



Written by [Bob Adelman](#) on March 24, 2022

## Trump-appointed Judge Pushes Back Against Biden's Immigration Policy

A Trump-appointed federal judge on Tuesday [tossed](#) part of the Biden administration's immigration agenda as spelled out by his DHS (Department of Homeland Security) secretary, Alejandro Mayorkas. District Judge Michael Newman ruled that the Biden administration exceeded Congress' explicit instructions and instead replaced them with "discretionary" authority as to whom the DHS and its enforcement arm, ICE (Immigration and Customs Enforcement), would target for deportation.



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In touting his new policy, Mayorkas told *CBS News*: "For the first time ever, our policy explicitly states that a non-citizen's unlawful presence in the United States will not, by itself, be a basis for the initiation of an enforcement action."

Mayorkas was referring to the ["guidance for the apprehension and removal of noncitizens"](#) that his department issued last September:

The federal government officials have broad discretion to decide who should be subject to arrest, detainers, removal proceedings, and the execution of removal orders ... therefore, we need to exercise our discretion and determine whom to prioritize for immigration enforcement action....

The fact [that] an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way.

In other words, they're here illegally, but that isn't sufficient cause to deport them. The DHS/ICE must answer the question "whether the noncitizen poses a current threat to public safety." A simple conviction for committing a crime isn't enough to send them home, said Mayorkas in his September 30, 2021, memorandum:

Our personnel should not rely on the fact of conviction [of a crime] ... alone. Rather, our personnel should, to the fullest extent possible ... review the entire criminal ... record to learn the totality of the facts and circumstances of [the conviction] ....

There could be mitigating and extenuating facts and circumstances that militate in favor of declining enforcement action [against such "removable noncitizens"].



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Judge Newman didn't buy that. In the lawsuit brought by the attorneys general of the states of Arizona, Montana, and Ohio, they contended that Mayorkas and his department "skirted Congress's immigration enforcement mandates ... [declaring instead] that seemingly mandatory statutes must be read flexibly to permit efficient law enforcement."

Wrote Newman:

At bottom, that is what this dispute is about: can the Executive displace clear congressional command in the name of resource allocation and enforcement goals?

Here, the answer is no.

To buttress his case, Newman quoted a small portion of a landmark Supreme Court case, *Youngstown Sheet & Tube Co. v. Sawyer*:

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.

Accordingly, Newman enjoined enforcement of the offending portions of Mayorkas' guidance.

The rest of the quote from *Youngstown* is helpful in more fully understanding the vital connection between the separation of powers and individual freedom:

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.

The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute....

The Constitution did not subject this lawmaking power of Congress to presidential ... supervision or control....

The Founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times.

The Founders did this for two reasons: they knew the true dark nature of man, and they knew that the only way for individual citizens to enjoy freedom was to limit severely the powers of government run by sinful and power-hungry men.

The present ruling may not be enough to keep Biden and his DHS secretary from finding other ways to exceed congressional authority, but it does light the way to understanding what is, as Newman wrote, "at bottom" in the fight for liberty: the limitation of government through the separation of powers.

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