. He hasn't done very well at the border.

And they're going to hit that issue really hard between now and November and point back to this day in November, when the Senate dealt with this impeachment trial in a matter of about three hours and 20 minutes.

CAVUTO: Three hours and 20 minutes would seem to be more deliberation than debate, right?

PERGRAM: It wasn't even deliberation. A lot of it was just voting on motions and trying to figure out what they were going to do.

There was a long stretch of time early -- early on in the 1:00 hour where they were kind of trying to figure out parliamentarily what to do. And about 30 minutes of that time was spent just swearing in the senators, all 100, as jurors, and having them sign in the oath book there. So, really, you condense it to that, it was probably more like about an hour-and-a- half, two hours, Neil.

CAVUTO: If you can just hang on there, Chad, I want to bring Andy McCarthy back with us now.

I don't know whether, going into this, Andy, that was the strategy on the part of Chuck Schumer. Let's take these two counts, these two articles of impeachment, and vote on whether they're even constitutional. And knowing that he had the votes right there, and the slimmest of all majorities, that this would be the conclusion.

What do you think?

MCCARTHY: Neil, this is a political process. It's not a real trial, as has been observed a number of times.

And I want to cite my favorite legal source for today, which is probably more popular on your side of the street than mine, Thomas Sowell, who reminds us that there's no solutions, only trade-offs. I think what we saw today was the Democrats made a trade-off. They had to decide -- they're going to take a hit here. They had to decide, is it better to try to make this go away quick and take the hit for that?

Or imagine what the alternative was, which was to have a trial, have all that attention paid to the border, and then essentially acquit Mayorkas, Which is what they would have done. And they must have decided that, between the exposure that this would bring to the problems at the border, and the fact that they would then be on record basically acquitting Mayorkas in the trial, that was going to be a bigger and more embarrassing hit for them than this is.

CAVUTO: You know, it is interesting too. I mean, when you look at impeachers in general, they start in the House, right? And they usually flame out in the Senate, where they're -- where, once in a trial, the hurdles you have to pass to convict someone are virtually insurmountable here, 67 votes needed to do that here, a long way from that here.

But it does get back to your basic issue, as a political act, whether it has political repercussions for both sides. For Democrats who might be relieved, and I see your point, Andy, that this is behind them, it might not be, because Republicans are going to pound the airwaves with ads to say, we were ready to hold the guy responsible for this incredible bleeding at the border, and Democrats wouldn't do it, and they didn't man up to the task.

That's what this will come down to, a political sort of a litmus test.

MCCARTHY: That's right, Neil. And let's not forget, that was the reason for doing it in the first place, right?

CAVUTO: That's right. That's right.

MCCARTHY: In the House, they knew that there was no chance they -- for the very reasons you just mentioned about the supermajority that's required in the Senate, which is the reason that no president, for example, has ever actually been convicted in an impeachment trial.

It's a heavy bar. It's a high hurdle to clear. So the reason they did this was not to actually get Mayorkas convicted and removed.

They knew that was a bridge too far. It was to call attention to the catastrophe at the border, which has now spread to virtually every city in every state in the country, to the point where the states are essentially - - their welfare systems, their education systems, their law enforcement systems, they're all under strain to the point of collapse because of Biden's policy of letting in basically the two Los Angeleses worth of illegal aliens into the United States since he's come in.

CAVUTO: Amazing.

Andy McCarthy, thank you very much.

MCCARTHY: Thanks, Neil.

CAVUTO: I want to go back to my buddy Chad Pergram, because we were talking about throughout this whole process how Homeland Security was saying that this was a waste of time. They have sort of buttoned that now with a statement.

What can you tell us, Chad?

PERGRAM: This a statement here from the Department of Homeland Security.

And this is what they're saying: "Today's decision by the Senate to reject House Republicans' baseless attacks on Secretary Mayorkas proves definitively that there was no evidence or constitutional grounds to justify impeachment. As he has done throughout more than 20 years of dedicated public service, Secretary Mayorkas will continue working every day to enforce our laws and protect our country. It's time for congressional Republicans to support the department's vital mission, instead of wasting time playing political games and standing in the way of commonsense bipartisan border reforms."

Now the other thing we're going to have here probably in three or four minutes is a press conference by House Democratic leaders, Hakeem Jeffries, the Democratic leader in the House of Representatives, Katherine Clark. There might be some questions in there too, just not about impeachment and the disposition of this trial, but also about the international aid package.

We got text of the those bills today, and they're probably going to vote some time Saturday afternoon, Saturday evening, at least in the House of Representatives. So that's on the docket here as well. And that was the point by some of the Democrats, saying, we have other things to do here in the Senate.

We have to renew FISA by Friday night, the Foreign Intelligence Surveillance program, Section 702. That program was reapproved with some retooling in the House last week, and that comes up Friday night. And then the Senate, if the House is able to move these things, has to sync up with the with the House of Representatives on the international aid package as well.

CAVUTO: All of that would have been delayed, right, because, if the Senate takes up this measure, they can be doing nothing else during it, right?

PERGRAM: Not necessarily.

CAVUTO: OK.

PERGRAM: If you look at the Senate impeachment rules, by rule -- and you can agree to do anything, but, by rule, you start at 1:00 in the afternoon. So they could have been doing other business in the morning...

CAVUTO: I see.

PERGRAM: ... and then go to the impeachment in the afternoon.

One of the reasons that they usually meet at 1:00 in the afternoon is because the chief justice of the United States afternoon is because the chief justice of the United States typically presides over these impeachment trials. And they have court across the street at the Supreme Court, usually an argument at 10:00 and then at 11:00, and then give him a chance to go to lunch and then come across the street to the Capitol.

So they could have done other business in the morning, but it might not have made things easy, because floor time is always at a premium in the Senate.

CAVUTO: All right, got it. Chad Pergram, thank you very much.

We will be waiting for these responses. No statement as yet from the White House or from our President Biden, who was not too keen on this impeachment effort.

But just to bring you up to date, before we take a quick break here, the Senate has voted today to dismiss two articles of impeachment against the homeland security secretary, Alejandro Mayorkas. So he lives to fight another day and deal with a border where Republicans say he's just not up to the job or doing his job, and that is under the full support and countenance of the president of the United States.

So he is still the homeland security secretary, not impeached, already no doubt ads on both sides, Republicans and Democrats, to pounce on this, for Democrats, an opportunity for them to say, we thought this was a sham and you should know it, Republicans to say, it wasn't a sham, and you are going to regret it.

Stay with us.

(COMMERCIAL BREAK)

CAVUTO: All right, you know about the impeachment effort that failed against Alejandro Mayorkas.

There were other developments on Capitol Hill today, including the big way to see what Israel does in response to that Iranian missile attack over the weekend.

The General Kenneth McKenzie joins us right now, the former U.S. Central Command chief.

Commander, always good to have you.

This issue has come up again and again now as to waiting for whatever responses the Israelis will have. They seem to indicate they will have a response. I don't know what they're sharing with us or not. But what do you think that response will be?

GEN. KENNETH MCKENZIE (RET.), FORMER COMMANDER, U.S. CENTRAL COMMAND: Well, I think, Neil, Israel's task is how to turn at remarkable operational victory over the weekend, comprehensive in every way, into some kind of strategic success.

And to do that, they have got to they have got to balance their natural desire to strike back at someone who attacked them with tremendous force, with great malice, against the requirement to balance the coalition that assisted them in this defense and to keep their neighbors in the Arab world onside.

So, it's a complex equation that Israel faces. However -- and we should always note this -- the initiative is with Israel now. It is not with Iran. Iran is weaker today than they were the day before the attack. Israel is stronger today than they were the day before the attack, but, sometimes, victories can be hard to -- can be as hard to deal with as defeats.

CAVUTO: You know, I guess we have made it clear, the Western world has made it clear, the United Nations has made it clear that, to sort of paraphrase the president, commander take the win and stop.

Now, if that is not the position Israel is going to take, and we have learned from a number of Arab allies who were actually on Israel's side in this whole attack thing, that they're not going to share their airspace or do anything of the sort if there is a follow-up attack, that leaves Israel pretty much on its own, no matter what it does, right?

MCKENZIE: It does, so that Israel is going to have to look very hard at how they respond. And there are some things they can do. They can do very narrow, circumscribed things that would demonstrate their technological superiority over Iran.

But they need to balance that and think strategically about the long term. This is not going to be easy for them to do. I understand the culture in the region. You don't turn the other cheek. It's not a culture that reacts and respects that.

But Israel not only has to balance what's going on in the region. They have to balance their international support outside of the region. By that, I mean the United States, France, the United Kingdom, other countries that have been very helpful to them to this date. So it's a very difficult challenge that they face right now.

And they really do need to think in deep time about how they want to go forward with this.

CAVUTO: Commander, are you surprised by all of these protests that have popped up in the case of -- in the latest ones the Monday after these attacks?

So, it says something about the -- sort of the global pressure that Israel is under, even after getting strafed by 300 missiles that were blessedly knocked away. It enjoys no overwhelming support or sympathy or just, oh, my gosh, bad luck, my friend. None of that. It's just unusual, isn't it?

MCKENZIE: Well, that's a good observation, Neil. And that's something that Israel will have to take into account as they make a decision here, because it -- the world is a complex place. Israel occupies a very significant role in it.

It is about more than Iran. It's about the support that they need globally in order to remain in place. And that's a very difficult -- that's a very difficult problem they face right now.

CAVUTO: Obviously, no matter what Israel does in response, I don't think it's a leap to assume that Iran is going to want to respond to that. Do we just go back and forth and back and forth with this?

MCKENZIE: Well, Iran is -- they fired pretty much a maximum effort over the weekend.

CAVUTO: Right.

MCKENZIE: They will be able to attack again if they choose to do so. I don't know that the results will be different.

I think what's interesting, Neil, and this hasn't been -- I don't think enough has been made of it -- Lebanese Hezbollah has not chosen to come into this fight. L.H. up in Lebanon has done some short-range Katyusha rocket attacks across the northern border with Israel, but they have not chosen to aid Iran in a full-throated way.

And Lebanese Hezbollah is the largest nonstate military entity in the world. They could literally throw thousands of rockets into Israel. They have chosen not to do that. And I think that's very significant and is worth bearing in mind, and I know the Israelis think about it all the time.

They look at their northern flank all -- even as they look east, east to Iran.

CAVUTO: Got it.

General, Commander, thank you and, more importantly, for your service to this country, sir. Be well.

MCKENZIE: Thanks, Neil.

CAVUTO: All right, in the meantime here, just updating you.

The United States Senate has dismissed impeachment charges against the homeland security secretary of the United States. So, Alejandro Mayorkas continue doing his job.

Folks like Lindsey Graham not one bit happy about it -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, the White House has issued a statement regarding the Senate voting down this Mayorkas impeachment we have been talking about here, saying -- and I quote here -- "Once and for all, the Senate has rightly voted down this baseless impeachment that even conservative legal scholars said was unconstitutional. President Biden and Secretary Mayorkas will continue doing their jobs to keep America safe and pursue actual solutions at the border."

Going on to say: "Congressional Republicans should join them, instead of wasting time on basis political stunts, while killing real bipartisan border security reforms."

So, the political fallout from this, because each side is going to try to capitalize on it, with Tiana Lowe Doescher, the political reporter, also Gianno Caldwell, FOX News political analyst, "Outloud" podcast host.

Tiana, what do you think of what the White House is saying? That's obviously to be expected, Republicans saying just the opposite, that Democrats will rue the day, and those Democrats who voted this that vote that essentially made this thing go away, because the immigration issue will not go away, the border issue will not go away.

And they're going to keep pounding it. What do you think?

TIANA LOWE DOESCHER, POLITICAL REPORTER: Yes, the immigration crisis is unprecedented.

GIANNO CALDWELL, FOX NEWS POLITICAL ANALYST: That's right. And...

CAVUTO: No, no, I'm sorry, I do want to go to Tiana first.

Go ahead, Tiana.

CALDWELL: OK.

LOWE DOESCHER: It is currently unprecedented.

We have had almost 10 million illegal immigrants cross into the southern border since Biden took office, 1.7 million got-aways. And it's recently topped the economy as the issue that voters care the most about.

But Biden is clearly catering to this very far left flank of his party, and it's why he won't actually have any procedural reform on the issue. It will rather just be throwing pennies at Border Patrol. The issue isn't just Border Patrol funding. It isn't really Border Patrol funding.

It's the official policy of catch-and-release, which, unlike the Obama era, at least migrants would be caught and released with a court date, right now, the system is so backlogged that these migrants are getting released and told that they will be notified with a court date maybe in a few years from now.

And so the reality is that impeaching Mayorkas, while it is important, because Mayorkas did most likely lie to Congress and Mayorkas has most likely violated the law in not enforcing congressional law as written, it won't change anything as long as the official Biden administration policy refuses to change.

But all this is signaling to Joe Biden -- all this is signaling to voters is that Joe Biden is indeed doubling down on open borders policy.

CAVUTO: Gianno -- and I'm sorry for the confusion at the outset, Gianno, but the Democrats, they might talk on this subject, say there's a very big difference between expressing concern for the border and what they call a sham scam to get rid of the guy running Homeland Security, and they're happy to fight that out in the press and in the polls to justify the distinction.

Do you?

CALDWELL: well, first and foremost, I fully agree with what Tiana just said. I thought it was very well put.

And to add to that, Democrats have clearly shown that they're hell-bent on ***politics***. The migrant crisis has impacted the country in ways that not many people expected. If you look at it as an example, in Chicago, you got an 11000 percent increase in migrant crime in the city of Chicago.

If you look at New York, over the next three years, they plan on spending $12 billion for migrants. We have American citizens who have been disenfranchised about what we have seen at the border, and with Joe Biden saying that there was no crisis forever. For a very long time, he said there was no crisis. There was nothing to see here.

But what we do see is many Americans have taken note to it. That's why immigration is now the number one, number two issue for many, many Americans across the country. In addition to that fact, it's also the reason why so many people, including African-Americans in some places like Chicago and otherwise, have said that they're going to support Donald Trump for president, because they believe that he can actually solve this issue.

So, of course, they didn't want to really have any debate or conversation about this, because, again, it's going to tease out what many Americans already feel, that the border is out of control, and that Joe Biden has failed to protect this country from including many folks that have come over that have been on the terrorist watch list.

And considering the fact that we got all of these wars going on across the country, you just never know what this can lead to. And it's unfortunate, Neil.

CAVUTO: Tiana, that gets back to the issue. There's a big difference between what Gianno laid out and the fact that the guy in charge of Homeland Security still has his job. They're going to draw the distinction.

It's threading the needle, as I keep saying, more the point, that he isn't the issue. The border still is the issue. So, those voting to have this whole thing declare, these two articles of impeachment unconstitutional, were saying, this was the farce. We don't say the border is a farce.

But that could be a tough sell.

LOWE DOESCHER: Yes, and there's a reason why Republicans like Tom Cotton were warning before Biden even took his oath of office, do not rip up the safe third country agreements that stop migrants from passing through multiple countries to buy whichever asylum they want.

There's a reason why they warned against ripping up remain-in-Mexico, because, without these diplomatic deals, it creates this heavy incentive that's wreaking havoc, not just on America, where you have over 100 migrants living in Boston Logan Airport, thousands of migrants living in Chicago precincts, migrants living everywhere because we don't have the capacity for them, but also passing through Central and the rest of North America, this incredibly dangerous Darien Gap, where Doctors Without Borders are saying that sexual assaults have increased by sevenfold in just the last quarter of the year.

Because people are not just coming from South America, but they are also flying. It's why you have this explosion of Chinese nationals coming over here.

CAVUTO: All right.

LOWE DOESCHER: Iranians, Russians, they fly out here, and they come into a country where we can't kick them out again because Biden ripped up those policies.

CAVUTO: All right, guys, I wish we had more time. You both articulate it very well.

So, that battle goes on and the debate that you ensue here, that goes on, just without the issue of the homeland security secretary, who stays in his job, the president happy that he is staying in his job, and hope this has no more repercussions. We shall see.

"The Five" now.

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