

Warner Warren Whitehouse
Warnock Welch Wyden

VOTE ON MOTION

The motion was rejected.
The ACTING PRESIDENT pro tempore. The pending business is the point of order offered by the Senate majority leader.

The PRESIDENT pro tempore. The question is on the motion.
Is there a sufficient second?
There is a sufficient second.
The clerk will call the roll.
The senior assistant legislative clerk called the roll.

here. This means the Senate can ignore, in effect, the House's impeachment. It doesn't make any difference whether our friends on the other side thought he should have been impeached or not. He was.

And by doing what we just did, we have, in effect, ignored the directions of the House, which were to have a trial. We had no evidence, no procedure.

This is a day that is not a proud day in the history of the Senate.

(Applause.)
The PRESIDENT pro tempore. The Senator from Utah.

Mr. LEE. Madam President, I ask unanimous consent to enter into a colloquy with my Republican colleagues.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEE. Madam President, what we witnessed today is truly historic. This has never occurred. Nothing like this has ever occurred.

Under article I, section 3, clause 6, we have been given a duty. We have been given the sole exclusive power to try all impeachments—try all impeachments—not some of them, not just those with which we happen to agree, not just those we are happy that the House of Representatives undertook to prosecute, but all.

The word "try" is also significant. It refers to the word "trial." It is the same word. It is a proceeding in which the law and the facts are presented to finders of fact—in front of judges—in order to reach an ultimate disposition. In a criminal proceeding, it would be an ultimate disposition culminating in a verdict of guilty or not guilty.

We were precluded from doing that job today. We were precluded from doing so in a way that is not only ahistoric and unprecedented but counterconstitutional. Nothing could be further from the plain structure, text, and history of the Constitution than that.

Let's look at the arguments that we would have heard, that we could have heard, that we should have heard today had things unfolded as they were supposed to, had things unfolded in a manner consistent with the oath that we took first when we were sworn in as U.S. Senators. We were all required to take the same oath to the Constitution when we did that.

(Ms. BUTLER assumed the Chair.)
But also the oath that we took just a few hours ago in this very Chamber in this very case to decide this case impartially.

What would we have heard? Well, first and foremost, regardless of what you think about what a trial consists of or how different people might cleverly define the term, a trial will always, at a minimum, involve lawyers, involve lawyers. Unless the person is proceeding pro se, you will always have lawyers there. At least one side will always be represented by lawyers in 99.9 percent of all cases. Both sides will. You will hear from lawyers.

PARLIAMENTARY INQUIRY

Mr. CORNYN. Madam President, parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state his inquiry.

Mr. CORNYN. Madam President, I inquire whether the actions we take today are creating a precedent on impeachments that would apply to all future impeachment actions in the Senate, including an impeachment of the President of the United States.

The ACTING PRESIDENT pro tempore. Impeachment precedents would apply in future impeachment hearings.

VOTE ON SCHUMER POINT OF ORDER

The question is on the point of order.
Mr. THUNE. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.
The clerk will call the roll.
The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 139 Imp.]

YEAS—51

Baldwin Heinrich Reed
Bennet Hickenlooper Rosen
Blumenthal Hirono Sanders
Booker Kaine Schatz
Brown Kelly Schumer
Butler King Shaheen
Cantwell Klobuchar Sinema
Cardin Lujan Smith
Carper Manchin Stabenow
Casey Markey Tester
Coons Menendez Van Hollen
Cortez Masto Merkley Warner
Duckworth Murphy Warnock
Durbin Murray Warren
Fetterman Ossoff Welch
Gillibrand Padilla Whitehouse
Hassan Peters Wyden

NAYS—49

Barrasso Graham Ricketts
Blackburn Grassley Risch
Boozman Hagerty Romney
Braun Hawley Rounds
Britt Hoeven Rubio
Budd Hyde-Smith Schmitt
Capito Johnson Scott (FL)
Cassidy Kennedy Scott (SC)
Collins Lankford Sullivan
Cornyn Lee Thune
Cotton Lummis Tillis
Cramer Marshall Tuberville
Crapo McConnell Vance
Cruz Moran Wicker
Daines Mullin Young
Ernst Murkowski
Fischer Paul

The motion was agreed to.
The PRESIDENT pro tempore. On this vote, the yeas are 51, the nays are 49.

The point of order is well-taken; article II falls.

The majority leader is recognized.

MOTION TO ADJOURN THE COURT OF IMPEACHMENT SINE DIE

Mr. SCHUMER. Madam President, I move to adjourn the impeachment trial of Alejandro N. Mayorkas sine die, and I ask for the yeas and nays.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 140 Imp.]

YEAS—51

Baldwin Heinrich Reed
Bennet Hickenlooper Rosen
Blumenthal Hirono Sanders
Booker Kaine Schatz
Brown Kelly Schumer
Butler King Shaheen
Cantwell Klobuchar Sinema
Cardin Lujan Smith
Carper Manchin Stabenow
Casey Markey Tester
Coons Menendez Van Hollen
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Cornyn Lee Thune
Cotton Lummis Tillis
Cramer Marshall Tuberville
Crapo McConnell Vance
Cruz Moran Wicker
Daines Mullin Young
Ernst Murkowski
Fischer Paul

The PRESIDENT pro tempore. On this vote, the yeas are 51, the nays are 49.

The motion is agreed to.

ADJOURNMENT SINE DIE OF THE COURT OF IMPEACHMENT

The PRESIDENT pro tempore. The Senate, sitting as a Court of Impeachment, stands adjourned sine die.

Thereupon, at 4:26 p.m., the Senate, sitting as a Court of Impeachment, adjourned sine die.

LEGISLATIVE SESSION

REFORMING INTELLIGENCE AND SECURING AMERICA ACT—Motion to Proceed—Continued

The PRESIDENT pro tempore. The majority leader.

Mr. SCHUMER. For the information of Members, there are no further votes today. I remind all Members that we have very serious business ahead of us in the next few days, and we will keep you informed as to schedule as things can get scheduled.

The PRESIDENT pro tempore. The Republican leader is recognized.

MAYORKAS IMPEACHMENT

Mr. MCCONNELL. Madam President, we set a very unfortunate precedent

We didn't hear that today. We didn't hear from the committee of individuals appointed by the House of Representatives to be the House impeachment managers or prosecutors. What else would you expect to hear? Well, you would hear evidence. Evidence would be brought in. Sometimes trials in the Senate involve bringing in evidence in a documentary form.

Other times, you might have witnesses. We didn't have any witnesses, we didn't have any documentary evidence, other than that which was charged.

So let's talk about what was charged and what evidence we could have, would have, and should have heard had we done our job today.

Well, the accusations in this impeachment trial, they fit into two categories. Category one, Senate article I of the Articles of Impeachment, article I alleges that Secretary Mayorkas repeatedly, defiantly did the exact opposite of what Federal law requires; namely, that under myriad circumstances, eight or nine different statutory provisions that he violated, he was required to detain people whom he did not detain.

But it is not just that he didn't do what the law required; he did the exact opposite of that. Instead of holding them until such time as they could be removed or alternatively adjudicated to have the status, whether in the context of immigration parole or asylum or otherwise, he just released them and, in many cases, gave them work permits.

We would have heard evidence about the fact that memoranda issued by Secretary Mayorkas within the Department of Homeland Security didn't just tolerate this result; they instructed this result. We would have heard evidence about the fact that at the outset of the Biden administration, Secretary Mayorkas, when asked what he would tell those traveling through the caravans, those paying many thousands of dollars per head—in some cases tens of thousands of dollars per head—to international drug cartels. Instead of telling them, Don't do it, he said, Maybe don't do it yet; give us a few weeks before we are ready to receive you—showing intention, aforesought to facilitate the violation of Federal law.

We would have heard evidence about how he instructed his own department to violate those rules. We would have heard evidence about how directly contrary to Federal law those things are and contrary to his own oath and his own duty.

Now, as to article I, the Senate chose to dispose of this today by doing something it has never done, in any context anywhere close to this, with a point of order that said as follows.

The majority leader stood up, defiantly refusing to have the Senate perform its obligations and called a point of order. He said: I raise a point of order that impeachment article I does not allege conduct that rises to the

level of a high crime or misdemeanor as required under article II, section 4 of the United States Constitution and is, therefore, unconstitutional.

Now, let's talk about that for a minute. Now, had we been permitted to have a trial—alternatively, had we been permitted to go into executive session; alternatively, had we been permitted to go into closed session, as several of us moved today—we would have been able to hear arguments about this, about how wrong this is, because that is what you do when you have a trial: You hear evidence; you hear arguments from lawyers; and when someone makes a legal argument, as Majority Leader SCHUMER just did, you can consider their implications and, most importantly, consider whether or not the argument is right.

Because when we are sworn in, in a trial of impeachment, our job is to serve as both finders of fact and adjudicators of law relevant to this case. We were denied that opportunity.

So while we are exploring what we would have heard had we gone to trial, had we done our job, let's also explore what would have happened in a real trial had somebody made an actual motion and we had been permitted to do our job.

But, look, first and foremost, this is patently absurd to argue that a willful refusal to obey the law that one has a sworn solemn obligation to perform is somehow not impeachable.

We don't have to look too far in order to find support for the conclusion that this is an illegitimate, unwarranted, unsubstantiated claim—one that is directly contrary to law.

In fact, we don't have to look further than President Biden's own lawyer. The Solicitor General of the United States, who holds a special position within our Federal Government, performs functions that many people mistakenly associate with the Attorney General. But it is, in fact, the Solicitor General who is the United States Government's chief appellate advocate and chief advocate before all proceedings at the U.S. Supreme Court.

There was an exchange in a case argued last term in the Supreme Court of the United States called *United States v. Texas*. In that case, the Supreme Court heard arguments from the State of Texas about whether or not this administration's approach toward these same provisions of law is acceptable, whether or not they could challenge them.

Now, unfortunately, the Supreme Court reached a conclusion—a conclusion with which I strongly disagree. And the Supreme Court concluded, ultimately, that the State of Texas lacks standing to challenge Federal policy—Federal policy along the lines of what we are discussing today, notwithstanding the fact that it is conduct that inflicts substantial harm on the State of Texas and its residents.

But the important part that we should have been able to argue here

today is the exchange that occurred at oral argument between Justice Kavanaugh and Elizabeth Prelogar, Solicitor General of the United States, in her capacity as Solicitor General as the Biden administration's chief appellate advocate and chief advocate before the United States Supreme Court.

Justice Kavanaugh asked her a number of questions at oral argument, and on page 50 of that argument transcript some of that discussion ensues. He asks the following:

[I]f a new administration comes in and says we're not going to enforce the environmental laws, we're not going to enforce the labor laws, your position, I believe, is no state and no individual and no business would have standing to challenge a decision to, as a blanket matter, just not enforce those laws, is that correct?

Here is what Solicitor General Prelogar says:

That's correct under this Court's precedent, but the framers intended political checks in that circumstance. You know, if— if an administration did something that extreme and said we're just not going to enforce the law at all, then the President would be held to account by the voters, and Congress has tools at its disposal as well.

So this argument continues, it continues on to the next page, in which Justice Kavanaugh says:

What are the exact tools that Congress has to make sure that the laws are enforced . . .

And Solicitor General Prelogar answers:

Well, I think that Congress obviously has the power of the purse.

And she goes on to explain how this is relevant. And then this goes on until we get to page 53.

And then at page 53, Justice Kavanaugh jumps back in and says:

I think your position is, instead of judicial review, Congress has to resort to shutting down the government or impeachment or dramatic steps—

of some sort or another.

Solicitor General Prelogar responds by saying:

Well, I think that if those dramatic steps would be warranted, it would be in the face of a dramatic abdication of statutory responsibility by the executive.

She just acknowledged exactly what has happened here, and she acknowledged that is exactly the moment at which the impeachment power becomes very relevant.

Lest there be any doubt on that, this stuff was settled, not just in 1789 when we adopted the Constitution and when the Framers used the language that they did, but remember, the Framers were not operating in a vacuum. They were not writing on a blank slate. They were incorporating legal terminology that had been in use for centuries.

In fact, Justice Story in his treatise on the Constitution discusses this very kind of thing and explains in section 798 of his famed treatise, written not so very long after the Constitution itself was written, that we got this stuff from England, that the British knew what impeachment meant, and they understood what would constitute a high crime or misdemeanor.

In section 798, Justice Story acknowledges that there was precedent, there was an understanding at the time of the founding that recognized that you would have an impeachable offense if, among other things, a Lord Admiral would have neglected the safeguard of the sea.

They didn't have a Homeland Security Secretary then, not in America, not in Britain. But this is really analogous. This is the exact same thing. Somebody who had a duty to do a certain thing under the law and defiantly refused to do so.

Those are arguments we could have and would have and should have heard today had we had an actual trial, had we been permitted even to go into executive session, or even go into closed session.

Why closed session? We didn't want to have to do it in closed session. But, you see, the standing rules of impeachment in this body preclude us from having this very kind of debate.

So when Majority Leader SCHUMER made this argument, to the great shock and surprise of all of us, we wanted to warn the body and have this debate. He wouldn't let us do that. The Democrats voted us down. So that is article I in a nutshell.

Article II of the Articles of Impeachment, what do those get to? Well, those are interesting, because those deal with false statements—knowingly false statements repeatedly made by Secretary Alejandro Mayorkas to Congress—to Congress as it is performing its oversight responsibilities.

He lied to Congress according to the allegations of the Articles of Impeachment in article II.

To my great shock—look, he was dead wrong as to article I, but if he was dead wrong as to article I, he was deader than a doornail—whatever that means—ten times more dead as a doornail as to article II than he was to article I.

Why is that? Well, because they allege in article II that Secretary Mayorkas knowingly made false statements. Knowingly making false statements is a felony offense. It is punishable as a crime, as a felony Federal offense under, among other things, 18 USC section 1001. It is routinely charged, prosecuted, and is the basis for lots of convictions for a felony offense. You can go to prison for a very long period of time for that.

Now, for CHUCK SCHUMER to argue—

Mr. KENNEDY. Will the Senator yield for a question?

Mr. LEE. Yes.

Mr. KENNEDY. I just want to be able to be sure I understand, Senator.

I asked Senator LEE if he would yield to a question.

I thought I heard Senator SCHUMER argue today that lying to the U.S. Congress was not a high crime or misdemeanor and, therefore, could not be the basis for an Article of Impeachment.

Did I hear that correctly?

Mr. LEE. That is exactly what he said. That is exactly what he said when he made this motion, because he stood up and he said: I raise a point of order that impeachment article II does not allege conduct that rises to a level of high crime or misdemeanor.

Mr. KENNEDY. So even though lying to the U.S. Congress is a felony under the precedent that the majority leader and our Democratic colleagues established, it is not a high crime or misdemeanor? Is that what we did?

Mr. LEE. That is precisely what the precedent established today stands for. That is—we have effectively—by this vote that the Democrats forced through, not even allowing us to debate this—and this is why I raised a point of order—or this is why I made a motion that we go into closed session to discuss this, because we have now set a precedent that effectively—very arguably effectively immunizes from impeachment making a false statement to Congress.

Mr. KENNEDY. Well, may I ask one more?

Mr. LEE. Yes, please.

Mr. KENNEDY. Well, I am trying to follow the Senate majority leader's logic. What do you have to do to get impeached now? I mean, a felony is not sufficient. What is above a felony?

Mr. LEE. Well, let's see, obviously, spreading what they deem misinformation on the internet might be a felony. I suppose at some point—

Mr. KENNEDY. But it takes, as I understand it, Senator—you are a legal scholar—it takes more than a felony now.

Mr. LEE. A high crime or misdemeanor.

Mr. KENNEDY. Yeah.

Mr. LEE. It takes more than a high crime or misdemeanor.

Mr. KENNEDY. Who is on first? What is on second? I don't understand any of this, and I am very, very worried and would like your thoughts or others' thoughts about the precedent that our Democratic colleagues, in their haste to sweep this under the rug, may have established.

Ms. LUMMIS. Will the gentleman from Louisiana yield for an adjunct question to his question?

Mr. KENNEDY. With pleasure.

Ms. LUMMIS. So the law says that lying to Congress is a felony. Since we are no longer using impeachment as a means to address someone who is lying to Congress, how does Congress prosecute or address someone who deliberately lies to Congress now that the Senate has swept away, through this precedential action today, the opportunity to use impeachment for that purpose?

Thank you.

Mr. LEE. I would love to respond to that point briefly, if I could, please. What we have done is to effectively immunize this against impeachment—immunize making false statements.

And going back to the original question, I don't know. Maybe aggravated,

first-degree murder with heinous, atrocious, and cruel conduct as aggravators—maybe that is still a high crime or misdemeanor. That remains to be seen.

But keep in mind, particularly with the fact that they already set aside article I—and they have already said that that is out of bounds, as well, for impeachability. The Supreme Court has said pretty much nobody has standing to address that. What are we left with?

And getting back to the question from Senator LUMMIS, this is a phenomenally dangerous precedent to have set here, specifically with regard to false statements, because what does that do to our oversight hearings, where we rely, routinely, on testimony provided under oath by Cabinet Secretaries and other administration officials? What does that do? What incentive structure does that create? What perverse incentives does that create for them to lie?

Mr. GRAHAM. Would the Senator yield?

Mr. LEE. Yes.

Mr. GRAHAM. Are you aware—here is the question: Are you aware of the fact that President Clinton was impeached? And one of the charges against him was lying under oath in a civil lawsuit. Are you aware of that?

Mr. LEE. Yes.

Mr. GRAHAM. OK. So you can be impeached for lying under oath in a civil lawsuit, but apparently you can't be impeached for lying to Congress about how you do your job.

So here is what I—I will give Senator SCHUMER the benefit of the doubt, Senator KENNEDY. He is saying that the fact pattern here apparently doesn't rise to the level of high crime or misdemeanor; that it is a policy disagreement. We have taken a policy disagreement in the House and tried to turn it into impeachment.

Well, here is a question for you, Senator LEE. Are you aware of the fact that 2 days ago—2 days ago—Secretary Mayorkas was asked about the parole of the man alleged to have killed Laken Riley, Mr. Ibarra: Why was he paroled and how was he paroled?

Under the parole statute, 212(d)(5), there are two ways parole can be granted: unique humanitarian need circumstances. Your mother is dying. Something is going on bad. You need to get into the country on a temporary basis. Or a special benefit to the United States—that means you are a witness in, probably, a cartel trial. Those are the only two reasons you can be paroled.

And 2 days ago—no, yesterday—Secretary Mayorkas said he did not know why Mr. Ibarra was paroled. Which one of the two was it? This was a question from Congressman BISHOP. He said: I didn't know.

At the same time he said, I didn't know, I had the file, and it says: Subject was paroled due to detention capacity at the Central Processing Center in El Paso, TX. In the file, he was

paroled because they didn't have any space for him.

Senator SCHUMER, this is illegal. The Secretary of Homeland Security cannot just add a condition to the statute. The statute doesn't allow you to give parole because you are full. And the reason this man was given parole is not because of the statutory requirements, but because we had run out of space, because we have got more illegal immigrants than we can handle.

And the rest is history. He gets paroled. He goes to New York. He gets convicted of a crime. He goes to Georgia, and he is accused of murdering this lady.

It seems to me that would be something we should argue over, as to whether or not you should lose your job because you have got a statutory requirement limiting your authority to parole people, and in your own file, exhibit A, you paroled him because the place was full.

This happened 2 days ago. So this gives kangaroo courts a bad name. This is a frigging joke.

We have a nation under siege. Madam President, 1.9 million people have been paroled. Are you telling me they do an individual analysis on all the people?

In November 2023, I asked him: Secretary Mayorkas, do you do a case-by-case analysis?

Senator, we comply with the law.

So you are telling me that for all of the 240,000—the ones in front of us—you determined that they meet the criteria of urgent humanitarian need or significant public benefit?

And he said: Yes.

This was in November, under oath, to me when I questioned: I don't believe you. I don't believe you are doing an individual analysis on this stuff. You are doing blanket parole, and you are paper-whipping this stuff.

It turns out he gave false testimony to the Congress. Whether he lied or he just doesn't know what he is doing, I don't know. You should be impeached either way. If you don't know what you are doing, you should be kicked out because you don't know what you are doing.

But the man that we are talking about is the one charged with murdering this young lady who was going on a jog. If that is not important to the American people—to find out how that happened and should somebody be held responsible—what the hell is?

You can talk about why we impeached Trump and Clinton? Was it worthwhile? Did it matter? Was it all political?

You cannot say this is not important. To say that how he is doing his job is not important to the American people—tell that to the Riley family. This is not an academic debate.

The policies of this administration being carried out by Secretary Mayorkas are illegal. The man charged with killing Laken Riley was illegally released into this country by DHS. That should be something we argue

about in the Senate, as to whether or not you keep your job. It has been swept under the rug.

There will be an election in November. This is the only chance you have to get this right, to the American people. We had a chance today to hold somebody accountable, finally, for all the rape and the murder and the drugs. The largest loss of life in America is fentanyl coming through the border, for young people. How many more people have to die, be raped or murdered before somebody is held accountable?

We had a chance here, and our Democratic friends swept it under the rug because they are more concerned about the November election than protecting the American people, and this is a sad day for the Senate.

Mr. LEE. Who wouldn't be offended by the use of the term "kangaroo court." In fact, the entire marsupial world will be offended by this.

Mr. MARSHALL. If the gentleman will yield.

Mr. LEE. Yes.

Mr. MARSHALL. It certainly seems to me that, today, 51 of our friends across the aisle voted to not have a trial. Make note of this: that every person that voted to end that trial was a vote for an open border. It was a vote to tell Laken Riley's family that the life of their daughter didn't matter. It was a vote to tell the 250,000 families that lost a loved one to fentanyl: It doesn't matter.

But what struck me, as the clock struck midnight here and we lost that vote, is I feel like the Senate was gutted, that we lost part of our powers.

You know, in high school we were taught—in high school government, we talked about checks and balances. And one of the checks and balances that the legislative branch had on the executive branch was this impeachment process.

And I want to ask my colleague from Texas: Why do I feel like it has just been gutted right now—like the entire Senate—that this body has been gutted of a power that we are never going to get back, that impeachment going forward may mean nothing. Am I wrong?

Mr. CRUZ. I am sorry to say that my friend from Kansas is not wrong. In the 237 years of our Nation's history, I don't know that there has been a more shameful day in the U.S. Senate than today.

What we just witnessed was a travesty. It was a travesty to the U.S. Constitution, and it was a travesty to the American people. And it is important to understand why the Democrats did what they did.

We are here on the Senate floor right now, but I want the record to reflect that I am going to do a very accurate count of the number of Democrats who are with us. That would be zero, other than the Presiding Officer, and somebody has to preside. Not a single Democrat Senator chose to come to this floor and listen to one word of evidence.

When it comes to the Constitution, the Democrats concluded that Joe

Biden and Alejandro Mayorkas defying Federal law, ignoring the text of the statute, deliberately releasing criminal illegal aliens over and over and over again—that is just hunky-dory. You can't impeach him for that. Every Democrat just voted.

By the way, every Cabinet member—guess what—you have just been given a blank slate. Ignore the law. When Democrats are in charge of the Senate, the entire Cabinet can ignore the law. It is no longer impeachable in Democrat wonderland when a member of the executive branch openly defies the law.

By the way, every Democrat just voted that way. They didn't hear one word of argument. The majority leader didn't stand up and say: Here is the reason why it is OK. No, he didn't present that argument.

They didn't read a brief. Nobody wrote a brief. They didn't care enough to know what Senator LEE just laid out, that the Biden Department of Justice went in front of the U.S. Supreme Court and said: If the executive defies the law, the answer is impeachment.

The willingness of every Democrat to be blatantly hypocritical—just last year, the Biden Justice Department said: No, no, no, no, no. You can't sue in court when we, the Biden administration, defy the law. The answer is impeachment.

And like three-card monte, every Senate Democrat said: No, no, no, no, no. The answer is not impeachment. I don't know what it is.

Actually, I do know what it is. There is only one answer left, which is that everyone who is unhappy about the open border shows up in November. And, to use the phrase, throw the bums out.

Because if you are not willing to do your job—is there not one Senator on that side of the aisle who cares enough to honor the Constitution?

And, by the way, the second article they threw out said that lying to Congress is not a high crime or misdemeanor. It is not impeachable.

Now, as the Senator from South Carolina pointed out, Bill Clinton was impeached for lying under oath. And do you know what happened? He was ultimately acquitted, but after a full trial, where they heard the evidence, when the Senate did its job.

By the way, one of the impeachment managers was Senator GRAHAM, who presented that evidence right here on this floor.

And do you know what? Before Bill Clinton, there is a guy named Walter Nixon. You may not know who Walter Nixon is. Walter Nixon was a Federal judge who was convicted of perjury. From Mississippi, he was convicted of perjury in front of a grand jury, and he was impeached. And it went to the Senate, and the Senate convicted him and removed him from the bench.

So do you want to know what the precedents were prior to today? You commit a crime—lying under oath, perjury—it is a high crime or misdemeanor that is impeachable. No

more, because understand the Democrats rule here. This is all about—this is not about the Constitution. None of them care.

By the way, we repeatedly moved: Let's go into debate and hear the other side of the argument—no.

Look, the famous three monkeys: Hear no evil, see no evil, speak no evil. That is just evil, what they did. They don't want to know because they don't care, because it is not about the Constitution. It is not about the law. It is about political expedience.

But every bit as violent as what they did to the Constitution was that it is even more offensive what they did to the American people.

Last year, 853 migrants died crossing illegally into this country. That is almost three a day. You go down to the southern border. You go down to Texas—which the Democrats don't bother to do because they don't care about the people dying—and you see photograph after photograph of the Texas farmers and ranchers finding dead bodies on their property. Many of my colleagues who have been down there with me have seen the elderly people the human traffickers have abandoned, have seen the pregnant women the human traffickers have abandoned, and have seen the infants and toddlers left to die. The Senate Democrats just told the American people they don't give a damn about the bodies and the people who have died the last 3½ years, and they don't give a damn about the people who are going to die next week.

Next week, more migrants are going to die. But we brought 19 Senators down to the border. We went out on a boat in the Rio Grande. We saw a man floating dead in the water. Senator LEE was there. Senator KENNEDY was there. He had died that day. The Democrats just told the American people they don't care.

When you go down to the border and you look at the children who have been brutalized—just about all of us here are parents. I will tell you, when you look in the eyes of a little girl or a little boy who has been abused by traffickers and you see it—you see the pain. You see the agony of children trapped in sex trafficking. The Democrats just said they don't care. They won't hear the evidence. They don't care if it is deliberate, and they don't care that it will happen next week, that it will happen tomorrow. Tomorrow, there will be children brutalized because of the Democrats' open border policies and not a one of them care.

They don't care about the women who are repeatedly sexually assaulted. Again, when you look at the eyes of these women coming over, it is heart-breaking. And the Democrats just said: We don't care.

And they don't care about the more than 100,000 Americans who died last year from drug overdoses, the highest in our Nation's history. Seventy percent of that is from Chinese fentanyl

coming across our southern border. And the Democrats said: We don't want to hear about it. We are not interested in the Americans dying.

You know what else they don't care about? They don't care about the criminals who are being released day after day after day. The Biden administration is releasing murderers and rapists and child molesters, and every week we see a different story of somebody being killed, somebody being raped, another child being assaulted by illegal immigrants being released by Alejandro Mayorkas and Joe Biden.

How shocking that there wasn't one Democrat who said: You know, massive human suffering matters.

We ought to hear the evidence. How shocking is it that there wasn't one Democrat—one. There are 51 of them on that side. Not a single one could screw up the courage to say: Let's do our job. Let's hear the evidence.

How shocking is it that not a Democrat cares about the terrorists who are streaming across our southern border? The nation of Iran has called for jihad against America. Hamas has called for jihad against America. Hezbollah has called for jihad against America. And Joe Biden and the Democrats have put out a red carpet and said: If you want to murder Americans, come across our southern border and we the Democrats will welcome you.

Like many of us on this floor, I was in Washington, DC, on September 11, 2001. I remember the horror. I lost a good friend. Barbara Olson was in the plane that crashed into the Pentagon.

I remember the smell of smoke and sulfur and burning. I remember the agony, and I remember the national unity that came after 9/11, and Democrats and Republicans came together. I don't know that I have ever been more proud of a President than when President George W. Bush stood on a pile of rubble with a bullhorn, talking to firefighters and New Yorkers. And one of the men in the crowd called out and said: "We can't hear you." And he responded: Well, I can hear you. And soon the whole world is going to hear you as well. We were as one.

Today, not a single Democrat was able to mount up the courage to tell the majority leader: You know what, I don't want another 9/11 to happen. The House impeached Alejandro Mayorkas, brought evidence of releasing terrorist after terrorist after terrorist. We ought to hear the evidence.

I believe today we have a greater risk of a major terrorist attack on U.S. soil than at any point since September 11. And every Democrat just told the American people it doesn't matter to them to hear the evidence.

I appreciate my Republican colleagues who are here, who are willing to hear the evidence, willing to engage, willing to stand up and defend the American people. But you know what? The Democrats who aren't here, they aren't here because you know who also is not here? If you look up at the Gal-

lery, the reporters are all gone. The couple of folks in the back, I hope you all write. But the reporters are absent.

That is the Democrats' plan. What is fascinating? We are presenting argument—many of us, particularly those of us on the Judiciary Committee, but many of us have presented those arguments over and over and over again in hearings—not a Democrat arguing from the other side. It is an issue unlike any other issue I know of in politics.

Listen, if we are arguing about taxes as Republicans, we say: We can cut taxes. It is good for the American people. Do you know what Democrats do? They stand up with their talking points: No, tax the rich. OK, fine. We have a debate.

When we are talking about just about every issue, the Democrats will argue on the other side. They have their spin. What is fascinating—where is DICK DURBIN, the chairman of the Judiciary Committee, standing up and saying: No. No, it is not right that migrants are dying every day. No, it is not right that children are being assaulted every day. No, it is not right that women are being sexually assaulted every day. No, it is not right that they are releasing terrorists every day. They are not there. Not a Democrat is there. Why? Because you can't defend it.

I will tell you, South Texas for 100-plus years has been a Democrat region of our State. It is turning red with the speed of a freight locomotive because nobody can see the suffering that is unfolding and defend it. And the Democrats, by their silence and by the complicity of the press corps—they are counting on the press corps to write stories: "Victory for the Democrats." Yes, they got rid of the impeachment trial. That is the headline news.

Understand, they don't have a substantive defense. None of them dispute a word we are saying. Not a single Democrat has stood up and said: You know, it is wrong that Laken Riley would still be alive if Joe Biden hadn't let her murderer go. They know it is right. The reason they didn't want a trial is because they don't want the American people to hear about it, and it is our obligation to make sure the American people do.

Mr. LEE. Senator RICKETTS is the former Governor of Nebraska. I would love to get your perspective on this.

The PRESIDING OFFICER. (Ms. CORTEZ MASTO). The Senator from Nebraska.

Mr. RICKETTS. Thank you very much to the Senator from Utah for organizing this.

My, my, my. What have our majority leader and the Democrats in the Senate wrought?

They have overturned 227 years of precedence that my colleagues have talked about: 21 previous impeachments, all scheduled for trial; 17 came to trial, and the ones that did not was because the person who was to be impeached was either expelled or dismissed prior to the trial.

To my colleague from Texas's point about the media being complicit, one of the headlines in Politico that I was told about said the trial lasted only 3 hours.

There was no trial. There was no trial.

The majority leader decided that he could determine it was unconstitutional and get every single one of his Democrats, along partisan lines, to vote for it. He said it was unconstitutional, did not rise to the level of high crimes and misdemeanors.

Let me briefly examine that.

Article I sent over to us by the House. I am just going to read the title: "Willful and Systematic Refusal to Comply With the Law." That is article I.

Let me tell you about complying with the law. Prior to this administration, the Trump administration had brought illegal crossings down to a 45-year low. What we have seen since then is an explosion of illegal crossings: over 1.7 in the first year of the Biden administration, nearly 2.4 in the second, and nearly 2.5 in the third. Now, if you count all the people who tried to cross the border illegally or who crossed the border, including the "got-aways," it is 9.4 million people—larger than the population of New York City—and 300,000 in just December alone. That is larger than our capital city in Nebraska, Lincoln. The evidence is right there that we are not doing a good job at the southern border.

And why would that be? Well, because Alejandro Mayorkas is complicit in not following the law.

In a memorandum Mayorkas sent to Immigration and Customs Enforcement officials in 2021, he said:

The fact an individual is a removable non-citizen—

Notice he doesn't even say "illegal alien," which is what it says in the law. He says:

The fact [that] an individual is a removable noncitizen therefore should not alone be the basis [for] an enforcement action against them.

He is basically saying that just because you broke the law doesn't mean we have to enforce the law. That right there should tell you he is willfully disregarding the law. Absolutely.

How about the case of parole where the law says that it is only supposed to be used on a case-by-case basis in situations where the person has an extreme humanitarian need or it is in the best interest of our country? Under the Obama and the Trump administrations, it was used an average of 5,600 times—paroled 5,600 foreigners in this country between the Obama and Trump administrations on an annual basis. Last year alone, Mayorkas paroled into this country 1.2 million—whole classes of people—a clear abuse of the law.

Folks, when you see instances where the Secretary for Homeland Security is not following the law, doesn't that raise the question: Shouldn't we have a trial? Shouldn't we examine whether or

not he actually should be convicted of this?

And yet, as my colleagues have pointed out, not a single Democrat—a partisan line—said: No, that is not willful disregard of the law.

Let's move on to article II. Article II—again, I am just going to read the title of this—sent over, says "Breach of Public Trust." Breach of public trust.

Well, what does that mean? How about misleading Congress, wouldn't that be a breach of public trust?

On April 28, 2022, Mayorkas testified repeatedly in front of the House Judiciary Committee that DHS possessed the operational control of the southwest border in accordance with the statutory definition. But I just told you how the number of people crossing the border had exploded. My colleague from Texas did a great job talking about the human suffering this created.

If we had been allowed to have a trial, we would have heard from Border Patrol agents who would have come up and testified personally that the border was not secure.

I have been down to that border as well four times. I have seen the people coming across. That border is not secure. In the last trip down there, there were mostly Hondurans, but there was a couple from Moldova on the Russian border who had paid to get across our border because the whole world knows it is open.

This is absolutely what we are talking about; that this is why we have to hear the evidence to go and determine whether or not there is guilt or innocence. And the Democrats have denied it, and it is to the detriment of our Constitution and to our country that we are not being allowed to have a trial, to examine the evidence, and to determine whether or not Alejandro Mayorkas is guilty and whether or not he should be impeached.

I think the few things that I have laid out here this afternoon go exactly to we should examine the questions, and the Democrats chose not to even ask the questions before they dismissed this entirely.

Thank you to my colleague from Utah for giving me the opportunity to be able to address these issues.

Mr. LEE. Before he had his name changed legally—for purposes of this Chamber—to the junior Senator from Missouri, Attorney General ERIC SCHMITT was one of the Nation's leading legal minds engaged in this problem, engaged in trying to address the lawlessness at our southern border, brought on by the policies of this administration. I would like to hear his perspective on what happened today.

Mr. SCHMITT. I thank the Senator.

Madam President, I will take this in two parts. I think it is important for us to actually digest—for the folks here watching in the Gallery or the press folks who are here or who have left—to really understand what happened today, because what happened today wasn't some disagreement about the

number of amendments people might have on an appropriations bill or whether or not some vehicle is going to be a priority or not.

What was established today was a new precedent—something that had never taken place in this Chamber in the history of our Republic.

What the Senate Democrats decided to do with a simple majority was to bulldoze 200 years of precedent that said something very simple: that this Chamber would honor our constitutional obligation and conduct a trial to hear the evidence. There is no real debate. We were to hear the evidence from witnesses, with counsel present. There is a whole process—there is a whole procedure—that has been established, finely wrought throughout the ages, that we were to honor—when we raised our right hand when we get sworn in to honor—when we got sworn in today to honor—as U.S. Senators. That is all gone now—maybe forever.

I don't see a circumstance now—you heard the parliamentary inquiries asking if a precedent had ever been established for this or that. A hundred years from now, when somebody else has Harry Truman's desk—if I remember to carve my name in it before I die—somebody will have this desk. I don't know that person's name. I don't know their background or what their life experience will be, but they will know what happened today. They will know that the U.S. Senate, under CHUCK SCHUMER, who will go down as one of the worst U.S. Senators in American history because of his actions today—they will know that we just blew off an important duty: to conduct a trial.

It wasn't, you know, an idea—and to paraphrase my friend from Louisiana, it wasn't some, you know, "gamer bro" with a tweet. These were Articles of Impeachment, voted on by the people's Representatives in the House of Representatives, walked over here and delivered. So CHUCK SCHUMER and the Democrats who voted for that are going to have to own that. And to paraphrase something the Senator from Kentucky said just a few years ago: I think they are going to regret it, and I think they are going to regret it sooner than they think.

So, having said that, what was this trial supposed to be about?

As the Senator from Utah mentioned, when I was attorney general in Missouri, we brought the first lawsuit against the Biden administration for their actions at the southern border when they decided to undo "Remain in Mexico." We were successful for a while, but what came out of that was a lot of what you might have read in article I of the impeachments that were brought over. A lot of those were from—a lot of those arguments were from that case.

As an interesting little side note, when we won—when we had an injunction in place, actually, for the Biden administration to keep this very important protection in place—they ignored it. We had to go back in front of

a judge time and time again to get them to abide by the law.

But what we have found out from this administration and Secretary Mayorkas specifically is they are willing—he himself is willing to subvert the law, to believe that he is above the law, to lie and to commit a felony that this Chamber now has said doesn't rise to the level of a high crime and misdemeanor—forever. That is the precedent forever.

The human toll of this lawlessness at the border that has been overseen by Secretary Mayorkas is devastating. Thousands of people die every month from fentanyl abuse or overdoses. We have a ticking time bomb in this country with a national security threat. We don't know who 2 million people are; and 9 million people have come here illegally. Most of them have been told: Please show up for a court date sometime in the 2030s. That is not going to happen. But 2 million of them—we don't know who they are; we don't know where they are from; we don't know where they are at. We are seeing a record number of Chinese nationals come across just in California alone.

People from all across the world are coming here because they know our border is wide open, and it is not by accident. Whatever the motivations are, Secretary Mayorkas's memo and instruction to his employees is to ignore the law. The immigration law in this country, the snapshot, is if somebody comes here illegally, they are detained, and they are deported unless some adjudication exists, like an asylum case is processed; but 9 out of 10 of those are bogus. That had been the law of our country, the law of the land, for a very long time among Republican and Democratic administrations but no longer, because Secretary Mayorkas decided to instruct his employees to subvert that law.

If you want to change it, come here. If you want to change a "shall" to a "may," that is what we are supposed to do. That is what the article I branch is supposed to do, just like the article I branch here in the Senate is supposed to hold people accountable who are in high positions of government. It is our remedy.

As the back-and-forth in that United States vs. Texas and Missouri case from Justice Kavanaugh to the Solicitor General of the United States indicated, what is the remedy here?

And the Department of Justice's own lawyer said: Well, they have the remedy of impeachment.

But I guess we don't actually have that anymore.

So I know that, in these 24-hour news cycles, things move on quickly. Tomorrow, we are going to be on, you know, FISA, and there is national security stuff, and it will be easy, I think, for many to sort of wipe today away, but it won't go away. It is a stain on this institution. It diminishes this body. It is why I stood up to object to a ridiculous idea that, somehow, we are supposed to

negotiate away our constitutional duty. That isn't up for grabs. That is our job.

Oh, thank you, Senator SCHUMER, for giving us a half hour to talk about this.

No thanks. Not from me.

Now, would I do that on some amendment to an approps bill? Probably not. But, when Senator SCHUMER wants to set our constitutional order on fire, I will stand up and I will object, and I know many other people share that point of view.

There is no structure to the arson you are committing.

So I appreciate the inquiry—or this back-and-forth we are having with the Senator from Utah because, sadly, this is all we are left with.

So many powers of individual Senators have been given away over the years. This institution is no longer the world's greatest deliberative body; it is Kabuki theater with fewer powers now individual Senators have and fewer powers that we have been given by our Founders as an institution. For what? For what? A couple of bad days? A couple of news cycles?

Congratulations. Congratulations, CHUCK SCHUMER. You are going to own that, and every single Democrat who voted for it will too.

So the border crisis isn't going away. It still exists. The Senate lost an opportunity to hear evidence to hold someone accountable today.

I thank the Senator.

Mr. LEE. No. Thank you. Excellent remarks. There are some days that one wishes one could live over. This is a day that will live in infamy and is a day that future generations will wish had gone differently.

We have got a friend and colleague—our friend and colleague, the senior Senator from Wisconsin, has many titles in the Senate, titles of distinction. He is the prince of plastics, the maven of manufacturing, the connoisseur of cheese curds. He is also, among other things, someone who has identified himself as a chancellor of charts showing the profound depth of our border security crisis. He has been working on this ever since he first became the chairman of the Homeland Security Committee back in 2015. He has built on these charts, and he has built on them in a way that has resulted in their catching fire. You will now see politicians all over the country at every level of government—and I mean every level of government—utilizing his charts because they are the best in the business. Let's hear from him now.

Mr. JOHNSON. I thank my colleague from Utah, and I was not aware of all of those titles, but I will accept them.

Madam President, if we would have had a trial—and it is a travesty we haven't. There has been great damage done to our Constitution and to this institution by our colleagues on the other side of the aisle because they didn't want the American people to see this.

Now, I have described this chart—had we had a trial, this would have been the irrefutable DNA evidence that proved the crime. There is no way you can take a look at the history of illegal entry into this country and not recognize that what has happened under the Biden administration and under Secretary Mayorkas is nothing less than an utter catastrophe.

Yesterday, I spent about 10, 15 minutes on the floor going through the history of the cause and effect that this chart shows. But what I really want to point out today is what the Democrats did not want us to reveal, because what this chart shows is that this was purposeful; this was willful. President Biden and Secretary Mayorkas and our Democratic colleagues here in the Congress and in the Senate, they want an open border. They caused this crisis. This didn't just happen. This was a game plan that they implemented. They aided and abetted it. All the damage, all the destruction, all the crimes that are a result of this—they have aided and abetted it.

What this chart does show is that the lawlessness started back in 2012 by the Obama administration under the Deferred Action for Childhood Arrivals. This took prosecutorial discretion, which is—again, I am not a lawyer; I am not a prosecutor, but I believe that is supposed to be applied on a case-by-case basis. President Obama took prosecutorial discretion and granted it to hundreds of thousands of people. That is what has sparked every surge in illegal immigration since that point in time.

I used to have a chart that just showed unaccompanied children. Prior to DACA, there were maybe 2,000, 3,000, 4,000 unaccompanied children per year that our Federal Government had to account for and had to deal with. In 2014, because of DACA, we encountered 69,000 unaccompanied children—69,000. Even back then, President Obama, when his Department of Homeland Security and his Customs and Border Patrol were dealing with 2,200 illegal immigrants being encountered per day, he declared that to be a humanitarian crisis—2,200 people a day.

By the way, I went down to McAllen, TX, with a bunch of Democratic colleagues in February of 2015, during this surge, and people were singing the praises of CBP, of their kind of skirting bureaucratic rules and setting up a detention facility that would protect children. They used chain-link fences. Again, we were singing their praises. Democrats were singing the praises of the CBP. A few years later, when President Trump had to deal with the crisis—again, sparked by the unlawful DACA memorandum—all of a sudden, the Democrats were saying they were kids in cages. Do you notice a double standard?

I won't go through all the history, but I will point out, with President Trump, the reality of the situation was we were letting children in. We

couldn't detain them. You had the Flores reinterpretation that said that children, even accompanied by their parents, couldn't be detained. People around the world noticed that, so they started coming. They started creating fake families. Children were being sold—in testimony from my committee, children were being sold for \$81 to create a family. A little boy was found abandoned in a field in 100-degree temperatures. He had already been used. He created that family. The other people got in, and they just left him there. The only identification was a phone number written on his shoe.

President Biden and Secretary Mayorkas said they had to undo all of President Trump's successful border security provisions because he said those were inhumane. There is nothing humane about facilitating the multibillion-dollar business model of some of the most evil people on the planet—the human traffickers, the sex traffickers, the drug traffickers. How many overdose deaths have we experienced throughout America because of this open border policy? There is nothing humane about that.

When President Trump faced his peak, there was a sharp, sharp rise but a sharp fall. In May of 2019, almost 4,800 people entered this country illegally. President Trump did something about it. He used what the Supreme Court said in the 2018 decision is existing law that exuded deference to the President. So even though that Presidential authority has been weakened somewhat by the Flores reinterpretation, that settlement, even with that weakened authority, President Trump took the bull by the horns, instituted "Remain in Mexico," safe third-world countries, and had to threaten the President of Mexico with tariffs so he would cooperate. But in 12 months, President Trump went from his peak to his trough: A little more than 500 people a day entered this country.

The interesting thing about this chart—that was, again, April of 2020. Why did the numbers go up? There is a pretty simple explanation. That was amidst a Presidential campaign, and every Democrat Presidential candidate pledged that they would end deportations, that they would give free healthcare, and the world took notice. People started coming in in anticipation of President Biden taking office, and then once President Biden took office, the catastrophe began.

President Biden now he claims he doesn't have the authority. No, he has all the authority that President Trump had to close the border. President Biden and Secretary Mayorkas used that exact same authority purposefully, willfully to open up the border. So President Biden didn't need more laws, Secretary Mayorkas didn't need more laws to fix this problem; they caused the problem. They have the authority.

We would have been happy to strengthen the authority, to overrule

the Flores reinterpretation. They weren't asking for that. All our Democratic colleagues wanted was political cover. That is the truth.

So we went from a humanitarian crisis under Obama of 2,200 people a day. Trump had almost 4,800 people a day, but he fixed it. President Biden's record is more than 10,000 people a day in December of last year—10,000 people a day. During his entire administration, he has averaged 7,800 people entering this country illegally because he has welcomed them. He has incentivized them. He wanted an open border. He caused this problem.

Our Democrat colleagues would not even listen to evidence, would not let the House managers make their case of the lawlessness, of the willfulness, of the lying to Congress, because they didn't want the American people to see this.

I have shown this chart to Secretary Mayorkas. I will show it to him again tomorrow when he comes before our committee. The first time I showed this a couple of years ago, it looked almost as bad.

I asked him: Secretary Mayorkas, I mean, don't you recognize this is a crisis?

He sort of said we have a secure border. He wouldn't say it is a crisis.

Well, would you at least admit it is a problem?

No, Senator; it is a challenge.

Now, I would view that as a lie.

I would have liked to have heard the evidence presented by the House managers of other instances where Secretary Mayorkas lied to Congress, which, again, as I thought was definitely pointed out by the Senator from Louisiana—isn't that a felony? Doesn't impeachment only have to be a misdemeanor?

So there is so much wrong in what our Democrat colleagues did today by just summarily, cavalierly dismissing these charges. It is going to come back to haunt our country.

My final point will be that this disaster—it is not a chart; it is numbers. There are colors. But the real disaster is with the individuals who have lost their lives, who have lost loved ones, the children who have been raped, who have been caught in the crossfire of the gang wars. That is the real challenge or that is the real catastrophe. That is the real problem the Democrats today just swept under the rug. It is a travesty that shouldn't happen. But we will continue to prosecute this case right up until November.

Mr. LEE. I am grateful for those insights that we had from our friend and colleague, the distinguished senior Senator from Wisconsin.

You know, when the senior Senator from Alabama joined the United States Senate, it was a pleasure to get to know him. It has been a pleasure to work with him ever since. In fact, I visited our southern border within a few months after he arrived here.

I noticed in him a distinct concern not only for the welfare of the resi-

dents of the State of Alabama and all other Americans but also a genuine concern for those who have been human-trafficked into our country by the drug cartels, with the tacit acquiescence and even the affirmative blessing of this administration.

I, for one, am glad that Senator TUBERVILLE was not the head coach at the University of Miami when their football team played BYU in the late summer of 1990. Had he been, that game might have turned out differently. But I would love to get his thoughts on this matter.

Mr. TUBERVILLE. It was a pretty good game, by the way.

Mr. LEE. A very good game.

Mr. TUBERVILLE. Thank you to my colleague from Utah.

I am kind of amazed at what has happened today. It has been categorized several ways, whether it is kangaroo court or three-ring circus or organized grab-ass. I don't know how you look at it, to be honest with you.

It is amazing what we sat here and watched. We all thought in the last few weeks that there was a chance for an impeachment trial of Secretary Mayorkas, but it only lasted a few hours—a historic event in the eyes of every Senator, not just Republicans but also Democrats.

One thing I want to say is, has he faithfully executed his duties of the United States Constitution, the one that we all put our hand on the Bible and swore to do?

It was amazing to me how this all went down at the end of the day. It really wasn't Secretary Mayorkas. He wasn't the only one on trial today or would have gone on trial, impeachment trial; it would have been every Democrat—every Democrat here in the Senate, every Democrat in the House, and every Democrat who is running our executive branch—because there has not been one person who has said anything since I have been here, in 3½ years, like: We need to do something at the border. Not one.

We have let in 10 million illegal aliens in the last 3 years. On that data point alone, Secretary Mayorkas intentionally—intentionally—failed to secure the border.

I personally asked him one day why he was not at least giving a fair chance of closing the border. He says: Senator, we need more money.

Well, I looked it up, and his budget is 20 percent more than what President Trump's Secretary of Homeland Security had—20 percent.

His job is homeland security. That is his entire job.

Senator SCHUMER and all the Democrats could have conducted this impeachment trial today, and it would have never seen the light of day after the trial because we would not have had the votes on our side to impeach Secretary Mayorkas. So, instead, the impeachment process is over. The media will stop covering it in a few days. We will be going back to throwing millions of taxpayer dollars at blue

States so they can manage the surge of illegal aliens going to blue cities all over the country.

Just last week, the Department of Homeland Security awarded another \$300 million to cities in support of illegal aliens. Today, the city of Denver announced that they would shift \$8 million from their law enforcement to take care of illegal aliens. It is clear that the Biden administration is more concerned with taking care of these illegals than they are about protecting the citizens.

So I will ask again: Has Secretary Mayorkas fulfilled his oath of duty before this body to protect and defend the country against all threats, foreign and domestic? Is our border secure? The answer is simple: He has not, and it is not.

Mayorkas has been derelict in this duty—derelict—and confrontational in his duty to all of us when we have asked him personally what he is doing at the southern border.

In voting against his impeachment, our Democrat colleagues are basically lying to themselves. They are risking the lives of Americans.

Senator SCHUMER and Democrats can't say that they want to fix the border while trying to save his job. Americans are dying at the hands, every day, of what is going on at our southern border.

Every State is a border State now. It is not just Texas; it is not Arizona and California—every State. My State of Alabama is being overrun with illegal aliens.

The number of people crossing the border who are on the Terrorist Watchlist is unprecedented. That is what scares me. If you listen to our FBI Director, he said we have a major threat to our country, and he said it is coming, but it doesn't seem like anybody is listening. Nobody is listening who is in charge.

Just last week, it was reported that an Afghan on the FBI Terror Watchlist has been in the United States for almost a year. He is a member of a U.S.-designated terrorist group responsible for the deaths of at least nine American soldiers and civilians in Afghanistan—nine. ICE arrested him in San Antonio just last year in February. Unfortunately, this known terrorist has been released on bond and is now roaming the neighborhoods in the United States of America.

It isn't just terrorists; it is also fentanyl. We have had 100,000 people a year die in the last 3 years. The last time I looked, that is 300,000 people. It is a crime, what is going on.

Law enforcement officers in Alabama tell me that they had never heard the word "fentanyl" until 3 years ago—not heard the word. It was heroin. It was cocaine. It was meth. Now it is almost 100 percent fentanyl, just in the last 3 years. That is a pretty good coincidence.

In February this past year, Secretary Mayorkas traveled to Austria to speak

to Chinese officials about counter-narcotics efforts. Now, he traveled to Austria to do that. Did he discuss the flood of Chinese people coming into our country? Madam President, 22,000 Chinese illegals have come into our country just in the last 5 months. Most of these individuals are adult males. And I wonder where we get the idea that there might be a big problem coming to America soon. Yet the media tries to act like all the people who are coming here from China and all these other countries are great people. Some of them probably are, but most probably are not. They are coming here for different reasons.

This is not a border crisis; it has turned into a huge invasion. It is a national security problem, and we are having it more and more each day.

So I just want to say this: We have not done our duty here today. We have failed the American people.

My phone rings constantly about protecting the sanctity of not just Alabama but everybody in this country from what is happening at the southern border. Nothing good is happening because of what has happened from Secretary Mayorkas to the people who have opened these borders—again, not just southern but also our northern border. That is getting worse and worse.

We failed the American people today. Why? I don't know, but we don't do our job.

We had a Republican majority when I first got here 3 years ago. We brought the President of the United States on an impeachment trial, and he was a Republican. We put him on trial in this very room.

This is all politics. We broke something today that has never been done in the history of this school—excuse me. I am used to getting on people when their phone is ringing in the classroom. But it has never happened before. Now, we have set a precedent, and, unfortunately, it will be a precedent probably that will be broken many times.

How is this body ever going to be able to hold anybody accountable for anything that they have done wrong here in the Federal Government?

Mr. LEE. Thank you, Coach.

Another one of our colleagues who has been a longtime advocate of secure borders and is tireless in her advocacy is our friend and colleague the senior Senator from the State of Tennessee. I would love to get her thoughts on what happened today.

Mrs. BLACKBURN. I thank the Senator from Utah so much for organizing this.

Madam President, I think it is so important for the American people to really understand what did happen here today. And what we saw happen here today is a violation of our oath, the oath that we take that we are going to abide by the Constitution.

Now, those who are watching this—and I would encourage all of my col-

leagues among us to pull out that Constitution and read article I, section 2, which lays out the process of impeachment for the House of Representatives. And then section 3 of that Constitution lays out the duty of the Senate in that Constitution.

Now, I have a poster up here from 2019. It is CHUCK SCHUMER. This was during the Trump impeachment in 2019. Now, CHUCK SCHUMER, who is currently the majority leader, basically made a full-time job of talking about how the Senate had to do their constitutional duty to hold a trial. That is all he talked about for days. The clips are all over the internet.

One thing he repeatedly said:

We have a responsibility to let all the facts come out.

"A responsibility."

Now, we have to say: What has changed between 2019, 2020, and today? Well, of course, we know what changed for CHUCK SCHUMER because he is desperate to hold onto the majority in this Senate, and he did not want some of the Senators who are highly contested in their races to have to take a vote on the Mayorkas impeachment.

Why is that? It is because the No. 1 issue with the American people is that open southern border.

And who is it that has regularly lied to this Chamber, to the House, and to the American people about what is going on at the southern border? It is Secretary Alejandro Mayorkas—repeatedly lied, repeatedly stood before us in hearings, in committees and said the border is secure.

Anyone who is watching, anyone who has ever been to that border knows the border is not secure. They know that, on the Mexico side of that border, it is being run by the cartels. You can spend an hour with the Border Patrol, and you will find out.

Last year, there were people from 170 different countries that came to that southern border seeking entry. Not a one of them got here on their own. They get flown to Mexico. They pay the cartels, and the cartels bring them over. The cartels are making a fortune. We are paying the price.

And we are paying this price because of the dereliction of duty carried out by Secretary Mayorkas, the way he is not standing up for the Border Patrol, the way he is not standing up for the American people. That is an issue and, yes, a responsibility. Did we have that responsibility? You bet we do.

And that is why we are here on this floor to talk about this, because our border—when you look at the drugs, the fentanyl, that are coming across that border and moving into communities across this country, every State is a border State, every town a border town. Every single family affected or worried about the consequences of the border, thousands of Americans dead from fentanyl poisoning, other Americans that have become angel parents because their children, their spouses

have been killed in auto accidents by criminal illegal aliens.

What they have done to this country by opening that border—and do you know the sad thing about this? It is very intentional. This is their border policy. They intend to do this.

So looking at the drugs, looking at the crime and the gangs, and then, of course, looking at the human trafficking on Mayorkas's watch—and this is something that is so important for the American people to know. In Tennessee, we have several groups that work on human trafficking and seek to rescue women and girls and children who are being trafficked, sexually trafficked. The exploitation of these children, we know that is driven by the cartels. The cartels have turned human trafficking in this country from a \$500-million-a-year industry—over the last 3½ years, it has become \$13 billion, with a “b.” People are being trafficked.

Indeed, children are being used as aides for these traffickers. They are being recycled. And these precious children have their name—they have the contact name and the phone number in indelible ink written on their backs, written on their arms, because the cartel uses these children to get cartel members across the border posing as families. And, then, once that cartel member is in the United States, they turn that child loose, and then the child gets sent back. That is disgusting. But because of Biden and Mayorkas and the open border, that is what is happening.

Now, even worse, we have an issue that Secretary Mayorkas claims he knew nothing about, and it was the loss of 85,000 migrant children. Now, we have got 400,000 migrant children who have been turned over to the Federal Government under Secretary Mayorkas. Out of this, 85,000 of those children cannot be accounted for. We have asked Secretary Becerra; we have asked Secretary Mayorkas: Where are these children?

They do not know. They do not know if these 85,000 children are dead or alive. They do not know if they have been attached to drug mules or drug traffickers or if they have been put into gangs, labor crews.

What we did find out from some reporters is this. We found out that some of these children were working in slaughterhouses, in the night. That is what we found out. Oh, by the way, that was from a New York Times reporter.

This situation at the southern border is a humanitarian crisis. The trafficking of human beings is a crisis. Using human beings as chattel, that is a crisis. Putting people into indentured servitude and slavery, that is a crisis.

And who has lied about this repeatedly to the Senate and to the House is Secretary Alejandro Mayorkas. And who voted for him? Every Democrat on that side of the aisle who refused to let this trial come forward—each and every one—you are responsible for this

not coming to light. It is a dereliction of your constitutional duty and a responsibility—that we, as Members, have to make certain that the American people know what happened today.

Mr. LEE. Thank you, Senator BLACKBURN.

Another great mind that we benefit from in the Senate is our friend and colleague, the junior Senator from Florida.

Before he became the Senator from Florida, Senator SCOTT was previously Governor Scott, a Governor of one of the most heavily populated States in America. And prior to that, he was famous in the business world, personally employing hundreds of thousands of people.

So the Department of Homeland Security is an enormous organization. Nobody understands how best to run an enormous organization and to do so with exceptional skill better than Senator SCOTT, and nobody understands better than him how the buck stops with the person running that organization. We would love to hear from him now.

Mr. SCOTT of Florida. Madam President, I want to thank my colleague from Utah for his commitment to the rule of law, his commitment to the Constitution, all of his efforts today and every day that he has been up here to make sure that the Senate follows the Constitution and doesn't set precedents that don't make any sense. And today is a horrible today.

I also want to thank my colleague from Wisconsin for being such a voice on making sure that the public actually knows what is going on here. The information he puts out, the charts he uses, the information he has gives everybody an idea of what is actually going on.

But, unfortunately, today, Democrats' assault on American democracy had a banner day. Democrats in the Senate said that impeachments by the U.S. House of Representatives don't matter anymore. You don't have to have a trial. They don't matter.

According to what Democrats did today, we don't need to hold impeachment trials here in the Senate, ever. This is a horrible precedent. It is not what the Constitution envisioned.

It doesn't matter if, for example, your Cabinet Secretary even instructed your Agency to ignore the law and not execute the laws of the United States. It doesn't matter if, by ordering an Agency to ignore the laws of the United States, Americans are murdered. They are. They have been.

It doesn't matter if, by ordering an Agency to ignore the laws of the United States, deadly fentanyl pours into our communities and poisons our children and grandchildren.

It doesn't matter if, by ordering an Agency to ignore the laws of the United States, terrorists on the FBI Terrorist Watchlist and migrants with known gang affiliations stream into

our country to such an extent that the FBI Director testified, sitting right next to Secretary Mayorkas, before Congress that this is the most dangerous time in America since 9/11.

Just stop and think about your family for a second. Think about either your mom or your dad, your spouse, your brother or your sister, a child or a grandchild, a niece or nephew. Just think of one of them. Just pick one of them. You cherish and you love them. You can think about wonderful things about them.

Now, for thousands of American families, that person that you are thinking about today is dead. Let me say that again. For thousands of American families, the person that you are thinking about today is dead. They have been taken too soon by the deadly fentanyl crisis that has ravaged our Nation because of the wide-open southern border.

I think every one of us knows some family that has been ripped apart by the deadly fentanyl crisis. Everybody does. Some of us have been impacted directly. Fentanyl is killing 70,000 people a year. That is 70,000 families who are torn apart because we have an open southern border.

(Mr. OSSOFF assumed the Chair.)

This happened, in part, because instead of letting our brave Border Patrol do their job and stop these deadly drugs, Secretary Mayorkas intentionally is using them to let even more people illegally cross the border and come into our country and get all sorts of nice services. They get phones, they get lawyers, they get hotel rooms—all paid for by the U.S. taxpayer.

Every victim of Secretary Mayorkas's order for his Agency has a name. Just think about that family member.

I have heard a lot of heartbreaking stories in my home State. Florida families are feeling the impact of this administration's lawless border crisis every single day—deadly fentanyl, criminals, terrorists, human traffickers. They pour across Biden's open border. This is all intentional.

There are 1,145 children between 14 and 18 years old who died from fentanyl in 2021. So that is like having a classroom of kids die every week—every week.

In 2022, I heard from a mom in Kissimmee, just outside Orlando, where her son, who was in the Air Force—and he had a bright future in the Air Force—came to surprise her on Mother's Day weekend. He, unfortunately, visited an old friend whom he didn't know had been dealing drugs. The friend convinced the young man to take a Xanax, which was unknowingly laced with fentanyl. The mom found him dead. He came home to just surprise her for her birthday, and he is dead.

Put yourself in the position of that mom. What is she thinking about today? What is she thinking about when she watches the Senate floor, and every Democrat says: The guy who

made the decision to open the southern border will not be held accountable.

So 26-year-old Ashley Dunn is another American we have lost to fentanyl poisoning. Ashley's mother, Josephine Dunn, says their daughter did not overdose but was poisoned by one-half of one Percocet tablet that was counterfeit. According to Ms. Dunn, her daughter was murdered by products made in Mexico that were welcomed into this country by Mayorkas and his administration.

Today, Senate Democrats made certain that Secretary Mayorkas will never have to answer. He is never going to answer for Ashley's death. He is never going to have to answer for any of the other deaths.

But do you know what? He will know what he did. People will know too much what he did. He will never, ever—he will never get away with this.

America is a more dangerous place because Mayorkas and Biden have allowed criminals, drugs, terrorists, and other dangerous people into our communities, all over the country.

Real Americans with families are being killed. Real American families are being torn apart by vicious crimes and deadly drugs because we have a wide-open southern border.

If you go to the southern border on the other side, you have IDs everywhere, because they don't want the Border Patrol that meets them on our side to know who they are. Why would you do that?

Secretary Mayorkas is the first and only sitting Cabinet Secretary to be impeached. He will always be known as the first sitting Cabinet Secretary to be impeached, and now he is forever going to be blocked from being acquitted of that charge.

I wonder how that makes him feel. He will never get that chance to be acquitted because of what the Senate Democrats did today.

I still have a question for my Senate Democrat colleagues. Did you silence Mayorkas today because Democrats are terrified of his record and unable to defend him, or just because you don't trust him?

Whatever the answer is, I think that every reporter here and every American needs to know this: Democrats put politics over the safety of American families and the security of our great Nation today.

I fear the consequences of that unprecedented failure will be devastating beyond our worst fears. I think it is going to take decades to rid the criminals from this country. And, in the meantime, how many people like Ashley are going to lose their life? How many people are going to be raped? How many people are going to be put into slavery? I hope to God it doesn't happen to your family.

Mr. LEE. I am grateful for the comments that have been made by so many colleagues today in this colloquy and for the insights they have shared. Each comes from a different State, bringing

a different set of perspectives to the table, a different set of political and professional perspectives that help them shed light on this important issue and provide insights and warnings about the rather grave implications that we so cavalierly overlooked today—"we," meaning the Senate as a whole, with 49 of us trying to stand in the way and raise a word of warning about what we are doing and what implications that might have for the future.

The warning signs are everywhere. Tragically, we have seen, just in the last few days, with news breaking in recent hours, that the consequences of our open-borders policy can touch all of us, with one of our dear respected colleagues having lost a beloved staff member within the last few days, having lost that staff member as a consequence of the actions taken by an immigrant in this country who was here unlawfully, who shouldn't have been here.

That is a troubling thing, but the human level has so many ramifications. There are so many thousands of families, so many hundreds of thousands, and, in fact, so many millions and, in fact, tens—depending on how you slice it, hundreds—of millions of Americans who have been impacted in real, meaningful ways by the open-borders policy that has been so prominently featured by these Articles of Impeachment.

Over three decades ago, I spent 2 years along the U.S.-Mexico border, down in the McAllen, TX, region. I was there as a missionary. And, as a missionary, one lives and works among people of all backgrounds. I spent a lot of time with people of modest means. And, in my case, I spent most of my time with people of such humble means that I never quite witnessed in the United States—conditions that I didn't know existed on any widespread basis in the United States, including some people with dirt floors and no indoor plumbing.

But in countless cases—those were a little bit more rare, but they exist or, at least, they existed in the early 1990s. Even though those were more rare—those extreme cases—almost all the people I interacted with on a day-to-day basis were people of very humble means. They were living paycheck to paycheck, just trying to get by. And many of these people were themselves recent immigrants. Some, I suspect, were here legally. Others, I suspect, were here illegally. It wasn't standard practice at the time for missionaries talking to people to find out their immigration status. We were there for different reasons. You get to know people. You get to know their backgrounds. You get to know their concerns.

One of the things that stands out from my memories of those 2 years is that, as I interacted with these people and learned their customs and learned their language—most of them didn't

speak English. Some who didn't speak English had themselves lived in the United States most or all of their lives. In fact, there were some people, especially in the older generations, where these families had been in Texas for a very long time—for generations. And some of those older generations of people were raised speaking largely, if not exclusively, Spanish.

But regardless of their immigration background or whether their family had been in Texas for generations or for only days or weeks, and whether they came legally or illegally, something I learned about them was that there is no one who fears uncontrolled waves of illegal immigration in quite the same way, to quite the same degree, as recent immigrants, especially recent immigrants of humble means living on or near the U.S.-Mexico border. You see, because it is their schools, it is their jobs, it is their neighborhoods, their homes, their children, their families who are most directly affected by these uncontrolled waves of illegal immigration, because it is those things that are at their doorstep.

They know that every one of those things are placed in grave jeopardy every time the floodgates open and people pour across our border into the United States without legal authority to be here. Every single time that happens, that has adverse consequences.

We have talked a lot about the more obvious and more newsworthy, more news-covered, implications of open borders, with situations like Laken Riley hitting the news. But we don't always talk about how it affects other people in more mundane, more pedestrian ways.

I think we have to be mindful of and, really, watch out for the tendency of those of us who are privileged enough to serve in this body to otherize immigrants, to otherize anyone with a Hispanic surname, to otherize anyone by, among other things, assuming that those groups of people speak monolithically or that we speak for them, insofar as we are seen as advocating a position that is tolerant of or even eager to embrace open borders. It is not the full picture, and it is one of the more blatantly awful otherizations that we bring about in our society. It is assuming that someone with a Hispanic surname, someone who may be a recent immigrant themselves would necessarily want open borders. It is simply not true, and it speaks profound ignorance to the plight of these individuals when we claim that they speak monolithically, especially insofar as we are suggesting, even indirectly, that they are for open borders just because of their last name or their first language or how recently they arrived in the United States or where they live in the United States relative to the border.

Getting back to the bigger picture here into what specifically happened today, when I think about the 13—

going on 13½—years that I have spent in the U.S. Senate, I don't think I can remember another day when something of such profoundly disastrous consequences was done in this body to shatter norms, rules, precedents, legal traditions and, in this case, constitutional principles quite like this decision here today did.

I remember, just before Thanksgiving in 2013, I had been in the Senate not yet 3 years, just days before Thanksgiving, just before we broke for the Thanksgiving recess, when a group of my colleagues, all of one particular party, decided to nuke the executive filibuster—decided to break the rules of the Senate in order to change the rules of the Senate, not by changing the rules themselves, because changing the rules themselves takes 67 votes, but, instead, by a simple majority vote. They created new precedent to undercut and flip the meaning of one of the Senate rules: getting rid of the cloture rule with regard to the Executive Calendar.

I spoke to a lot of people after that happened, people of both political parties, including some of both political parties even within this body, who serve in this body, who expressed regret over that day and concerns for where it could lead. But particularly I heard from people not serving in this body, people from all walks of life, including people of all political persuasions, who acknowledged the profound consequences that could have and would eventually have on the United States Senate because, again, it involves a rather shameless, cynical maneuver whereby the Senate broke the rules of the Senate in order to change the rules of the Senate without actually changing the rules, pretending that the rules said A, not B, when, in fact, they said B, not A.

I think it may have been Abraham Lincoln who once said that—he asked rhetorically, if you count a dog's tail as a leg, how many legs does the dog have? Whenever he asked this to any individual, they would tend to say, understandably, accepting the framework of his hypothetical, that that would be five legs. He would respond by saying: No, it is not five legs. Even if you call the tail of a dog a leg, it is still not a leg.

That is what we did when we nuked the executive filibuster on that fateful day in November 2013.

In countless ways, what happened today was far worse than that because what was at stake today were not just the rules, traditions, precedents, and norms of this body—rules, precedents, traditions, and norms that, I would add here, have at no moment in our nearly 2½ century existence countenanced a result like what we achieved today. That is to say, we never had something like this, where we had Articles of Impeachment passed by the House of Representatives and transmitted to the United States Senate at a moment when the person impeached was neither

dead, nor a person who had left the office that person held, nor a person ineligible for impeachment, meaning a Member of the House or Senate. Members of the House or Senate can be expelled by their respective body by a two-thirds supermajority vote, but they are not subject to impeachment *per se*.

If we carve out those narrow, rare exceptions where Articles of Impeachment have been cast in a way that was patently wrong, where subject matter jurisdiction in this body was lacking either at the time the articles were passed or between the time they were passed at the House and the time they arrived in the Senate, we have what I think can fairly be characterized as essentially a perfect record—at least a consistent record—that we at least held a trial.

We at least held the bare bones of a trial in which we had arguments presented by lawyers—at a minimum, by lawyers representing the House of Representatives. They are known as impeachment managers and sometimes described colloquially as House prosecutors. We at least heard arguments by them. Normally, that involves a presentation of evidence by them, by the House impeachment managers. Normally, it involves both sides having lawyers—not just the House impeachment managers but also defense counsel representing the impeached individual. Normally, there has been evidence presented and arguments made about why the Articles of Impeachment either were or were not meritorious.

In every one of those circumstances, with the narrow exceptions that I described as the sole exceptions, there has been at least some finding on at least some of those articles in every single case culminating in a verdict—a verdict of guilty or not guilty. That by itself is a precedent and a norm and a custom and a tradition and a set of rules that we overlooked today and that we have run roughshod right over.

But there is something much more at stake, something much more concerning about this that I find so troubling, and that is that under article I, section 3, clause 6, the Senate is given the sole power and with it the sacred responsibility and duty to try all impeachments.

As I just described, in every circumstance where there wasn't some jurisdictional defect—and by that, I mean a bona fide subject matter jurisdictional defect such that we lacked jurisdiction to move forward—we have proceeded and reached some kind of a verdict in every one of those cases. But not today.

Mr. President, I had been concerned for weeks and I heard rumors for weeks that what was going to happen today was that the majority leader was going to approach these articles with a certain degree of cavalier indifference and offer up a motion to table.

I immediately became convinced after looking at the rules and studying

the precedent on this that a motion to table would be inappropriate here. It would be inappropriate because, for the same reasons I just explained, we have never done that, never done anything close to that.

The closest precedent for something like that was so far off course that it couldn't even be relied on. I recall the only precedent that even sounded like the same thing was, in fact, very different. During the trial over the impeachment of President Andrew Johnson, one Senator had made a particular motion to do a particular thing during that trial, and another Senator later moved to table that motion. There was no motion to table any Articles of Impeachment.

In any event, I became convinced after studying this that a motion to table would be without precedent and contrary to everything I thought I knew about our role constitutionally and otherwise to conduct impeachment trials.

I also became convinced that this would be bad precedent in that it would set a certain precedent suggesting that it is OK, that if the party occupying the majority position at the United States Senate didn't want to conduct a trial, that it didn't have to; it could just sweep them aside.

As I say, channeling the immortal words of Rush and the song "Freewill," if you choose not to decide, you still have made a choice. You made a bad one if you choose to just set aside the impeachment articles without rendering a verdict of guilty or not guilty, whether pursuant to a motion to table or otherwise. A motion to table would be an especially bad basis—an especially bad strategy and bad mode for disposing of or otherwise addressing Articles of Impeachment.

It is important in this context to remember that the United States Senate has exactly three states of being. We exist at any given moment in our capacity as legislators in legislative session; secondly, in executive session, where we consider Presidential nominations and also on occasion treaties for ratification—both executive functions carried out under our Executive Calendar. Our third state of being exists in this context where we are to operate as a Court of Impeachment.

It is solely in our capacity as Senators sitting in a Court of Impeachment that we are administered a second separate oath, different from the oath that we all take each time we are elected or reelected to the Senate—different capacity. It is a capacity that requires us to decide the case and to do so on the merits of the case.

It is also unique in that it is the only mode in which there is a solid expectation, unblemished until today, that if we do, in fact, have Articles of Impeachment over which we have subject matter jurisdiction, that the case hasn't been rendered moot—there is an expectation, backed up by history, tradition, precedent, and the text of the

Constitution, that we will do the job; that, in fact, according to these precedents, up until today, we will reach a verdict of guilty or not guilty by the time we are done.

You see, those things don't exist in the other two states of being. In our legislative calendar, there is no expectation or tradition or precedent or implication from the text of the Constitution that we will affirmatively act upon and ultimately dispose of every piece of legislation presented to the United States Senate. We don't do that. We have never taken that approach. If we did, it would grind the place to a halt. I don't think it would physically be possible.

Nor has that ever been the expectation on the Executive Calendar. Sure, we tend eventually to get to most of them, but there is an understanding that unless or until such time as we confirm a particular nominee, that nominee is not confirmed, such that if we get to the end of the road, the end of that Congress, the end, even, of a session, if that person is to be confirmed, that person is to be renominated first and then considered by the Senate. But even then, there is no guarantee as to any final vote disposing of that nomination.

This is different in the context of an impeachment where we sit as a Court of Impeachment. In so doing, we become two things. In any trial—in an ordinary court, there are two functions that a trial involves. You have to have finders of fact—that is a role typically played by a jury in our system, both in civil cases and in criminal cases—and you have to have judges of legal issues. Typically, those are performed by a judge. In some cases—most commonly, if the parties agree to have the issues of fact decided by a judge rather than a jury, then you can have the whole thing, the issues of fact and the issues of law, decided by a judge.

We serve both functions. We are finders of fact and judges of the law relevant to the impeachment case before us. I think that is the whole reason why we are given a separate oath for that. We don't take a separate oath every time we bring up a bill or get a Presidential nomination or every time we are asked to consider a treaty for ratification, but we do take a separate oath every time we receive Articles of Impeachment. It is not just because these things are more rare than bills as they are introduced or nominations as they are received or treaties presented to us for potential ratification; it is because it is a sacred responsibility in which there is an expectation, backed up by centuries of tradition, custom, precedent, and understanding of our constitutional text, that we will dispose of the case.

We will dispose of it in a way that culminates in a finding of guilty or not guilty except in these rare instances where we lack subject matter jurisdiction most commonly because the case has been rendered moot, which it is not in this instance.

The particular way in which we went about this today really was crazy and impossible to defend—absolutely impossible to defend on its merits.

Remember, there were two articles in these impeachment charges. Article I alleged that in eight or nine different instances in which Secretary Mayorkas had an affirmative legal duty to detain illegal immigrants pending adjudication of either their asylum claims or of their argument that they might be entitled to some other form of relief, including immigration parole, the Secretary of Homeland Security had an affirmative duty to detain them while those decisions were pending.

Eight or nine different statutes required that, eight or nine different statutes he deliberately violated. He did the opposite of what the statute required, and by doing that, he invited and facilitated an invasion at our southern border that is unprecedented in American history. That has been dangerous. That has resulted in all kinds of heinous crimes being committed—loss of life, loss of innocence, loss of property—many, many harms occurring as a result of this, occurring as a result of his deliberate decision not only not to do the job he was hired to do and that he swore an oath to perform well but to do the exact opposite of what the law required.

I mentioned a little while ago the writings of Justice Story, Justice Joseph Story, one of our early Supreme Court Justices a couple of centuries ago. He was familiar with the Constitution at a time closer to the Founding and also very familiar with the English legal antecedents on which the Constitution was predicated, with the legal terminology incorporated from English law into the American constitutional system.

And in his great treatise on the Constitution, in section 798, he explained a few things about impeachable offenses. And he said in section 798:

In examining the parliamentary history of impeachments, it will be found, that many offences, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy.

This extraordinary remedy, of course, referring to impeachment. It then recites a litany of things that would qualify for this. And, again, he just noted, they don't necessarily have to be easily definable by law when they are of a political nature, but he identified some of those things that had been established through English legal precedent—English parliamentary precedent—as worthy of impeachment qualifying as high crimes and misdemeanors.

Among other things, he identified what he referred to as “attempts to subvert the fundamental laws”—attempts to subvert the fundamental laws. Those could have broad application in all sorts of areas, but I can think of few laws more fundamental to our Republic, to our Federal legal sys-

tem than our fundamental laws governing who may enter this country and under what circumstances.

He went on to identify a number of other things that fit this definition, adding to it, among other things, by saying the one thing in particular that would meet the definition of “high crimes and misdemeanors” and would thus be impeachable would be an instance in which a lord admiral may have neglected the safeguard of the sea.

So some on the other side of the aisle have argued that, well, really what Secretary Mayorkas did was to just not do as good of a job as he should have and could have in enforcing the law, and that can't be a basis for impeachment, they argue.

Some of them will invoke the line of reasoning that says maladministration—in other words, not doing your job well—isn't a valid basis for an impeachable offense. I am not at all sure that that argument, even stated in the abstract, is accurate. In fact, I tend to think that it is not because the Constitution itself assigns that job to this branch of government—to the House as it assesses whether to charge something as impeachable and to the Senate as it assesses whether an impeachment passed and presented by the House warrants conviction, removal from office.

That really is our job, and as Justice Story noted, it includes offenses of a political character, regardless of whether they would amount to independently prosecutable criminal offenses in a criminal court of law sense of that word.

But in any event, even if you buy into that reason, there are those scholars who believe that. I seem to recall Professor Alan Dershowitz, a respected Harvard law professor from whom we have heard in past impeachment proceedings. I believe that he believes in this approach. Even under Professor Dershowitz's approach, he is someone for whom I have great respect, even where I disagree with him.

Even if you were to accept that premise, this isn't just that. This goes far beyond just maladministration. It is not just that Secretary Mayorkas didn't do as good of a job as he could have and should have and we wish he would have, it is that he willfully subverted what the law required and did the exact opposite of what the law required. That is impeachable.

It has got to be impeachable, and yet the majority leader stood up today, and he said: I raise a point of order that impeachment article I—again, impeachment article I is the part that deals with Secretary Mayorkas's decision to do the exact opposite of what the law requires.

The majority leader continued: Impeachment article I does not allege conduct that rises to the level of a high crime or misdemeanor as required in article II, section 4, of the United States Constitution and is therefore unconstitutional.

Really, I don't know how he gets there. He can't get there except by sheer force, and the way you do something by sheer force here is you produce a simple majority of votes from Senators declaring the impeachment equivalent of defining the tail of a dog to be a leg.

What I found even more stunning, was when—as stunning as that first move was and as disappointing as it was that a simple majority of United States Senators, all from the same political party, I would add, not my own—he somehow managed to outdo that one by later making the same point of order with respect to article II.

Arguing that, you know, he said: I raise a point of order that impeachment article II does not allege conduct that rises to the level of a high crime or misdemeanor as required under article II, section 4, of the United States Constitution and is therefore unconstitutional.

Let's remember what article II was about. Article II charged Secretary Mayorkas with knowingly making false statements to Congress as Congress was carrying out its oversight responsibilities with him testifying, often under oath, to Congress.

Now, unfortunately, we never got to hear any evidence on this. Therefore, we weren't presented with the opportunity to make a final determination on this, but we instead had the majority simply roll right over all of us by just declaring, *ipse dixit*, it is because it is. It is because we say it is; that it is not an impeachable offense, even if, as has been alleged and as the House impeachment managers—the House prosecutors we sometimes call them—were denied the opportunity to try to prove that he knowingly made false statements to Congress. To say that that is not impeachable is breathtakingly frightening.

We have now established a precedent in the United States Senate that if you occupy a high position of trust within the United States Government, a Cabinet member in this instance, and you knowingly, willfully make false statements to Congress as Congress has tried to get to the truth about what you are doing in your job and whether or not you are faithfully executing, implementing, and enforcing the law, that lying to Congress in that sense, even under oath, isn't an impeachable offense.

That precedent could suggest that we now are effectively immunized from impeachment, doing that very thing. How are we to conduct adequate oversight, if even the theoretical threat, the theoretical, hypothetical, potential threat of impeachment isn't on the table?

That severely weakens the fabric of our Republic. It certainly weakens the ability of the United States Senate to push back on abuses by and within a coordinate branch of government. You know, when James Madison expressed in the Federalist Papers, among other

places in Federalist 51, the government was sort of an experiment; it is an exhibit; it is a display of human nature—there and in other Federalist Papers, he explains things like the fact that as he continued in Federalist 51, that if we as human beings were angels, we wouldn't need government; if we had access to angels to run our government, we wouldn't need all these rules to govern those responsible for government, but, alas, we are not angels. We don't have access to angels to run our government, so we need rules.

Madison was also a big believer in the fact that because we are not angels, we don't have access to angels to run our government, we do need these rules. You have got to set up a system in which power can be made to check power, and you set up each branch with its own set of incentives to guard against abuses in power.

I have wondered over time, as I have seen the United States Senate gradually but very steadily over many decades voluntarily relinquishing its power—much of it started with our work on the legislative calendar starting in earnest really in the 1930s, continuing to the present day.

We have gradually, steadily been outsourcing a lot of our lawmaking power to unelected, unaccountable bureaucrats—pass all sorts of laws saying, essentially, we shall have good law with respect to issue x and we hereby delegate to Department or Commission or Agency or functionary y the power to promulgate rules carrying the force of generally applicable Federal law as to issue x.

Little by little, the American people lose control over their own government as this happens. Little by little, you start to see that this diminishes the overall accountability of the U.S. Government. And when Agency or Department y promulgates a particular rule carrying the force of generally applicable Federal law, people understandably, predictably, very consistently come to us to complain, saying: This is killing us. This rule made by unelected, unaccountable bureaucrats is now going to shut down my business. I am going to be deprived of life, liberty, or property, or some combination of the three. Whether I choose to comply or not, it is going to harm me in material ways.

And, yet, you know, Article I, Section 1, Clause 1, says that all legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and a House of Representatives.

Article I, Section 7, makes abundantly clear what Article I, section 1 sets up, which is to say: You cannot make a Federal law without the assent of both the House of Representatives and the Senate on the same bill. They have got to the pass the same bill text and then present it to the Chief Executive—the President of the United States—for signature, veto, or acquiescence.

Unless you follow that formula of Article I, Section 7, you are not supposed to be able to make a Federal law.

One of the more influential political philosophers on the founding generation was Charles de Montesquieu, who observed that the lawmaking power is itself nondelegable; that the task of lawmaking involves the power to make law, not other lawmakers, because as we see to this very day, when these things happen, when people come back to complain to us that the administrative regulation carrying the force of generally applicable Federal law, when it causes problems, people come and complain to us. And then Members of Congress, predictably and foreseeably, beat their chest. And they say: Oh, yes, those barbarians over at Agency, Commission, Department y. We didn't mean to authorize this. We just said make good law as to issue x; we didn't say to make bad law.

And then, predictably, Senators, the Representatives, say something like the following: You know what I am going to do for you, Constituent? I am going to write them a harshly worded letter. That is what I am going to do—as if that were our job we were sworn in to do were to write harshly worded letters.

It is not that, of course. It is to make laws, not other lawmakers.

You know, I keep these two stacks of documents behind my desk. One stack is small. It is usually a few inches, no more than a foot or so, consists of the laws passed by Congress in the preceding year. It is just, you know, a few thousand pages long.

The other stack is 13 feet tall. During a typical year, it will reach about 100,000 pages stacked up—even on very thin paper, double-sided, small print—about 13 feet tall, consists of last year's Federal registry, the annual cumulative index of these Federal regulations as they are promulgated, as they are initially released for notice and comment and, later, as they are finalized.

Those rules carry the force of generally applicable Federal law. Failure to abide by those can shut down your business, can result in enormous fines. In many cases can result in your imprisonment if you don't follow them. And yet they are not enacted themselves through the formula prescribed by Article I, Section 7. No.

Because in that instance, we have authorized the making, not of laws but of other lawmakers, not ourselves. And those other lawmakers to whom we have given this assignment, while, perhaps, however well-educated and well-intentioned, wise, specialized, well-trained they might be, they don't stand accountable to the American people, ever. Their name will never appear on a ballot. In fact, their name will stand, essentially, as a secret to nearly every American, including those who will stand accountable to those laws, who may lose life, liberty, and property as a result of those things.

(Ms. HASSAN assumes the Chair.)

That is not right. We all know deep down that is not right. We know that every time we are presented with one of these complaints by our constituents—and we all have them. In my office, it is in nearly constant refrain. And yet they often precipitate the predictable harshly worded letter and not a lot else.

In other instances, they might culminate in the filing of a resolution of disapproval under the Congressional Review Act. As fun as those can be—as they do give us, at least, an opportunity to debate them—those are privileged resolutions. If you follow the rules of a Congressional Review Act, you can pretty much always get one of those voted on. You can, at least, have an opportunity to present those here in the U.S. Senate and to vote up or down as to whether or not you want to disapprove of the regulation in question.

Ultimately, however, those prove dissatisfying from a constitutional standpoint in the sense that, with very narrow exceptions, they don't really do any good because nearly any administration whose bureaucratic structures will promulgate the administrative rule in question will like, for policy reasons and political reasons, the policy choice embodied in those regulations. And, consequently, the President whose administration promulgated that regulation being challenged under the CRA resolution of disapproval will almost always veto any resolution of disapproval passed by both Houses of Congress. It is very rare that that doesn't happen.

With only one exception I can think of from a few decades ago, the only time that works—other than that one exception that I am thinking of—occurs when you have a holdover, when you have a new administration and you have regulations that have been promulgated toward the tail end of the previous administration. We had a number of those when President Trump took office following President Obama's time in office where regulations from the Obama era were becoming ripe for CRA resolutions of disapproval, and we were able to get them passed by both Houses of Congress and then signed by President Trump.

Those circumstances are pretty rare. In every other circumstance, the voters of this great country, those subject to these administrative regulations that are, in fact, laws, those things leave us without redress. It is one of the reasons why I have long advocated for us to pass a measure called the REINS Act.

If a genie appeared to me and said: You can pass any one bill now pending in front of the U.S. Congress, it would be the REINS Act. Why? Well, because the REINS Act would require us, by statute, to do what I believe the Constitution already requires, what it, in fact, does contemplate, which is: It is fine for administrative regulations to be promulgated, to be proposed. But unless or until they are affirmatively

enacted into law by both Houses of Congress and then signed into law or acquiesced to by the sitting President, or in the event of a veto, that veto is overridden by two-thirds of both Houses of Congress, then it can take effect. Short of that, no dice. You don't get a law.

These do have far-reaching effects, including the fact that, as a Member of the Judiciary Committee, I and a few of my colleagues tried to figure out a few years ago how many criminal offenses are on the books. How many different provisions of Federal law prescribe criminal penalties that can result in a criminal conviction?

We asked this question of the Congressional Research Service, the entity to which we turn regularly in order to get answers to questions like those. The answer came back to us in a way that I found absolutely stunning. The answer that came back to us from the Congressional Research Service—very talented people at the Congressional Service who were very good at answering these questions. They did a good job doing it, and in the end, they gave us the answer that it was possible to achieve. They said: The answer is unknown and unknowable, but we know that it stands at at least 300,000 separately defined criminal offenses on the books.

Now, this does not mean that on 300,000-plus occasions both Houses of Congress passed into law separate statute defining a criminal offense with criminal penalties. No. In many, many of these instances—one of the reasons why the number is so difficult to tie down is because a lot of these are defined administratively.

So that is one area in which the U.S. Senate has been deliberately shirking its responsibilities and handing them off to somebody else, refusing to do the job that we have been given to do. So that is on the legislative calendar.

We have done that time and time again. Also on the executive calendar where we have changed the law so as to limit—changed the law or, in some cases, adopted standing orders that have been embraced in subsequent iterations of the Senate limiting the number of Presidential nominees requiring confirmation.

So we have narrowed our playing field there, too, shirking our responsibility. Even as the size of the Federal Government has increased inexorably, we have narrowed our job. And now we have seen it done again today in our third state of being, in our third category where we operate as a Court of Impeachment.

Even here, where our job is really limited, we have one job in this area: to conduct impeachment trials. There are a thousand ways you can conduct an impeachment trial. You can conduct an impeachment trial with the whole Senate. You can specialize the impeachment trial so that it is heard in the first instance by a select committee with Members of both political

parties who hear the evidence and then, after doing that, submit the whole matter for a final vote to the whole Senate.

You can hear evidence through individual witnesses. You can receive evidence in documentary form. There are a thousand different ways to conduct a trial, some of which allow the trial to be conducted pretty quickly, others might take more time. But there are a thousand ways we can do it.

And, here, as with the other two states of being—first on the legislative calendar and then on the Executive Calendar—now as we sit as a Court of Impeachment, we have narrowed our work again, shirking our responsibilities again, again declining to perform our constitutional duties.

This is shameful. I am embarrassed that we as a Senate seem so enamored with the idea that we can't do the things given to us.

What is especially troubling about this is that, you know, we are, in fact, a government of limited enumerated powers.

Our job is not to, as some people put it, run the country. Our job is not to make law on any matter that we think appropriate or significant. Our job is not just to enact legislation in any area where we think it might redound in one way or another to the net benefit of the American people. No. We are supposed to be a government of limited, enumerated powers, charged with a few basic things.

We are in charge of a uniform system of weights and measures, a system of immigration and nationality laws, regulating trade or commerce between the several States with foreign nations and with Indian Tribes. We are in charge of declaring war; establishing and regulating an Army and a Navy; coming up with rules governing State militias, which we now describe and refer to as the National Guard; coining money and regulating the value thereof; coming up with bankruptcy laws; postal roads; post offices; regulating in some instances Federal land to be used for some military purpose; regulating what we now call the District of Columbia; adopting rules governing the regulation and disposal of territory and of other property owned by the United States.

One of my favorite powers of Congress involves granting letters of marque and reprisal. "Marque" in this instance is spelled M-A-R-Q-U-E. We haven't done one of those in over a century. I hope we will sometime. I think we should. A letter of marque and reprisal is basically a hall pass issued by Congress that allows those acting pursuant to it to engage in acts of piracy on the high seas, with impunity offered by the United States if they are able to make it back with whatever loot they take into the United States and then divide the spoils and share in the spoils with the United States Government.

That is about it. There are a few other powers of Congress here and

there, but that is the lion's share of what the Federal Government can do.

Of course, we occupy the most significant, prominent, dominant, and dangerous power within that because we are the lawmaking branch. We make the laws.

The executive branch enforces the laws we make, deferring to our policies and enforcing the policies that we enact.

The judicial branch, headed by the Supreme Court, interprets them—not just in the abstract but interprets them in a way so as to be able to resolve disputes properly brought before the jurisdiction of the courts—disputes over the meaning of Federal law.

So we have the most dangerous, prominent, dominant position. It makes sense that the Founding Fathers entrusted that role only to us because we happen to be the branch of government most accountable to the people at the most regular intervals. You can fire all 435 Members of the House every 2 years. You can fire one-third of the Members of this Body every 2 years. It is one of the reasons why you know the Founding Fathers considered the power that we wield the most dangerous, because they made us subject to the most frequent and regular and direct kinds of guarantees of accountability—that is, through elections.

So now we have somebody who has been impeached because a law that we passed that he was charged with enforcing and administering and implementing and executing—didn't do his job, although it falls on us to decide that.

We have myriad instances in which that violation of the law can't be adjudicated in court, such as this case we referred to earlier, the United States v. Texas, where a majority of the Supreme Court of the United States—I guess, by the way, a brilliant dissent by Justice Alito—concluded that the State of Texas didn't have standing to address violations of law, deviations from law by Secretary Mayorkas and the Biden administration.

So if not us, who? There are countless instances that the courts can't do it. The executive branch isn't going to check the executive branch. The buck stops with us. It is our job to do this, and today, we failed. We didn't just fail in the sense that we tried to do it and we didn't; the majority of us, unfortunately, tried not to, went out of our way to define our role as something that it is not, to define the law as saying something other than what it, in fact, says so that we can shirk our responsibilities once again. Shame on us. Shame on those Members of this body who voted to do that today.

I wonder what future generations will say about this. I wonder how many ways in which future generations will suffer from what we did today.

I hope they will take this as a lesson in what not to do and soon depart from this awful precedent because otherwise

this will lead to the shedding of tears and worse.

We are told that the Senate is apparently just too busy to conduct an impeachment trial, just as we are about to be told that the Senate is too busy to require the Federal Government to get a warrant before searching the private communications of the American people incidentally collected and stored in the FISA 702 databases. Too busy to do those things, but I think we are about to be told that it is not too busy to send even more money to Ukraine, where we have already sent \$113 billion—not too busy to do that; not too busy to expand FISA without adding a warrant requirement; but just way too busy, apparently, to do what the Senate and only the Senate can do and what under the Constitution we must do.

Like the ghost of Christmas future in Charles Dickens' "A Christmas Carol," I hope that as we examine our future and what today's action portends about the future of the United States and of the United States Senate, I hope we can choose to depart from this course. While I fear that our past will prove to be our prologue, I sure hope we won't solidify and more deeply entrench this unwise, indefensible move that we took today.

But I am glad we have had a chance today to set the record straight, to make an adequate record of what really happened, and that while a majority—a bare, slim majority—chose to excuse the inexcusable today, some of us—nearly half of us tried to stand in front of that train and stop it. I hope this will prove to be an aberration. Let's all pray that it does.

Madam President, I yield the floor.

Mr. SCHUMER. Madam President.

The PRESIDING OFFICER. The majority leader.

MIGRATORY BIRDS OF THE AMERICAS CONSERVATION ENHANCEMENTS ACT OF 2023

Mr. SCHUMER. Madam President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 4389 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (H.R. 4389) to amend the Neotropical Migratory Bird Conservation Act to make improvements to that Act, and for other purposes.

There being no objection, the committee was discharged and the Senate proceeded to consider the bill.

Mr. SCHUMER. I ask that the bill be considered read a third time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill was ordered to a third reading and was read the third time.

Mr. SCHUMER. I know of no further debate on the bill.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 4389) was passed.

Mr. SCHUMER. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

50TH ANNIVERSARY OF ILLINOIS' 13 AREA AGENCIES ON AGING

Mr. DURBIN. Madam President, May 1 will mark the beginning of Older Americans Month, a time to honor the many contributions our seniors make to our communities. In honor of Older Americans Month, I would like to congratulate Illinois' 13 area agencies on aging—AAAs—on 50 years of service to Illinois seniors.

As the saying goes: With age, comes wisdom. But living a long, full life also means facing life's many changes, challenges, and uncertainties. Let me take you back to 1965. Thanks to modern medicine and science, Americans were living longer than ever before. Every 20 seconds, an American was turning 65. But that progress exposed a lack of support for the needs of the older population. While more Americans were living longer, many were living their Golden Years in poverty, alone, and without the services and care they needed. They had nowhere else to turn.

At this same time, President Lyndon B. Johnson was pursuing an ambitious agenda of domestic policies aimed at eliminating poverty and racial injustice, his "Great Society." Recognizing our "nation's sense of responsibility toward the well-being of our older citizens," President Johnson signed the Older Americans Act—OAA—on July 14, 1965. This legislation paved the way for the creation of a nationwide network of area agencies on aging—AAA—that would support the health, social, and economic well-being of older people and their caregivers.

In accordance with the OAA, Illinois has 13 AAAs that offer services in all 102 counties in Illinois. For the past 50 years, they have served as a backbone of Illinois' senior services, helping develop aging services in local communities across Illinois. From addressing the health needs of older adults, to providing nutrition, transportation, legal assistance, benefit enrollment, and in-home services, Illinois' AAAs help older Americans thrive in their homes and communities. In 2023 alone, Illinois' AAAs served more than half a million adults over the age of 60.

Currently, around 18 percent of the U.S. population is 65 and older. And by 2054, that number is estimated to jump to 23 percent. So these services do not just benefit older Americans; they