

January 10, 2024

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The Capitol
Washington, D.C. 20515

Chairman Mark Green
2446 Rayburn House Office Building
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**Constitutional Law Experts on the Impeachment Proceedings
Against Secretary of Homeland Security Alejandro Mayorkas**

Senior Republicans in the House of Representatives—including Speaker of the House Mike Johnson and Chairman Mark Green of the Committee on Homeland Security—have stated that they intend to pursue an impeachment of Homeland Security Secretary Alejandro Mayorkas. This proceeding will apparently occur in the Committee on Homeland Security on an accelerated timeframe. As scholars of the Constitution, considering the facts currently known and the charges publicly described, we hereby express our view that an impeachment of Secretary Mayorkas would be utterly unjustified as a matter of constitutional law.

Although House Republicans have offered various justifications for an impeachment, the underlying basis appears to be their view that Secretary Mayorkas’s policy decisions have degraded border security and involved objectionable uses of enforcement discretion. House Republicans have also publicly asserted that Secretary Mayorkas testified falsely in stating that he is enforcing existing federal law and that the southern border is closed and secure.

When the Framers designed the Constitution’s impeachment provisions, they made a conscious choice not to allow impeachment for mere “maladministration”—in other words, for incompetence, poor judgment, or bad policy. Instead, they provided that impeachment could be justified only by truly extraordinary misconduct: “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. Const., art. II, § 4. Thus, as Charles L. Black, Jr. noted in his influential handbook, impeachment is not permitted for “mere inefficient administration, or administration that [does] not accord with Congress’s view of good policy.” Simply put, the Constitution forbids impeachment based on policy disagreements between the House and the Executive Branch, no matter how intense or high stakes those differences of opinion.

Yet that is exactly what House Republicans appear poised to undertake. The charges they have publicly described come nowhere close to meeting the constitutional threshold for impeachment. Their proposed grounds for impeaching Secretary Mayorkas are the stuff of ordinary (albeit impassioned) policy disagreement in the field of immigration enforcement. If allegations like this were sufficient to justify impeachment, the separation of powers would be permanently destabilized. It is telling that there is absolutely no historical precedent for the impeachment charges that House Republicans have articulated. To the contrary, on the rare

occasions that Members of the House have proposed impeaching executive officials for their handling of immigration matters, the House has properly retreated from that grave step.

We hold a wide range of views on the wisdom and success of Secretary Mayorkas's approach to immigration policy. But we are in agreement that impeaching him based on the charges set forth by House Republicans would be a stark departure from the Constitution.

Of course, our institutional affiliations are listed for identification purposes only, and our signatures reflect our personal capacity, not any position on behalf of our employers.

Sincerely,

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