

Written Testimony of

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## State of Montana

Before the United States House of Representatives  
Committee on Homeland Security

### **“Havoc in the Heartland: How Secretary Mayorkas’ Failed Leadership Has Impacted the States”**

January 10, 2024

Chairman Green, Ranking Member Thompson, Members of the Committee:

As the Attorney General and chief law enforcement officer for the State of Montana, I am grateful for your committee’s attention to how Secretary Alejandro Mayorkas’ failed leadership has impacted states like mine. The crisis at the border is a self-inflicted injury the policies of Secretary Mayorkas have brought upon our nation. The southern border presents a difficult challenge for any administration. But Secretary Mayorkas and the Biden Administration have poured gasoline on the fire. He has violated his oath to defend the homeland and uphold the Constitution by repeatedly disregarding the laws passed by Congress. To that end, he has instructed the men and women of his Department to violate congressional mandates and circumvent court orders issued after states like Montana have taken the drastic measure of filing suit against the federal government to stop the madness at the southern border.

His actions as secretary have turned the border into an effectively meaningless 2,000-mile line in the sand, ceding operational control to Mexican drug cartels—some of the most savage and depraved organizations in world history. In turn, the cartels have seized on Secretary Mayorkas’ weakness, driving addiction and death in our country, expanding their enterprises into human trafficking and smuggling, and engaging in a reign of terror in communities on both sides of the border while the Secretary forces Customs and Border Patrol agents watch in horror.

The southern border and the drugs flowing across it into communities large and small across our nation are ultimately the reason I am the Montana Attorney General today. I am from rural Montana—about as rural as you can get—where I was a private practice attorney until two drug dealers drove by my kids’ school firing guns at each other out their windows in broad daylight.

Not long after that incident, I became our county prosecutor. And there, my eyes truly opened to the devastation that the drug epidemic was hoisting onto our community. I saw what I thought were the worst things possible: babies born addicted to drugs, kids thrown into foster care because their parents would rather buy drugs than take care of them, young girls and women sexually assaulted by family members on drugs, people murdered over \$20 drug deals gone wrong. I had to commit a high school classmate to a psychiatric hospital because drugs had essentially fried his brain.

So, to say that I was encouraged by the previous administration's progress in securing our nation's border is an understatement. It's also an understatement to say that I was horrified to see this administration, under Secretary Mayorkas' leadership, begin to erase that progress and systematically dismantle policies and programs meant to secure the border. Since then, it has been like watching a train wreck in slow motion as our citizens fall victim to violent crime, become addicted to drugs, and, in hundreds of thousands of cases, die because Secretary Mayorkas is derelict in his duty to secure the border.<sup>1</sup>

The most devastating impact of the open border on Montana has been the massive quantities of fentanyl and methamphetamine. In 2020, drug task forces in our state seized 6,663 dosage units of fentanyl. In 2021, the first year of Secretary Mayorkas' watch at the border, that quantity exploded ten-fold to 61,000. In 2022, we tripled that, seizing nearly 190,000 dosage units. The numbers aren't finalized for 2023, but as of the third quarter, we were on track to seize nearly one half-million dosage units of fentanyl and yet another 200 pounds of methamphetamine.<sup>2</sup> This is a staggering amount of drugs for a northern-tier state with just over one million residents—and the cartels trafficked 100 percent of that fentanyl and methamphetamine across the southern border. Once it crosses, it can be in Montana within 24 hours and it has a deadly effect on our communities, especially reservations.

In just one week during March 2022, seventeen people on the Blackfeet Indian Reservation overdosed on fentanyl. Four died.<sup>3</sup> I spoke with a woman later that year from the Fort Peck Indian Reservation who was raising her grandkids after both of her sons were killed by fentanyl. In January of last year, a combination of methamphetamine and fentanyl that came across the border from Mexico killed a woman who was seven months pregnant. Nationwide, Indigenous people suffer from the highest rate of fentanyl

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<sup>1</sup> National Institute on Drug Abuse. *Drug Overdose Death Rates*. <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>

<sup>2</sup> Gibson, Kylie. *Significant spike in fentanyl leads to rising overdose rates in Montana*, KECI (December 31, 2023), <https://nbcmontana.com/news/local/significant-spike-in-fentanyl-leads-to-rising-overdose-rates-in-montana>

<sup>3</sup> *Blackfeet tribe declares emergency after drug overdoses*, ASSOCIATED PRESS (March 23, 2022). <https://apnews.com/article/covid-health-opioids-synthetic-opioids-e03fee8a19c143ab5e1c3ae3787e439f>.

overdoses.<sup>4</sup> In Montana, the opioid overdose death rate among Native Americans is twice as high than it is for white people.<sup>5</sup>

The devastation of Secretary Mayorkas' refusal to faithfully execute the laws goes beyond the deaths it causes and the anguished families left to pick up the pieces. These drugs cause people to do unthinkable things. A suspect in a current drug case was taking delivery of drugs that were being supplied directly from Mexico. She had a minor daughter living in a shed who was sexually assaulted by the man delivering the drugs. In another case last year, a young mother who was homeless was able to find a bedroom in a house, not knowing that the room had been recently occupied by a fentanyl user. Shortly after taking residence, that mother found her 11-month-old child not breathing. Fortunately, medical and law enforcement personnel responded quickly enough to administer naloxone before the fentanyl killed the child.

Nor does the impact of Secretary Mayorkas' policies end with the proliferation of drugs into Montana communities. In a human trafficking operation this summer, our agents arrested three men from Central America. All three were in the country illegally but on deferred action. One had been deported once before and was again apprehended after crossing the border but had been allowed to stay. These men were all here and able to engage in this criminal activity because of the policies Secretary Mayorkas has implemented at the Department of Homeland Security.

While the crisis at the southern border is often the focus of attention, the northern border is also a grave concern to me. The border between Montana and Canada is 545 miles long. Recent reports indicate the fentanyl super labs have been proliferating in that country, including in British Columbia, a province directly adjacent to Montana. In one November bust, authorities there seized approximately 55 pounds of fentanyl and 6.5 pounds of fentanyl diluted for distribution, along with 10 industrial-sized barrels worth of chemical precursors. In all, the seizure represents over 2.5 million street doses of the drug.<sup>6</sup>

This is particularly alarming because under Secretary Mayorkas, DHS has made it a common practice to redeploy Border Patrol personnel from states like Montana to the southern border. As this committee has revealed, thousands of Border Patrol agents and officers were relocated between October 2020 and April 2023, with a substantial increase in Federal Fiscal Year 2023.<sup>7</sup> I have first-hand knowledge that this includes agents from

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<sup>4</sup> National Center for Injury Prevention and Control. *Opioid Overdose Prevention in Tribal Communities*. CENTERS FOR DISEASE CONTROL AND PREVENTION (August 25, 2023). <https://www.cdc.gov/injury/budget/opioidoverdosepolicy/TribalCommunities.html>

<sup>5</sup> Bolton, Aaron. *Tribal leaders sound the alarm after fentanyl overdoses spike at Blackfeet Nation* (June 1, 2022) NPR, <https://www.npr.org/sections/health-shots/2022/06/01/1101799174/tribal-leaders-sound-the-alarm-after-fentanyl-overdoses-spike-at-blackfeet-nation>

<sup>6</sup> *Fentanyl equal to 2.5 million street doses seized at rural property in Mission, B.C.: police*, CBC NEWS (November 2, 2023), <https://www.cbc.ca/news/canada/british-columbia/fentanyl-drug-lab-police-seizure-mission-bc-1.7016534>.

<sup>7</sup> U.S. House Committee on Homeland Security. *Phase 2 Interim Report: DHS Secretary*

Montana. Adding insult to injury, the redeployed personnel were not there to help secure the border, but to process and more quickly release illegal aliens into the interior of our country. The redeployments forced stations at the northern border cut back on patrols, and curtail participation in joint law enforcement operations, ultimately lessening their effectiveness to disrupt cross-border smuggling.

The specter of Canadian fentanyl super labs with a production capacity that far exceeds demand in their nation and a northern border that could again be left unguarded by the whims of a Homeland Security Secretary who prioritizes political points over safety is terrifying for every law enforcement officer in Montana.

As I said in my opening, the tragedy is that this crisis is entirely self-inflicted. The Trump Administration overcame fierce opposition at every turn and was able to gain control of our southern border as no other previous administration could. But all that progress has been destroyed. Secretary Mayorkas is the architect of that destruction. He took an oath to “well and faithfully discharge the duties” of his office and support and defend our Constitution. By any objective measure, he has failed to keep his oath. At the direction of Secretary Mayorkas, the Department of Homeland Security has wreaked havoc at our southern border, exacerbated the fentanyl epidemic, and emboldened the drug cartels.

I’ve heard some claim that this is merely a resource issue—that if Congress would simply appropriate funds for more border patrol agents or immigration judges, we could solve the border crisis. As a prosecutor, I’m always in favor of giving law enforcement the tools they need to succeed. But the reality is that no amount of funding or resources will change the status quo as long as Secretary Mayorkas is in charge. It’s not negligence and it’s not incompetence. It’s ideology and intransigence.

By willfully and intentionally failing to enforce our nation’s immigration laws, Secretary Mayorkas has violated his oath of office and breached the trust placed in him by the American people.<sup>8</sup>

For the last three years, I have joined Attorneys General across the country in legal challenges to the Biden Administration’s disastrous border policies. Over and over, the Department of Homeland Security has argued in court filings that its refusal to enforce the laws passed by Congress is not subject to judicial review.<sup>9</sup> Secretary Mayorkas has repeatedly hidden behind the concept of “prosecutorial discretion.” In some instances,

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*Alejandro Mayorkas has Emboldened Cartels, Criminals, And America’s Enemies* (September 7, 2023).

<sup>8</sup> See generally Hans A. von Spakovsky, Lora Ries, & Steven G. Bradbury, *THE CASE FOR IMPEACHMENT OF ALEJANDRO NICHOLAS MAYORKAS SECRETARY OF HOMELAND SECURITY*, THE HERITAGE FOUND., Feb. 6, 2023, <https://www.heritage.org/immigration/report/the-case-impeachment-alejandro-nicholas-mayorkas-secretary-homeland-security> (discussing the legal case for impeachment of Secretary Mayorkas); see also Lawrence Tribe, *AMERICAN CONSTITUTIONAL LAW 217* (Mineola, NY: Foundation Press, 1978) (noting there’s “wide agreement” that impeachable offenses include “misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.”).

<sup>9</sup> See, e.g., *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022).

the courts have halted this illegal behavior and prevented further damage.<sup>10</sup> In others, however, the courts have deferred to the Secretary's discretion.<sup>11</sup> Meanwhile, the Biden Administration has gone to court to stop states from defending the border.<sup>12</sup>

As a prosecutor, I can tell you this: There's an obvious difference between exercising discretion and complete abdication. The courts may not be able to hold Secretary Mayorkas accountable for violating his oath of office, but this body *can* and *should*.

Impeachment is a serious and solemn process. It isn't to be taken lightly or used to settle mere policy disagreements. But the Framers understood that impeachment is an appropriate response if members of the executive branch abdicate their duties or statutory responsibilities.<sup>13</sup>

The American people are watching. They know that our border was secure just a few years ago. They see the devastation metastasizing in on our communities from drugs and human trafficking. The conclusion is clear: Secretary Mayorkas has violated his oath of office and the consequences have been dire. I urge this body to impeach.

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<sup>10</sup> See, e.g., *Florida v. United States*, Nos. 23-11528, 23-11644, 2023 U.S. App. LEXIS 13863, at \*1 (11th Cir. June 5, 2023); *Florida v. United States*, No. 3:21-cv-1066-TKW-ZCB (N.D. Fl. Mar. 8, 2023).

<sup>11</sup> See, e.g., *Biden v. Texas*, 142 S. Ct. 2528 (2022); *Arizona v. Biden*, 31 F.4th 469, 472 (6th Cir. 2022).

<sup>12</sup> See, e.g., John Kruzal & Andrew Chung, *White House turns to US Supreme Court in Texas razor-wire border dispute*, REUTERS (Jan. 2, 2024), <https://www.reuters.com/world/us/biden-administration-asks-us-supreme-court-intervene-texas-border-row-2024-01-02/>; Olivia Alafritz, *U.S. seeks court order requiring Texas to remove floating barrier in Rio Grande*, TEXAS TRIBUNE (July 26, 2023), <https://www.texastribune.org/2023/07/26/rio-grande-floating-barrier-injunction/>.

<sup>13</sup> See, e.g., FEDERALIST 65 (Hamilton); Joseph Story, 2 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES WITH A PRELIMINARY REVIEW OF THE CONSTITUTIONAL HISTORY OF THE COLONIES AND STATES, BEFORE THE ADOPTION OF THE CONSTITUTION 221 (Boston, MA: Hilliard Gray & Co.; Cambridge, MA: Brown, Shattuck and Co., 1833); Jared P. Cole & Todd Garvey, IMPEACHMENT AND THE CONSTITUTION, CONGRESSIONAL RESEARCH SERVICE REPORT No. R46013, at 36, Nov. 20, 2019, <https://crsreports.congress.gov/product/pdf/R/R46013>; Elizabeth B. Bazan & Anna C. Henning, IMPEACHMENT: AN OVERVIEW OF CONSTITUTIONAL PROVISIONS, PROCEDURE, AND PRACTICE, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS No. 98-186, Apr. 8, 2010, at 28, [https://digital.library.unt.edu/ark:/67531/metadc29530/m1/1/high\\_res\\_d/98-186\\_2010Apr08.pdf](https://digital.library.unt.edu/ark:/67531/metadc29530/m1/1/high_res_d/98-186_2010Apr08.pdf).