



STATE OF FLORIDA

**ASHLEY MOODY
ATTORNEY GENERAL**

July 24, 2023

The Honorable Patty Murray
Chairwoman
Senate Committee on Appropriations
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Kay Granger
Chairwoman
House Committee on Appropriations
2308 Rayburn HOB
Washington, DC 20515

The Honorable Susan Collins
Ranking Member
Senate Committee on Appropriations
413 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Rosa DeLauro
Ranking Member
House Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

Dear all:

For two years, I have fought in federal court to force Secretary Mayorkas to comply with the law of the land and fulfill his obligation to secure our southern border. I have watched with horror as fentanyl has flooded our nation, as children have been trafficked across our country, and as the present administration has lost all operational control of the southern border. As the House Committee on Homeland Security recently found, Secretary Mayorkas has been derelict in his duty, and the

States—especially Florida—have fought tirelessly to force him to follow the law.¹ While I believe we will succeed in court, I also believe this issue is too important to leave solely to the Judicial Branch.

In Federalist 58, James Madison noted that “[t]he power over the purse may . . . be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”² I am writing to urge you to use your appropriation powers to redress Secretary Mayorkas’s attack on the rule of law and force the Executive Branch to fulfill its obligations to enforce the duly enacted laws of this nation.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).³ In that statute, Congress commanded the Executive Branch to take into custody two categories of aliens. First, Congress commanded that the Executive Branch “shall take into custody” any criminal alien when that alien is released from jail or prison.⁴ Second, Congress required that all illegal border crossers be arrested, detained, and removed.⁵

Since his confirmation, Secretary Mayorkas has flouted Congress’s clear command to the detriment of my constituents and this nation.⁶ Rather than detain criminal aliens and illegal border crossers as required by law, Secretary Mayorkas has released millions of these aliens.⁷ Amazingly, when pressed in court about why he continues to release aliens in violation of the law, Secretary Mayorkas consistently blames one entity above all others: Congress.

When defending his decision to end the Migrant Protection Protocols, Secretary Mayorkas told the Supreme Court that “Congress has not provided DHS with

¹ COMMITTEE ON HOMELAND SECURITY, 118TH CONGRESS, DHS SECRETARY ALEJANDRO MAYORKAS’ DERELICTION OF DUTY, PHASE 1 INTERIM REPORT, MAJORITY REPORT (2023), <https://homeland.house.gov/wp-content/uploads/2023/07/Phase-One-Report.pdf>.

² THE FEDERALIST NO. 58 (James Madison).

³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

⁴ See 8 U.S.C. § 1226(c).

⁵ See 8 U.S.C. § 1225(b); see also *Florida v. United States*, No. 3:21-cv-1066, 2023 WL 2399883, at *26 (N.D. Fla. Mar. 8, 2023) (discussing “the 1996 expansion of § 1225(b) to include illegal border crossers”).

⁶ COMMITTEE ON HOMELAND SECURITY, 118TH CONGRESS, DHS SECRETARY ALEJANDRO MAYORKAS’ DERELICTION OF DUTY, PHASE 1 INTERIM REPORT, MAJORITY REPORT 3–4, 6–30 (2023), <https://homeland.house.gov/wp-content/uploads/2023/07/Phase-One-Report.pdf>.

⁷ *Id.* at 13, 44–52.

sufficient appropriations to detain all the noncitizens the agency encounters who are subject to detention under [the IIRIRA].”⁸

When defending his failure to detain criminal aliens, Secretary Mayorkas argued to the Supreme Court that “Congress has not appropriated the enormous resources that would be required to apprehend, detain, and remove every non-citizen described [in the IIRIRA].”⁹

When defending his failure to detain illegal border crossers in the suit I brought, Secretary Mayorkas argued that “Congress has even provided Administrations less detention funding than they requested to cover even a small fraction [of those subject to mandatory detention]” and Congress’s failure to provided adequate funding “*constitute Congressional acquiescence* to DHS’s [practice of releasing aliens].”¹⁰

When submitting budgets to your committees, however, Secretary Mayorkas sings a different tune. When explaining to Senator Lankford why the 2022 Budget requested less funding for detention capacity, Secretary Mayorkas testified that “[w]hen the budget was being formulated during Spring 2021, ICE’s adult daily detention populations were near historic lows.”¹¹ Of course, the reason ICE’s detention populations were low was because Secretary Mayorkas implemented a mass release policy. Similarly, when explaining why the Department of Homeland Security requested a decrease in funding for the 2023 Budget, the Department stated that its “reduction in detention capacity level will not impede ICE’s ability to apprehend, detain, and remove noncitizens that present a threat to national security, border security, and public safety.”¹² This statement, however, was not true, since by the time this requested was submitted Secretary Mayorkas had lost operational control of the border.

⁸ Brief for the Petitioners at 5, *Biden v. Texas*, 142 S. Ct. 2528 (2022) (No. 21-954), https://www.supremecourt.gov/DocketPDF/21/21-954/218538/20220314173404979_21-954tsUnitedStates.pdf.

⁹ Reply Brief for the Petitioners at 2, *United States v. Texas*, 143 S. Ct. 1964 (2023) (No. 22-58), https://www.supremecourt.gov/DocketPDF/22/22-58/246874/20221117181036700_22-58rbUnitedStates.pdf.

¹⁰ Defendants’ Proposed Findings of Fact and Conclusions of Law, and Post-Trial Brief, at 162–63, *Florida v. Mayorkas*, No. 3:21-cv-01066-TKW-ZCB, (N.D. Fla. May 11, 2023) (Document No. 156) (emphasis added).

¹¹ *Resources and Authorities Needed to Protect and Secure the Homeland: Hearing Before the Senate Committee on Homeland Security and Governmental Affairs*, 117th Cong. 117 (2021) (response of Alejandro Mayorkas, Secretary of Homeland Security) <https://www.govinfo.gov/content/pkg/CHRG-117shrg47977/pdf/CHRG-117shrg47977.pdf>.

¹² U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SEC., OPERATIONS AND SUPPORT FISCAL YEAR 2023 CONGRESSIONAL JUSTIFICATION, ICE–O&S–19 (2022), https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Immigration%20and%20Customs%20Enforcement_Remediated.pdf.

Secretary Mayorkas should not be allowed to engage in this double-speak. Using your appropriations authority, your committees can ensure that Secretary Mayorkas follows the law of the land and gives Congress the respect it is due. Your committees can ensure that the Executive Branch respects the rule of law and restores order to the southern border. Accordingly, I ask you to consider the following recommendations to force Secretary Mayorkas to follow the law.

First, you should “zero out” Secretary Mayorkas’s salary and that of his immediate staff. Until Secretary Mayorkas does his job, he should not be paid. There is strong historical precedent for taking this action when the Executive Branch defies Congress.¹³

Second, you should provide additional funding for border security. In doing so, you should require Secretary Mayorkas to maintain detention capacity sufficient to control the flood of migrants at our southern border. In fiscal year 2021, the Department of Homeland Security sought to increase its detention capacity to 60,000 beds. But Secretary Mayorkas has reduced that capacity to less than half that number. You should require the Department to maintain at least that capacity and forbid it from spending any funds on releasing aliens so long as there is available detention space. Similarly, you should fund enough personnel to appropriately vet migrants in a timely manner and promptly resolve their immigration cases so they can be deported.

Third, you should provide additional funding to support state cooperation programs under 8 U.S.C. § 1357(g). If Secretary Mayorkas continues to claim that he lacks the resources to do his job, he should be forced to allow the States to help. Any appropriations to the Department of Homeland Security should require him to seek state assistance before he uses appropriated funds to release aliens.

Finally, you should create a cause of action allowing states to force the Executive Branch to comply with federal immigration law. Such a cause of action should make clear that States have authority to sue in a *parens patriae* capacity on behalf of their citizens. And if you choose not to create such a cause of action, you should appropriate funding to reimburse States, like Florida, that spend hundreds of millions of dollars as a result of this Administration’s unlawful immigration policies.

Regardless of whether you agree with the current immigration laws, they are the law of the land and Secretary Mayorkas swore to uphold them. Congress, more than any other branch of government, is uniquely positioned to defend this country’s duly

¹³ See L. Anthony Sutin, *Check, Please: Constitutional Dimensions of Halting the Pay of Public Officials*, 26 J. Legis. 221, 223 (2000) (explaining that “[l]egislative efforts to halt the pay of executive branch officials are not uncommon”).

enacted laws when the Executive Branch chooses to ignore them. I hope that you will adopt my recommendations and defend the rule of law.

Sincerely,

A handwritten signature in blue ink that reads "Ashley Moody". The signature is written in a cursive, flowing style.

Ashley Moody

Florida Attorney General