

# [***Alejandro Mayorkas Impeachment Vote And Legislature In Jeopardy; Bipartisan Backlash Over Border Legislation Intensifies; Joe Biden Blames Donald Trump As Senate Border Bill Stalls; Appeals Court Rules Against Donald Trump Immunity Claim; Sen. Lindsey Graham (R-SC), Is Being Interviewed About The Senate Border Deal Which On The Brink Of Collapse; Involuntary Manslaughter; Trump Losses Court Appeal Over Election Prosecution; Senate Border Deal On Brink Of Collapse; Sen. Lindsey Graham (R-SC) And Sen. Richard Blumenthal (D-CT) Interviewed On Senator Bipartisan Immigration Bill And Proposed Bill To Make Tech Companies Liable For Knowingly Allowing Users To Share Child Sexual Abuse Material; First House Of Representatives Vote To Impeach Homeland Security Secretary Alejandro Mayorkas Fails; House Of Representatives Vote On Standalone Aid Bill For Israel Fails; Appeals Court Rejects Former President Trump's Claim To Presidential Immunity For Actions Related To January 6th Capitol Riots***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6B8H-NGT1-JCS1-60M8-00000-00&context=1516831)

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**Guests:** Lindsey Graham, Richard Blumenthal, Josh Holmes

**Body**

HAROLD FORD JR., FOX NEWS CHANNEL CONTRIBUTOR: Congrats to him and his family. And congrats to my pal Bret Baier on winning the Horatio Alger award.

GREG GUTFELD, FOX NEWS CHANNEL HOST: We have 10 seconds, Dana. Say something silly.

DANA PERINO, FOX NEWS CHANNEL HOST: Jesse's show is going to be great tonight. Don't miss "PRIMETIME".

JESSE WATTERS, FOX NEWS CHANNEL HOST: Thank you very much.

GUTFELD: That's it for us. Have a great night.

BRET BAIER, FOX NEWS CHANNEL HOST: I really love Harold, Greg, thank you.

GUTFELD: Me too. Dreamy.

BAIER: All right. Thank you. Good evening. Welcome to Washington. I'm Bret Baier.

Breaking tonight, the House tees up and historic vote on the impeachment of the Homeland Security Secretary as the Senate border bill is on life support tonight and President Biden gets out and plays the blame game.

We have Fox team coverage tonight, Peter Doocy at the White House with the executive level finger pointing over the border package. Aishah Hasnie at the capitol as Republicans, even some Democrats put the stop sign on the measure.

But we begin with Senior Congressional Correspondent Chad Pergram on the Hill where the House could begin voting at any moment on whether to impeach Homeland Security Secretary Alejandro Mayorkas. Gdeev, Chad.

CHAD PERGRAM, FOX NEWS CHANNEL CONGRESSIONAL CORRESPONDENT: Bret, good evening. No living American has seen the House vote to impeach a cabinet secretary, that changes tonight. The House votes to impeach Homeland Security Secretary Alexandra Mayorkas, the allegations lying to Congress and failing to enforce the law. It's about the math that leads two Republicans plan to vote no, Ken Buck and Tom McClintock. McClintock called the impeachment a stunt.

(BEGIN VIDEOTAPE)

REP. TOM MCCLINTOCK (R-CA): But we know that's not grounds for impeachment. This border crisis can't be fixed by replacing one left wing official with another.

PERGRAM (voice over): If the House impeaches, Marjorie Taylor Greene will serve as one of the 11 prosecutors in a Senate trial. She criticized McClintock for opposing impeachment.

REP. MARJORIE TAYLOR GREENE (R-GA): He needs to grow some courage and read the room. The room is our country and the American people are fed up with millions of people abusing our laws, Mayorkas breaking the law.

PERGRAM (voice over): The vote is on the edge. Mike Gallagher of Wisconsin warned his colleagues they could be setting a dangerous precedent.

PERGRAM: Do you respect their views when they say they don't think that this is right to go ahead and try to impeach Mayorkas when someone like Mike Gallagher says this opens up Pandora's box?

REP. MIKE JOHNSON (R-LA): It's an extreme measure. We do not take it lightly. And I respect the conscience of everyone and how they vote.

PERGRAM (voice over): Democrats claimed impeachment of Mayorkas is a proxy for impeaching President Biden.

REP. HAKEEM JEFFRIES (D-NY): You've brilliantly come up with in your minds Plan B. Let's go after Secretary Mayorkas.

(END VIDEOTAPE)

PERGRAM (on camera): Now, we do not expect any Democrats to support impeachment. The vote should start in about 15 minutes here, about 6:15 and probably a result by about 6:30, Bret.

BAIER: So, it's the second bill in the series. The third bill is the standalone Israel funding, is that right?

PERGRAM: That's right, Israel is third in the series and I'm told right now that this vote on impeachment is right on the razor's edge.

BAIER: OK, we'll watch it. We'll bring you back later in the show as that vote happens. Thank you, Chad.

Now, the border bill could be a bust as opposition to the proposed spending package mounts from both sides of the political spectrum. Now the measure is causing some major problems for Senate Republican leadership. Congressional Correspondent Aishah Hasnie has the latest tonight from Capitol Hill.

(BEGIN VIDEOTAPE)

AISHAH HASNIE, FOX NEWS CHANNEL CONGRESSIONAL CORRESPONDENT (voice over): Tonight, anger amongst Senate Republicans.

SEN. JD VANCE (R-OH): The leadership really screwed this up.

HASNIE (voice over): And a call for a new leader.

UNIDENTIFIED FEMALE: Is it time for Mitch McConnell to go?

SEN. TED CRUZ (R-TX): I think it is.

HASNIE (voice over): As the bipartisan border bill falls apart.

SEN. MITCH MCCONNELL (R-KY): I think we can all agree that Senator Cruz is not a fan.

HASNIE (voice over): Senate Republicans are expected to block a vote on the border and national security package after GOP Leader Mitch McConnell couldn't get half the conference to back it. Today, he pushed back on blame for misreading his colleagues.

MCCONNELL: I've followed the instructions of the conference. Things have changed over the last four months. And it's been made perfectly clear by the speaker that he wouldn't take it up.

HASNIE (voice over): The House Speaker rejoicing the stalemate.

JOHNSON: We welcome that development because this is a matter that must be addressed in a manner that address -- that actually solves the problem.

HASNIE (voice over): While Democrats lash out.

SEN. CHUCK SCHUMER (D-NY): They just don't have the backbone, the guts, the spine to resist the blandishments of Trump.

HASNIE (voice over): But the left also disjointed. The chair of the Hispanic Caucus says the bill fails to meet the moment. While Senator Alex Padilla a hard no, demands protections and legal pathways for the undocumented.

SEN. ALEX PADILLA (D-CA): Not a single dreamer will benefit or receive relief.

(END VIDEOTAPE)

HASNIE (on camera): And Bret, also happening tonight on the House floor, Speaker Johnson has put up for a vote, a standalone Israel aid bill, that vote happens right after the Mayorkas impeachment vote. We'll have to watch the Democrats very carefully here because he needs those Democratic votes and the left might decide not to vote that way because they might be waiting for the Senate to send them a new package, Israel aid and Ukraine aid combined, Bret.

BAIER: Yes. And President Biden has threatened to veto a standalone Israel funding bill. We'll talk about that at the White House. Aishah, thank you.

President Biden is not only blaming former President Trump for the Republican opposition of the border part of the bill, but also saying the former president is the reason the border is not secure. That had some pushback from conservatives as you might imagine. White House Correspondent Peter Doocy has that part of the story tonight live from the North Lawn. Good evening, Peter.

PETER DOOCY, FOX NEWS CHANNEL CORRESPONDENT: Bret, good evening. President Biden is now saying he thinks this bipartisan border bill is the toughest and fairest immigration package that they've seen in years. But unlike his former boss, who famously said in times like these, he would reach for a pen and a phone. President Biden is pointing a finger.

(BEGIN VIDEOTAPE)

JOE BIDEN, PRESIDENT OF THE UNITED STATES: They're afraid of Donald Trump. Afraid of Donald Trump.

DOOCY (voice over): President Biden is accusing Republicans of lacking backbone.

BIDEN: To show a little courage, to show a little spine.

DOOCY (voice over): Arguing their top priority is keeping the border on election issue to help Trump.

BIDEN: He'd rather weaponize this issue than actually solve it.

DOOCY (voice over): Trump has said as much himself.

DONALD TRUMP, FORMER PRESIDENT OF THE UNITED STATES: A lot of the senators are trying to say respectfully, they're blaming it on me. I said, that's OK. Please blame it on me. Please.

DOOCY (voice over): White House speech writers have copy and pasted that line.

BIDEN: Every day between now and November, the American people are going to know that the only reason the border is not secure is Donald Trump and his MAGA Republican friends.

DOOCY (voice over): The border deal blow up also tanks Ukraine and Israel aid for now. And the administration says if a standalone Israel package passes and makes it to the President's desk, "He would veto it."

KARINE JEAN-PIERRE, WHITE HOUSE PRESS SECRETARY: Yes, that's still the case.

DOOCY (voice over): President Biden struggled today to describe how Hamas has responded to a new proposal for a ceasefire in Gaza.

BIDEN: There's been a response from the opposition. But --

UNIDENTIFIED MALE: Hamas.

BIDEN: Yes, I'm sorry, from Hamas.

DOOCY (voice over): And it's not the only time this week he's had a slip up on camera.

DOOCY: How is President Biden ever going to convince the three quarters of voters were worried about his physical and mental health that he is OK, even though in Las Vegas he told the story about recently talking to a French president who died in 1996.

JEAN-PIERRE: I'm not even going to go down that rabbit hole with you, sir.

(END VIDEOTAPE)

DOOCY (on camera): After the president's remarks on Sunday, the White House did quietly released a transcript where they replaced Mitterrand, the late French President, that President Biden mentioned with Macron who is the current French president and who is still alive and met with the president, Bret.

BAIER: Peter Doocy live in the North Lawn. Peter, thanks.

A federal appeals court has ruled former President Trump does not have immunity from prosecution. That means he can face trial on charges he plotted to overturn the results of the 2020 election.

The Trump team is already indicating it will appeal but they need to file fast. Correspondent David Spunt reports from the Justice Department with the latest. Good evening, David.

DAVID SPUNT, FOX NEWS CHANNEL CORRESPONDENT: Hello, Bret. Good evening to you. This 57 page unanimous ruling is no doubt a setback for the former president. But this entire case is a marathon, not a sprint and much is still uncertain.

(BEGIN VIDEOTAPE)

SPUNT (voice over): Former President Donald Trump inching closer to a criminal trial in the nation's capital after a federal appeals panel handed his argument of absolute immunity unanimous defeat.

He's on trial for his alleged attempt to overturn the results of the 2020 election. Trump claims he is immune as a former president because the allegations took place while he was in office.

A three judge panel writing, for the purpose of this criminal case, former President Trump has become citizen Trump with all the defenses of any other criminal defendant, but any executive immunity that may have protected him while he served as president no longer protects him against this prosecution.

The ruling, a win for special counsel Jack Smith, attempting to convict Trump before the November election in a trial originally slated for March 4th.

UNIDENTIFIED MALE: They are very powerful compelling arguments on each side. I think that's probably why this court took about 60 pages of an opinion having to wrestle with these complicated claims.

SPUNT (voice over): A Trump spokesman said in a statement, if immunity is not granted to a president, every future president who leaves office will be immediately indicted by the opposing party. Without complete immunity, a president of the United States would not be able to properly function.

Swift reaction from Trump's supporters on Capitol Hill.

JOHNSON: I believe that they've been after President Trump for partisan political purposes. I think that's obvious.

(END VIDEOTAPE)

SPUNT (on camera): Donald Trump has until Monday to appeal to the Supreme Court. Bret, it takes just four justices to approve hearing a case before it goes before the entire court.

If the Supreme Court decides not to hear this case, it goes right back to the district court Judge Tanya Chutkan who wants to get this ball rolling just as soon as possible, Bret.

BAIER: David Spunt at the Justice Department. David, thanks. Jonathan Turley join us a bit on that and more.

Meantime, the Fox Corporation is partnering with ESPN and Warner Brothers discovery in a new sports streaming venture. The service will stream content that airs on networks owned by all three companies. A new standalone app built from the ground up is expected to launch this fall.

Stocks edged higher today with a late day bounce as investors focused on earnings and interest rates. The Dow gaining 141, the S&P 500 and NASDAQ both finished ahead 11.

Up next, a stunning verdict involving -- verdict involving one of the parents of a school shooter, we'll bring you that.

First, here's what some of our Fox affiliates around the country are covering tonight. Fox 5 in New York has accused gilgo beach serial killer Rex Heuerman appears in court for the first time since he was indicted for a fourth murder. He has pleaded not guilty to all charges. His defense attorneys say they want to make sure police have followed up on every lead they received over the 13 year period when the case went cold.

Fox 11 in Los Angeles as residents in Southern California deal with persistent rainfall, flooding and big mudslides there after the latest atmospheric river pounds that region, three people were killed by falling trees in recent days.

And this is a live look at Chicago from Fox 32, one of the big stories there tonight, the Chicago Blackhawks will host the St. Louis Blues in the NHL is Winter Classic next year. The outdoor game will be played at Wrigley Field. The team hosted the first winter classic game at Wrigley in 2009.

That's tonight's live look outside the Beltway from SPECIAL REPORT. We'll be right back.

(COMMERCIAL BREAK)

BAIER: "BREAKING TONIGHT," a potentially precedent setting ruling. The mother of a teenager who killed four fellow students at a Michigan High School has been convicted of not doing enough to prevent that shooting. Chief Correspondent Jonathan Hunt has details tonight on this landmark trial. Good evening, Jonathan.

JONATHAN HUNT, FOX NEWS CHANNEL CHIEF CORRESPONDENT: Good evening, Bret. This is a groundbreaking verdict in terms of holding parents responsible for the actions of their children. In cases of mass shootings.

(BEGIN VIDEOTAPE)

UNIDENTIFIED FEMALE: We find the defendant guilty of involuntary manslaughter.

HUNT (voice over): Jennifer Crumbley was found guilty on each of four counts of involuntary manslaughter. After prosecutors argued she had ignored obvious signs of her son's mental struggles, including pictures. Then, 15-year-old Ethan Crumbley drew, and on which he wrote, helped me, and blood everywhere.

On November 30th, 2021, Jennifer Crumbley and her husband, James was summoned to Oxford High School in Michigan, after staff there found Ethan Crumbley's drawings.

The Crumbleys were asked to take their son home and told they could get same day mental health care services.

They said they couldn't take Ethan because they both needed to go back to work.

Hours later, Ethan Crumbley shot dead four of his classmates and wounded seven others using a gun his parents had bought him.

Jennifer Crumbley's attorneys had argued she couldn't possibly have foreseen the violence her son would turn to, and that holding her responsible would set a dangerous precedent for parents everywhere.

But the jury has now set that precedent. Jennifer Crumbley faces 15 years in prison on each of the four camps of involuntary manslaughter. Her husband, Ethan's father James will go on trial next month facing the same four charges. Bret?

BAIER: Jonathan, thank you. Let's get some legal analysis on this. And the other big legal story tonight. Jonathan Turley, professor at George Washington University Law School. Jonathan, good evening.

JONATHAN TURLEY, FOX NEWS CHANNEL CONTRIBUTOR: Than you.

BAIER: This is unique.

It is. And quite frankly, it's troubling. You know, there are millions of families across this country that have children with emotional problems. And what was being declared here is that this mother had a reasonably foreseeable situation that her son would have become a serial killer, would be -- would to take off on a massacre.

How you can make those fit together is indeed troubling. You know, parents have this impossible situation when they are dealing with an unstable teenager. But to say that you had reasonable certainty, or foreseeability, that he was going to actually shoot up his school, is a standard that I think could easily be met in thousands of cases involving teenagers committing criminal acts.

BAIER: And obviously, we'll follow the father's case as well. It's the same scenario.

TURLEY: It is. And it's not that this is a perfect home. But the prosecutors seem to be convicting these parents of having an untidy home, bad parenting skills, and frankly, there's a lot of stuff that most of us would have done differently.

The question here is, does that really become a matter for the Criminal Code? Or is it still a matter of the Family Court?

BAIER: That's pondering question there. Let's turn back to the Trump ruling on not being immune. The appeals court rules this. "At bottom, former President Trump's stance would collapse our system of separated powers by placing the president beyond the reach of all three branches."

The Trump team says they will appeal, but there is inside this order sort of a deadline on that.

TURLEY: There is. They really put this poison pill in their order that says that even though you're entitled to go for what's called an en banc review, which take three --

(CROSSTALK)

BAIER: Which is the three judges?

TURLEY: Which is to have the whole court.

BAIER: Oh, the whole court, rather.

TURLEY: That will take 45 days. The court said, if you don't file with the Supreme Court on Monday, we're going to return the mandate to the trial court. What that means is that the trial court judge can start pre-trial proceedings.

But that also means that Trump is essentially being leapfrogged over part of his appeal that most people are entitled to. Now, he is going to do a number of things, you know, he could -- he could put in a motion to stay this, and asked Chief Justice Roberts, and ultimately the court to simply stay that part of the ruling, go back and do his full appeal.

But the panel is clearly trying to get him to shortcut this process.

BAIER: And his thing is time.

TURLEY: It is. Although, and he's in -- and time is of the essence to all parties. You know, you have Special Counsel Smith, who has been telling courts, we must try this person before the election. So far, courts except this one haven't felt that urgency, but he has the perfect judge, the perfect jury pool. He does not have the perfect calendar. If this goes too long.

BAIER: It's one to watch. We'll have you back, Jonathan. Thanks.

TURLEY: Thanks.

BAIER: Let's go overseas. Protesting farmers in Europe welcome with caution. The European Union's decision to shelve an anti-pesticide proposal. It's another concession to these farmers. After weeks of protests in France and really across Europe. Hundreds of farmers and their tractors, more particularly, gathered on the outskirts of Rome, to demand fair prices for their products, the retention of a tax reduction for agricultural diesel fuel, a reduction in bureaucracy, other concessions we've seen this in France, we've seen it in Italy, Spanish farmers block traffic on several major highways and burn tires.

And in Bulgaria, farmers blocked roads and paralyze traffic after refusing to accept a government offer there.

Up next, one Democrat one Republican as the Senate border bill is in limbo. We seek common ground on a number of things.

First, "BEYOND OUR BORDERS" tonight. Secretary of State Antony Blinken meets with Egyptian leaders as part of his efforts to secure a ceasefire in the Israel-Hamas war.

The visit comes amid growing concerns in Egypt about Israel's stated intentions to expand the combat in Gaza to areas on the Egyptian border that are filled with displace Palestinians.

King Charles III is seen out for the first time since his cancer diagnosis was made public. British Prime Minister Rishi Sunak says the monarch's cancer was caught early. A whole country, he says, is hoping for a speedy recovery. Statement came as Prince Harry flew from the U.S. to visit his father.

And panda cubs in China wish people good luck in the Year of the Dragon, as they make their first appearance.

Cubs were born last year, debuted in two giant panda reserves to mark the Lunar New Year. That's something there. Just bringing out the pandas. Just some of the other stories BEYOND OUR BORDERS. We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

JOE BIDEN, PRESIDENT OF THE UNITED STATES: This will -- would also give me as president, the emergency authority to temporarily shut down the border when it becomes overwhelmed. The numbers are talking to over 5,000 people trying to get in one day.

The bill -- if the bill were law today, it would qualify to be shut down right now. Every day between now and November, the American people are going to know that the only reason the border is not secure is Donald Trump.

(END VIDEO CLIP)

BAIER: President Biden today. Tonight, our "COMMON GROUND" segment tackles the border build, supplemental bill, the Middle East. Our guests are South Carolina Republican Senator Lindsey Graham and Connecticut Democratic Senator Richard Blumenthal.

You both gentlemen, thank you for being here. Are working on something together and you've done a lot of things together when it comes to foreign policy and aid.

I just want to get a sense of where you think these stands right now. As we talk, the House, by the way is in the process of a vote. We'll take a live look at the floor of the impeachment vote for Secretary -- Homeland Security Secretary Mayorkas.

We are monitoring that. It is going, I think it's the next vote and there was a question whether they had the votes to do that or not.

But let's get back to the supplemental bill on the Senate side. Senator Graham, where do you see this tonight? It seems like Republicans are bailing.

SEN. LINDSEY GRAHAM, (R-SC): I think there are a lot of good things in the bill. Senator Lankford did a good job, I think. But the 5,000 number is way too high. Secretary Johnson in the Obama administration said when he had 1,000 that was a bad day. So I think you should be able to shut the border down when you have 1,000, not 5,000. I don't know what is going to happen tomorrow. We'll see.

BAIER: You put a statement out saying that you were looking forward to amendments.

GRAHAM: Trying to make it better. Trying to make it better. I don't know if that will happen. We'll know tomorrow.

BAIER: Senator Blumenthal, when you hear the president blame President Trump for the border, it's tough for Republicans and conservatives to look at that and say, come on, you know, you have been in office. All these people have come in. You could have done executive orders. It's tough to hear that.

SEN. RICHARD BLUMENTHAL, (D-CT) SENATE JUDICIARY COMMITTEE: There is no question, Bret, that we need to reform our immigration system, comprehensive immigration reform. It's a broken system. The border is broken. We need to take back control. But here's what I think is most urgent today and tomorrow, is aid for Ukraine and Israel.

We need to come together. Talk about common ground. I think we have common ground because the Ukrainians are literally bleeding and dying for the cause of freedom, and our security will be at risk, we'll have young men and women fighting if Putin is not stopped and he goes against NATO. That's why Senator Graham and I have been to Ukraine four times, and we have advocated for this kind of Ukraine aid along with aid for Israel, humanitarian aid, and also in the southeast, aid for Taiwan.

BAIER: So when you hear people say, Senator Blumenthal, that the president hasn't used his bully pulpit to talk about why Ukraine is important, and that is why we have seen this shift, how do you answer that, first. Second, the third bill being voted on in the House floor is a standalone funding for Israel. And the White House has said the president is going to veto that. How does that factor in?

BLUMENTHAL: I think, again, we have to maximize our common ground. We cannot aid Israel alone, as much as I have advocated aid for Israel, and I have been one of the most staunchest, MOST steadfast advocates of aid for Israel. We have been together to Israel as well as Ukraine. I think, there again, we believe that there is a path towards normalizing relations between Saudi Arabia and Israel. but we cannot forego aid to Israel at this point along with aid to Ukraine. Both involve our national security, and both are urgent.

GRAHAM: Yes, I would just say this. If you think getting out of Afghanistan was bad idea, you're right. If you think letting Putin win in Ukraine and it doesn't matter to us, you're dead wrong, China is watching everything we do. So, let's help Ukraine. No American soldiers are involved. They're taking the money and the weapons, and they are destroying the Russian army, 50 percent of it has been destroyed. It is in our interest for Putin not to win, because if he does win, there goes Taiwan.

As to the president, he could secure the border. He has the power. He has chosen not to.

BAIER: But so do you think the voices in your party, Senator Graham, that are very loud about not funding Ukraine --

GRAHAM: They were just -- there were loud voices about getting out of Afghanistan. All I can tell you, if you know anything about the history of Europe, when somebody takes a country by force of arms, and you think it doesn't affect America, you missed all of World War II. If you don't think China is watching how we respond to Putin's invasion of Ukraine, you're crazy.

So, if Ukraine goes down because we pull the plug, you are going to be spending a lot more money and you are going to have American soldiers involved because Putin is not going to stop. If you don't believe me, listen to him.

BAIER: All right, you all are working on something together. This is the "The Washington Post." "Lawmakers again want to advance the Earn It Act. Cybersecurity experts still oppose it." It was voted out of committee last time May 4th, 2023. "The bill would remove liability protections for tech companies if they knowingly allow users to share CSAM," which is child sexual abuse material. "Cybersecurity advocates fear that such changes could prompt tech companies to stop offering end to end encryption for their users. Such encryption helps protect data from hackers, governments, and other snoops." Senator Blumenthal, where on you on this?

BLUMENTHAL: Senator Graham and I have partnered on this bill for some time now, as well as other measures that will hold big tech accountable. And where I am is we need to do everything possible as quickly as possible to protect children just as we did against child trafficking with the SESTA CESCA bill that passed with overwhelming bipartisan support. This bill has overwhelming bipartisan support. Republicans and Democrats are for it. And child advocates, law enforcement has broad support out there in the community.

The big tech companies are going to fight us with their armies of lawyers and lobbyists, but we have the public interest and people on our side.

BAIER: And the privacy questions and concerns?

GRAHAM: You know, here's what I'm concerned about. You've got kids. If you've got kids or grandkids, it's a pretty tough world out there. There are over 20 million sexually explicit images marketed to children every year. Children are being abused by pedophiles, and that abuse is put on the internet so other pedophiles can watch. I want to stop that. You should be able to sue these companies that do this to your children. Under our law, you can't sue them.

So what are we trying to do? We are trying to tell every social media platform if you recklessly or knowingly share sexually explicit material involving minors, you can be sued. And until they can be sued, they are not going to stop.

BAIER: Senator, I want to put up a live picture of the House floor. They just started this vote on the impeachment of Secretary Mayorkas. It looks like it's going to be close, but they wouldn't be going to the vote if they didn't have the votes. What do you make of this? This is not a common ground element, obviously, between the two of you, but what do you make of this effort?

GRAHAM: Well, I'm disappointed in Mayorkas, too. I will be in the Senate along with Senator Blumenthal. We will judge it when it comes our way. We haven't impeached a cabinet officer in 150 years. I'm very disappointed in the way he has handled his job, but we'll see.

But just one -- we are talking about all the things that are right in front of us. But what we are trying to do is get the largest companies in the world to change their behavior when it comes to children. You cannot sue these people if they do bad things to your children. I am trying, along with Senator Blumenthal, to break the grip they have on Congress. If you care about your children and your grandchildren, support us.

BLUMENTHAL: Let me add one more point just so everyone understands, this provision of law that gives them complete immunity is nearly unique. They have this protection that dates from a time, the 1990s, when the Internet was a nascent thing. And Meta now, along with all these other big tech companies, are among the most profitable, biggest companies in the world, and yet, they still have this immunity that prevents kids who are exploited -- they are the product, not the consumer -- from taking any action.

BAIER: Senator Blumenthal, let me just ask you this. We see every day the president comes out and gives some statement, like he did today and throws in the MAGA stuff. And we see the back and forth. We see this effort on Capitol Hill right now to impeach the secretary of Homeland Security. It seems like it's very divisive, divisive. What do you say to people who look at this place and say it just doesn't work?

BLUMENTHAL: I say watch us on the Kids Online Safety Act, where we have common ground. Watch us on Earn It, where we are trying to protect children. Watch us, hopefully, on Ukraine and Israel and Taiwan funding. Watch us in the time ahead, because I am hopeful, talking to my Republican colleagues, working with Senator Graham and others like Senator Blackburn on the Kids Online Safety Act. And I don't mean to get them in trouble.

(LAUGHTER)

GRAHAM: That's OK.

BLUMENTHAL: But we have the potential for real partnerships like this one. And I think it matters to our national security.

BAIER: Last word?

GRAHAM: OK, last word here is every parent and grandparent feels they have lost control. What happens on social media can destroy your children's lives, and there's nothing you can do about it because you can't sue these people. We're going to change that.

Mayorkas may get impeached tonight, but there's not 67 votes to remove him in the Senate. There are votes in the Senate, if we can ever get the damn bill on the floor. So what we're going to do, we're going to make sure the Senate responds. Judiciary is the hardest of the hard. This passed unanimously. I pledged to you, if you are worried about your children and grandchildren, Senator Blumenthal and I and everybody on the Judiciary Committee is going to make the United States Senate vote on a bill to protect your children.

BAIER: Senators, we appreciate the time, breaking news night. Thanks for coming over here.

BLUMENTHAL: Thank you.

GRAHAM: Thank you.

BAIER: We are going to check in now with senior congressional correspondent Chad Pergram up on Capitol Hill with this vote. Good evening, Chad.

PERGRAM: Good evening, Bret. I'll tell you, this as tight as can you ever find a vote in Congress. Right now it is 215 to 215 on the House floor. By rule, a tie vote would lose in the House of Representatives. There is one Republican who has not voted right now. All Democrats have cast ballots here so far.

We are looking at the vote matrix here in terms of the Republican no's. Mike Gallagher, a Republican of Wisconsin, he has voted no. Tom McClintock, Republican of California, voted no, and Ken Buck has voted no. Keep in mind that Republicans could only lose three votes. Steve Scalise, the majority leader, is out. So this is a 215-215 right now. I mean, this is tighter than a new pair of shoes on a wet day outside, I'll tell you, 215-215. Again, a tie vote means this goes down to defeat.

So they are waiting to see who this one Republican might be. If they vote for this, then they win, they impeach Mayorkas. History is made for the first time since 1876, impeaching a cabinet secretary. The vote would be 216 to 215. But if it stays right now in this stasis, Bret, 215 to 215, that means the vote goes down. There's a lot of yelling right now in the House chamber because Democrats want them to close the vote. They think they have prevailed, Bret. We're trying to see. This might get very dicey here in the next couple of moments.

BAIER: But we're going to stay with it, Chad. What was your deal, a pair of leather shoes on a wet day?

PERGRAM: On a wet day, that's right.

BAIER: That was your best Dan Rather right there, back to the old phrases.

(LAUGHTER)

BAIER: Talk about the significance of this. You mentioned it's been obviously forever before -- since the cabinet official has been impeached. But the fact, we just heard from Senator Lindsey Graham here that they are not going to have the votes in the Senate for conviction. But this does to Republicans you talked to send a message, and that's what they want to do?

PERGRAM: It does. They were trying to make good on a promise here in the House of Representatives. They said that they were going to impeach Alejandro Mayorkas. Some Republicans said they were going to impeach President Biden. You had Hakeem Jeffries, the Democratic leader, saying earlier that the Republicans realized that they were having trouble impeaching President Biden, so they went to, as he termed it, plan b to go after Mayorkas here.

But here's the other thing that would happen. If you have a vote -- and I keep looking off to the screen here just to see where we stand with this vote here, but it's still at 215-215. And we have one member, yes, still outstanding here. The significance, if this goes to the Senate, is they have to start a trial. You can't just --

BAIER: Let me interrupt you, Chad. Let me put the sound of the floor up and see if we can hear some of this natural sound, and then we'll pipe in. Just give it a second. We just heard some yelling there back and forth on the floor. Hold on.

(SHOUTING)

BAIER: We missed the big yelling, but there was some gelling there. Explain to people as they look at this graphic, Chad, 215 to 215. On the bottom it says zero time remaining. So where are the other votes?

PERGRAM: That's right. They're trying to see if there's somebody who is absent or somebody who said they were going to vote yes. It makes me think that the Republicans, the reasons that they were willing to forge ahead is they were pretty confident that they had the votes, as confident as they could be in this situation. The yelling that you hear, these are Democrats hollering "Regular order, regular order, close the vote." Because 215 to 215 by rule, that loses. That's a tie vote.

BAIER: There it goes to the opposition.

PERGRAM: That's right. That's right.

And the clock does not matter. For people watching at home, this is kind of like soccer. At the end of the soccer match you always see five minutes of extra time, four minutes of extra time. They keep these votes open as long as they feel that they need to. They don't have to close the vote by a certain time. They'll keep it open until they get that vote. And maybe there is somebody who they're trying to twist an arm right now. Maybe there's somebody who said they were going to be here or is en route. That's always a possibility.

The other thing that told me that they were really on the edge is they flipped the vote series around. Remember, there was that other vote earlier tonight. We were told that the vote on impeachment was going to be first in the vote series --

(SHOUTING)

BAIER: Hold on a second. Now what are they doing?

PERGRAM: So if you watch down at the bottom of the screen here, you're going to see somebody potentially come up and fill out a card. They're going to go to the dais and fill out a card, probably a green card because they are going to signal that they are a nay or a red card if they're a no, to switch their vote or potentially to vote within that final minute or two. You have to do that manually in the House of Representatives.

So what you see on the screen, whatever that total is going to be, that's not going to be official. Whatever they announce from the chair, that is the official vote total here.

BAIER: So Chad, three. We know Ken Buck, McClintock. Who is the third.

PERGRAM: And Mike Gallagher, Republican of Wisconsin. And he argued in the Republican conference this morning that it was a bad precedent for Republicans to go down this road because you might have a Democratic House in the future and a Republican administration. You have not impeached a cabinet secretary since the 1870s, and maybe this becomes regular activity now, kind of like it's become with presidents here.

The other thing I should point out is that there were some other Republicans who seemed to be on the fence. You had David Joyce, a Republican of Ohio, a moderate. He voted yes, and you also had Dan Newhouse, a Republican of Washington who voted yes. And right now, there has been somebody who has switched their vote to no. And that's why you are hearing cheering on the Democratic side. And again, look at that, the yeas are losing right now. The no's are prevailing. It's 216 on the negative side to 214 on the positive side. So let's listen here. They're about to gavel this down.

UNIDENTIFIED MALE: On this vote, the yeas are 214 and the nays are 216. The resolution is not adopted.

(CHEERS)

(APPLAUSE)

BAIER: OK, Chad. This is really something, because you don't bring this to the floor unless you have the votes. This has echoes of the speaker vote when McCarthy was going for 15 different times, and when we ended up with Speaker Mike Johnson. How far do you do the count, you bring to a vote to lose by one vote?

PERGRAM: It's all about the math. And I was told before I came down to get on the air tonight that they thought that there were a couple people who they weren't completely positive who were locked down. And I'm told here from the House chamber that Blake Moore, who is now a member of the leadership, who is speaking on the floor right now. He switched his vote from yes to no. And he is on the floor right now. and I'm wondering if he is trying to amend something right now. That's why Mike Johnson is speaking. But Blake Moore is now the vice chair of the Republican conference. The bottom line is --

BAIER: Let's listen in for a second. Let's listen.

REP. MIKE JOHNSON, (R-LA) HOUSE SPEAKER: -- and Pass HR-7217, on which the yeas and nays are ordered. The clerk will report the title.

UNIDENTIFIED FEMALE: HR-7217.

PERGRAM: This is the Israel bill that they are going to now. They need two thirds for this. We are not guaranteeing that this going to pass either because you need this big coalition of Democrats and Republicans to pass this, and President Biden has threatened to veto this.

BAIER: Chad, amazing job, as always, keeping us honest on Capitol Hill. And there is a lot moving around.

I want to bring in our panel early. Stand by, if you would, Chad. FOX News senior political analyst Juan Williams, Josh Holmes, co-host of "The Ruthless" podcast, former chief of staff to Senator Mitch McConnell, and Mollie Hemingway, editor in chief of "The Federalist."

OK, Josh, kind of crazy. We're now on the Israel vote. We should point out this is standalone funding for Israel of $17.6 billion that President Biden has vowed to veto, which is also a political kind of question mark.

JOSH HOLMES, "RUTHLESS" PODCAST CO-HOST: It's a huge question mark. Look, this is not the finest day of legislating that we've seen on Capitol Hill in the history of our republic. This was obviously a huge setback for House Republicans in this impeachment vote. But honestly, what they are trying to do is get back to the security funding issue that started the entire border discussion right from the very beginning. An awful lot of conservatives saw it as an opportunity at some point to try to force the Biden administration into doing something they were unwilling to do, frankly, on the border. That has since been set by the wayside. And so now the alternative here is to try to take up a standalone bill here.

BAIER: Again, this is the standalone bill, as you see the numbers ticking up. This is to fund Israel. This is separate of the supplemental which put everything together, Ukraine, border, and Israel. And that looks like it's going nowhere.

Mollie, 30,000 feet, what do you look at, at this Mayorkas vote and where we are?

MOLLIE HEMINGWAY, FOX NEWS CONTRIBUTOR: I actually think it's good for people to vote. You get to see where people stand on the issue of how do you think about how Mayorkas has been handling the border situation? You get people's actual record on that. You get a record on Israel funding. Legislation -- it's just good to see where people vote.

But regardless of whether they end up impeaching him or whether the Senate ends up taking it up, this has really been a watershed week in Washington. You have seen just a dramatic amount of frustration from the American people over how broken Washington is when it comes to our border, and they are really sick and tired of it and sick and tired of not sufficient solutions to the problem at hand.

BAIER: Juan, if you're Secretary Mayorkas, are you breathing a sigh of relief? You are not the cabinet member that got impeached, the first one in 100-plus years?

JUAN WILLIAMS, FOX NEWS POLITICAL ANALYST: Don't write it off yet, but I say yes, tonight he is not the one who got impeached. But the larger picture, when you say what do you see looking over this, is you see a Republican caucus that is dysfunctional. I mean, they hurt themselves here.

BAIER: But let's rewind here, Juan. Isn't it dysfunctional for President Biden to come out and blame former President Trump for the border situation, to say that he is the reason for the border? It's been 8 million plus illegal immigrants across a very porous border that the president could have locked down.

WILLIAMS: We can go back and we can go into the weeds and say you're to blame Democrat, you're to blame, Republican. But right now, Republicans had been calling for some resolution, for increasing support for security on that border. And yet, they say no. Obviously, you have the Chamber of Commerce. You have the border guards themselves, you have --

BAIER: The agents' union.

WILLIAMS: They are all saying, yes, vote for this. The Democrats, by the way, are not happy about this. They are making major concessions on amnesty and Dreamers. And yet the Republicans say oh, no, we don't want this. It's incredible.

BAIER: Mollie?

HEMINGWAY: I'd just say, first off, before Democrats impeached President Trump over his concerns about corruption in Ukraine, they held that vote multiple times until they got the number of votes needed. So that's not unheard of.

But you heard Joe Biden say today that he needed a bill to deal with the border, even though he took like nearly 100 executive actions to completely open up the border. And you know that's not true because Democrats controlled both Houses of Congress for the first two years of his administration. He could have easily passed whatever he claims he needed. But this was an intentional opening up of the border.

And no, you do not see Democrats upset with the border bill that was negotiated. It was a disaster, this border bill that was negotiated. You heard Chuck Schumer say that he had never worked with so closely with Mitch McConnell on anything in his life. That was a big failure, and that's why you're seeing some people calling for --

BAIER: You've got a couple. You've got Padilla, you've got Menendez, who needs something else to talk about.

Let's go back to Chad Pergram live on Capitol Hill. And there is something technical happening here, Chad.

PERGRAM: Yes, something of paramount importance. And I mentioned Blake Moore, the Republican from Utah. He moved to reconsider the vote. This is after he switched his vote from yes to no. The reason that's important is that this was going down at 215 to 215. By rule a tie vote loses in the House of Representatives. So, why would Blake Moore, who is now the vicechair of the Republican conference who wants to impeach Alejandro Mayorkas, switch his vote to no?

Well, if you just have a straight vote, a tie vote here, it's off the table. It's done, 30. But if you switch your vote to the prevailing side, in this case the no's, so Blake Moore, member of the leadership, switches his vote to the prevailing side, the no's, they are able to recall this vote at some point. Maybe not tonight. Maybe not in the next few days. Maybe when they get Steve Scalise, the majority leader, back. Maybe if they win that special election on Long Island next week, if they win, they might have the votes to impeach.

So, Blake Moore is not necessarily against impeachment, but what he did is he switched so he was on the prevailing side. They didn't have the votes. Otherwise, this was a done deal at 215 to 215.

BAIER: Chad, as always, thank you.

Josh, big picture, they get a win, they don't get a win. Tonight, they got a loss. But the bottom line is they are not going to have the votes in the Senate to convict Secretary Mayorkas. It's more of sending a message. But rewind. In Iowa and New Hampshire, immigration was the number one issue facing everybody that we talked to.

HOLMES: Yes.

BAIER: And it's in every poll, Democrats and Republicans saying it's big.

HOLMES: Yes, typically, it's got a very conservative constituency. But we have seen with the absolutely mess that's been at the border over the last few years that it's bled deeply from the conservative side of the electorate into the middle and now into the left as migrants have been moving into cities like New York and Chicago across the country. It is a voting issue across all demographics at this point.

And that's one of the things that's led to all of this, right? This is part of the reason why House Republicans and some Senate Republicans see this as a paramount political issue. And I will just say this. I don't think, for regardless of what Joe Biden is saying about trying to put blame on President Trump or Republicans or anything else, I don't think that this is an issue that the American people can be confused upon. This is something that President Trump ran on in 2016, secured the border, at least made great progress towards it, and was immediately reversed by the election of Joe Biden. This, of all issues, has total clarity with most people.

BAIER: We're getting ready for an election. We just talked about, obviously, the presidential election and where it stands. But the Senate and the House is really on a razor's edge. And you look at what is happening here with Republicans, Mollie, and you wonder about the viability of Speaker Johnson to control his caucus. We saw it with Kevin McCarthy how just a few votes caused him to leave the seat. Do you think Johnson can herd the cats?

HEMINGWAY: It's a very difficult situation in the House. But I do think people will reward Republicans for at least trying to do something in the House. What I think is also interesting is you have Senate leadership that is very much out of touch with the American voters, just like Josh said. They completely misread the situation on the border bill that they secretly negotiated for months. And it was a really epic failure that that just like fell apart in just 24 hours. And it's because the Senate leadership on both -- in both parties really don't understand the frustration with the American people about this border situation that's gone on for decades. They pretend during election years that they care about it, and nobody actually does what needs to be fixed. It's going to be a live issue.

BAIER: Hold on one second. Senator Cruz called for your old boss to step down. Do you think that's happening?

HOLMES: Yes. Look, I think the same people that blame Mitch McConnell for a cloudy kay at the beginning of the Congress are going to blame him for everything afterward. I don't think that much has changed. Not surprisingly I have a very different opinion than Mollie does on how everything played out ultimately. He was given a mandate to try to get something done by the most conservative members of that conference. Unfortunately, with a Democratic Senate and a Democratic president, it requires a little bit of bipartisan.

BAIER: Let's listen in here. I think they just gaveled it. This bill for --

UNIDENTIFIED MALE: On this vote the yeas are 250, the nays are 180. Two- thirds not being in the affirmative, the rules are not suspended. The bill is not passed.

BAIER: OK, so that is the funding for Israel, standalone, $17.6 billion. It's also the bill that had it passed the White House said President Biden was going to veto.

So you are left with this situation, Juan, where the supplemental is not looking like it's going anywhere, the cause of the immigration pushback from conservatives. Standalone bills on Ukraine and Israel, one just failed right here. Are they just going to put them up? Because that is a big deal for this administration to get that funding.

WILLIAMS: I think they are going to try their best to try to find some way to get something done on the border and make this a total package. That's why the president's rejecting it as a single item. I mean, that was a political maneuver by the Republicans.

Look, I think for most of my life immigration has been an issue that favors Republicans. The public and the voters trust Republicans more on this issue, particularly when it comes to border security. But I think right now, instead of having the Democrats beaten like a drum, I think what you are seeing is President Biden and the Democrats are saying, wait a second, we are trying to do something. We are trying to, in fact, increase security at the border, more border security agents, change the system, and the Republicans aren't going along.

And it looks like, the President Biden was saying it's the toxic political atmosphere caused by former President Trump who sees it as a disadvantage politically for him to have the Democrats say we've got a deal, we are taking care of the border, and therefore, he is not going to act. He is encouraging Senate and House members to go against this bill.

BAIER: I want to turn to another topic really quickly before we come to the top of the hour. Do you want to weigh in on this really quickly? Whenever you give me the smirk, it's like don't go on, I have something to say.

(LAUGHTER)

HEMINGWAY: Joe Biden is currently suing to prevent Texas from enforcing their border. We all know what the border was like during the Trump administration. We saw the hard work that was put in place to make sure that there was at least some security there. The idea that this is going to go well for Democrats after seeing what we have gone through for the last few years is just absurd.

WILLIAMS: I think if President Trump had not only the White House, he had the House and the Senate. There is no wall. There was no comprehensive reform of the immigration system. But now he sees it as a political issue that he can use to whack Democrats. And people see that's all this is. It's ***politics*** instead of looking out for what is best for America, secure the border.

BAIER: All right, let's take off the House floor because they have moved to other things, so we now know that right now that the vote against impeaching Mayorkas failed on the first time. They may bring it up again later. Also, the standalone Israel funding failed on that vote as well.

I want to turn topics here, Josh. "Wall Street Journal", "Appeals court rejects Trump's immunity claim. A three-judge panel U.S. Court of Appeals for the D.C. Circuit dismissed the former president's arguments that his efforts during the final months of his presidency to undo his loss, including by promoting false claims of voter fraud, fell within the ambit of his official duties. That was a crucial tenet of Trump's defense."

This is a setback for the Trump team, but they are going to appeal. It was interesting, I talked to Jonathan Turley that there is kind of a deadline baked into this order that he has got to do it by Monday.

HOLMES: Yes, it seems awfully quick. I'm your best Holiday Inn Express lawyer on the panel here tonight, but I can say that does -- that timeline does feel a little fishy to me. I don't think the original decision has been unexpected. But the biggest part of this is the calendar, as Dr. Turley was talking about. What we are dealing with is an appeal and ultimately a trial, if one happens.

BAIER: I think we have a graphic of all the calendar. It is really amazing when you put it all up together.

HOLMES: Yes. And it comes down now to get very close to Election Day anyway you cut it. And typically, the Department of Justice has looked at that extremely unfavorably, about going on into something that could affect an election of any kind, let alone a presidential election. So, I think the calendar is the most important part of this decision today.

BAIER: Mollie?

HEMINGWAY: And it is the Democrat strategy to imprison their top political opponent before the coming election. So they do need to rush, and they have been having courts that haven't really gone along with that yet. So it will be interesting to see if other courts --

BAIER: If you look at that calendar, it does tell a story. Quickly.

WILLIAMS: More likely there's going to be now a trial now before the election. And negative testimony and possibly a conviction don't help Donald Trump.

BAIER: Panel, thanks for rolling with the punches tonight. A little breaking news.

Tomorrow on SPECIAL REPORT, Ukraine funding on the line. We'll talk to three Ukrainian teens who were taken captive by Russian soldiers.

Remember, if you can't catch us live, set your DVR, 6:00 p.m. in the east, 3:00 p.m. out in the west. As always, fair, balanced, and still unafraid, breaking news, too. Here's Laura.

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