

WRITTEN TESTIMONY - MISSOURI ATTORNEY GENERAL ANDREW BAILEY  
HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
Committee on Homeland Security  
January 10, 2024

*"A nation without borders is not a nation." - President Donald J. Trump*

**I. Introduction**

Chairman Green, Ranking Member Thompson, and distinguished members of the Committee, thank you for the opportunity to appear before you this morning.

Our borders define us geographically, culturally and militarily. Secure borders are the bedrock upon which safe and prosperous societies are built. That ubiquitous truth has been self-evident for millennia, and it remains true today regardless of whether or not the current administration and Secretary Alejandro Mayorkas choose to believe it.

My understanding of border security comes from direct, hands-on experiencing securing a nation's border. It was earned on a barren desert battlefield half a world away from the turret of an M2 Bradley Fighting Vehicle. In 2005, as a newly minted 2<sup>nd</sup> Lieutenant, my platoon deployed to Nineveh Province, Iraq, under the command of General H.R. McMaster and was tasked with securing the northwest border between Iraq and Syria. Our mission was simple and clear: close the border. And that's exactly what we did. We did not capture people and release them into the interior of the country. We did not hand out citations and ask folks to report back in ten years. And we certainly did not send a "border czar" on fruitless missions to identify the "root causes" of regional migration. No, we closed the border to ensure the country was safe from those who wanted to cross the border to undermine the sovereignty and safety of the nation.

I learned many lessons about leadership and security during my two deployments to Iraq, but chief among them is this: mission success is a function of competent command. Where the leader leads, the troops will go. When the leader has a clear vision, a strong work ethic and a sense of mission integrity, success and security will follow. Conversely, when a leader is indecisive and evasive, chaos will reign – and crisis is inevitable.

Make no mistake, a crisis is exactly what we have. Since 2021, more than eight million illegal immigrants have entered the United States. That is more than the population of Missouri. The illegal immigration rate is so high that in 2023, more illegal immigrants entered our country than there were babies born in the United States. A recent Gallup poll shows that 72% of Americans consider the situation at our southern border a "crisis" or a "major problem." And 82% of Americans say they worry about illegal immigration. Those numbers are alarming, and they have been getting worse nearly every month for the past three years.

These numbers are not an accident; they happened by design. There is only one reason eight million people illegally cross a sovereign nation's border: because they know they can get away with it. And why wouldn't they? In the last three years of Secretary Mayorkas' reign, there has been an orchestrated lack of enforcement of our nation's immigration laws. Our border has become a rudderless ship of chaos.

Secretary Mayorkas, either at the direction of his superiors or of his own volition, has abdicated his responsibilities. He has failed to uphold his oath of office. He has failed to enforce our nation's immigration laws. And he has failed to do that which is most fundamental to his mission: protect our border.

That failure has not only led to today's impeachment proceeding; it has given rise to an unprecedented level of state actions necessary to fill the vacuum created by the Secretary's ineptitude. State attorneys general like me and my colleagues here today have become the vanguard in the fight for border security.

I'd like to highlight for you a few of the actions my office has taken as we fight to secure the border and keep Missourians, and all Americans, safe.

## **II. Secretary Mayorkas is already in possession of resources needed to secure the border**

In an interview last Wednesday on CNN, Secretary Mayorkas stated, "we need additional resources. We need them now and that is why we submitted a supplemental funding package quite some time ago."

In reality, we all know he already has funding. He just refuses to use it.

In FY 2020, Congress appropriated funds explicitly for the purpose of constructing barrier systems at the southern border to keep unauthorized individuals out of our country. In the appropriation, Congress explicitly stated the money "shall only be available for construction of barrier systems along the southwest border," and provided specific criteria on their use and where the barrier systems may be constructed. Secretary Mayorkas and his administration refused to comply with Congress' command.

When asked why the current Administration "did not build a barrier, such as a wall, to keep migrants out," Secretary Mayorkas replied that "[i]t is not the policy of this administration" because "[w]e do not agree with the building of a wall." DHS expressed its intention to "end wall expansion." The Administration even "call[ed] on Congress to cancel remaining border wall funding" because they knew that without congressional action, they would need to use the appropriated funds for their specified purpose: finish the construction of President Trump's border wall. Yet when Congress did not capitulate to his demands, the Secretary ignored his constitutional obligations to abide by Congress's appropriations laws and opted not to use the funding for the purpose Congress directed.

**Missouri, alongside Texas, immediately filed suit.** DHS attempted to argue we did not have standing to challenge its refusal to use the funds, but the Fifth Circuit Court of Appeals ruled that states can indeed bring a challenge. That ruling cleared the way for our lawsuit against the Secretary's refusal to finish President Trump's border wall to move forward. We anticipate a ruling from the district court any day now.

So while we battle in court over Secretary Mayorkas' refusal to use taxpayer dollars in the manner Congress intended, we have little sympathy for his pleas for more resources. Congress gave him resources. He simply refuses to use them.

## **III. Secretary Mayorkas is not even attempting to faithfully execute the laws; rather, he is working to loosen them**

Rather than find ways to secure our border, Secretary Mayorkas has been busy enacting policies to make it easier to enter our country illegally.

In January, **Missouri filed suit** against Secretary Mayorkas over a new DHS program that unlawfully creates a de facto pathway to citizenship for hundreds of thousands of illegal immigrants. Despite the fact that an executive agency cannot create immigration programs without the express permission of Congress, DHS instituted a new visa system that would allow for up to 360,000 illegal immigrants from Cuba, Haiti, Nicaragua, and Venezuela to be “paroled” into the United States every year. Parole allows noncitizens to physically enter and remain in the United States even though they do not have a legal basis for being admitted. Although Congress authorized a limited parole power for illegal immigrants who meet very specific and stringent standards, Secretary Mayorkas’ program does not meet these standards. Contrary to existing law, the program creates a pathway for program participants to apply from their home country and gain lawful status to enter and stay in the U.S. for up to two years, or even longer, while their application is reviewed. Even worse, Secretary Mayorkas instituted the program without engaging in the notice and comment rulemaking process required by law. This program is another instance of Mayorkas abusing his executive authority to further his dangerous open borders agenda at the expense of the states and their taxpayers.

A mere three months later, **Missouri again filed suit** against Secretary Mayorkas, this time for his attempt to implement a rule that would make it even easier for persons to illegally immigrate into the United States. His new “Circumvention of Lawful Pathways” rule redefined what had previously been considered illegal border crossings as “lawful pathways.” The Circumvention Rule references a new “process” that would allow vast numbers of illegal immigrants to enter the country and receive instant work authorization and quick access under bogus asylum claims. These migrants, who previously would have had to cross the border illegally, will still lack lawful status in the United States (though with a false imprimatur of legality, thanks to the Secretary’s unlawful procedures), and the States will be forced to bear the cost of their presence. Rather than acknowledge the root cause of the influx of illegal immigrants poring over our border, the Secretary tried to define the problem away by simply making something that was once illegal into something legal.

**Missouri has not only filed suit against Secretary Mayorkas – we have given him advice on how to fix these problems.** In the wake of the October 7 terrorist attacks on Israel, we called on DHS to make regulatory changes that close the catch-and-release loophole that DHS is currently exploiting to implement its mass release policy at the Southwest border. In the Petition for Rulemaking we submitted directly to the Secretary, we asked DHS to end the blatantly unlawful catch-and-release policies because of the horrendous effects on the security of our country. DHS is releasing illegal immigrants at a rate of over one million per year, and that does not include the ones being released on parole under § 1182(d)(5). Even worse, in addition to unlawfully releasing inadmissible immigrants into the U.S., DHS is giving the “parolees” a court date many years in the future. DHS’s unlawful decisions are allowing millions of illegal immigrants to remain in the U.S. for 15 years or longer before ever approaching a judge’s bench.

Secretary Mayorkas does not care.

His refusal to secure the border has resulted in an unprecedented flood of unvetted migrants into the interior of our nation. We have no idea who Mayorkas has allowed into Missouri communities. After what happened in Israel, it is more vital than ever that we secure our border and keep Americans safe.

My office is doing everything in its power to hold Mayorkas accountable and end the border crisis that he created.

#### **IV. The cost to the states**

Secretary Mayorkas has enacted illegal policies that are akin to posting a “Come In, We’re Open” sign along the southern border, later refusing to take any responsibility for the consequences of his actions. States are then forced to bear the enormous cost of Secretary Mayorkas’ failure. Despite it not being in the states’ job descriptions to fight cartels, catch illegal immigrants, or subsidize illegal immigrants’ driver’s licenses and educations, state leaders are forced to make an impossible choice: leave the federal government to its reckless policy choices, which inherently leaves our communities to be ravaged, or face the wrath of a federal government who wants us to sit down and shut up.

The choice for me is clear: I will not sit idly by while Missouri communities continue to be decimated by the weight of unchecked illegal immigration under Secretary Mayorkas’ watch.

The Secretary may be pushing his open border agenda in the name of compassion, but the facts tell a different story. It is not compassionate to the women and children being trafficked by cartels at the southern border. It is not compassionate to the Americans losing their loved ones in the streets to fentanyl. And it is not compassionate to Americans who do not know who has been let loose in their communities.

Members of the Committee, here are some key figures:

More than 8 million illegal immigrants have entered America from Mexico since 2021, not including ‘got-aways’. Estimates indicate there have been as many as 1.8 million ‘got-aways’.

Roughly 3 million people were encountered illegally entering the U.S. in fiscal year 2023. On Mayorkas’ watch, we have set the record for the highest number of yearly illegal alien encounters in U.S. history.

December broke a record for monthly encounters with more than 302,000.

A November report by the House Committee on Homeland Security indicates annual federal and state tax dollar support for illegal immigrants exceeds the annual GDP of 15 states. Only a small fraction is ever recouped from the taxes paid by illegal immigrants, according to the report. Medicaid is the biggest expense, at \$12.4 billion dollars in the past 2 years. In FY 2022, taxpayers provided millions of illegal immigrants with nearly 6 billion in food stamps.

Let’s talk about fentanyl. Nearly 12,500 grams fentanyl were seized by the Missouri Highway Patrol in 2023. It takes only 2 milligrams of fentanyl to cause an overdose death. With a population of more than 6 million in the state of Missouri, 12,500 grams of fentanyl could kill Missouri's entire population twice over.

There has also been:

- a 500% surge in child fentanyl exposure deaths,
- a nearly 75% increase in fentanyl overdoses in Missouri between 2019 and 2023, and
- a total of 43 Missouri children died from unintentional fentanyl poisonings in 2022

Let's turn to human trafficking. Missouri ranks fourth on the list of the states with the highest human trafficking rate in the United States, with 4.30 per 100,000 citizens. This makes sense with two interstates flowing through our major cities directly from the southern border. In 2021, the National Human Trafficking Hotline Database recorded 1,100 human trafficking tips in our state. Missouri law enforcement was able to rescue 327 victims from those tips. Most cases revolved around sex trafficking, with the NHTH recording 210 sex trafficking cases, and 15 labor trafficking-related.

And yet while these statistics shed light on a nauseating reality, some of the costs to Missourians cannot be quantified. The loved ones lost to fentanyl or human trafficking can never be replaced, much less properly described in this hearing today.

And yet, Secretary Mayorkas' failure does not discriminate. Red states are not the only ones facing this problem. Blue states are also begging the federal government to course correct, as they too are forced to bear the unspeakable burden of tens of thousands of unauthorized migrants entering their communities.

Only weeks ago, Arizona Governor Katie Hobbs deployed the National Guard to the border to protect her state against the influx of unauthorized migrants flooding into their cities. Prior to that, Illinois Governor J.B. Pritzker sent a letter to DHS begging for federal aid to assist in managing the massive cost from illegal immigrants residing in his state. Before that, New York governor Kathy Hochul declared a state of emergency to handle what she dubbed a "crisis."

#### **V. Congress must bring accountability**

The fact of the matter is that every state is a border state. Every state and its citizens are forced to bear the brunt of Secretary Mayorkas' ineptitude. My call to Congress today is simple: remove that burden from the shoulders of everyday Americans and put it back where it belongs - on the shoulders of those sworn to protect us.

The states should not need to take steps to do the federal government's job for them. Secretary Mayorkas swore an oath to faithfully execute the laws of our land, including those intended to protect Americans. Congress has even given DHS ample tools to do its job. But let's be clear: this hearing today is not about resources. It's about Secretary Mayorkas' refusal to use the resources given to him in good faith.

That is important. So often, we are told that Congress has the power of the purse and can use it to check failures by the Executive Branch. But the power of the purse means little if executive officials are going to ignore the appropriations laws this body creates.

In Missouri, we remove officials who do not do their jobs because we have seen firsthand the catastrophic toll it takes on entire communities. It is rightful for Congress to consider removing a government official who refuses to do his job.

We have reached a point of "no-return." The attorneys general sitting before you today are doing everything we can at the state level to rectify this appalling situation, but Congress has a role to play for

accountability. While we battle in the nation's courts, Congress must use every tool at its disposal to obtain accountability for the American people.

I welcome the Committee's questions.