

117TH CONGRESS
1ST SESSION

H. RES. 493

Expressing disapproval of the failure to uphold the constitutional duty to “take Care that the Laws be faithfully executed” and the usurpation of the legislative authority of Congress by the President of the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2021

Mrs. BOEBERT (for herself, Mr. POSEY, Mr. BISHOP of North Carolina, Mr. DUNCAN, Mr. JACKSON, Mr. GOHMERT, Mr. HICE of Georgia, Mr. GOOD of Virginia, Mr. GRIFFITH, Mr. MOORE of Alabama, Mr. CAWTHORN, Mr. BIGGS, Mr. GAETZ, Mr. FALLON, Mr. MASSIE, Mr. NEHLS, Mr. GOSAR, Mr. MOONEY, Mr. NORMAN, Mrs. HARSHBARGER, Mr. GOODEN of Texas, Mr. WEBER of Texas, Mrs. GREENE of Georgia, and Mr. ROY) submitted the following resolution; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Expressing disapproval of the failure to uphold the constitutional duty to “take Care that the Laws be faithfully executed” and the usurpation of the legislative authority of Congress by the President of the United States.

Whereas article I of the United States Constitution vests Congress with all legislative powers;

Whereas article I, section 8, clause 4 of the Constitution grants Congress clear jurisdiction with regard to citizenship and immigration matters;

Whereas article II, section 3 of the United States Constitution imposes a duty on the President to “take Care that the Laws be faithfully executed”;

Whereas the Constitution does not delegate authority to the President to rewrite or amend constitutionally enacted laws;

Whereas President George Washington explained the Constitution’s Take Care Clause as follows: “It is my duty to see the Laws executed: to permit them to be trampled with impunity would be repugnant to” that duty;

Whereas James Madison wrote in The Federalist No. 47 that the “accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny”;

Whereas the text of sections 235(b)(1)(B)(iii), 235(b)(1)(B)(iii)(IV), 235(b)(2)(A), and 239(a)(1) of the Immigration and Nationality Act requires detaining inadmissible aliens and issuing Notices to Appear;

Whereas it is the duty of the President of the United States to ensure the faithful execution of the immigration laws of the United States and enforce all provisions of the Immigration and Nationality Act mandating removal of inadmissible or removable aliens;

Whereas the Department of Homeland Security (hereafter DHS) has entered into more than 100 agreements under section 287(g) of the Immigration and Nationality Act (8

U.S.C. 1357(g)) with State and local law enforcement agencies;

Whereas DHS entered into a Memorandum of Understanding on January 8, 2021, with the State of Texas; in which DHS agreed to “consult with Texas before taking any action or making any decision that would reduce immigration enforcement,” including pausing or decreasing deportations;

Whereas the agreement required DHS to provide 180 days’ notice of any proposed action to reduce immigration enforcement;

Whereas, on January 20, 2021, the President’s administration unilaterally ordered a “100-day pause” on the removal of any alien with a final order of removal pending DHS review;

Whereas the U.S. District Court for the Southern District of Texas initially issued a Temporary Restraining Order against the President’s “100-day pause”;

Whereas the Court stated the statute “does not imply total discretion to pause or suspend a statutory mandate”;

Whereas the same Court followed with a preliminary injunction pending a final ruling;

Whereas the “100-day pause” would suspend action against more than 1 million aliens subject to final orders of removal;

Whereas in 2015 the U.S. Court of Appeals for the Fifth Circuit held the Obama Administration’s planned expansion of its Deferred Action for Childhood Arrivals (DACA) program to cover a broad category of persons was unlawful;

Whereas in 2018 the U.S. District Court for the Southern District of Texas during a hearing challenging the legality of DACA stated that DACA was likely unlawful and that DHS may defer removal in specific cases and that exercising discretion to a large class of aliens contravenes the INA's statutory scheme;

Whereas, on January 20, 2021, the President issued a Memorandum for the Attorney General and Secretary of Homeland Security “to preserve and fortify DACA”;

Whereas in January 2020, the nonpartisan Government Accountability Office (GAO) issued a legal opinion finding “faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law”;

Whereas GAO found further that the previous administration's temporary withholding of foreign aid funds was not permitted under the Impoundment Control Act;

Whereas President Biden may have violated the Impoundment Control Act, in directing that no funds Congress had appropriated to build the border wall would be spent on building the wall;

Whereas, on February 5, 2021, the President suspended agreements with certain Central American countries resulting in a massive surge of people at the southern border claiming asylum;

Whereas, on February 18, 2021, the President began allowing criminal aliens with felony records to remain in the United States;

Whereas the President threatens to ensure an immigration crisis continues at the southern border by offering amnesty to millions of illegal aliens;

Whereas more than 180,000 illegal immigrants were apprehended by Border Patrol in May 2021;

Whereas one year ago under President Trump, there were 1,400 unaccompanied minors in Department of Health and Human Services custody, and now under President Biden there are 22,000;

Whereas Alejandro Mayorkas took an oath to defend and secure our country and uphold the U.S. Constitution when he was sworn in as Secretary of the Department of Homeland Security on February 2;

Whereas in more than four months, Secretary Mayorkas has failed to faithfully uphold his oath and has instead presided over a reckless abandonment of border security and immigration law enforcement, at the expense of the U.S. Constitution and security of the United States; and

Whereas the President has endangered the America people:
Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) calls on the President to remove Alejandro
3 Mayorkas as Secretary of the Department of Home-
4 land Security and replace him with leadership that
5 will prioritize the security of the United States and
6 faithfully enforce the laws enacted by Congress;

7 (2) disapproves of the President's usurpation of
8 the legislative power of Congress in his withholding
9 of duly appropriated funding for the southern border
10 wall;

1 (3) calls on the President to employ all lawful
2 means to enforce the immigration laws of the United
3 States;

4 (4) calls on the President to ensure the faithful
5 execution of the immigration laws of the United
6 States;

7 (5) reaffirms that the preservation of the Con-
8 stitution's separation of powers is essential for the
9 protection of individual liberty and the maintenance
10 of the rule of law; and

11 (6) censures the President for his failure to
12 "take Care that the Laws be faithfully executed" as
13 required by the Constitution.

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