

# LEADERSHIP CHALLENGES AT THE DEPARTMENT OF HOMELAND SECURITY

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## HEARINGS

BEFORE THE

COMMITTEE ON HOMELAND SECURITY

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MARCH 26, 2015 and APRIL 30, 2015

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*On April 14, 2015, Mr. Patrick Meehan of Pennsylvania was elected to the Committee pursuant to H. Res. 199.*

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**LEADERSHIP CHALLENGES AT THE DEPARTMENT OF HOMELAND SECURITY: ALLEGATIONS OF IMPROPER INFLUENCE REGARDING SPECIAL VISAS**

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**Thursday, March 26, 2015**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The committee met, pursuant to call, at 9:23 a.m., in Room 311, Cannon House Office Building, Hon. Michael T. McCaul [Chairman of the committee] presiding.

Present: Representatives McCaul, Miller, Duncan, Barletta, Perry, Clawson, Katko, Hurd, Carter, Walker, Loudermilk, McSally, Ratcliffe, Thompson, Vela, Watson Coleman, Rice, and Torres.

Chairman MCCAUL. The Committee on Homeland Security will come to order. The purpose of this hearing is to receive testimony regarding the Inspector General's investigation into leadership decisions involving the Immigrant Investor program, known as EB-5 program.

I now recognize myself for an opening statement.

As public servants, trust, integrity, and honesty means everything. As Members of Congress, we must have the trust of our constituents and carry out our jobs without the perception of impropriety.

Without these qualities, we cannot be seen as effective leaders. Simply put, a public office is a public trust.

The same holds true for all public servants, including the top leadership at the Department of Homeland Security.

In an April 2010 memo to USCIS employees, then-Director Mayorkas stated, "Each USCIS employee has the duty to act impartially in the performance of his or her official duties. Any occurrence of actual or perceived preferential treatment, like treating similarly-situated applicants differently, can call into question our ability to implement our Nation's immigration laws fairly, honestly, and properly." That is in his words.

I am extremely troubled by the findings of the DHS Inspector General's report on the EB-5 program. The alleged exertion of undue influence and special processes established by Deputy Secretary Mayorkas during his tenure as director of USCIS that resulted in benefits for politically connected and powerful individuals is extremely concerning.

The list of individuals involved in the allegations raised in the report reads like an A-list of political powerhouses: Ed Rendell, former Democratic Governor of Pennsylvania, former chair of the Democratic National Committee, and long-time Clinton advocate; Terry McAuliffe, current Democratic Governor of Virginia, former chair of the Democratic National Committee, co-chairman of President Bill Clinton's 1996 re-election campaign, and chairman of Hillary Clinton's 2008 Presidential campaign; Anthony Rodham, younger brother of Hillary Clinton; and Harry Reid, Senate Minority Leader.

The findings show that Mr. Mayorkas' intervention in three specific examples involving the individuals I just mentioned gave the appearance that he played favorites with these Democratic political operatives capable of opening doors in Washington.

Specifically, according to the Inspector General's report: Mr. Mayorkas intervened in an administrative appeal related to an application to receive EB-5 funding to manufacture electric cars through investments in a company at the behest of Terry McAuliffe, a former board chairman, and Anthony Rodham, who was listed as the CEO of Gulf Coast, an entity that managed related investments.

Mr. Mayorkas intervened in a case involving a Las Vegas hotel that was of interest to Senator Reid. He also took the extraordinary step of requiring staff to brief Senator Reid's staff on a weekly basis for several months.

Mr. Mayorkas intervened in the L.A. Films Regional Center cases by ordering that a USCIS decision to deny a proposal to fund a series of movie projects in Los Angeles be reversed after he was in contact with Ed Rendell.

Mr. Mayorkas overruled career staff in numerous instances and, according to the report, "communicated with stakeholders on substantive issues" and influenced the outcome of the cases.

Although there are a lot of details and technical specifics in this report, I am troubled by many aspects that allegedly occurred under the watch and with the direct intervention of Mr. Mayorkas. As I read the report I was struck by four main themes.

Here are some quotes from the Inspector General's Report, and they appear on the monitor. No. 1, special access: "Their allegations were unequivocal: Mr. Mayorkas gave special access and treatment to certain individuals and parties." Furthermore, the report states that "Mr. Mayorkas' communication with external stakeholders on specific matters outside the normal procedures created an appearance of favoritism and special access."

### SPECIAL ACCESS:

“Their allegations were unequivocal: Mr. Mayorkas gave **special access & treatment** to certain individuals & parties.”

“Mr. Mayorkas’ communication with external stakeholders on specific matters **outside the normal procedures**...created an appearance of favoritism and special access.”

DHS OIG REPORT Pg. 3, 2

No. 2, political favoritism: “We received complaints from USCIS employees that the application for a politically connected regional center, Gulf Coast Funds Management, received extraordinary treatment as a result of Mr. Mayorkas’ intervention.” Additionally, “USCIS staff understood that these applicants were prominent or politically connected.”

### POLITICAL FAVORITISM:

“We received complaints from USCIS employees that the application for a **politically connected** regional center, Gulf Coast Funds Management, received **extraordinary treatment** as a result of Mr. Mayorkas’ intervention.”

“USCIS staff...understood that these applicants were prominent or politically connected.”

DHS OIG REPORT Pg. 38, 5

No. 3, created or went around established process and career staff decisions: “Mr. Mayorkas was in contact, outside of the normal adjudication process, either directly or through senior DHS leadership, with a number of stakeholders having business before

USCIS. According to the employees, but for Mr. Mayorkas' actions, the staff would have decided these matters differently."

### CREATED OR WENT AROUND THE ESTABLISHED PROCESS AND CAREER STAFF DECISIONS:

"Mr. Mayorkas was in contact, **outside of the normal adjudication process**, either directly or through senior DHS leadership, with a number of applicants and other stakeholders having business before USCIS."

"According to the employees, but for Mayorkas' actions, the staff would have **decided these matters differently**."

DHS OIG REPORT Pg. 4-5, 3

No. 4, misplaced priorities: "Mr. Mayorkas' focus on a few applicants and stakeholders was particularly troubling to employees given the massive scope of his responsibilities as director of USCIS."

### MISPLACED PRIORITIES:

"Mr. Mayorkas' focus on a few applicants & stakeholders was particularly troubling to employees, given the massive scope of his responsibilities as Director of USCIS."

DHS OIG REPORT Pg. 6

As a former Federal prosecutor in the public integrity section in main Justice, I appreciate the thorough review that was conducted by the DHS Inspector General in this case.

Mr. Roth, I want to thank you for your work on this report.



I was struck by the sheer number and variety of the whistleblowers who contributed to this report. More than 15 DHS employees stepped forward. I can't think of any report in the past that has had that many.

They varied in responsibility and authority and included very senior managers who were in a position to witness the events in Washington, and experts who handle this program in the field. This really drove home the gravity of their allegations.

In addition, I know your office conducted more than 50 interviews, reviewed more than 40,000 phone records, and obtained more than 1 million documents and e-mails.

As the committee continues its rigorous oversight of the Department, we must review these findings to determine if Congressional action is needed to ensure proper systems are placed to effectively manage the EB-5 program. We also need to ensure the program strikes a balance between National security and commerce.

Today, as the Chairman of the Committee on Homeland Security, I want to listen to the facts and the findings of your report and determine if further oversight by this committee is warranted. In fairness, I also look forward to hearing from Mr. Mayorkas and hearing his side of this story in the near future.

[The statement of Chairman McCaul follows:]

STATEMENT OF CHAIRMAN MICHAEL T. MCCAUL

MARCH 26, 2015

As public servants, trust, integrity, and honesty mean everything. As Members of Congress, we must have the trust of our constituents and carry out our jobs without the perception of impropriety.

Without these qualities, we cannot be seen as effective leaders, simply put, a public office is a public trust. The same holds true for all public servants including the top leadership at the Department of Homeland Security.

In an April 2010 memo to USCIS employees, then-Director Mayorkas stated, "Each USCIS employee has the duty to act impartially in the performance of his or her official duties. Any occurrence of actual or perceived preferential treatment, like treating similarly-situated applicants differently, can call into question our ability to implement our Nation's immigration laws fairly, honestly, and properly," and that is in his words.

I am extremely troubled by the findings of the DHS Inspector General's Report on the EB-5 program. The alleged exertion of undue influence and special processes established by Deputy Secretary Alejandro Mayorkas during his tenure as director of USCIS that resulted in benefits for politically-connected and powerful individuals is extremely concerning.

The list of individuals involved in the allegations raised in the report reads like an A-list political powerhouses:

*Ed Rendell*.—Former Democratic Governor of Pennsylvania, former chair of the Democratic National Committee and long-time Clinton advocate;

*Terry McAuliffe*.—Current Democratic Governor of Virginia, former chair of the Democratic National Committee (after Ed Rendell), co-chairman of President Bill Clinton's 1996 re-election campaign, and chairman of Hillary Clinton's 2008 Presidential campaign;

*Anthony Rodham*.—Younger brother of Hillary Clinton; and

*Harry Reid*.—Senate Minority Leader.

The findings show that Mr. Mayorkas' intervention in three specific examples, involving the individuals I just mentioned gave the appearance that he played favorites with these Democratic political operatives capable of opening doors in Washington. Specifically, according to the Inspector General's report:

(1) Mr. Mayorkas intervened in an administrative appeal related to an application to receive EB-5 funding to manufacture electric cars through investments in a company at the behest of Terry McAuliffe, a former board chairman, and Anthony Rodham, who was listed as the CEO of Gulf Coast, an entity that managed related investments.

(2) Mr. Mayorkas intervened in a case involving a Las Vegas hotel that was of interest to Senator Reid. He also took the extraordinary step of requiring staff to brief Senator Reid's staff on a weekly basis for several months.

(3) Mr. Mayorkas intervened in the L.A. Films Regional Center cases by ordering that a USCIS decision to deny a proposal to fund a series of movie projects in Los Angeles be reversed after he was in contact with Ed Rendell.

Mr. Mayorkas overruled career staff in numerous instances and according to the report, "communicated with stakeholders on substantive issues" and influenced the outcome of the cases.

Although there are a lot of details and technical specifics in this report, I am troubled by many aspects that allegedly occurred under the watch, and with the direct intervention of Mr. Mayorkas.

As I read the report, I was struck by four main themes. Here are some quotes from the Inspector General's report:

(1) *Special Access*.—"Their allegations were unequivocal: Mr. Mayorkas gave special access and treatment to certain individuals and parties."

Furthermore, the report states that ". . . Mr. Mayorkas' communication with external stakeholders on specific matters outside the normal procedures created an appearance of favoritism and special access."

(2) *Political Favoritism*.—"We received complaints from USCIS employees that the application for a politically connected regional center, Gulf Coast Funds Management, received extraordinary treatment as a result of Mr. Mayorkas' intervention." Additionally, "USCIS staff . . . understood that these applicants were prominent or politically connected."

(3) *Created or Went Around the Established Process and Career Staff Decisions*.—"Mr. Mayorkas was in contact, outside of the normal adjudication process, either directly or through senior DHS leadership, with a number of stakeholders having business before USCIS . . . According to the employees, but for Mayorkas' actions, the staff would have decided these matters differently."

(4) *Misplaced Priorities*.—"Mr. Mayorkas' focus on a few applicants and stakeholders was particularly troubling to employees given the massive scope of his responsibilities as Director of USCIS."

As a formal Federal prosecutor in the public integrity section for the Department of Justice, I appreciate the thorough review conducted by the DHS Inspector General.

Mr. Roth, thank you for your work on this report. I was struck by the sheer number and variety of the whistleblowers who contributed to this report. More than 15 DHS employees stepped forward. I can't think of any report in the past that has had as many. They varied in responsibility and authority and included "very senior managers" who were in a position to witness the events in Washington, DC and experts who handle this program in the field. This really drove home the gravity of their allegations. In addition, I know your office conducted more than 50 interviews, reviewed more than 40,000 phone records and obtained more than 1 million documents and emails.

As the committee continues its rigorous oversight of the Department, we must review these findings to determine if Congressional action is needed to ensure proper systems are place to effectively manage the EB-5 program. We also need to ensure that the program strikes a balance between National security and commerce.

Today, as Chairman of the Committee on Homeland Security, I want to listen to the facts and findings of your report and determine if further oversight by my committee is warranted. I also look forward to hearing from Mr. Mayorkas and hearing his side of the story in the near future.

Chairman McCAUL. With that, I recognize the Ranking Member.

Mr. THOMPSON. Thank you very much, and I want to thank you for holding today's hearing.

I also thank both Inspector General Roth and Ms. Odom for appearing today.

The degree of independence that you both have strengthens your ability to be an advocate for the public interest. Last Thursday this hearing was officially noticed as "Leadership Challenges at the Department of Homeland Security." The Department of Homeland Security certainly has several leadership challenges that I want to discuss.

For instance, I still want to know why, despite the United States Secret Service's Protective Mission Panel recommendation, the Secret Service still has not brought someone from outside the agency into its leadership. However, I see from press releases the title now includes "Allegations of Improper Influence Regarding Special Visas."

On Tuesday the Inspector General publicly released the results of an investigation into employee complaints about management of the Investor Visa program managed by the United States Citizenship and Immigration Services, better known as the EB-5 program. The report centers around Deputy Secretary Mayorkas' efforts when he was director of USCIS. For the purposes of background, the EB-5 program accounts for less than 1 percent of all visas issued by USCIS. Nonetheless, the EB-5 program potential as a job creator gives its visibility to Congressional leaders from across the political spectrum.

On average, USCIS is contacted over 1,500 times per year about specific cases. I am sure that those communications did not come from just one office or one party.

Yet for years the EB-5 program, like many USCIS programs, has well-documented management issues and challenges that demand action. In the absence of Congressional action to address the wide range of woes this program faced, Mr. Mayorkas, while the director of USCIS, took on those challenges.

I have read the Inspector General's report, find it instructive insofar as it is a window into Deputy Secretary Mayorkas' leadership style. The picture that emerges in this report is of an activist manager who demanded reform and responsiveness from his agency.

It seems that at times, Mayorkas' style made employees feel uncomfortable. This is unfortunate, and I am sure that Mr. Mayorkas, if he were here today, would express regret about that.

I commend Inspector General Roth for taking a hard look at the charges leveled by those whistleblowers. I hope that the Inspector General will come to take such action when whistleblowers are involved.

However, I regret, Mr. Chairman, that the headlines and news accounts about these reports are not in line with the Inspector General's actual findings. Mr. Chairman, a man's reputation is at stake. Before we jump to conclusions and join the bandwagon of media reports, we must be responsible.

For the record, the Inspector General did not find that Deputy Secretary Mayorkas broke any laws. Instead, the Inspector General acknowledges that Deputy Secretary Mayorkas and the USCIS personnel recognized the risks to the program if benefits were granted without transparency and were not adjudicated according to statute, regulations, and existing policy.

In fact, the report explicitly states that the decisions made by Mr. Mayorkas were legitimately within his purview, and despite news accounts of political favoritism, the Inspector General also did not find that a single adjudication in question was improperly decided.

The report did, however, find a wide range of resentment within the component. Unfortunately, resentment toward management and low morale is not an anomaly at DHS.

Consequently, Mr. Chairman, it is a fair question to ask if the hands-on, reform-minded leadership style that Deputy Secretary Mayorkas seems to have exhibited here is what DHS needs to address its long-standing management and operational challenges. It is also fair, as Secretary Johnson has indicated, to look into the protocols of the program and see what changes can be implemented, including changes in the law that Congress could enact.

Mr. Chairman, I want to remind you that just 2 days ago in this hearing room former Speaker Gingrich urged us as Members of Congress to stop being obstructionists and work together, especially in the interest of security.

What is unreasonable, Mr. Chairman, is to degrade deputy secretaries' integrity and reputation. I hope that it is not what we are here to do.

I hope that today we can receive testimony and gain more insight to both the program and Inspector General's findings. I also hope that at a future hearing we can have the deputy secretary testify on the reforms he made at USCIS and the changes he is making at the Department of Homeland Security, and how we can truly address the leadership challenges at DHS.

I yield back, Mr. Chairman.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

MARCH 26, 2015

Last Thursday, this hearing was officially noticed as "Leadership Challenges at the Department of Homeland Security". The Department of Homeland Security certainly has several leadership challenges that I want to discuss.

For instance, I still want to know why, despite the United States Secret Service's Protective Missions Panel's recommendations, the Secret Service still has not brought someone from outside the agency into its leadership. However, I see from press releases, the title now includes allegations of improper influence regarding special visas.

On Tuesday, the Inspector General publicly released the results of an investigation into employee complaints about management of the investor visa program managed by the United States Citizenship and Immigration Services, better known as the "EB-5 program." The report centers around Deputy Secretary Alejandro Mayorkas' efforts when he was the director of USCIS. For the purposes of background, the EB-5 program accounts for less than 1 percent of all visas issued by USCIS.

Nonetheless, the EB-5 program's potential as a job-creator gives it visibility to Congressional leaders from across the political spectrum. On average, USCIS is contacted over 1,500 times per year about specific cases. I am sure that those communications did not come from just one office or one party.

Yet, for years, the EB-5 program, like many USCIS programs, had well-documented management issues and challenges that demanded action. In the absence of Congressional action to address the wide range of woes this program faced, Mr. Mayorkas, while the director of USCIS, took on those challenges. I have read the Inspector General's report and find it instructive insofar as it is a window into Deputy Secretary Mayorkas' leadership style.

The picture that emerges in this report is of an activist manager who demanded reform and responsiveness from his agency. It seems that, at times, Mayorkas' style made employees feel uncomfortable. That is unfortunate and I am sure that Mr. Mayorkas, if he was here today would express regret about that.

I commend Inspector General Roth for taking a hard look at the charges leveled by these whistleblowers. I hope that the Inspector General will continue to take such action when whistleblowers are involved.

However, I regret that the headlines and news accounts about this report are not in line with the Inspector General's actual findings. Mr. Chairman, a man's reputation is at stake. Before we jump to conclusions and join the bandwagon of media reports, we must be responsible. For the record, the Inspector General did not find

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Mr. Chairman, I want to remind you that just 2 days ago, in this hearing room, Former House Speaker Gingrich urged us, as, Members of Congress, to stop being obstructionists and work together, especially in the interest of security.

What is unreasonable is to degrade deputy secretary’s integrity and reputation. I hope that is not what we are here to do. I hope that today we can receive testimony and gain more insight to both the program and the Inspector General’s findings.

I also hope that at a future hearing we can have the deputy secretary testify on the reforms he made at USCIS and the changes he is making at the Department of Homeland Security and how we can truly address the leadership challenges at DHS.

Chairman MCCAUL. I appreciate the Ranking Member’s comments. I do agree with you that a man’s reputation is at stake here, and I take that responsibility very seriously.

I do believe that Mr. Mayorkas should have the opportunity, the accused, to come before this committee and tell his side of this story. I am simply interested in the facts and the evidence as they present themselves, which is why we have the Inspector General here today with his report.

Other Members are reminded that statements may be submitted for the record.

[The statement of Hon. Jackson Lee follows:]

STATEMENT OF HONORABLE SHEILA JACKSON LEE

MARCH 26, 2015

I thank Chairman McCaul and Ranking Member Thompson for holding this morning’s hearing on “Leadership Challenges at the Department of Homeland Security.”

I welcome and thank today’s witnesses: Mr. John Roth, the Inspector General for the Department of Homeland Security; and Ms. Maria M. Odom, Citizenship and Immigration Services ombudsman with the Department of Homeland Security.

The subject of today’s hearing is an Inspector General Report of the Department of Homeland Security (DHS) regarding allegations by employees against former USCIS director, and now DHS deputy secretary, Alejandro N. Mayorkas regarding three separate Employment-Based Fifth Preference (EB-5) applications that:

- Found no wrong-doing.
- Found no unlawful act committed for an unlawful purpose.
- Found no lawful act for an unlawful purpose.

There were three unusual acts but none were determined to be unlawful by the Inspector General.

As the director of an adjudicatory agency, Mr. Mayorkas’ delegation of authority to subordinates to conduct work on the behalf of the director was normal and reasonable.

However, the director’s delegation of responsibility to perform work on his behalf did not and does not mean the delegation divested him of his ultimate authority to render the final decision of the agency.

The director's signature must be affixed to each final decision—and the director retains the power and authority under the letter of the law to accept or reject, in whole or in part, the preliminary recommendations of his subordinates.

Two major requirements of administrative decision making are that the director not personally benefit from the decisions reached and that the decisions are not arbitrary or capricious.

We are here today to review the publication of an Inspector General Report that was not referred to the Department of Justice.

The scope of Office of Inspector General's investigation was limited to determining whether Director Mayorkas engaged in conduct that would lead a reasonable person to believe that specific individuals or groups were given special access or consideration in the EB-5 program.

The OIG report focused on whether Director Mayorkas intervened in the adjudicative process to the benefit of stakeholders regarding three EB-5 applications—L.A. Films Regional Center, Las Vegas Regional Center, and Gulf Coast Funds Management Regional Center.

The OIG found that Director Mayorkas and the personnel of the USCIS recognized the risks to the EB-5 program if benefits were granted without transparency and were not adjudicated according to statute, regulations, and existing USCIS policy governing EB-5 matters.

The USCIS established processes to ensure all communications with stakeholders were properly documented and to ensure the process for deciding on petitions and applications closely followed statute, regulations, and established policy.

The Inspector General found a number of instances in which Director Mayorkas declined to become involved in certain matters, stating that he did not think it would be appropriate for the director to do so.

It is important to note that Alejandro N. Mayorkas has been in public service for nearly 17 years—12 of which as a Federal prosecutor in the U.S. Attorney's Office for the Central District of California, including almost 3 years as the United States Attorney.

Upon taking his position as director of USCIS he ordered a top-down review of the agency.

In Director Mayorkas words, the review found an agency "filled with dedicated public servants but one that faced significant challenges executing its mission."

The report identified the following challenges:

- (1) Prioritizing case processing time goals in tension with the critical needs of National security and program integrity;
- (2) Inconsistent adjudication policies and the inconsistent application of adjudication policies; and
- (3) A fundamental misalignment of the agency's organizational structure.

Director Mayorkas focused his efforts on addressing these challenges by making National security and fraud detection the primary goal of the agency.

To this end, Director Mayorkas established several directorates and offices which included:

- (1) Fraud Detection and National Security Directorate;
- (2) Service Center Operations Directorate;
- (3) Field Operations Directorate;
- (4) Office of Performance and Quality;
- (5) Management Directorate; and
- (6) Office of Public Engagement.

In 2010, the first full year that Director Mayorkas was in the position the USCIS received 1,953 applications; the agency approved 1,369, and denied 165.

In 2013, when he was confirmed as Deputy Secretary of Homeland Security, USCIS received 6,346 applications; approved 3,699; and 943 applications were denied.

I would offer to my colleagues that an act is not unlawful or improper just because it may be unusual.

As Members of this body we often act consistent with the vote recommendations of our respective leadership on matters that come before the House, but we are not bound by those recommendations.

We, as Members might usually vote as recommended because we agree with the positions recommended; but should we disagree it is neither appropriate nor reasonable to question the integrity of the Member who has done nothing more than exercised the ultimate authority that he or she alone possesses.

I thank today's witnesses and look forward to their testimony.

Thank you.

Chairman MCCAUL. I would like to introduce our panel today.

First, the Honorable John Roth assumed the post of Inspector General for the Department of Homeland Security in March of 2014. Previously, he served as director of the Office of Criminal Investigations at the Food and Drug Administration as an assistant U.S. attorney for the Eastern District of Michigan.

Second, we have Ms. Maria Odom, who was appointed as ombudsman of the Citizenship and Immigration Services in September 2012. Prior to her current position, she was executive director of the Catholic Legal Immigration Network and served in the Department of Justice.

I want to thank you all for being here today.

Chairman now recognizes Mr. Roth for his testimony.

**STATEMENT OF JOHN ROTH, INSPECTOR GENERAL, U.S.  
DEPARTMENT OF HOMELAND SECURITY**

Mr. ROTH. Thank you.

Chairman McCaul, Ranking Member Thompson, and Members of the committee, thank you for your invitation to testify today regarding our investigation into the complaints made against Alejandro Mayorkas regarding his management of the EB-5 program when he was director of USCIS. As you know, we recently issued a written report of the results of our investigation, and my testimony here today will summarize what we found.

As a result of our inquiry, we found that USCIS personnel, including Mr. Mayorkas, recognized the risks to the EB-5 program if benefits were granted without transparency and were not adjudicated according to statute, regulations, and existing policy. We found a number of instances in which Mr. Mayorkas declined to become involved in certain matters, stating that he did not think it would be appropriate for the director to do so.

In three matters pending before USCIS, however, Mr. Mayorkas communicated with stakeholders on substantive issues outside the normal adjudication process and intervened with career staff in ways that benefited those stakeholders. In each of these three instances, but for Mr. Mayorkas' intervention, the matter would have been decided differently.

Mr. Mayorkas told us that his sole motivation for such involvement was to strengthen the integrity of the program. He said he had no interest in whether a particular application was approved or denied.

Regardless of Mr. Mayorkas' motives, his intervention in these matters created significant resentment within USCIS. This resentment was not isolated to career staff within the EB-5 program, but extended to senior managers and attorneys responsible for the broader USCIS mission and programs.

The juxtaposition of Mr. Mayorkas' communication with outside stakeholders on specific matters outside the normal procedures, coupled with favorable action that deviated from the regulatory scheme that was designed to ensure fairness and evenhandedness, created an appearance among staff of favoritism and special access.

During the course of our work, we identified a significant number of DHS employees—more than 15—with varying levels of responsibility and authority, who each had direct contact with Mr. Mayorkas and were in a position to witness the events in question.

The number and variety of witnesses was, in our experience, highly unusual.

Each conveyed the same factual scenario: Certain applicants and stakeholders received preferential access to DHS leadership and preferential treatment in the manner in which their application or petition was handled.

USCIS personnel consistently made allegations about the same three matters, and the first instance involved the L.A. Films Regional Center. Mr. Mayorkas ordered that a USCIS decision to deny a proposal to fund a series of Sony movie projects in Los Angeles be reversed after he was in contact with politically prominent stakeholders associated with the venture.

Mr. Mayorkas later created a deference review board, staffed with individuals he hand-picked, to review a separate series of Time Warner movie projects. This board did not previously exist and was never used again after it voted to reverse the adjudicators' proposed denials. Remarkably, there is no record of the proceedings of this board.

The second instance involved the Las Vegas Regional Center. At the request of a U.S. Senator, Mr. Mayorkas intervened to allow expedited review of investor petitions involving the funding of a Las Vegas hotel and casino, notwithstanding the career staff's original decision not to do so.

The third instance we found involved the Gulf Coast Funds Management Regional Center. Mr. Mayorkas intervened in an administrative appeal related to the denial of a regional center's application to receive EB-5 funding to manufacture electric cars through investments in a company associated with politically prominent individuals. This intervention was unprecedented and, because of the political prominence of the individuals involved as well as USCIS' traditional deference to the administrative appeals process, the staff perceived that as politically motivated.

Mr. Mayorkas' actions in these matters created a perception within the EB-5 program that certain individuals have special access and would receive special consideration.

This concludes my testimony. I am happy to answer any questions the panel—the committee may have.

[The prepared statement of Mr. Roth follows:]

PREPARED STATEMENT OF JOHN ROTH

MARCH 26, 2015

Chairman McCaul, Ranking Member Thompson, and Members of the Committee, thank you for your invitation to testify today regarding our investigation into the complaints made against Alejandro Mayorkas regarding his management of the Employment-Based Fifth Preference (EB-5) program when he was director of U.S. Citizen and Immigration Services (USCIS). As you know, we recently issued a written report of the results of our investigation, and my testimony here today will summarize what we found.

We undertook this investigation after receiving allegations from career USCIS employees that Alejandro Mayorkas, then-director of USCIS and current deputy secretary of the Department of Homeland Security, was exerting improper influence in the normal processing and adjudication of applications and petitions in a program administered by USCIS. Specifically, we were told that Mr. Mayorkas was in contact, outside the normal adjudication process, with specific applicants and other stakeholders in the EB-5 program, which gives residency preference to aliens who agree to invest in the U.S. economy to create jobs for U.S. citizens. We were also



told he was exerting influence to give these individuals preference and access not available to others.

The scope of our investigation was to determine whether Mr. Mayorkas engaged in conduct that would lead a reasonable person to believe that specific individuals or groups were given special access or consideration in the EB-5 program.

#### WHAT WE FOUND

As a result of our inquiry, we found:

- USCIS personnel, including Mr. Mayorkas, recognized the risks to the EB-5 program if benefits were granted without transparency and were not adjudicated according to statute, regulations, and existing USCIS policy governing EB-5 matters. USCIS therefore took pains to ensure all communications with stakeholders were properly documented and to ensure the process for deciding on petitions and applications closely followed statute, regulations, and established policy. Indeed, USCIS was obligated by law to follow the procedures set forth in the regulations. We found a number of instances in which Mr. Mayorkas declined to become involved in certain matters, stating that he did not think it would be appropriate for the director to do so.
- In three matters pending before USCIS, however, Mr. Mayorkas communicated with stakeholders on substantive issues, outside of the normal adjudicatory process, and intervened with the career USCIS staff in ways that benefited the stakeholders. In each of these three instances, but for Mr. Mayorkas' intervention, the matter would have been decided differently.
- We were unable to determine Mr. Mayorkas' motives for his actions. In each instance he remembered, Mr. Mayorkas asserted that he intervened to improve the EB-5 process or to prevent error. As a result, he claimed that he took a hands-on approach when a case warranted his personal involvement. Mr. Mayorkas told us that his sole motivation for such involvement was to strengthen the integrity of the program; he said he had no interest in whether a particular application or petition was approved.
- Regardless of Mr. Mayorkas' motives, his intervention in these matters created significant resentment in USCIS. This resentment was not isolated to career staff adjudicating within the EB-5 program, but extended to senior managers and attorneys responsible for the broader USCIS mission and programs.
- The juxtaposition of Mr. Mayorkas' communication with outside stakeholders on specific matters outside the normal procedures, coupled with favorable action that deviated from the regulatory scheme designed to ensure fairness and evenhandedness in adjudicating benefits, created an appearance of favoritism and special access.

#### OUR WITNESSES

During the course of our work, we identified a significant number of DHS employees—more than 15—with varying levels of responsibility and authority, including some very senior managers at USCIS and USCIS' Office of the Chief Counsel (OCC), who each had direct contact with Mr. Mayorkas and were in a position to witness the events. Each conveyed the same factual scenario: Certain applicants and stakeholders received preferential access to DHS leadership and preferential treatment in either the handling of their application or petition or regarding the merits of the application or petition. Other employees with whom we spoke did not have direct contact with Mr. Mayorkas, but witnessed significant deviations from the normal process for certain applicants. Many witnesses provided emails, written contemporaneously with the events, to support their allegations of special access and treatment.

The number and variety of witnesses is highly unusual. It is also quite unusual that a significant percentage of the witnesses we interviewed would talk to us only after being assured that their identities would remain confidential. Being a whistleblower is seen to be hazardous in the Federal Government, and a typical investigation would have 1 or perhaps 2. That so many individuals were willing to step forward and tell us what happened is evidence of deep resentment about Mr. Mayorkas' actions related to the EB-5 program. These employees worked in both USCIS headquarters and the California Service Center. Headquarters staff worked in Service Center Operations (the unit that supervised the California Service Center), the Administrative Appeals Office, the EB-5 program office, in USCIS leadership offices, and in OCC. The employees include current and retired career and non-career members of the Senior Executive Service, attorneys, all levels of supervisors, immigration officers, and those involved in fraud detection and National security.

We will protect the confidentiality of these courageous employees, who are protected from retaliation by the Whistleblower Protection Act and whose identities are

protected under the provisions of the Inspector General Act. We hope that their actions will set an example for all potential whistleblowers that look to the Office of Inspector General to give them a voice.

#### THREE EXAMPLES

USCIS personnel consistently made allegations about the same three matters. In each instance, Mr. Mayorkas was in contact with individuals perceived by career USCIS employees to be politically powerful and intervened in the adjudicative process in unprecedented ways to the stakeholders' benefit. We describe these three instances in more detail in the body of this report. To help understand the facts, we have also included time lines for two of these matters in appendixes.

- *L.A. Films Regional Center.*—Mr. Mayorkas ordered that a USCIS decision to deny a proposal to fund a series of Sony movie projects in Los Angeles be reversed after he was in contact with politically prominent stakeholders associated with the venture. Mr. Mayorkas later created a “deference review board,” staffed with individuals he hand-picked, to review a separate series of Time Warner movie projects. This board did not previously exist and was never used again after it voted to reverse the adjudicators' proposed denials. Remarkably, there is no record of the proceedings of this board.
- *Las Vegas Regional Center.*—At the request of a U.S. Senator, Mr. Mayorkas intervened to allow expedited review of investor petitions involved in funding a Las Vegas hotel and casino, notwithstanding the career staff's original decision not to do so. The career staff noted that the purported urgency was of the applicant's own making and that the decision to expedite fell outside EB-5 program guidelines. Nevertheless, Mr. Mayorkas pressured staff to expedite the review. He also took the extraordinary step of requiring staff to brief Senator Reid's staff on a weekly basis for several months.
- *Gulf Coast Funds Management Regional Center.*—Mr. Mayorkas intervened in an administrative appeal related to the denial of a regional center's application to receive EB-5 funding to manufacture electric cars through investments in a company in which Terry McAuliffe was the board chairman. This intervention was unprecedented and, because of the political prominence of the individuals involved as well as USCIS' traditional deference to its administrative appeals process, staff perceived it as politically motivated.

Mr. Mayorkas' actions in these matters created a perception within the EB-5 program that certain individuals had special access and would receive special consideration.

This concludes my testimony, I am happy to answer any questions you may have.

Chairman MCCAUL. Thank the witness.

Chairman now recognizes Ms. Odom for her testimony.

#### **STATEMENT OF MARIA M. ODOM, OMBUDSMAN, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. ODOM. Mr. Chairman, Ranking Member Thompson, and Members of the committee, thank you for the opportunity to testify today.

I have the privilege of serving as the Citizenship and Immigration Services ombudsman, an independent headquarters office in the Department of Homeland Security. I also serve as chair of the Department's Blue Campaign, our unified effort to combat human trafficking.

I would like to take this opportunity to thank many of you who are actively working in addressing the important issue of human trafficking.

The ombudsman's statutory mission under the Homeland Security Act is to assist individuals and employers with problems with U.S. Citizenship and Immigration Services. We do this in two ways: We provide case assistance to applicants who are navigating their way through the legal immigration process, and we review systemic issues and make recommendations to USCIS.

In establishing our office, Congress recognized that from time to time immigration cases are not properly handled, and thus the need for an office that serves the public and seeks to resolve problems. But this is first and foremost USCIS' responsibility. We are an office of last resort for those who have been unable to resolve their case problems directly with the agency.

It is important to note that our casework informs our policy work, and the same is very true for USCIS. Issues revealed in individual cases aided the agency to develop or revisit broad matters of policy and practice.

Cases, each one representing an individual, a family, an employer, are the lifeblood of our immigration system. In 2015 we are on pace at our office to receive and work to resolve over 7,300 cases.

The EB-5 Immigrant Investor program, created by Congress in 1990, as many of you know, stimulates the U.S. economy through job creation and capital investment by foreign investors. Applicants must invest at least \$500,000 in an American business that will create or work to preserve at least 10 domestic jobs and comply with a host of other requirements.

The EB-5 program has presented, however, USCIS with significant challenges over the years due to many variables, including the complexity of projects and the financial arrangements with investors. My office, prior to my arrival in 2012 and during my tenure, has worked to resolve requests for case assistance from EB-5 regional centers and prospective investors as well as on systemic issues, including lengthy processing time, gaps in policy, lack of deference to prior USCIS decisions, and lack of communications with USCIS' EB-5 customers.

In March 2009 our office issued four more recommendations on the EB-5 program, some of which were reiterated in the Inspector General's 2013 EB-5 report. Additionally, we have written about issues in the EB-5 program in each of the ombudsman's office's last five annual reports to Congress. We continue to work to resolve individual case inquiries made to our office.

When Mr. Mayorkas came to USCIS, the EB-5 program was seriously deficient in numerous ways. Under his leadership, USCIS finally issued much-needed guidance, hired new adjudicators and economists to improve their capacity to resolve these complex cases, dedicated National security officers to the EB-5 program, and finally, restarted stakeholder engagement on these important issues.

During his tenure at USCIS, I found the director to be knowledgeable and to be a very involved leader. Under his leadership, public engagement became fundamental to the way USCIS conducts its work and develops new policy and initiatives. This was and still—and is still good for the agency and for the public.

Mr. Mayorkas also focused on improving customer service and the quality of USCIS' adjudications. At the head of an adjudicatory agency, I find that his responsibility in reviewing these cases fell squarely with his job as the director of this agency. Part of his job was to decide whether cases were decided correctly and whether errors occurred.

As we experience in the ombudsman's office, problem cases are brought to our attention by a variety of sources, including Members of Congress on both sides of the aisle. While some cases, like those in the EB-5 program, involve financially powerful interests, others involve the most vulnerable immigrants in our community. In fact, I have seen Director Mayorkas' direct engagement with a wide range of stakeholders, including those serving victims of crimes of violence and human trafficking.

In my experience working with Mr. Mayorkas, though we did not always agree, I always found his approach to be thoughtful and grounded on fact and the law. His engagement as well as our engagement with EB-5 stakeholders was responsive in great part to the rising number of desperate pleas by frustrated investors, regional center representatives, elected officials, and other individuals involved in these often large-scale, high-impact projects facing lengthy processing delays.

Though the Immigrant Investor program is still not without challenges, I believe the new office has shown signs of being a more transparent and rejuvenated investment and job creation program with a great focus on customer service and also integrity. While adjudication delays continue in the product line of the—in the EB-5 product line, the number of requests that we are seeing in our office for intervention on EB-5 cases has gone down dramatically in the last 2 years.

I thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

Chairman MCCAUL. Thank you, Ms. Odom.

The Chairman now recognizes himself for questions.

Let me first say that we are very fortunate on this committee to have former Federal prosecutors—Mr. Katko, Mr. Ratcliffe, Kathleen Rice. I am not interested in being sensational. I have no interest in inflammatory remarks.

I am simply interested in getting to the truth. I am interested in the facts and in the evidence, and that is the way I conducted myself when I was a Federal prosecutor in the public integrity section in Washington.

But I want to begin with you, Mr. Inspector General. Now, I want to talk to you about the findings in your report, and I think it is important that Mr. Mayorkas be able to respond to these, as well.

But I am deeply concerned, and I want to go case by case. In the L.A. Films case: In your opinion, sir, did Mr. Mayorkas provide special access and favoritism to former Pennsylvania Governor and chair of the Democratic National Committee, Ed Rendell, by intervening in this case?

Mr. ROTH. What we found, Congressman, is that we had received a number of complaints about the L.A. Films case and Mr. Mayorkas' approach to it. What we found, as you can see on page 17 of our report, is that the senior EB-5 officials were poised to deny the L.A. Films Sony proposal. Mr. Mayorkas had been informed of that in July 2011.

What we found was that there was a telephone call on July 15 from Mr. Mayorkas, or between Mr. Mayorkas and former Governor Rendell. Almost immediately after that, within an hour of

that phone call, Mr. Mayorkas directed his staff to reverse the denials that had been issued and stop issuing denials.

We are unable to understand what other intervening events would have occurred between the time he knew of and at least tacitly approved of the denials in that case other than the phone call with Mr. Rendell.

Chairman MCCAUL. I believe on page 3 of your report you said Mr. Mayorkas gave special access and treatment to certain individuals and parties. Is that correct?

Mr. ROTH. That is correct.

Chairman MCCAUL. According to your report, you said but for Mr. Mayorkas' actions, the career staff would have decided this case differently. Is that correct?

Mr. ROTH. That is correct. There were two different adjudications in the L.A. Films case. One involved Sony and one involved Time Warner, each of which were headed towards denials. After the intervention, that is the communication between Mr. Mayorkas and Mr. Rendell, those decisions were changed in different ways.

Chairman MCCAUL. You know, Mr. Mayorkas had a policy that he sent to all of his employees in this memo. In your opinion, sir, based on your investigation, did Mr. Mayorkas—did his actions violate the USCIS policy on preferential treatment?

Mr. ROTH. As we note in page 13 of our report, he did issue this memo. One of the memos said you should not meet with certain stakeholders at the exclusion of others, and also that the appearance of that kind of thing is highly damaging to USCIS.

In our judgment, we believe that these contacts between Mr. Rendell and Mr. Mayorkas violated that. There was a second policy that was issued within USCIS that said that any communications between stakeholders on matters that were to be adjudicated within USCIS had to be recorded within official agency files. Because we found no record of the communication between Mr. Mayorkas and Mr. Rendell, we believe that that policy was not followed.

Chairman MCCAUL. In the Las Vegas hotel case, in your opinion, sir, did Mr. Mayorkas take extraordinary actions regarding Senator Harry Reid's request to expedite this case?

Mr. ROTH. We found in that case that there were several highly unusual things that occurred as a result of the intervention, one of which was the sort-of moving ahead, expediting the decision, which basically means that you cut in front of the line to be able to get your thing adjudicated. So we found that unusual because that had rarely been done.

There had been a policy, although no one knew what the policy was. Many of the staff objected to sort-of the ad hoc nature of this kind of a decision because they believed that it would create suspicion or an appearance that someone was getting special favoritism.

Chairman MCCAUL. Did the USCIS career staff believe that this would set a precedent for expediting future cases?

Mr. ROTH. One of their concerns was that the reason that they wanted to expedite it—SLS wanted to expedite the processing was because they had not arranged their investors in a timely fashion and they were going to lose their financing if they didn't get this

approved. It was really on SLS to have done that before they applied.

So that case was within normal processing times. The staff did not see any reason why they should get special treatment. They also worried because the EB-5 sort-of pool of individuals who were skilled at getting these done was very small, that people would figure out that this is a way to game the system.

As it turns out, after SLS had received this expedite, other regional centers did complain about the fact that SLS was able to get expedited treatment.

Chairman MCCAUL. Then finally, again, did Mr. Mayorkas' actions go against his own policy on preferential treatment?

Mr. ROTH. We believe that there was the appearance that there was favoritism as a result of this action, yes.

Chairman MCCAUL. In the Gulf Coast case, sir, did Mr. Mayorkas provide special access and favoritism to current Virginia Governor and former chair of the Democratic National Committee, Terry McAuliffe, by intervening in this case?

Mr. ROTH. What we found in that case, Congressman, is that there was an appeal of a denial of the Gulf Coast application for the EB-5 program. Mr. Mayorkas intervened in a way that he had never done before by asking to see the draft opinion, by commenting on the draft opinion, and having influence into how that draft opinion ultimately was decided.

In our judgment, that created—and this occurred after a number of contacts between counsel for Gulf Coast and Mr. Mayorkas directly—in our opinion, that created an appearance of special access.

Chairman MCCAUL. It has been reported that the Gulf Coast EB-5 case involved visa applications for Chinese investors to manufacture electric cars. What was Hillary Clinton's brother, Anthony Rodham's, role in this specific case?

Mr. ROTH. Mr. Rodham was an officer within the Gulf Coast Regional Center.

Chairman MCCAUL. Sir, did—in your opinion, did USCIS career staff perceive that Mr. Mayorkas' actions were politically motivated?

Mr. ROTH. Yes. The career staff perceived that there was a political component to Mr. Mayorkas' intervention in this.

Chairman MCCAUL. According to your report, but for Mr. Mayorkas' actions, the career staff would have decided this case differently. Is that correct?

Mr. ROTH. That is correct. As I indicated, there had been a draft decision that would have denied specific applications on specific bases. Mr. Mayorkas' intervention resulted in that draft decision being modified substantially, and though—although it was ultimately denied, it was denied on different grounds that left the door open for a subsequent application, which was, in fact, approved.

Chairman MCCAUL. Then finally, did—again, did this go against the policy of USCIS?

Mr. ROTH. The policy against creating an appearance of special access and favoritism, yes.

Chairman MCCAUL. Based on your investigation, did the DHS whistleblowers believe that Mr. Mayorkas' actions favored the politically connected and his decisions were politically motivated?

Mr. ROTH. Yes.

Chairman MCCAUL. Finally, did former Secretary Napolitano's office—specifically her chief of staff—play a role in directing Deputy Secretary Mayorkas to get involved in these individual EB-5 cases?

Mr. ROTH. As we set forth in the report, there was a number of communications between some of these investors and either the chief of staff for the Secretary or an individual who was the assistant secretary for commercial affairs, who then sort-of intervened with Mr. Mayorkas.

Chairman MCCAUL. My time has expired. I have been informed that we have a vote on the floor with about 4 minutes left. We will adjourn and reconvene after the vote.

[Recess.]

Chairman MCCAUL. The Committee on Homeland Security is reconvening.

The Chairman now recognizes the Ranking Member.

Mr. THOMPSON. Thank you, Mr. Chairman.

Inspector General Roth, did Secretary Mayorkas cause any decision to be made in your report that is not in accordance with the law?

Mr. ROTH. We did not make that conclusion one way or the other. We had evidence that the staff who was responsible for executing the EB-5 program certainly thought that some of those decisions were incorrect.

Mr. THOMPSON. Well, you say the staff thought, but you have issued a report, and I am saying is there anything in the report that would lead you to believe that Mr. Mayorkas did something wrong?

Mr. ROTH. With regard to the actual substance of the decisions, or on an ethical basis?

Mr. THOMPSON. Well, did he break the law?

Mr. ROTH. We looked at a couple things, whether or not he violated USCIS policy that he established, and we concluded that he had. We also looked at the Standards of Ethical Conducts for Employees of the Executive Branch, which governs all sort of Executive employees. One of the issues is—or one of the commands is that employees shall act impartially and not give preferential treatment to a private organization or individual.

Mr. THOMPSON. I understand the policy and all that, but, you know, this man has a substantial career, and one that I think should go and give him a little more deference to whether he did something right or wrong. I am a little concerned that you issued a negative report, but when I asked you did he break the law or do anything wrong, you can't say just, "Yes, he broke the law."

Mr. ROTH. He violated an ethical canon, Congressman, which was creating a—he needed to avoid any actions creating the appearance that he was violating an ethical standard. Whether the particular circumstances creating that appearance have been violated shall be determined from the perspective of a reasonable person with knowledge of all the relevant facts.

So what we concluded here, Congressman, is that we are unable to determine Mr. Mayorkas' motive for intervening in the way he did, but the manner in which he did—

Mr. THOMPSON. Excuse me. You know, how in the world are you going to determine motive if you are going to be objective?

That is all right, sir. I mean, I am a little concerned that you went a long way to say that he didn't do anything wrong. If he did, I want to know.

I think every Member of this committee would want to know if he did something wrong or if he did something that wasn't in accordance to the law—not policy, the law.

You know, all of us are Members of Congress, and we contact agencies on behalf of our constituents all the time. It is just part of what we do. So I see you described how various Democratic public officials contacted USCIS. Are you aware of any Republican officials who contacted USCIS on any of these projects?

Mr. ROTH. No. Certainly not—we did not receive any complaints from employees with regard to special access or other extraordinary measures that were taken—

Mr. THOMPSON. So in your review—

Mr. ROTH [continuing]. Those projects.

Mr. THOMPSON [continuing]. You saw no communication from any Republican Member of Congress or any Republican elected official or official of the Republican Party?

Mr. ROTH. No. That is not what I am saying, Congressman. What I am saying—

Mr. THOMPSON. Well, that is what I am saying. I am saying if you found that, did you put it in your report?

Mr. ROTH. The CIS program is enormous. It has got 19,000 employees. It makes 5 million—has 5 million petitions before it every year.

What we did in our investigation was take a look at the complaints that we were receiving from employees with regard to special access and then determine whether or not those complaints had any merit to them. That was the extent of our investigation.

Mr. THOMPSON. I understand.

Mr. ROTH. We did not review the program in its entirety.

Mr. THOMPSON. Well, I am not asking you to review the program. But in your review, I would think if you had run across a Senator's letter or a Representative's letter on these particular projects, you would have included them in your report.

Mr. ROTH. As I said, again, what we did was investigate the complaints we had received from the whistleblowers to determine whether they had merit. In the course of that, basically every allegation that we found we tried to run to ground.

I don't have any recollection of an allegation of impropriety or special access other than these three.

Mr. THOMPSON. Mr. Roth, I am not asking about allegations. I am saying as you looked into the whistleblower complaints, did you come across any communication from a Republican Senator, a Republican elected official, or an official of the Republican or Democratic Party that you didn't include in your report?

Mr. ROTH. I mean, there were thousands of routine contacts between Members of Congress. But as I sit here today I could not tell you specifically what—

Mr. THOMPSON. Well, I understand. But you have come down and you have listed certain Democrats, and I am just saying from a fac-



tual standpoint and objectivity, the perception, based on this report, is only Democrats advocate for this program.

I want you to say whether or not you came across any information on the program—this Gulf Coast project, whether there were any Republican officials involved in advocating for this project. I think you know there are.

Mr. ROTH. Right. I can guarantee there were thousands of Congressional contacts on the EB.

Mr. THOMPSON. I am not looking for 1,000. I am just looking on this particular project—

Mr. ROTH. Right.

Mr. THOMPSON [continuing]. That you talked about.

Mr. ROTH. Sure.

Mr. THOMPSON. I don't want to become argumentative, but I think if your report is going to really have credence and not impugn the integrity of Mr. Mayorkas, when I ask you a question, all you have to do is say, "Look, in our review we saw letters from Senators, we saw e-mails from Representatives," and that is all you have to say.

I would hope that in your review you did see that. But if your reports say, "We only saw Democrats and I stand on that," then I would say your report is incomplete.

Thank you. I yield back.

Chairman MCCAUL. Chairman now recognizes Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. Appreciate that today.

Thank you guys for coming out today. We are glad to have you in this situation for sharing what you found and what you have seen.

One of the things I want to go back to is on Deputy Secretary Mayorkas, specifically the involvement EB-5 applications that were concluded his interventions on technical adjudicative matters were corrosive and destabilizing in nature. I believe that was the "corrosive and destabilizing."

During the investigation, did any USCIS employees indicate that any other director ever had such involvement in cases?

Mr. ROTH. What we found, for example, in the Gulf Coast matter, when we talked to the individuals in the administrative appeals office, that office is charged by regulation with deciding whether the original adjudication was correct and in compliance with the law or not. Historically, there has been a deference to the administrative appeals office. We asked the specific question whether Mr. Mayorkas before the Gulf Coast, or any other director, had ever sort-of asked to see an review and weigh in on an appeal decision, and the answer was no.

Mr. WALKER. Were you privy to any other discussions as far as now-Governor Terry McAuliffe, who is the current Governor of Virginia—were there any other discussions that you were informed of or knew about with the Gulf Coast situation?

Mr. ROTH. What we found was there was one face-to-face meeting between Mr. Mayorkas and Mr. McAuliffe, and then there were several telephone calls. We attempted, in determining exactly the extent of the calls, to put them in the appendix so there was a time line with every contact we were able to find between any of the individuals involved in these regional centers and Mr. Mayorkas.

Mr. WALKER. Deputy Secretary Mayorkas—did he acknowledge that he had this discussion? Did he share the—I guess the basic content of his conversation?

Mr. ROTH. Mr. Mayorkas' statement was that he was ordered by the Secretary to go and meet with Mr. McAuliffe. He consulted with counsel before he did so. Counsel said that in a perfect world it would be good not to do this, but understood the circumstances and advised Mr. Mayorkas to be in listen-only mode. Mr. Mayorkas then met with Mr. McAuliffe. He came back. He wrote an e-mail essentially contemporaneously with the meeting, said he was in listen-only mode and made no promises. When we interviewed Mr. Mayorkas he was consistent in that statement.

Mr. WALKER. So he has said basically that he basically didn't have any input in it, it was listen-only. That is on record?

Mr. ROTH. That is correct.

Mr. WALKER. Okay. Is there any other time that we can go back from a chronological standpoint to find out any place where he did have input?

Let me ask another question to follow up on that that can expound a little bit more. His posture—has he been willing to share and talk through some of this or have you had to come in from different ways to get some of the information? I would like to know his relationship to you and how forthright he has been in some of this discussion.

Mr. ROTH. We interviewed Mr. Mayorkas as we would in any sort of normal case like this. It was an extended interview with two of our agents that lasted about a day. He was completely forthcoming.

We gave him the opportunity to make a written statement. He had a lengthy written statement, which is attached as our appendix.

In the course of our investigation, of course, we tried to do an e-mail poll of Mr. Mayorkas' Government e-mail accounts. What we found there was, although through no fault of Mr. Mayorkas, that the e-mail records within DHS are less than complete, so we aren't confident that we have every contact or every record regarding this.

But I would say that he was cooperative with our investigation.

Mr. WALKER. In this particular agency, and as your experience here in the District of Columbia, when it comes to whistleblowers is this an abnormal amount that you have seen when it comes to this agency compared to other ones?

Mr. ROTH. This is. I mean, typically in a case we might have one or two or even three different whistleblowers. Many times you can sort of suss out what those individuals' motives are because perhaps they were demoted or some other sort of personal issue that happens. Not in every case, but certainly that is something that we look at.

What was unusual in this case was sort-of both the breadth of the whistleblowers—so we had individuals within the California service center who had personal dealings with Mr. Mayorkas, the headquarters unit that sort-of supervised the California service center, the EB-5 program office, office of counsel, and even in the leadership office within USCIS we found individuals.

Mr. WALKER. Thank you, Mr. Roth.

Mr. Chairman, I yield back.

Chairman MCCAUL. Chairman now recognizes Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you very much, Mr. Chairman. Thank you both for being here today.

I would like to speak to you first, Mr. Roth, regarding your report. On page 1 of the report you write: In each of these three instances that we have been discussing today, but for Mr. Mayorkas' intervention, the matter would have been decided differently.

But that doesn't necessarily mean the ultimate resolution of the case was decided wrongly. Indeed, your report explicitly states that all the key decisions made by Mr. Mayorkas were legitimately within his purview. You took no position as to the wisdom of any of these decisions—these actions.

Would you agree that it is reasonable for the agency leadership to take action when necessary to ensure fair and consistent administration of a program?

Mr. ROTH. Absolutely. That is well within the director's prerogative to do so.

To clarify what we said in the report was that it was within his prerogative to make these large, policy-based decisions as to the direction of the agency. The reason that we said that was to ensure—and this is certainly a question that we asked ourselves, was this a mere disagreement as to the direction of the USCIS and the EB-5 program? If there was a resentment with regard to that, of course that is entirely Mr. Mayorkas' call.

But what we did find was with regard to the specific decisions that we are talking about here, there was significant resentment and significant disagreement within USCIS as to the ultimate decision.

Mrs. WATSON COLEMAN. That is why there is a chain of command and why certain decision levels are vested in certain positions as opposed to lower-ranking individuals. I mean, so, I mean, that can be a given. That can be a finding that there was, indeed, resentment.

But there doesn't seem to be any finding of anything else that gives us particular pause here, because referring to these EB-5 cases that are the focus of your report, again on page 1 you write, "In each of these instances, but for Mayorkas' intervention, the matter would have been decided differently." However, I can't find further support for this assertion elsewhere in the report.

In fact, the only other time that I see that this is spoken to about this issue is on page 3 where it says only that according to the employees who complained to you, but for Mayorkas' action the career staff would have decided these matters differently. That is a very different assertion.

In the first instance you write that but for his actions the case would in fact have been decided differently, but later you write only that certain employees believed that but for his actions the cases would have been decided differently. Is it fair to say that the report concluded that certain employees believed Mr. Mayorkas' involvement in these three cases changed the outcome of the cases but that the report, in fact, did not conclude or establish that Mr. Mayorkas' involvement in fact changed the outcome of the cases?

Mr. ROTH. What we found in each of these three instances—and this was not simply us talking to individuals, but we found documented evidence with regard to that. So, for example, in—

Mrs. WATSON COLEMAN. With regard to what?

Mr. ROTH. With regard to the fact that the staff was going in a certain direction. So, for example, in the L.A. Films case, there were denials—draft denials already there. Mr. Mayorkas, in fact, had approved those draft denials, and then there was a call between Mr. Mayorkas and Mr. Rendell, and then Mr. Mayorkas ordered the reversal of that. So that is in the L.A. Films case.

Mrs. WATSON COLEMAN. Well, that in and of itself may not mean anything more than additional information upon which to make a decision was being offered at that time. That doesn't suggest that anything illegitimate took place.

Mr. ROTH. We asked Mr. Mayorkas about his contact with Mr. Rendell. He has no recollection of that. He asserts that Mr. Rendell's contact had nothing to do with his decision to reverse it, but he could not articulate the basis by which he decided to have those cases reversed.

Mrs. WATSON COLEMAN. But do you have proof that there was indeed contact directly between Mr. Mayorkas and Mr. Rendell?

Mr. ROTH. Yes.

Mrs. WATSON COLEMAN. What is that?

Mr. ROTH. Telephone records and a calendar appointment.

Mrs. WATSON COLEMAN. Mr. Mayorkas' calendar?

Mr. ROTH. Correct.

Mrs. WATSON COLEMAN. Well, first of all, what—I believe that Ms. Odom made some references—and correct me if I am wrong—that during this time that Mr. Mayorkas was in charge of the division that it had some administrative and organizational deficiencies and that he was sort of hands-on in trying to get some consistency and organization to this organization. This is part of a department that seems to be under fire all the time for its leadership and for the fact that it became a department of various divisions that had no relationship before and that there might already be this morale situation and resentment that existed.

So would it be unusual for someone at that juncture in their operation to sort-of be more hands-on in cases that—in some cases versus other cases? Is there any reason to believe that there is anything other than that with regard to Mr. Mayorkas?

Ms. Odom.

Ms. ODOM. Thank you, Congresswoman. Thank you for your question.

We have to go back to what was happening with the EB-5 program in 2011, 2012, 2013—a program that was suffering from a lot of problems, including inconsistencies in the quality of these complex adjudications; problems in long delays, many of which were caused by lengthy National security checks and other background checks which were necessary, as well as gaps in policy that created a host of problems for a program that, one, is complex, has to deal with large projects and large investments, as you have heard.

This was a priority for the director. He was working to revamp, to reform this program. There was active engagement with stakeholders not just pertaining to these three cases.

Our office, our ombudsman's office, saw a rise in the number of inquiries to our office, a need for increased engagement. In fact, we hosted a stakeholder engagement in March 2013 to go through some of the problems that were being reported.

All of that coupled by a dysfunctional e-mail system that was created to answer inquiries regarding the EB-5 program. At the point I assumed office in 2012, even the ombudsman's office was experiencing challenges in receiving responses through the EB-5 e-mail system. So if that was the process that was set up to address stakeholder concerns and specific case inquiries, it was very broken.

Coupled with other issues that the director tried to address through the new policy guidance that he issued in 2013, and finally, a very severe backlog with the administrative appeals office that is the internal appellate body within USCIS, that caused great frustration among the stakeholders in the EB-5 area.

Mrs. WATSON COLEMAN. Thank you.

If I might, one last question? One eeny-weeny-teeny-dweeny little bit question? This is for the Inspector General.

Beyond the three complaints that were alleged by the 15 employees, have you done any other investigations of applications and the processes that have been used, and have you found any irregularities that you needed to bring to our attention in conjunction with our hearing?

Thank you.

Thank you, Mr. Chairman.

Chairman MCCAUL. Chairman now recognizes Mr. Katko.

Mrs. WATSON COLEMAN. Pretty please answer the question?

Chairman MCCAUL. Oh, I apologize.

Yes, please answer the question.

Mr. ROTH. In the 3 years that we looked at, there were approximately 700 different applications to regional centers, so what our investigation did was functionally pull all the e-mails related to the EB-5 program. The e-mails that we found largely centered on these three cases. Where we found other e-mails, we tried to chase them down and see if there were any irregularities; we did not find any irregularities that would give us any pause.

Mrs. WATSON COLEMAN. Thank you very much.

Thank you, Mr. Chairman.

Chairman MCCAUL. Chairman now recognizes Mr. Katko.

Mr. KATKO. Thank you, Mr. Chairman.

At the outset I want to note, Mr. Roth, I have been working with you on my Transportation Security Subcommittee, and I have been very appreciative of your command of the facts and the thoroughness with which you do your reports, so thank you very much.

Ms. Odom, it is nice to meet you, as well.

Ms. Odom, just a quick question—and I am sorry, I have been in and out, so in case I missed it—are you familiar with the general facts of the Inspector General's report?

Ms. ODOM. I had the opportunity to read it when it was released.

Mr. KATKO. Are there any facts in that report that he raises that give you pause for concern about Mr. Mayorkas' conduct?

Ms. ODOM. Of course, I am reading the report in the context of the—how the audit was framed. I was not part of, you know, select-

ing the witnesses that came forward and that spoke to the Inspector General.

I think that what I read in the report was consistent with what was happening in the stakeholder community in the EB-5 program around the years in question, and I also—what I read is also consistent with the management style that I saw from Director Mayorkas when we worked together to resolve problems at USCIS.

Mr. KATKO. So your answer is that you don't have any pause for concern about Mr. Mayorkas' conduct, assuming the facts, as stated in the report, are true?

Ms. ODOM. I can't comment on whether or not the report that Inspector General Roth issued is reasonable or whether it contains facts that are true or not, but I can conclude that it was consistent with our—the department's engagement in the EB-5 area.

What I saw was someone who was actively involved in reforming and transforming the EB-5 program, something we have reported on in our annual report—issues as well as progress. In the way he handled those inquiries, which were coming from many different directions, not just in the EB-5 program, but stakeholders have taken every opportunity to reach out to leadership at DHS pertaining to a host of immigration issues.

Mr. KATKO. Yes or no, did you have any problems with any of the—anything stated in the report regarding Mr. Mayorkas' conduct?

Ms. ODOM. I do not have any problems that I can highlight to you today.

Mr. KATKO. Okay. Thank you.

Now, Mr. Roth, a question for you if I may, sir. I want to kind of set up a time line if I can. Could you tell me the conduct that you have raised in this report—could you tell me when the first act was and when the last act was?

Mr. ROTH. Sure. The first act, I think, is in approximately July 2011, and then the last act would be sometime late spring 2013. To be precise on this, we have a time line of all the contacts that we were able to discover, and if you excuse my fumbling I will find it.

So Gulf Coast filed its first application in July 2008, but really the thing didn't get started until about July 2010, and then there are contacts starting in July 2010. With regard to L.A. Films, the original application was in 2008, but again, things did not truly start to heat up until September 2010 and then into 2011.

Mr. KATKO. Okay. So basically the general time frame of the alleged allegations—I mean, of the facts you point to for Mr. Mayorkas is July 2011 to late spring of 2013.

Mr. ROTH. That is correct.

Mr. KATKO. Okay. When did you start your investigation?

Mr. ROTH. I know that we received complaints about this but did not truly start the investigation. I am going to have to get back to you on the specific date on which we started the investigation.

Mr. KATKO. A general—

Mr. ROTH. Say again?

Mr. KATKO. General start date, approximate—

Mr. ROTH. It would have been in, obviously, 2013. But again, I apologize for not having that exact date.

Mr. KATKO. It is all right. Now, the next question I have for you is do you know when Mr. Mayorkas was nominated to his current position at DHS?

Mr. ROTH. I do not.

Mr. KATKO. Okay.

Do you know, Ms. Odom?

Ms. ODOM. It was either June or July 2013, if I recall correctly.

Mr. KATKO. Okay. So June or July 2013. So the alleged conduct here took place until late spring 2013, and shortly thereafter Mr. Mayorkas was nominated for DHS.

Ms. ODOM. It was in the summer, yes, Congressman.

Mr. KATKO. Okay. Do you know when he—do you know who was behind that nomination, who made the nomination?

Ms. ODOM. No, sir.

Mr. KATKO. Okay. Do you know when the hearings took place regarding his nomination?

Ms. ODOM. It was right around the same time, sir. If I recall correctly, it would have been right close to the time that he was nominated.

Mr. KATKO. So I believe there was one in July 2013, and I believe the second hearing was in December 2013. Is that your general recollection?

Ms. ODOM. That is about right.

Mr. KATKO. Okay. He was confirmed soon thereafter.

Okay. Now, Ms. Odom, you are familiar with the structure at Homeland Security, correct?

Ms. ODOM. Correct.

Mr. KATKO. All right. Is it fair to say that going from the position Mr. Mayorkas had with your office to the No. 2 position at DHS was an ascension, if you will? It was a bigger job?

Ms. ODOM. Well, certainly a promotion. I do not work for USCIS, but I—it is definitely a position of higher rank in the Department.

Mr. KATKO. Okay. Thank you.

I yield my time.

Chairman MCCAUL. Chairman now recognizes Miss Rice.

Miss RICE. Thank you, Mr. Chairman.

So, Mr. Roth, I just want to go through the specifics of how the decisions would have been—how they were changed and how outside the normal—I mean, out of all of the cases that you have looked at were there ever decisions that were changed with or without the involvement of someone at Mr. Mayorkas' level?

Mr. ROTH. What we found, for example—and I will start with the L.A. Films Three, which was the Sony project. What we found was that, you know, we have an e-mail at a specific time, which is on page 17—July 7. There is an e-mail that basically reflects the fact that Mr. Mayorkas had approved the denial of these Sony things.

Miss RICE. What was the basis of the denial?

Mr. ROTH. The basis of the denial was the lack of—the largest issue was the fact that there was not a what was called a commitment letter. In other words, Sony had the option to take this EB-5 money, but they didn't have the requirement to take the money. So in other words, they weren't bound to take the money.

Why that is important in the EB-5 program is these investors invest this money into this regional center, they get a temporary

green card for 2 years. At the end of 2 years they have to prove that jobs, in fact, were created.

What they had seen before—for example, we talk about this Lions Gate Entertainment that was L.A. Films One. There was this non-commitment letter, so these folks got a temporary green card, but then Lions Gate never used the money because they were not contractually obligated to use the money. Therefore, these investors—these alien investors—were rejected for permanent residency as a result of that.

So there had been a decision relatively early on that this was not an appropriate investment vehicle because of the contingent nature of a non-commitment letter.

Miss RICE. So what changed? Then Mayorkas' decision allowed them what?

Mr. ROTH. So, as I said, in July 7 there was the decision to issue the denials, largely based on the sort-of this non-commitment letter, but there were a few other issues with regard to job creation. Were these jobs temporary jobs, seasonal jobs, permanent jobs? Did they actually create jobs or were these jobs that had been creative absent the EB-5 program?

But then again, there was a call on July 15, so, you know, 7 days later, 6 days later, and then within an hour of that call—we don't know the contents of that call; Mr. Mayorkas can't remember what was in the call—

Miss RICE. It was between him and—

Mr. ROTH. Mr. Rendell.

Miss RICE. Right.

Mr. ROTH. Then it was—and remember, some of these denials had already gone out by this time. There was an instruction from Mr. Mayorkas, "Pull back those denials and stop issuing other denials."

So that would be—and this is true in other cases where there were—for example, in the Gulf Coast there was a preliminary opinion, a draft opinion that would have been issued but for Mr. Mayorkas taking the unusual step of intervening and wanting to review the opinion.

Miss RICE. These are the only three cases that Mr. Mayorkas intervened in out of the 700 that you looked at?

Mr. ROTH. These are the ones that we found. Again, what we did to—you know, it is an enormous program, right? I mean, there are 700 regional centers. We did not look at every 700 regional center.

What we did was we followed sort-of the logical investigative steps you would think we would do, which is we talked to individuals, but we also did an e-mail poll and examined all the e-mails with, you know, those kinds of search terms you would expect to see used: EB-5, regional center, those kinds of things. Largely, these are the only ones we found that were noteworthy.

I will say—

Miss RICE. But there could be other ones.

Mr. ROTH. I will say that he was a very hands-on manager, and there is nothing wrong with being a hands-on manager. I am a very hands-on manager. You can't—

Miss RICE. I can tell.

Mr. ROTH. Good. You couldn't handle these stacks without it.



The problem is the juxtapositioning of contacts that the staff may or may not be aware of—

Miss RICE. Oh, believe me, I hear you.

Mr. ROTH [continuing]. Immediate—

Miss RICE. I hear it.

Mr. ROTH. So it is not the fact that he is a hands-on manager. I applaud that.

Miss RICE. But we have made it clear that he hasn't done anything to break the law. It is just a question of setting up parameters of when someone in this position would get involved in cases, and was that done on a specific basis.

In the L.A. Films case, Mr. Roth, did you find any indication that a former Congressman by the name of Dan Lungren had weighed in on this decision at all? Who happens to be a Republican, I might add.

Mr. ROTH. I don't know, and I will find out for you.

Miss RICE. If you could. I want to just move on because my time is almost done.

On the Las Vegas case, did you have any indication or did you see any indication that a Republican Senator by the name of Senator Heller, from Nevada, weighed in on the Las Vegas case at all?

Mr. ROTH. Again, on that one I will have to get back to you. I don't have a recollection of that but—

Miss RICE. Okay.

Mr. ROTH [continuing]. We can certainly find out—

Miss RICE. No, I appreciate if you would do that because actually that would, I think, change the whole tenor of what we are talking about here, and it becomes not a political decision that Mr. Mayorkas might have made, but one that—where he was attending to requests by Members of Congress across the—a broad political spectrum. Would you agree?

Mr. ROTH. Correct. This is certainly not, from my point of view, something about party affiliation. This is what the staff's reaction was as a result of this conduct and whether that reaction was a reasonable reaction. That is what the ethical standards say.

I completely understand and completely agree if people have a different judgment as to what was reasonable for Mr. Mayorkas to do.

Miss RICE. I agree with you, and I think that, you know, as you said, you cannot get into Mr. Mayorkas' head and figure out what motivated him to do what he did. So, too, is it almost impossible to get into the heads of the employees and understand what their motive was to complain about this situation.

But I thank you very much, Mr. Roth.

I yield back my time, Mr. Chairman.

Chairman MCCAUL. Chairman recognizes Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman. Thank you, Mr. Chairman.

As the Chairman noted previously, I am one of the former Federal prosecutors that serves on this committee, and from that perspective I would like to make sure, Inspector General Roth, that I understand the summary of your investigation. So you conducted 50 interviews?

Mr. ROTH. In excess of 50 employee interviews.

Mr. RATCLIFFE. Okay. That included at least 15 USCIS employees, including senior managers?

Mr. ROTH. The 15 employees I refer to are the ones who had first-hand contact with Mr. Mayorkas that had concerns as to improper access.

Mr. RATCLIFFE. Okay. Your investigation included a review of more than 40,000 telephone calls?

Mr. ROTH. Telephone records, yes.

Mr. RATCLIFFE. Records. I am sorry. Telephone records.

In aggregate, more than 1 million e-mails and other documents?

Mr. ROTH. Correct. We polled 1 million e-mails; that didn't mean we read a million e-mails, but we did searches off that poll.

Mr. RATCLIFFE. All right. What length of time did this investigation occur over?

Mr. ROTH. Several years.

Mr. RATCLIFFE. All right. Well, it certainly seems, from my perspective, very thorough and consistent with your training as a former assistant U.S. attorney, so I commend you on that.

So let me talk about some of the conclusions that come out of your investigation. You have had a number of questions about whether or not Deputy Secretary Mayorkas violated the law. Talk a little bit so I want to make sure everyone is very clear about what the charge was with respect to your investigation. Was it to adjudicate guilt or innocence?

Mr. ROTH. It was not. It was to find facts and compare what we found against both USCIS policy as well as the ethical standards by which we are bound.

Mr. RATCLIFFE. All right, so investigate and find facts, make certain conclusions as to where they may go, but ultimately guilt or innocence would be decided by another trier of fact if the facts would allow that.

Mr. ROTH. Correct. Our job on any misconduct investigation is to write a report and then give it to the individual who is responsible for that employee.

Mr. RATCLIFFE. Okay. So with respect to the conclusions of your investigation, your investigation found that Deputy Secretary Mayorkas pressured USCIS employees to depart from USCIS policies and procedures, correct?

Mr. ROTH. Yes.

Mr. RATCLIFFE. Okay. Did I hear your testimony earlier today to also depart from statutes and regulations that pertain to the EB-5 program?

Mr. ROTH. It was internal USCIS policies.

Mr. RATCLIFFE. Okay. But all of these pertaining to the management of EB-5 visa program?

Mr. ROTH. That is what we looked at, yes.

Mr. RATCLIFFE. All right. This happened on at least three occasions?

Mr. ROTH. Correct.

Mr. RATCLIFFE. All right. In each of those three occasions these extraordinary departures benefited prominent Democratic Republicans, including former Democratic Governors and employees of Bill and Hillary Clinton, including Hillary Clinton's own brother, correct?

Mr. ROTH. My conclusion is that the staff perceived that the influence was a result of politically connected people. I don't think there was a lot of conversation about sort-of party affiliation.

Mr. RATCLIFFE. Okay. But in each of these three your investigation included—and I—the words that you used earlier, “but for” these extraordinary departures and Deputy Secretary Mayorkas' intervention, the result in each of these EB-5 matters would have been different.

Mr. ROTH. That is correct.

Mr. RATCLIFFE. All right. You detailed earlier some of the ways in which the staff felt pressured?

Mr. ROTH. Yes.

Mr. RATCLIFFE. All right. How has this affected the morale?

Mr. ROTH. Our perception is that the morale was lowered as a result. At least the people who were affected, their morale was lowered.

Mr. RATCLIFFE. All right. Well, you know, as a former prosecutor I know that there are two sides to any set of facts, but I also want to commend you again, Inspector General. I think you put together a very thorough investigation. I think it shows compelling, if not overwhelming, evidence, and so I thank you for that.

I thank Ombudsman Odom for being here. I wish I had more time for questions.

Mr. Chairman, I thank you for calling this hearing and for your willingness to bring us back so that we all may have the opportunity to question Deputy Secretary Mayorkas. I yield back.

Chairman MCCAUL. Thank the gentleman.

Chairman recognizes Ms. McSally.

Ms. MCSALLY. Thank you, Mr. Chairman.

I thank you for your testimony today.

I join some of my colleagues in certainly being concerned, based on the thoroughness and the conclusions of your report, that there have not been any consequences towards the impropriety, and in fact, a promotion to the individual involved. So I think we do need some follow-up on that.

I want to ask a specific question about the deference review board that you mentioned in your report. My understanding is Mr. Mayorkas created this specifically to help petition for L.A. Films.

Was there any precedent for the creation of a board like this, and were the policies for the board ever formally established, approved, or documented?

Mr. ROTH. No. There was basically an announcement by Mr. Mayorkas via e-mail that he was concerned about inconsistent applications. He sent out an e-mail that basically said, effective immediately, we are going to have this—he didn't call it a deference review board, but he called it, I believe, a review board.

There was great pressure to do this immediately. No policies had been set up. Office of Chief Counsel had some concerns as to how this fit with the regulatory scheme and whether there were going to be violations of the Administrative Procedures Act and the like.

All that is set forth basically on page 25 and 26 of my report.

Ms. MCSALLY. Okay. But none of the policies of this quote-unquote board were ever written down, codified, or ever used again, right?

Mr. ROTH. Correct.

Ms. MCSALLY. Okay. What was the career staff's impression of this board?

Mr. ROTH. There was a meeting on January 30 in which this was discussed between Mr. Mayorkas and the career staff, and that is on page 26. One of the participants of the meeting said the meeting left a clear impression that the director and his chief of staff wanted to accommodate L.A. Films and Tom Rosenfeld, was the president of the L.A.—the regional center.

There was a—to some of the staff—a very disturbing incident that occurred at the conclusion of that meeting, which was as they were leaving they overheard the fact that there was a telephone call from Tom Rosenfeld, so this was an affected party who was part of this. One of the individuals who understood what was going on said that the appearance of impropriety was overwhelming, that that official ultimately reported the appearance concern to his supervisor, who in turn talked to an ethics official within USCIS.

I think it is a matter—to protect this individual's job they sort-of did it in a hypothetical fashion, "assuming this happened," but didn't mention Mr. Mayorkas. The conclusion of the ethics official within CIS was that this ought to be reported to either the Office of Inspector General or the Office of Special Counsel.

Ms. MCSALLY. Okay. Thank you.

Moving on to a different topic, in response to the allegations of Deputy Secretary Mayorkas improperly pressuring USCIS employees to expedite the SLS hotel and casino case in Las Vegas, he cited a Department of Commerce letter that stated the application was eligible for expedited processing, and on closer examination the Commerce employee who wrote the letter, Steve Olson, was a former employee of Mr. Mayorkas. It has also been alleged that Mr. Mayorkas actually requested that this letter be written.

In your investigation, did you find any evidence to support this allegation? Are writing letters of this kind something that falls within the description of Mr. Olson's job?

Mr. ROTH. We did not—our examination is, of course, only of DHS employees and not, for example, Department of Commerce individuals. Certainly the staff's reaction to this—and this was something that we obviously focused on—was that they believed and couldn't understand how it was that Mr. Olson even knew about the project and how it was to—you know, who to write the letter to.

You know, one of the individuals sort-of was opining that, you know, "I don't recall seeing these folks opine before and I wonder how they even know who to send this to. I fear we are entering a whole new phase of yuck."

Ms. MCSALLY. Okay, great. Thank you. In your opinion, would the letter have reached the same conclusion if it were written by somebody without connections to USCIS leadership?

Mr. ROTH. I can't determine that.

Ms. MCSALLY. Okay. Thank you.

Just one final question on the status of the whistleblowers. You know, these people have come forward and provided this information. Clearly a large number concerned about impropriety.

I mean, what is their professional status? Are they all still there? Have any been promoted? I mean, we are just always concerned about protecting whistleblowers, especially when the perpetrator is still within the Department.

Mr. ROTH. You know, we are always worried about that. We have, you know, obviously, very strong whistleblower protection laws.

We advertise to the entire DHS population about sort-of their rights under that. In fact, within the first couple months that I started this job I was able to send an e-mail to all 225,000 employees within DHS.

I am confident that if there is any sort-of attempt at retaliation that we will hear about it and we will investigate.

Ms. MCSALLY. Are they still all employed by USCIS, to your knowledge?

Mr. ROTH. I don't have the answer—

Ms. MCSALLY. Okay.

Mr. ROTH [continuing]. To that question off-hand.

Ms. MCSALLY. If we could just follow up if they are still in USCIS or even in DHS, just what is their status. Thank you. Appreciate it.

Thank you, Mr. Chairman. Yield back.

Chairman MCCAUL. The Chairman recognizes Mr. Perry.

Mr. PERRY. Thank you, Mr. Chairman.

Thank you for your testimony this morning.

I would like to move directly to the Gulf Coast Funds Management Regional Center. What I understand is this that Gulf Coast petition to invest in GreenTech Automotive—and according to what I have here, whose chairman at the time was Terry McAuliffe, the current Governor of Virginia. It says further that it is clear that Mr. Mayorkas was put under intense pressure by McAuliffe, who, according to Mayorkas, left him a voicemail led—laced with expletives at high volume.

When the terminology “put under intense pressure,” I am certain that—or I am relatively confident that Mr. Mayorkas can withstand a verbal dressing down, but can you characterize what you think would have led to the intense pressure? Was it just the volume or the expletives, or was there potentially something more and what might that be?

Mr. ROTH. I think you are reading from Mr. Mayorkas' written statement. We did not make that characterization of intense pressure.

Mr. PERRY. He did.

Mr. ROTH. I can't really sort of opine or comment—

Mr. PERRY. He provided no further details about what that intense pressure would be?

Mr. ROTH. No.

Mr. PERRY. Whose job would it be to go out and go back to him and find out exactly what that pressure is? We are talking about, obviously, taxpayer money here and the misdirection of that, and so I think it would be important for us to know if there is undue pressure being placed on individuals within the administration, how that is happening, and who is perpetrating that.

Would that not be your job? Or whose job would that be?

Mr. ROTH. We are responsible for looking at the conduct of U.S.—of DHS employees, not sort-of external parties. You know, we get external inquiries all the time.

Mr. PERRY. Okay.

Mr. ROTH. We do with those what we do with them, but we are obviously always obligated to follow the law and the ethics.

Mr. PERRY. Does it appear that there was criminal activity here at all to you? Are you familiar? Would you know if it was? Who would determine that?

Mr. ROTH. We do not believe that there was criminal activity involved. We had early on consulted with the Department of Justice public integrity section. I am a prosecutor of 25 years' duration. We have not seen any kind of action that we believe violates criminal law.

Mr. PERRY. Let me ask you if you know, regarding this undue or this intense pressure, what would cross the line? What would lead you to believe that something that, you know, would be of criminal intent or action would cross the line regarding the malfeasance or alleged or potential malfeasance?

Mr. ROTH. I can't tell you exactly what it would take to reach that.

Mr. PERRY. Okay.

Mr. ROTH. That simply is not something we looked at. Obviously if it were bribery then that would be a separate crime, and there is a whole series of things.

But as far as intense pressure, yelling at someone or something like that, as far as I can conceive, that is not—and, you know, that is one of the things that we have to be—I want to make sure that people understand is that we aren't looking at sort-of the outside folks, the owners of the regional centers, their conduct. We are only looking at what occurred within DHS.

Mr. PERRY. No, I understand. But my concern is that while you are—doing your job very well, that maybe it falls outside your purview if that is indeed the case, and that some of these folks that may have engaged in undue pressure which leads to malfeasance and potentially fraud, that they are left to walk away without that—you know, the public knowing that, and so—but we can explore that later.

Let me move on to another instance here regarding the—these two separate movie projects with Sony and Time Warner, where it says after an engagement with Tom Rosenfeld with CanAm Productions, and former Governor Rendell, where I guess the—Mr. Mayorkas was told that—the projects need to be approved. What do you suspect—what changed the trajectory, I mean if that is the case? Did you get any indication of that?

Mr. ROTH. Well, as I indicated, there were two different sort-of L.A. Films projects—L.A. Films Three and L.A. Films Four, for our purposes. There was contact between Mr. Rendell and Mr. Mayorkas on each of those.

As I said, there was a track to deny the L.A. Films Three petitions that was essentially reversed.

Mr. PERRY. So they are on-track to be denied, and then after a phone call then things reverse—things are reversed. Obviously find that suspicious. Is that a fair characterization?

Mr. ROTH. I think it was troubling both to the employees, who didn't understand how it was——

Mr. PERRY. What in that phone call would have made the difference? Is it information that would have made the difference, or was it—or do you suspect it was pressure? Did—was pressure alluded to?

Mr. ROTH. We have no information one way or the other.

Mr. PERRY. Okay. My time is expired.

Thank you, Mr. Chairman.

Chairman MCCAUL. Thank the gentleman.

Seeing no further Members to ask questions, I want to thank the witnesses for your valuable testimony, Mr. Roth, your extensive investigation. We look forward to hearing from Mr. Mayorkas and his response to these allegations.

The hearing record will be open for 10 days. Witnesses may have additional questions in writing.

Without objection, the committee now stands adjourned.

[Whereupon, at 11:11 a.m., the committee was adjourned.]





## APPENDIX

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### QUESTIONS FROM CHAIRMAN MICHAEL T. MCCAUL FOR MARIA M. ODOM

*Question 1a.* In the March 24, 2015 OIG report regarding the investigation of the management of USCIS's EB-5 program, it is noted that during the "Gulf Coast Case," your office was contacted on 12/05/2012 and 12/14/2012, and on 1/10/2013 you met with Mr. Mayorkas. Please describe your involvement in this case.

*Answer.* In 2012, Gulf Coast Funds Management, Ltd. (Gulf Coast) contacted the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) with regard to 21 petitions with which it had experienced delays and other administrative difficulties. These petitions included Forms I-924, *Application for Regional Center Under the Immigrant Investor Pilot Program*, Forms I-829, *Petition by Entrepreneur to Remove Conditions*, and Forms I-526, *Petition by Alien Entrepreneur*.

The Ombudsman's Office correspondence with Gulf Coast was handled, according to established protocols, by CISOMB managers and Immigration Law Analysts involved in processing employment-related requests for case assistance. All of the correspondence was routine; it included: Discussions regarding the consent forms necessary to evaluate and process Gulf Coast's requests for assistance; the information necessary to obtain case updates from USCIS; and verification of legal representation in order to allow communication with the attorneys representing parties in these matters.

The specific issue raised by Gulf Coast in some of these matters—delays in the adjudication of immigration benefits applications—is one of the most common reasons individuals and employers request assistance from the Ombudsman's Office. Gulf Coast did not request any unusual or extraordinary forms of assistance or relief; it asked only that the adjudication of its Forms I-924, I-829, and I-526 be completed in a timely fashion. The Ombudsman's Office did not take action on Gulf Coast matters that were within USCIS's posted processing times. Communications pertaining to these matters were made using channels available to the public when seeking Ombudsman's Office case assistance.

I did not meet with Mr. Mayorkas on January 10, 2013. On January 9, 2013, my leadership team and I met with Mr. Mayorkas and the USCIS leadership team, pursuant to Homeland Security Act section 452(d).<sup>1</sup> We discussed a variety of issues including systemic problems in the EB-5 program. We did not discuss any individual EB-5 case matters.

*Question 1b.* In your opinion, in reviewing the case documents, did you believe the case warranted special attention from headquarters and from the Director?

*Answer.* I believed at the time that processing delays and gaps in policy in the EB-5 program specifically warranted attention from USCIS Headquarters and Mr. Mayorkas. Some of the Gulf Coast cases were among those experiencing adjudication delays.

*Question 1c.* Did you monitor the case until the fourth amendment was approved on 2/12/2014?

*Answer.* No. All Gulf Coast requests for case assistance were closed by the Ombudsman's Office by early May 2013.

*Question 1d.* During the adjudication process of any other cases, did you personally meet with Director Mayorkas, or any other USCIS Director, to discuss the proceedings of the case?

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<sup>1</sup>Section 452(d) of the Homeland Security Act of 2002 states, in relevant part, "The Ombudsman . . . shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers."

Answer. No. I did not personally meet with Mr. Mayorkas, or any other USCIS Director, to discuss the Gulf Coast case matters.

*Question 2a.* Please list all recourse steps (petitions for help) available for investors during the EB-5 application and adjudication process.

At what point during this process (adjudication) are each specific avenue for recourse available for use?

Answer. EB-5 applicants and petitioners are able to request information about their specific cases at various points during the EB-5 adjudication process.

EB-5 petitioners and applicants may seek information through a variety of ways, including:

- Inquiring through the Immigrant Investor Program Office mailbox at USCIS.ImmigrantInvestorProgram@uscis.dhs.gov;
- Participating in and keeping abreast of information provided through USCIS' National stakeholder engagements and USCIS social media outlets;
- Corresponding through USCIS' public mailbox for general questions at Public.Engagement@uscis.dhs.gov;
- Working with their Congressional representatives and/or the DHS CIS Ombudsman;
- Accessing case status information by using USCIS' on-line customer service tools, such as E-Request, Change of Address, and MyUSCIS at <https://egov.uscis.gov/casestatus/landing.do>;
- Contacting the USCIS National Customer Service Center (1-800-375-5283, TDD for the Hearing Impaired 1-800-767-1833) for 24-hour telephone assistance.

After a decision has been rendered, if it is a denial, an applicant or petitioner can file a motion to reopen or reconsider to request that the original decision be reviewed. Additionally, if the applicant or petitioner would like to request that the case be reviewed de novo by the Administrative Appeals Office, information about how to appeal an adverse decision is contained in the relevant written notice of decision sent to the applicant or petitioner. More information on appeals and motions can be found at <http://www.uscis.gov/forms/questions-and-answers-appeals-and-motions>.

The USCIS website ([www.uscis.gov](http://www.uscis.gov)) also provides valuable information such as executive summaries, evidentiary tips, leadership remarks, public notices, lists of approved and terminated regional centers, policy memos, EB-5 precedent decisions, and links to other resources, such as websites for the Securities and Exchange Commission and the Internal Revenue Service.

Finally, petitioners and applicants may request an expedited review of their case if they believe the case fits within the USCIS expedite criteria, found at [www.uscis.gov/forms/expedite-criteria](http://www.uscis.gov/forms/expedite-criteria).

*Question 2b.* Are the various recourse steps easily accessible to investors?

Answer. The Ombudsman's Office believes that the USCIS customer service avenues are easily accessible for EB-5 petitioners and applicants. However, during the 2012 and 2013 time period, responses to customer service inquiries often were delayed or conveyed limited information.

## ALLEGATIONS OF SPECIAL ACCESS AND POLITICAL INFLUENCE AT THE DEPARTMENT OF HOMELAND SECURITY

Thursday, April 30, 2015

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The committee met, pursuant to call, at 10:12 a.m., in Room 311, Cannon House Office Building, Hon. Michael T. McCaul [Chairman of the committee] presiding.

Present: Representatives McCaul, Perry, Clawson, Katko, Carter, Walker, Loudermilk, Thompson, Jackson Lee, Keating, Watson Coleman, Rice, and Torres.

Chairman McCaul. The Committee on Homeland Security will come to order.

The purpose of this hearing is to receive testimony regarding the Immigrant Investor Program, known as the EB-5 program.

I now recognize myself for an opening statement.

On March 24, the Department of Homeland Security Inspector General released a report detailing allegations against Deputy Secretary Mayorkas that relate to his time as director of USCIS and his oversight of the EB-5 program.

The IG's office conducted more than 50 interviews, reviewed more than 40,000 phone records, and obtained more than 1 million documents and emails. This investigation was unprecedented in that there were more than a dozen whistleblowers that came forward to the Inspector General's office.

The findings were troubling, as the IG made some very serious charges against Mr. Mayorkas. Chief among them were that he used his position to influence outcomes in select cases for the benefit of politically connected and powerful individuals.

In general, these allegations fall into four categories:

Special access. Their allegations were unequivocal. Mr. Mayorkas gave special access and treatment to certain individuals and parties.

Political favoritism. "We received complaints from USCIS employees that the application for a politically connected regional center, Gulf Coast Funds Management, received extraordinary treatment as a result of Mr. Mayorkas' intervention." Additionally, USCIS staff understood that these applicants were prominent or politically connected.

Created or went around established process and career staff decisions. Mr. Mayorkas was in contact outside of the normal adjudica-

tion process, either directly or through senior DHS leadership, with a number of stakeholders having business before USCIS. According to the employees, but for Mr. Mayorkas' actions, the staff would have decided these matters differently.

Misplaced priorities. Mr. Mayorkas' focus on a few applicants and stakeholders was particularly troubling to employees given the massive scope of his responsibilities as director of USCIS.

Two days after the release of the report, this committee held a hearing and heard testimony directly from DHS IG John Roth. From the report and again in his testimony before us, the IG found that Mr. Mayorkas appeared to play favorites with Democratic political operatives and insert himself improperly in ways that influenced the outcome of cases.

These are very serious allegations and ones that, if true, should not be ignored. Although the IG did not allege that these acts were criminal in nature, they without a doubt raise questions about the deputy secretary's judgment.

This was not the first time that the Inspector General's office reviewed allegations of impropriety at USCIS. In a separate report, the IG found that, in late 2009, the former USCIS chief counsel also placed pressure on career staff to reverse the outcome for a petition filed by a university that the chief counsel was connected to.

Therefore, in April 2010 and in response to that, Mr. Mayorkas himself put out a policy memo to USCIS employees that stated, "Each USCIS employee has the duty to act impartially in the performance of his or her official duties. Any occurrence of actual or perceived preferential treatment, treating similarly situated applicants differently, can call into question our ability to implement our Nation's immigration laws fairly, honestly, and properly."

In examining the IG's findings, it seems that Mr. Mayorkas has repeatedly violated his own policy through his actions regarding certain EB-5 cases as the director.

As Chairman of this committee, as a former Federal prosecutor in the Public Integrity Section of the Department of Justice, I take the oversight responsibilities of this committee under the Constitution very seriously. After looking at the IG's report and hearing the IG's testimony last month, I felt obligated to examine the accusations made in this report in greater detail.

Our committee staff has analyzed over 500 pages of documents from the IG and DHS. The committee expects to receive additional documentation from the Department in the coming days. But since our first hearing and after reviewing the report and associated documents, I have more questions.

For instance, did Mr. Mayorkas knowingly or unknowingly violate USCIS policy to grant special access and treatment to applicants who are prominent and politically connected and overrule the USCIS career staff decisions in these cases?

Second, does the lack of judgment shown by Mr. Mayorkas in the IG's report raise doubts about his ability to fulfill the responsibilities of deputy secretary? Specifically, DHS's morale is ranked the lowest of any large Federal agency. Mr. Mayorkas is charged with fixing this morale problem, yet the morale of certain USCIS staff deteriorated under his watch.

Third, why has Mr. Mayorkas not been held accountable for his actions? According to the 2010 policy that Mr. Mayorkas signed, “Failure to adhere to the standards or guidance set forth in this memorandum may subject the employee to disciplinary penalties, up to and including removal from employment.” Political appointees at DHS should not be immune from accountability when warranted.

We, as the people’s representatives, deserve to hear the truth in these cases. However, there is no place for presumed guilt before innocence, and Mr. Mayorkas is allowed the opportunity here today to explain and defend his actions as alleged in the IG report. At the conclusion of our hearing on March 26, I stated that I looked forward to giving Mr. Mayorkas the opportunity to respond today.

Today is that opportunity, sir.

At the heart of this case really is the issue of trust and credibility. In order for Government to function, our leaders must have the trust of the American people and those who work for them. We can never forget that public office is a public trust.

With that, I look forward to hearing from Mr. Mayorkas.

[The statement of Chairman McCaul follows:]

STATEMENT OF CHAIRMAN MICHAEL T. MCCAUL

APRIL 30, 2015

On March 24, the Department of Homeland Security Inspector General released a report detailing allegations against Deputy Secretary Mayorkas that related to his time as director of USCIS and his oversight of the EB-5 program.

The IG’s office conducted more than 50 interviews, reviewed more than 40,000 phone records, and obtained more than 1 million documents and emails. This investigation was unprecedented in that there were more than a dozen whistleblowers that came forward to the Inspector General’s office. The findings are troubling as the IG made some very serious charges against Mr. Mayorkas.

Chief among them was he used his position to influence outcomes in select cases for the benefit of politically-connected and powerful individuals.

In general, these allegations fall into four categories:

*Special Access.*—“Their allegations were unequivocal: Mr. Mayorkas gave special access and treatment to certain individuals and parties.”

*Political Favoritism.*—“We received complaints from USCIS employees that the application for a politically-connected regional center, Gulf Coast Funds Management, received extraordinary treatment as a result of Mr. Mayorkas’s intervention.” Additionally, “USCIS staff . . . understood that these applicants were prominent or politically connected.”

*Created or went around the established process and career staff decisions.*—“Mr. Mayorkas was in contact, outside of the normal adjudication process, either directly or through senior DHS leadership, with a number of stakeholders having business before USCIS . . . According to the employees, but for Mayorkas’s actions, the staff would have decided these matters differently.”

*Misplaced Priorities.*—“Mr. Mayorkas’s focus on a few applicants and stakeholders was particularly troubling to employees given the massive scope of his responsibilities as Director of USCIS.”

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April of 2010, Mr. Mayorkas himself put out a policy memo to USCIS employees that stated:

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Since our first hearing, and after reviewing the report and associated documents, I have more questions:

1. Did Mr. Mayorkas knowingly or unknowingly violate USCIS policy to grant special access and treatment to applicants who were prominent and politically connected and overrule USCIS career staff decisions in these cases?
2. Does the lack of judgement shown by Mr. Mayorkas in the IG report raise doubts about his ability to fulfill the responsibilities of deputy secretary? Specifically, DHS’s morale is ranked the lowest of any large Federal agency. Mr. Mayorkas is charged with fixing this morale problem yet the morale of certain USCIS staff deteriorated under his watch.
3. Why has Mr. Mayorkas not been held accountable for his actions? According to the 2010 policy that Mr. Mayorkas signed, “failure to adhere to the standards or the guidance set forth in this memorandum may subject the employee to disciplinary penalties up to and including removal from employment.” Political appointees at DHS should not be immune from accountability when warranted.

We, as the people’s representatives, deserve to hear the truth in these cases. However, there is no place for presumed guilt before innocence. Mr. Mayorkas is allowed the opportunity to explain and defend his actions as alleged in the IG Report. At the conclusion of our hearing on March 26, I stated that I looked forward to giving Mr. Mayorkas the opportunity to respond—today is that opportunity.

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We can never forget that public office is a public trust. With that, I look forward to hearing from Mr. Mayorkas.

### **SPECIAL ACCESS:**

“Their allegations were unequivocal: Mr. Mayorkas gave **special access** and **treatment** to certain individuals and parties.”

**DHS OIG REPORT** Pg. 3

### **POLITICAL FAVORITISM:**

“We received complaints from USCIS employees that the application for a **politically connected** regional center, Gulf Coast Funds Management, received **extraordinary treatment** as a result of Mr. Mayorkas’ intervention.”

Additionally, “USCIS staff...understood that these applicants were prominent or politically connected.”

**DHS OIG REPORT** Pg. 38, 5

## CREATED OR WENT AROUND THE ESTABLISHED PROCESS AND CAREER STAFF DECISIONS:

“Mr. Mayorkas was in contact, **outside of the normal adjudication process**, either directly or through senior DHS leadership, with a number of applicants and other stakeholders having business before USCIS... According to the employees, but for Mayorkas’ actions, the staff would have **decided these matters differently.**”

DHS OIG REPORT Pg. 4, 3

## MISPLACED PRIORITIES:

“Mr. Mayorkas’s focus on a few applicants and stakeholders was particularly troubling to employees given the massive scope of his responsibilities as Director of USCIS.”

DHS OIG REPORT Pg. 6

Chairman McCAUL. With that, I recognize the Ranking Member of the committee, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

I would like to thank Deputy Secretary Mayorkas for appearing today.



Last month, the Department of Homeland Security's Office of Inspector General released the results of an investigation into the employee complaints about the management of the investor visa program. This program, better known as the EB-5 program, accounts for less than 1 percent of all visas issued by the United States Citizenship and Immigration Services. However, given the program's potential as a job-creator, it has great visibility to Congressional leaders from across the political spectrum.

I do not take issue with the Inspector General's decision to limit his review to questions regarding Deputy Secretary Mayorkas' involvement in the three EB-5 applications at issue. However, I am disappointed that, after expending months of resources to investigate these cases, the Inspector General produced an incomplete report. It only addressed the allegations made by USCIS personnel about contact with prominent Democratic figures, thereby giving the false impression that there were no Republican inquiries or outreach on these three cases.

At the time that Inspector General Roth testified, I was skeptical that Deputy Secretary Mayorkas only heard from Democrats on these cases, given the potential economic benefit of the EB-5 program. When I asked the Inspector General about other outreach on these three cases, the Inspector General was nonresponsive.

Subsequently, through further engagement with the Department, I have learned that prominent Republicans contacted Deputy Secretary Mayorkas and asked him to give his personal attention to these three cases. Given that this review has implications for Deputy Secretary Mayorkas' reputation, it was incumbent on the Inspector General to present a complete picture of Mr. Mayorkas' contacts and involvement in these cases.

More broadly, I have learned that, while serving as USCIS Director, Deputy Secretary Mayorkas was regularly contacted on EB-5 cases and other visa matters, but not only by Democrats, but also Republicans, including Members of this committee.

Not only am I disappointed about the incompleteness of the Inspector General's review, I find it appalling that the Inspector General would not provide testimony to lay to rest questions of actual wrong-doing or impropriety, despite the fact that the report did not find the deputy secretary's involvement was inappropriate.

As I stated last month, the picture that emerged from the Inspector General's report was that of an activist manager that demanded reform and responsiveness from his agency. If we want to have a comprehensive examination of Deputy Secretary Mayorkas' leadership style, we should look at his actions as a whole, including in his current capacity as deputy secretary.

Under Deputy Secretary Mayorkas' leadership, the Department has made great strides in some areas and remains stagnant in others. There have been progress on key areas identified on the Government Accountability Office's high-risk list, and, as a result of these efforts, GAO recently acknowledged improvement, stating that DHS has demonstrated exemplary commitment and support for addressing the Department's management challenges.

The deputy secretary is also working closely with the Secret Service Director on reform efforts. There is quite a bit of work to be done to improve the agency's performance and address long-

standing cultural issues. Equitable treatment of Secret Service personnel is still an issue.

There is also the matter of a racial discrimination class action lawsuit that has dragged on for 15 years. Also, we have not seen many of the recommendations issued by the Department's independent panel implemented, including bringing someone from outside the agency into its leadership.

These outstanding issues undermine morale and performance within this vital agency and certainly demand timely and thoughtful attention.

More broadly, DHS has well-documented morale challenges of its own. According to the 2014 Best Places to Work in the Federal Government, the Department comes in last, with dismal scores in the areas of support for diversity, fairness, and effective leadership.

The Department has spent millions of dollars on studying the workforce, but a plan that yields results has yet to be implemented. I would like to hear from the Deputy Secretary Mayorkas on how, through his leadership, substantial improvements can be achieved at the Department.

Mr. Chairman, while I understand that much of today's discussion is looking backwards, I hope that we will seize this opportunity and also look ahead. Deputy Secretary Mayorkas is the highest-ranking DHS official to appear before this committee this Congress. We should seize this opportunity to have a meaningful discussion about DHS and how it is addressing its operational, administrative, and mission challenges.

This committee works well when we can work in a bipartisan manner to achieve the shared goals of advancing the Department of Homeland Security.

With that, Mr. Chairman, I yield back.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

APRIL 30, 2015

Last month, the Department of Homeland Security's Office of Inspector General released the results of an investigation into employee complaints about the management of the investor visa program. This program, better known as the EB-5 program, accounts for less than 1 percent of all visas issued by the United States Citizenship and Immigration Services; however, given the program's potential as a "job creator," it has great visibility to Congressional leaders from across the political spectrum.

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that while serving as USCIS director, Deputy Secretary Mayorkas was regularly contacted on EB-5 cases and other visa matters by not only Democrats, but also, Republicans, including Members of this committee.

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As I stated last month, the picture that emerged from the Inspector General's report was that of an "activist manager" that demanded reform and responsiveness from his agency. If we want to have a comprehensive examination of Deputy Secretary Mayorkas' leadership style, we should look at his actions as a whole, including in his current capacity, as deputy secretary. Under Deputy Secretary Mayorkas' leadership, the Department has made great strides in some areas and remains stagnant in others. There has been progress on key areas identified on the Government Accountability Office's "High-Risk" list and, as a result of these efforts, GAO recently acknowledged improvement, stating that DHS has demonstrated "exemplary commitment and support for addressing the Department's management challenges."

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Also, we have not seen many of the recommendations issued by Department's independent panel implemented, including bringing someone from outside the agency into its leadership. These outstanding issues undermine morale and performance within this vital agency and certainly demand timely and thoughtful attention. More broadly, DHS has well-documented morale challenges of its own.

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Chairman MCCAUL. I thank the Ranking Member.

Let me make it clear: I did not create or generate the Inspector General's report, but it has been completed. I have a role under the Constitution to provide oversight responsibility in this matter, and that is what we are doing here today.

We have heard, Mr. Mayorkas, from the Inspector General, and now today is your opportunity for us to hear your side of the story. With that, I want to thank you for being here.

Given the nature of this case today, I would like to swear in the witness.

If you would please now stand and raise your right hand.

[Witness sworn.]

Chairman MCCAUL. Let the record reflect that the witness has taken the oath.

Mrs. WATSON COLEMAN. Mr. Chairman.

Chairman MCCAUL. Mrs. Watson Coleman is recognized.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

I just want it stated for the record that I really don't understand the necessity of swearing in the deputy secretary, when we had the Inspector General, who generated this—the reason for our being here in the first place, and we never once asked him to be sworn in.

I just find that it is unusual and unnecessary, given this high appointed official who has such tremendous credentials on his behalf. I just want it stated for the record.

Thank you.

Chairman MCCAUL. I appreciate the gentlelady's point of order, I suppose.

Let me say, the committee and House rules provide for the swearing of any witness that the Chairman deem appropriate. I think, given the serious allegations generated by the Inspector General's report, that warrants the swearing in of this witness in particular. I, again, am giving the witness an opportunity to explain—

Mrs. WATSON COLEMAN. Yeah.

Chairman MCCAUL [continuing]. His side of the story.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

But may I just say that the reason that we are here is we are relying so heavily—or you are relying so heavily on the limited and very myopic findings of the Inspector General. His report has caused tremendous consternation here and, I am sure, in the Department. Yet we didn't feel the need—or you didn't feel the need to swear him in.

I just wanted to state that for the record, that I think that this is an unusual situation.

Thank you for your—

Chairman MCCAUL. Well, the gentlelady's point is well-taken, but the fact of the matter is that this is the witness today that is responding to these serious accusations. I think they are very serious. I think when we talk about potential breach of ethics and integrity policy that could have an impact on our Nation's security, as it impacts the entry of foreign nationals into the United States, madam, that this morning's swearing in is perfectly appropriate.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

Chairman MCCAUL. I want to say that it is important this committee exercise its oversight responsibilities and let the witness know how serious these accusations are by the Inspector General.

Therefore, I think it is entirely appropriate—not only is it appropriate, it is deemed under the House of Representatives' rules in this Congress and this committee's rules to have a swearing-in process, unless the gentlelady would prefer that this committee not exercise its oversight responsibilities under the rules of the United States House of Representatives and this committee.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman. I appreciate your consideration of my concerns. I most assuredly want us to exercise our responsibilities under the Constitution and under the organization of this committee, to exercise our oversight rights.

I do believe, however, I look for fairness and justice and equality as we undertake those important decisions and issues.

But I thank you for your consideration. You are always—

Chairman MCCAUL. As I have stated—

Mrs. WATSON COLEMAN [continuing]. Very generous with me. Thank you.

Chairman MCCAUL. If the gentlewoman would yield. I have stated the purpose of this hearing is to hear Mr. Mayorkas' side of the story.

I think, given the serious allegations and nature of misconduct, at the highest levels of the Department, involving foreign nationals, that the swearing in of this witness is entirely appropriate, and it is the responsibility of this committee to do so.

As we go forward with our investigations on this committee into foreign fighters and the home-grown violent extremists, those investigations may require the swearing in of witnesses, as well.

Most other committees, madam, actually swear in their witnesses. I don't see any reason why this committee, the Homeland Security Committee, should abdicate its responsibility and not swear in witnesses, to basically just give an oath to say, "Tell the truth."

Mrs. WATSON COLEMAN. It is inappropriate for me to engage in this discussion with you in this manner, so I shall yield any further discussion.

Chairman MCCAUL. Unless the—

Mrs. WATSON COLEMAN. I just am interested in—

Chairman MCCAUL. Unless the madam would prefer that this committee not to swear in witnesses.

Mrs. WATSON COLEMAN. I am just interested in consistency. That is it. Thank you.

Chairman MCCAUL. I think telling the truth is the No. 1 goal that this committee should have for witnesses that appear before this committee.

Mr. THOMPSON. Mr. Chairman, I don't think there is any reason for you to be concerned about Ms. Watson Coleman's drawing the distinction between an assertion that the Inspector General made from an incomplete report—and now we bring the No. 2 person in the Department, we swear him in, and that obviously is a rule, but she was just saying that, in her view, it was inconsistent. It has nothing to do with terrorists or foreign fighters. She only spoke to the procedure of swearing in the witness.

Obviously, we can do a lot of other things, but I think she is within her right, as a Member of this committee, to voice her concern and her observation. It is not taking issue that you, as Chairman, can't do it, but she is just saying that it is inconsistent. I think Ms. Watson Coleman, as a Member of the committee, is within her right to do so.

Chairman MCCAUL. You know, I—most likely, we will have the Inspector General back. You know, I think this committee actually should exercise its right under the rules to have witnesses being sworn in before-hand. This committee has not done that, and I think it should. I think that is a responsibility.

Mr. PERRY. Mr. Chairman.

Chairman MCCAUL. I yield to Mr. Perry.

Mr. PERRY. Just a point of clarification for me and maybe anybody else. Is it common practice in hearings, in courts, to swear in the prosecutor or swear in the judge? The Inspector General is not the person under scrutiny here; the Inspector General is the one that offered the report. We are trying to get to the facts.

It seems to me it would be inappropriate to swear in the Inspector General in this case and juxtapose that with this witness. As a layman, it just doesn't seem like that has been the normal course of events in any other similar circumstances, notwithstanding.

So I just want to make that point from my view.

Chairman MCCAUL. I think the gentleman raises a very good point, and it is—the allegations are there in the Inspector General's report. The witness is here to respond to those allegations. All I am trying to do, by ensuring the swearing in of the witnesses, is that he is telling the truth in response to the allegations made against him.

Mr. THOMPSON. I don't think it is in the witness' best interest not to tell the truth. I think that the point that is being made is—I don't have any doubt that our witness, if asked a question, will answer it. I think you elevate this situation by swearing in.

Sure, the rules provide for it, but we had, at the Inspector General's own admission, a report that was incomplete. That report, it makes serious allegations, but it was an incomplete report. You bring someone before the committee to respond to an incomplete report.

Chairman MCCAUL. This is an extraordinary case. We do not swear in witnesses. If the Ranking Member wants to do that in every hearing, I would be happy to do so.

This presents a very extraordinary case of the No. 2 man in the Department of Homeland Security under allegations that are very, very serious. We haven't had a case like this in quite some time before this committee in our oversight responsibilities. Therefore, I thought it was appropriate in this case to have him sworn in, because of the allegations being so serious.

We can attack the IG's report or deal with it as it is. The fact of the matter is the IG's report has raised serious accusations about Mr. Mayorkas' ethical policy and his potential violations thereof. Therefore, because of the extraordinary nature of this hearing and the issues at hand, as I stated at the beginning, I believe that swearing the witness in was entirely appropriate in this case.

I don't think the American people would think it was not. I think the American people expect this from our Government officials at the highest levels, to be sworn in to tell the truth, the whole truth, and nothing but the truth. I actually believe Mr. Mayorkas himself agrees with that assertion, and I believe that he will tell the truth at this hearing today.

Mr. THOMPSON. Well, let me just, for the record, indicate that, under title 18, it is illegal to lie or make misrepresentation to Congress, whether you are sworn in or not.

So Mr. Mayorkas is a witness, and, as I said, I have not known witnesses to come before this committee and do anything but tell the truth in their opinion. So he has operated for a long time in a professional capacity, and I am convinced that he understands it.

But I look forward to his sworn testimony.

Chairman MCCAUL. The gentleman is correct that, under the Federal law, it is a crime to lie to Congress. No one knows that better than a public integrity prosecutor in Washington, myself.

But the formality of this practice, as done by most other committees—and this one has an investigative role—I think we have not done it enough. The formality of this practice reminds all of us, both committee Members and our distinguished witnesses, of the importance of the testimony that is being offered here today.

Without further discussion, the Chairman now recognizes Deputy Secretary Mayorkas to testify.

**STATEMENT OF ALEJANDRO MAYORKAS, DEPUTY  
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. MAYORKAS. Thank you.

Chairman McCaul, Ranking Member Thompson, distinguished Members of the Homeland Security Committee, thank you for providing me with the opportunity to address you today and to answer questions you might have. I have looked forward to this opportunity.

The work of U.S. Citizenship and Immigration Services, or USCIS, is casework. The agency's primary responsibility is to decide immigration cases according to the law in a way that safeguards our Nation's security and the integrity of our immigration system. The agency decides millions of cases each year.

We are fortunate to have a great workforce at USCIS—dedicated and hard-working public servants. After I became the director and led a top-to-bottom review of the agency, I learned that the agency did not always provide its workforce with the support and resources it needed to meet its obligations to the American public.

Among the most significant challenges were gaps and inconsistencies in the critical legal and policy guidance that governed adjudicators in their review of cases. The consequences were serious. The agency was too often misapplying the law and issuing unsound policies.

The USCIS is an adjudicative body, and I learned of these legal and policy challenges when individual cases were brought to my attention. The cases—cases involving the rich and the poor alike, business and cultural interests, as well as profound humanitarian concerns—came to me from a variety of sources, including agency employees who brought cases to me for resolution, media reports, Members of Congress, other Government officials, and members of the public.

The extent of my involvement depended on the nature and complexity of the issues presented and what was necessary to resolve them. I became involved in many cases of all types throughout my tenure because it was ultimately my responsibility, as the Director, to ensure cases were decided correctly under the law. Congress is only too familiar with the severe consequences to an applicant when a case is wrongly decided.

The legal and policy challenges we face were greatest in the EB-5 program, the most complex program USCIS administers. EB-5 cases require complicated business and economic analysis, such as whether the required amount of investment capital is at risk and whether the econometric models used to predict future job creation are reasonable. Unlike traditional immigration adjudications that involve an application that is several pages in length, EB-5 cases require different stages of agency review and often involve thousands of pages of legal and business documents.

The EB-5 program was underdeveloped when I arrived at USCIS in August 2009. At that time, the program only had approximately nine adjudicators. The agency did not provide them with the needed economic, business, or corporate law expertise to support them.

Applicants did not have to file a form, as required in other visa categories, but instead would submit an informal letter.

The agency's National security and anti-fraud screening needed to be strengthened. There was no comprehensive EB-5 policy document but, rather, a series of memos issued over the years that I learned through my review of EB-5 cases had failed to address many critical issues that apply to our everyday work. As a result, we were administering the EB-5 program poorly, and that was the view from every quarter.

At the very same time, the public's interest in and use of the program was growing dramatically. In the challenging economy at that time, when it was difficult to obtain commercial loans domestically, more business developers were turning to the EB-5 program for foreign financing. Because EB-5 developments can lead to the significant infusion of money and new jobs into a community, the public was interested in the outcome of these cases.

The growing importance of the program in communities suffering high employment, combined with USCIS's poor administration of the program, led to rising complaints, which I took seriously.

Congress appealed to me repeatedly to fix our administration of the program and to fix errors in specific cases. Members of Congress from both sides directed to USCIS more than 1,500 EB-5 case inquiries per year, dwarfing the number of communications about any other program the USCIS administered.

As the individual ultimately responsible for USCIS's administration of the program, I became increasingly involved in resolving the EB-5 legal and policy issues that we as an agency confronted. The issues often came to me through cases, the very work for which the agency is responsible.

I became involved in many EB-5 cases, three of which became the focus of the Office of Inspector General. I became involved in the very same way that I became involved in other cases—at the behest of my own employees, Members of Congress, Government officials, and other stakeholders.

As to the three cases, the Office of Inspector General found that, through my involvement, I allowed some agency colleagues to develop the perception that I was favoring individuals with an interest in these cases. I thought I had taken steps to guard against this very possibility. Even an appearance of impropriety is not acceptable to me.

Yet, as I have reflected on this important matter, I understand that these colleagues would not necessarily have known what I did do to adhere to applicable guidelines in these three cases, nor would they necessarily have been aware of my involvement in many other cases, many of which were responsive to concerns and inquiries of Members of Congress from both parties. This context would better have guarded against the possibility of such perception.

I support and embrace Secretary Johnson's protocols developed to more ably ensure that employees understand the involvement of their supervisors in specific cases. The protocols will benefit future agency directors who become involved and provide guidance in certain cases. I regret the perception my own involvement created.



In the three cases at issue, cases that were the subject of bipartisan support, I did what I did in the many other cases that were brought to my attention: I did my job and fulfilled my responsibility. I did not let errors go unchecked but, instead, helped ensure that those cases were decided correctly—nothing more and nothing less.

I sought the advice of colleagues, including agency counsel; took steps I thought would guard against the chance of misperception; raised concerns of fraud or National security; and followed the facts and applied the law. I became involved in more cases, EB-5 and other types, than I can count.

All applicants are entitled to and deserve the fair and correct application of the law. In the cases in which I became involved, whether it was the case of the Guatemalan orphan seeking to be united with her adoptive American family, the pregnant mother seeking urgent humanitarian parole to escape a forced abortion in China, the performing arts group lending cultural influences and seeking a performing arts visa, or the EB-5 petitioner forming a business enterprise, this basic principle was my guide and my responsibility to fulfill.

Thank you for the opportunity to appear before you.  
[The prepared statement of Mr. Mayorkas follows:]

PREPARED STATEMENT OF ALEJANDRO MAYORKAS

APRIL 30, 2015

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We are fortunate to have a great work force at USCIS, dedicated and hard-working public servants. After I became the director and led a top-to-bottom review of the agency, I learned that the agency did not always provide its work force with the support and resources it needed to meet its obligations to the American public. Among the most significant challenges were gaps and inconsistencies in the critical legal and policy guidance that governed adjudicators in their review of cases.

The consequences were serious; the agency was too often misapplying the law and issuing unsound policies. USCIS is an adjudicative body and I learned of these legal and policy challenges when individual cases were brought to my attention. The cases—cases involving the rich and the poor alike, business and cultural interests as well as profound humanitarian concerns—came to me from a variety of sources, including agency employees who brought cases to me for resolution, media reports, Members of Congress, other Government officials, and members of the public. The extent of my involvement depended on the nature and complexity of the issues presented and what was necessary to resolve them. I became involved in many cases, of all types, throughout my tenure because it was ultimately my responsibility as the director to ensure cases were decided correctly under the law. Congress is only too familiar with the severe consequences to an applicant when a case is wrongly decided.

The legal and policy challenges we faced were greatest in the EB-5 program, the most complex program USCIS administers. EB-5 cases require complicated business and economic analysis, such as whether the required amount of investment capital is at risk and whether the econometric models used to predict future job creation are reasonable. Unlike traditional immigration adjudications that involve an application that is several pages in length, EB-5 cases require different stages of agency review and often involve thousands of pages of legal and business documents.

The EB-5 program was under-developed when I arrived at USCIS in August 2009. At that time, the program only had approximately nine adjudicators. The agency did not provide them with the needed economic, business, or corporate law

expertise to support them. Applicants did not have to file a form as required in other visa categories but instead would submit an informal letter. The agency's National security and anti-fraud screening needed to be strengthened. There was no comprehensive EB-5 policy document, but rather a series of memos issued over the years that I learned, through my review of EB-5 cases, had failed to address many critical issues that applied to our everyday work. As a result, we were administering the EB-5 program poorly and that was the view from every quarter.

At the very same time, the public's interest in and use of the program was growing dramatically. In the challenging economy at that time, when it was difficult to obtain commercial loans domestically, more business developers were turning to the EB-5 program for foreign financing. Because EB-5 developments can lead to the significant infusion of money and new jobs into a community, the public was interested in the outcome of these cases. The growing importance of the program in communities suffering high unemployment, combined with USCIS's poor administration of the program, led to rising complaints, which I took seriously. Congress appealed to me repeatedly to fix our administration of the program and to fix errors in specific cases. Members of Congress from both parties directed to USCIS more than 1,500 EB-5 case inquiries per year, dwarfing the number of communications about any other program USCIS administered.

As the individual ultimately responsible for USCIS's administration of the program, I became increasingly involved in resolving the EB-5 legal and policy issues that we as an agency confronted. The issues often came to me through cases, the very work for which the agency is responsible. I became involved in many EB-5 cases—three of which became the focus of the Office of Inspector General—and I became involved in the very same way that I became involved in other cases; at the behest of my own employees, Members of Congress, Government officials, and other stakeholders.

As to the three cases, the Office of Inspector General found that through my involvement I allowed some agency colleagues to develop the perception that I was favoring individuals with an interest in the cases. I thought I had taken steps to guard against this very possibility; even an appearance of impropriety is not acceptable to me. Yet, as I have reflected on this important matter, I understand that these colleagues would not necessarily have known what I did do to adhere to applicable guidelines in these three cases, nor would they necessarily have been aware of my involvement in many other cases, many which were responsive to concerns and inquiries of Members of Congress from both parties. This context would better have guarded against the possibility of such perception. I support and embrace Secretary Johnson's protocols developed to more ably ensure that employees understand the involvement of their supervisors in specific cases. The protocols will benefit future agency directors who become involved and provide guidance in certain cases. I regret the perception my own involvement created.

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I became involved in more cases—EB-5 and other types—than I can count. All applicants are entitled to and deserve the fair and correct application of the law. In the cases in which I became involved—whether it was the case of the Guatemalan orphan seeking to be united with her adoptive American family, the pregnant mother seeking urgent humanitarian parole to escape a forced abortion in China, the performing arts group blending cultural influences and seeking a performing arts visa, or the EB-5 petitioner forming a business enterprise—this basic principle was my guide and my responsibility to fulfill.

Thank you for the opportunity to appear before you.

Chairman MCCAUL. I thank the Deputy Secretary.

I now recognize myself for 5 minutes.

Let me just say first, again, I did not create this report, had nothing to do with it. It raises serious allegations. You, I know, sir, of all people, know that I have an oversight responsibility under the Constitution.

I want to go through some of the issues that have been raised by the report to give you the opportunity to respond to that.

First, I know in April 2010 you issued an ethics policy to all of your employees.

I would like the clerk to provide the policy memorandum to the witness.

[The information follows:]

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director (MS 2000)  
Washington, DC 20529-2000



U.S. Citizenship  
and Immigration  
Services

APR 02 2010

Memorandum

TO: USCIS Employees

FROM: Alejandro N. Mayorkas  
Director

SUBJECT: Ethics and Integrity Memorandum No. 2: Preferential Treatment

A government position is a public trust requiring an employee to act impartially in the performance of his or her duties. The "Standards of Ethical Conduct for Employees of the Executive Branch" (5 CFR 2635) regulates the conduct of Federal Government employees and prohibits preferential treatment as a form of "Misuse of Position." Subpart G of the Standards of Ethical Conduct states:

"An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations."

**Purpose**

This memorandum provides guidance to USCIS employees on avoiding and preventing situations that could be, or appear to be, preferential treatment. It also provides information on obtaining further guidance, and on how to report suspected misconduct.

**Guidance**

Each USCIS employee has the duty to act impartially in the performance of his or her official duties. Any occurrence of actual or perceived preferential treatment, e.g., treating similarly-situated applicants differently, can call into question our ability to implement our Nation's immigration laws fairly, honestly, and properly.

A USCIS employee could violate the prohibitions against preferential treatment in a number of ways, by:

- Working on, or in any way attempting to expedite or otherwise influence the processing of, an immigration application, petition, or benefit for a friend, relative, neighbor or acquaintance;
- Meeting with certain stakeholders to the exclusion of others;
- Writing contract requirements that favor one organization over another;
- Referring applicants to a particular immigration practitioner or vendor;

Ethics and Integrity Memorandum No. 2: Preferential Treatment  
Page 2

- Using his or her official position or title in a manner that could reasonably be construed to imply that USCIS or the Government sanctions or endorses his or her personal activities;
- Using USCIS letterhead or his or her official position or title to:
  - Provide a letter of recommendation for an individual;<sup>1</sup> or
  - Endorse any organization, product, service, or enterprise.

Often the appearance of preferential treatment can be as damaging to our Agency's reputation as actual preferential treatment; therefore, a USCIS employee should avoid matters (e.g., cases or applications) if his or her participation may cause a reasonable person to question the employee's impartiality. Should a question arise about whether an employee's action(s) might be seen as providing preferential treatment, the employee should discuss his or her concerns with a supervisor or USCIS Ethics Officer before acting on the matter.

Failure to adhere to the standards or the guidance set forth in this memorandum may subject the employee to disciplinary penalties, up to and including removal from employment. Such disciplinary action may be in addition to any criminal or civil action or penalty prescribed by law.

**Contact Information**

If you have questions related to ethical standards applicable to your position, please discuss the issue with your supervisor or contact a USCIS Ethics Officer. For further information on ethics rules please go to <http://ethics.uscis.dhs.gov>, or contact the Ethics Division at [USCIS.Ethics@dhs.gov](mailto:USCIS.Ethics@dhs.gov).

To report a suspected violation of ethics rules or any other allegation of misconduct, contact the Office of Security and Integrity by any of the following methods:

1. Online through the USCIS intranet at <http://osi.uscis.dhs.gov/Forms/Complaint>;
2. Fax at (202) 233-2453; or
3. Mail at the following address:  
Chief, Investigations Division  
Office of Security and Integrity MS 2275  
U.S. Citizenship and Immigration Services  
633 Third Street, NW, 3<sup>rd</sup> Floor  
Washington, DC 20529-2275

Questions should be posed and reports should be made immediately upon identifying an issue or concern.

<sup>1</sup> USCIS employees may sign a letter of recommendation using their official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom the USCIS employee has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Chairman MCCAUL. I just want to ask you first: Why did you issue this ethics policy, and what was the purpose behind it?

Mr. MAYORKAS. Mr. Chairman, I issued this ethics policy because the principles articulated in this policy are very important and are applicable to everyone in the agency.

You correctly noted that public confidence in the decision making of a Government agency is critical to the public interest and to our responsibility as Government officials. In the service of that principle, I issued this important ethics memorandum.

Chairman MCCAUL. I think it is a good memorandum. I know you, coming from the Justice Department, like myself—you say the

purpose is to prevent situations that could be or appear to be preferential treatment.

What are the penalties outlined in this policy if an employee fails to meet the standards set forth?

Mr. MAYORKAS. Mr. Chairman, the penalties depend upon the facts of a particular case. The memorandum does spell out that the penalties can cover a wide range of possibilities, anywhere from a counseling to a termination, depending upon what principle is specifically violated and the facts of that violation.

Chairman MCCAUL. So it is a disciplinary—penalties up to and including removal from employment is what is stated in the memo.

More than 15 civil servants, career employees, came forward in your matter regarding your actions in the three EB-5 cases. According to the IG, “Their allegations were unequivocal,” giving special access and treatment to certain individuals and parties. I would like to ask you about these three cases specifically.

First, in the L.A. Films case, according to the IG’s report, within an hour of speaking to Ed Rendell, former Governor and chair of the Democratic National Committee, you directed USCIS staff to stop processing the denials of EB-5 visa petitions that you had already signed off on.

Is that true?

Mr. MAYORKAS. Mr. Chairman, I don’t remember the chronology of communications in that particular case.

I think there’s a very important principle at stake, though, and that is the following: That if a concern with respect to our adherence of the law is raised, it is our obligation to address that concern and have confidence that the ultimate decision that we are making in a case adheres to the law and the facts in every case.

Chairman MCCAUL. I appreciate—

Mr. MAYORKAS [continuing]. That is what I did in that case.

Chairman MCCAUL. On page 18, that is exactly what the IG’s report says. They stopped processing the denials that you had already signed off on.

I mean, I guess you can’t answer that question? I am just going from the IG’s report.

Mr. MAYORKAS. Mr. Chairman, I am not questioning the facts that the Inspector General lays out at that particular point in the report. What I am sharing with you is that I don’t recall the chronology of communications in that case.

But the principle is vitally important, that when we issue an adjudication in a case, it is our obligation to adjudicate the case in adherence of the law based on the facts in that particular case.

Chairman MCCAUL. I respect that.

According to the report, you also directed the staff to create one-time review board that resulted in approval of 249 petitions that, in the opinion of the career staff, would have otherwise been denied.

Do you know if that is true?

Mr. MAYORKAS. That is not precisely true, if I may. If I can please share—

Chairman MCCAUL. Very succinctly. I have very limited time.

Mr. MAYORKAS. Yes, Mr. Chairman.

In 2011, amidst many complaints with respect to our poor administration of the EB-5 case, we developed a series of reforms, proposals that we would flush out subsequently. One of those reforms that we discussed in the agency and announced publically and to which the public responded was the creation of a decision board in EB-5 cases to address complex issues that were unresolved between the agency and the parties—

Chairman MCCAUL. I appreciate it, but, if I could say, the board was only used once, in this specific case. It creates the appearance that you may have created a special process to accommodate special parties, which, I argue, were in violation of your own policy.

If I could go to the Las Vegas hotel case, according to the IG's report, not me, you directed your employees to provide Senator Reid's staff with weekly briefings. Is this correct?

Mr. MAYORKAS. I don't recall doing so.

Chairman MCCAUL. That is on page 36 of the IG report.

Is it standard practice to provide weekly updates to the status of EB-5 visa applications to outside parties?

Mr. MAYORKAS. Mr. Chairman, we prided ourselves on our responsiveness to Congress. How frequently our Office of Legislative Affairs responded to the enumerable questions and inquiries and concerns from Members of Congress I could not speak to. I know that the dialogue between our agency and Members of Congress from both parties was constant and consistent throughout our administration of the EB-5 program, and for reasons that were quite understandable, quite frankly.

Chairman MCCAUL. Well, I mean, in all three of these, you have been unable to confirm or deny the specific allegations set forth in the IG's report. I believe that it seems clear that your actions to address Senator Reid's request to expedite this case, provide his staff with weekly updates, if true—and I understand the IG is making the accusation and you are denying it, or you are saying you don't remember—that would, in my judgment, create a perception of preferential treatment in violation of your own policy, your ethical policy that you set forth, sir.

Let me move to the last one, because my time is limited, the Gulf Coast case. According to the IG's report, not my words, following communications with current Virginia Governor and former chair of the Democratic National Committee Terry McAuliffe, you subsequently intervened in the decision on the Gulf Coast appeal, even saying to career staff that you would rewrite the decision yourself.

That is set forth in the IG's report. Can you respond to that? This is your day to respond to these accusations, sir.

Mr. MAYORKAS. Thank you very much, Mr. Chairman, for that opportunity.

I was asked by the then-Secretary's office to look into this EB-5 case because it was the subject of considerable concern not only by stakeholders outside of the Government but by Members of Congress of both parties as well. It was at that direction that I looked into the case and learned that there were serious legal issues at play in that case, legal issues the seriousness of which my own colleagues recognized.

Chairman MCCAUL. You know, I was a prosecutor in the campaign finance reform where the Chinese Government influenced an

election, and I have to tell you, I am going to pursue this investigation into the EB-5 applicants and what was behind with respect to some of these foreign nationals. There may be nothing there, but I think it warrants a further look.

In conclusion, I would just like to say your 2010 ethics policy—again, you state in your policy, “Often, the appearance of preferential treatment can be as damaging to our agency’s reputation as actual preferential treatment. Therefore, an employee should avoid matters, cases, or applications if his or her participation may cause a reasonable person to question the employee’s impartiality.”

Sir, I believe, in my judgment, reviewing this matter and the responses you have given today, not really being able to respond specifically, that your actions in these cases create, at least at a minimum, the perception of special access and political favoritism.

In my judgment, I think you also violated your own ethics policy. You know, at the end of the day, you know, you and I are both career employees. Now you are a political appointee, but political appointees should be held to the same ethical standards, I believe, as rank-and-file members at the Department.

With that, the Chairman now recognizes the Ranking Member. Mr. THOMPSON. Thank you very much, Mr. Chairman.

Deputy Secretary Mayorkas, the Inspector General was before us several weeks ago. I asked some questions about the normal process by which he reviewed this EB-5 program.

All of us are Members of Congress. Our constituents ask us all the time to contact this agency on our behalf, do what you can. For the most part, we do. It is not unusual for a Member of Congress to contact a Federal agency about a constituent’s interest in a program.

Now, EB-5 is a job-creator. That was one of the reasons it was put together. But I am going specifically to the three EB-5 cases mentioned in the Inspector General’s report.

The Gulf Coast case, the Inspector General talked about contacts from Democrats. Are you aware of any contact from Republicans in this same case?

Mr. MAYORKAS. Yes, Congressman, I am. That EB-5 case was the subject of bipartisan support, and we received communications from Members of Congress of both parties.

I think, if I may articulate a very important principle here, that the individual who brings an issue to our attention does not decide the disposition of that issue. The disposition of the issue is neutral to the messenger but loyal, scrupulously loyal, to the law and the facts in the case.

Mr. THOMPSON. Thank you.

Now, you know, this is only not to impune any of the individuals, but my former Governor, Haley Barbour, is known. He headed the Republican National Committee, a very active person in the community, and somebody who is interested in jobs.

I am told that he contacted your office on behalf of Gulf Coast. Is that correct?

Mr. MAYORKAS. Yes, Congressman.

Mr. THOMPSON. Well, and I just want people to understand that the perception is that here you have a Republican Governor contacting a Democratic administration on behalf of a job creator, but

an IG report gives you the impression that only Democrats contacted the agency.

Now, I understand that both my Senators, Wicker and Cochran, contacted your office on behalf of this very same project. Am I correct?

Mr. MAYORKAS. I believe that's correct.

Mr. THOMPSON. Former Member of this committee, who just left 2 weeks ago, Representative Palazzo, contacted your office on behalf of this very same project. Am I correct?

Mr. MAYORKAS. I believe so.

Mr. THOMPSON. Well, and the point I am trying to make is we get an Inspector General's report that would lead you to believe that only Democrats contacted on behalf of this job creation program.

Let's go to the L.A. Films program. A former Member of this committee—I am told that a former Member of this committee contacted you, a Republican, contacted you on behalf of this program. Are you aware of that?

Mr. MAYORKAS. I don't recall. I know that that case was the subject of communications from both parties of Congress—

Mr. THOMPSON. Okay.

Mr. MAYORKAS [continuing]. Congressman.

Mr. THOMPSON. The SLS program, are you aware of bipartisan contact in support of this program?

Mr. MAYORKAS. I am.

Mr. THOMPSON. So it is safe to assume that the three cases presented to us by the IG did not include any Republican Members' support for those projects, as you saw them?

Mr. MAYORKAS. As best I can recall the report, that is correct.

Mr. THOMPSON. Well, I asked the IG in this hearing, and he did not answer the question.

But I am just trying to say, again, the report was incomplete. Gentlemen, ladies, we all get asked by our constituents all the time to support various projects.

Deputy secretary, there has been some question about a deference review board that you allegedly created to review the L.A. Films case. Are you aware of that?

Mr. MAYORKAS. Yes, but that was not created for that case. That was created for all cases.

The concept of the decision board was generated in 2011. I discussed with career employees the application of that decision board to the issue of deference, which was of tremendous concern in the community in the EB-5 program. I discussed its application with a number of career employees in 2012 and on-going.

Mr. THOMPSON. So it was not limited to that one case.

Mr. MAYORKAS. The decision board, or deference board, as it was termed subsequently, was a reform that was applicable to the EB-5 program writ large. It was needed, and especially with respect to the issue of deference, which caused so much consternation in the community.

When USCIS would make a decision, investors would invest, capital would be infused, business projects would begin. Then the agency would change its interpretation, reverse course, and projects would collapse, and jobs would be lost.



Mr. THOMPSON. Thank you.

My last question, Mr. Mayorkas, goes to this: Was it unusual for you, as the director of the agency, to refer items to counsel for their review and opinion?

Mr. MAYORKAS. I did that, Congressman, with some frequency depending on the issue.

Mr. THOMPSON. With respect to the EB-5 cases with the outside stakeholders, you sought advice of counsel in these cases.

Mr. MAYORKAS. I did. Quite frequently, we would discuss the legal issues and other issues involved in these cases.

Mr. THOMPSON. Thank you. I yield back.

Chairman MCCAUL. The Chairman now recognizes the gentleman from New York, Mr. Katko.

Mr. KATKO. Mr. Mayorkas, thank you for appearing before us today.

Again, to reiterate the Chairman's comments, we didn't write this report, and we are duty-bound, since the report exists, to follow up on it. So I am going to ask you a series of questions, and if you could keep the answers as brief as possible, I would appreciate it, unless I ask for some explanation.

With respect to the L.A. Film Regional Center issue, did you, in fact, speak to Governor Rendell about that issue?

Mr. MAYORKAS. I believe I did. In a conference call, I believe I did, to the best of my recollection.

Mr. KATKO. To the best of your recollection, do you recall what was said during that conference?

Mr. MAYORKAS. I apologize. I'm sorry?

Mr. KATKO. Do you recall what was said during that discussion?

Mr. MAYORKAS. I do not.

Mr. KATKO. But you do recall, to the best of your recollection, that you spoke to him about this issue.

Mr. MAYORKAS. I know I spoke with him about an EB-5 case, and I believe it involved the L.A. Films case. I'm not certain, Congressman.

Mr. KATKO. Now, the deference review board that was referenced as part of the L.A. Film Center Regional issue, did that, in fact, exist after this, after the L.A. Film Regional Center issue?

Mr. MAYORKAS. I learned from the Inspector General's report that it was not convened since the L.A. Films case. My hope is that, No. 1, the agency was not issuing incorrect decisions subsequently—

Mr. KATKO. I understand that. I am sorry to cut you off. I just want to know if, in fact, the board was ever used, and your answer is it was not?

Mr. MAYORKAS. Based on my reading of the Inspector General's report, it appears that it was not.

Mr. KATKO. Well, you were working there.

Mr. MAYORKAS. I left sometime after, and so I did not keep track of the conduct of the deference review board, especially because of the changes that I made in our administration of the program—

Mr. KATKO. Okay.

Mr. MAYORKAS [continuing]. The new leadership that I brought, the new office that I created, and the new processes that we put in place.

Mr. KATKO. Thank you.

Now, with respect to this deference review board, was it ever used before the L.A. Films Regional Center case?

Mr. MAYORKAS. To the best of my recollection, Congressman, we discussed using it in 2012 with respect to another EB-5 case, and we decided that a different process could be used to resolve the very same issue of deference in that EB-5 case.

That was an EB-5 case in which I became—

Mr. KATKO. I am sorry to cut you off again.

Mr. MAYORKAS. I'm sorry.

Mr. KATKO. It just requires a yes-or-no answer. Was it used before the L.A. Films case or not?

Mr. MAYORKAS. To the best of my knowledge, no.

Mr. KATKO. Okay. It wasn't used since?

Mr. MAYORKAS. To the best of my knowledge, no.

Mr. KATKO. Thank you.

Okay. Now, with respect to the Las Vegas Regional Center issue, do you recall specifically speaking with Senator Reid about this?

Mr. MAYORKAS. I do.

Mr. KATKO. Okay. Also, with respect to this, do you ever remember speaking with Steve Olson, the executive director of SelectUSA?

Mr. MAYORKAS. I do not remember speaking with him about the case. That doesn't mean I did or did not. I just don't recall.

Mr. KATKO. Now, with respect to the Gulf Coast case that was mentioned in the report, do you recall having contacts directly with Governor McAuliffe?

Mr. MAYORKAS. I do.

Mr. KATKO. Okay. How many such contacts did you have with him about this case?

Mr. MAYORKAS. I remember, to the best of my recollection, less than a handful. To the best of my recollection now, as I sit here, Congressman, I remember a meeting I attended at which Mr. McAuliffe was present, in the Department of Homeland Security headquarters, at the direction of the then-Secretary's office. I remember him calling to complain over the ensuing couple years, I believe, a few times.

Mr. KATKO. All right. The general discussions were about Gulf Coast and trying to get that approved; is that correct?

Mr. MAYORKAS. They were Mr. McAuliffe complaining about our adjudication in the cases.

Mr. KATKO. All right. Thank you.

Now, you mentioned during your opening statement and I think in your testimony, as well, that you got involved to ensure, "that cases were decided correctly." Do you recall saying that?

Mr. MAYORKAS. Absolutely.

Mr. KATKO. Okay. Now, weren't there procedures in place to handle these cases at your agency?

Mr. MAYORKAS. There were, but there were times when cases were brought to my attention by my own employees to resolve complex legal or policy issues. That was with respect to the EB-5 cases and many other cases outside of the EB-5 program.

Mr. KATKO. With respect to the EB-5 cases, though, I just want to make sure I am clear—and you can tell me “yes” or “no”—were there established procedures for handling EB-5 cases?

Mr. MAYORKAS. Yes.

Mr. KATKO. Were those EB-5 cases procedures, did they contemplate interjection by the head of the agency like you did?

Mr. MAYORKAS. I believe that they contemplated supervisorial review. So, when supervisorial review was warranted, supervisors engaged.

Mr. KATKO. But—

Mr. MAYORKAS. I viewed myself as the ultimate supervisor responsible for the agency’s fair and correct administration of the law.

Mr. KATKO. So, in your mind, it was appropriate for you to interject yourself into the process as you saw fit?

Mr. MAYORKAS. It was my responsibility to ensure that we were adhering to the law, Congressman, and if that warranted my involvement in a case, then I became involved. I was a very hands-on leader and, I believe, for the benefit of the agency and all of its workforce.

Mr. KATKO. Now, I want you to—it is hard to do, I know, and I have to do this once in a while in my 10 years as prosecutor—to take a step back and look at it from a layman’s perspective.

Now, if you look at it from a layman’s perspective, you have instances in which individuals are trying to influence the EB-5 process for their own benefit. You are taking their input and then, in turn, interjecting yourself into those cases and trying to effect the outcome of those cases to the benefit of the individuals who ask for your support.

It is fair to say, from a layman’s perspective, that may give you a perception of something less than impartiality. Isn’t that fair to say?

Mr. MAYORKAS. Congressman, if I may, I would not characterize it that way. Because what you said is that I would interject myself to drive to a decision that would benefit those individuals, and that is not true.

What I did do was get involved in cases to ensure that we were adhering to the law, whether that led to a denial of a case or the approval of a case.

Mr. KATKO. Well, it is fair to say, if these allegations are true, you were interjecting yourself into these cases in an attempt to influence the outcome.

I point specifically to the allegation that you wanted a case file, in the McAuliffe instance, because you wanted to rewrite the decision yourself. Is that fair to say?

Mr. MAYORKAS. No, Congressman. Respectfully, that is not accurate.

I interjected myself, to use your terminology, in many, many cases in the agency—

Mr. KATKO. I am not talking about other cases. I am—

Mr. MAYORKAS. I understand.

Mr. KATKO [continuing]. Talking about this case.

Mr. MAYORKAS. I sat around the table and discussed the legal issues that were involved in the GreenTech case that our own

agency designated as complex, that our own agency referred to its own appellate review office because of the complexity of the issues.

When we resolved a particular issue, I offered to write the legal analysis, just as I had offered to attend in person a settlement conference in a particular case because I thought I could add value to the correct disposition of the case; just as I offered—and the Chairman will appreciate this—just as I offered to try a case that involved National security interests because our agency felt that we were compelled to grant citizenship to an individual who I believe did not deserve citizenship and actually posed a danger to our community, and I offered to try that case myself, for the benefit of the agency, for the benefit of the interests that our agency was the guardian of.

Mr. KATKO. Okay.

If the Chairman would indulge me just one moment? Thank you.

I guess I am getting at the point that the perception, even if there was no wrong-doing here, the perception is that people are calling, at least in the Gulf Coast case, for example, someone who has a very strong interest in seeing it come out a certain way, certain actions were taken by you.

Looking back on it, wouldn't it be fair to say that—you said yourself that you, quote, regret the perceptions caused by your actions. Now, isn't it fair to say that that perception is part of the problem and kind of flies in the face of your ethical guidelines, the perception is almost as bad as doing something wrong?

In looking back on it, wouldn't you say that, at a minimum, it was probably not a good idea to have such access from the outside and just deal the cases based on the facts?

Mr. MAYORKAS. If I can, Congressman—and, Mr. Chairman, if I could also have your indulgence, because this is a very important point, and it speaks to the value and importance of the Inspector General's report, which I have tremendous respect for.

I took actions in these cases to guard against a perception issue. I was aware of it. I consulted with counsel; I consulted with my colleagues.

I have thought a great deal about this issue because, as the Chairman noted, the ethics and integrity memorandum that I issued is extremely important, and the principles articulated therein are extremely important and principles to which I have adhered throughout my 18 years of Government service—12 as a Federal prosecutor and 4 as the director of U.S. Citizenship and Immigration Services and approaching 2 as a deputy secretary of Homeland Security.

I have thought a great deal about the report. I have thought a great deal about the allegations. I have reviewed the report and the allegations with great care and reflected upon them and reflected upon my activities and the concerns expressed by my colleagues at U.S. Citizenship and Immigration Services.

I do regret the perceptions that my activities created, and I take responsibility for those perceptions. I've thought about, what else could I have done to better guard against those perceptions?

That is one reason why I value so much the report that the Inspector General prepared and, importantly and critically, why I have endorsed and embraced the protocols that Secretary Johnson

directed and that the Office of the General Counsel for the Department of Homeland Security have promulgated. Those protocols would have better equipped me to guard against the perception of some employees, who did not necessarily have complete context with respect to my involvement in these three cases nor my involvement in so many other cases.

I appreciate the opportunity to address your important questions.  
Chairman MCCAUL. The gentlemen's time has expired.

Mr. KATKO. Thank you very much.

Chairman MCCAUL. The gentlelady, Ms. Watson Coleman, is recognized.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

Mr. Mayorkas, I have a lot of questions, so I, too, would like to have expedient answers.

You started in 2009 in this program over the EB-5 program, right?

Mr. MAYORKAS. Yes. I became the director in August 2009.

Mrs. WATSON COLEMAN. When did you leave?

Mr. MAYORKAS. I left in December 2013.

Mrs. WATSON COLEMAN. When were these three cases, in particular, the subject of consideration and, supposedly, your involvement?

Mr. MAYORKAS. Two-thousand-eleven on. I can't—I apologize, I can't provide a more discrete time frame.

Mrs. WATSON COLEMAN. Do you know when the Inspector General started his investigation?

Mr. MAYORKAS. I don't. I believe it was in 2012 or 2013.

Mrs. WATSON COLEMAN. Some of this happened while you were there, and some of this happened while you were gone?

Mr. MAYORKAS. I learned of the Inspector General's investigation in July 2013.

Mrs. WATSON COLEMAN. During his investigation, how many times did he interview you?

Mr. MAYORKAS. I was interviewed once.

Mrs. WATSON COLEMAN. During that interview, did he raise the issues that preferential treatment and preferential access was alleged and that decisions based upon that access on your part was alleged with regard to these three cases?

Mr. MAYORKAS. Yes, that subject was raised in the interview. I should say that the Inspector General himself did not interview me, but investigators did.

Mrs. WATSON COLEMAN. Did the investigators tell you the individuals that you supposedly gave access to?

Mr. MAYORKAS. I believe the allegation was that I gave access to some individuals with interest in the outcome of the cases.

Mrs. WATSON COLEMAN. But did they identify them for you?

Mr. MAYORKAS. I don't recall, but—

Mrs. WATSON COLEMAN. My question is going to be—my question is basically this: The Inspector General only reported to us that there was access by people who are of one political persuasion. The information that we have been briefed on consistently is that there was bipartisan interest in each of these instances.

So I want to know at what time did you ever inform the Inspector General that, in addition to the people that he was concerned

about, or his office, that there were equally as many other either nonpartisan or partisan individuals from either side of the aisle who expressed consistent interest in the outcome of these cases.

Mr. MAYORKAS. I believe I informed the Inspector General's office that these cases were the subject of bipartisan support. I don't believe I identified particular individuals.

I did articulate the overarching and critical principle that our obligation is to decide a case not by who is interested in it but by the law and the facts in the particular case.

Mrs. WATSON COLEMAN. Thank you.

One of the things that I heard you say or I read was that perhaps individuals who had made these allegations who were lower in the hierarchy did not know what was going on because you were discussing these issues with counsel and with members above you in the hierarchy.

So they didn't know that you were, in fact, checking with legal counsel and others as you were proceeding to work your way through these particular issues, as you might on other issues too. Is that correct?

Mr. MAYORKAS. I think there were individuals with whom I worked at all levels of the agency with whom I interacted about these cases. But I—I have thought a lot about this. But perhaps I could have done a better job of providing full context for those with whom I worked, and maybe that would have better guarded against the perceptions.

Mrs. WATSON COLEMAN. Well, are those the ones that are below you in the system, that were below you in the organizational chart?

Mr. MAYORKAS. Well, I was—

Mrs. WATSON COLEMAN. In other words, you would be communicating down to them that which you were doing on behalf of these cases or in the interest of resolving these issues?

Mr. MAYORKAS. Those were individuals who reported to me, either directly or through chains.

Mrs. WATSON COLEMAN. So you did have interaction with people you were seeking counsel from at the counsel level or at your level or above—

Mr. MAYORKAS. Oh, yes.

Mrs. WATSON COLEMAN [continuing]. On these issues?

Mr. MAYORKAS. With respect to my involvement in these cases, I was very open with my colleagues.

Mrs. WATSON COLEMAN. On the three cases that have been a part of this discussion—and the only discussion we have had—two of them had an outcome which was not favorable to the individuals who were seeking the applications; is that right?

Mr. MAYORKAS. I know that, in the GreenTech case, after my involvement concluded—because, once the complex legal issues were addressed, I withdrew from involvement in the case, my involvement was no longer warranted—I know that complaints regarding the case continued for quite some time.

In the SLS case, my involvement was very discrete with respect to whether we were applying our expedite criteria correctly. I concurred, in that case, with the career employee—

Mrs. WATSON COLEMAN. Right.

Mr. MAYORKAS [continuing]. Who led the EB-5 program office at that time.

Mrs. WATSON COLEMAN. Right.

Mr. MAYORKAS. Then with L.A. Films, I was not involved in the decision of the—what has been termed the “deference board.” I was not involved in its decision making.

Mrs. WATSON COLEMAN. So, in your opinion, why are these three issues before you, these allegations raised by these employees that were beneath you? Was there something going on in your agency?

Mr. MAYORKAS. Well, I will say this, if I may, and then I’d like to answer your question directly.

I was very active—

Chairman MCCAUL. I would just like to state, we are about a minute, 30 overtime. So, if you could, you know—

Mrs. WATSON COLEMAN. Excuse me. With all due respect, Mr. Chairman—

Chairman MCCAUL. Yeah.

Mrs. WATSON COLEMAN [continuing]. We just had a 11½-minute interaction between—

Chairman MCCAUL. Yeah. Just—

Mrs. WATSON COLEMAN [continuing]. My esteemed colleague Mr. Katko and Mr. Mayorkas.

Chairman MCCAUL. That is fine. I gave the witness a very long opportunity for a very long time to respond, to his benefit. I—

Mrs. WATSON COLEMAN. I can wait for another round.

Chairman MCCAUL. To deference to all the other Members here, I am going to have to keep a little more discipline.

But go ahead. Ask your—

Mrs. WATSON COLEMAN. Thank you.

Chairman MCCAUL [continuing]. Last question.

Mrs. WATSON COLEMAN. You know what? I will come back for a second time, because there are only two of us here. But I just ask for consistency.

Chairman MCCAUL. I am not going to allow 10 minutes for every Member. I—

Mrs. WATSON COLEMAN. Well, how we pick and choose—

Chairman MCCAUL. The last one, the response from the witness was a little bit on the long side, and I allowed that to go forward.

Mrs. WATSON COLEMAN. Okay.

Chairman MCCAUL. But I am—

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

Chairman MCCAUL [continuing]. Going to have to maintain some discipline, as Chairman of this committee.

Your last question?

Mr. THOMPSON. But I—

Mrs. WATSON COLEMAN. Thank you—

Mr. THOMPSON. Excuse me.

Chairman MCCAUL. Last question.

Mr. THOMPSON. Mr. Chairman, I think what the gentelady is asking for is a balance. At no point did anybody get the time called on them. The gentelady was only a minute over. All we had to do—

Chairman MCCAUL. We will have a balance, and it will be more disciplined moving forward in this hearing, or we will not be done by the time votes occur.

But, having said that, the gentlelady will please ask your last question.

Mrs. WATSON COLEMAN. I believe that Mr. Mayorkas was in the process of answering a question, Mr. Chairman.

Chairman MCCAUL. Sure.

Mr. MAYORKAS. If I may, I'll answer it very briefly by saying this: It is my responsibility to ensure that my employees understand my actions as a leader of the agency. It is my responsibility to ensure that they understand entirely and completely the reasons for my involvement and the consequences of my involvement.

Mrs. WATSON COLEMAN. Thank—

Mr. MAYORKAS. At this time, I was making extraordinary changes in the EB-5 program and our administration of it.

Mrs. WATSON COLEMAN. Thank you very much.

Mr. Chairman—

Chairman MCCAUL. Yes?

Mrs. WATSON COLEMAN [continuing]. I don't know if we were planning to come back afterwards. I mean, I have a series of questions. But I tell you, I also have a series of questions that I would like to bring before the Inspector General as to why we were only given a little bit of information regarding these three issues in particular and why it was all associated with some sort of partisan—so I don't know what your plans are, but I don't think we are done here.

I thank Mr. Mayorkas.

I really wanted to talk to you about all the improvements that you have made to the management of this office and the Department in general and how we should be applauding that instead of, sort-of, excoriating you, but maybe next time.

Thank you very much, Mr. Chairman.

Chairman MCCAUL. Thank you.

Let me just say I am very lenient with time normally as a Chairman, but I am trying to keep this within some bounds of reason. I will let Members go over the 5 minutes, but within bounds of reason, on both sides of the aisle.

With that, now the Chairman recognizes Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

If I may take just a point of privilege here, the Chairman did not interrupt the Member but I think was directed to Mr. Mayorkas.

The 2009 EB adjudication policy contains a section entitled, and I quote: "Communication with EB-5 External Stakeholders."

The section of the policy states, "Where oral communication takes place between USCIS staff and external stakeholders regarding specific EB-5 cases, the conversation must be recorded, or detailed minutes of the session must be taken and included in the record of proceeding. The EB-5 program maintains an email account for external stakeholders to use when seeking general EB-5 program information, inquiring about the status of pending cases, or requesting to expedite of a pending EB-5 case."

The policy continues with this: "USCIS personnel are instructed to direct all case-specific and general EB-5-related communications



with external stakeholders through this email account or through other established communications channels, such as the National Customer Service Center or the USCIS Office of Public Engagement.”

So, during your tenure as director, would you be considered USCIS personnel? As such, the clause in this policy that I just read, would it be applicable to you, yes or no?

Mr. MAYORKAS. Yes, I was a USCIS personnel. Those guidelines would apply to me. However, they should not be at the detriment of ensuring that we get to the right result in a case. So I would become involved in a case if my involvement was warranted to adhere to the law that Congress passed.

Mr. WALKER. So are you saying that you unilaterally made that decision, whether you should, kind-of, abide by the policy? Is that my understanding, or are you saying something different here?

Mr. MAYORKAS. I’m saying something different, Congressman, if I may. I apologize if I was unclear.

I was a consultative leader. So, when I engaged in a particular case, sometimes at the behest of my employees, sometimes because a concern or inquiry was raised by a Member of Congress, sometimes because of a stakeholder, I did not do so in the dark of night but did that openly, in collaboration with my colleagues, to ensure that we were resolving legal and policy issues correctly and bringing force to the laws that Congress passed in the EB-5 program.

Mr. WALKER. Fair enough.

Okay. You also had contact over email, telephone, and in person with EB-5 external stakeholders, including but not limited to Ed Rendell, Tom Rosenfeld, Terry McAuliffe, and Anthony Rodham, where the status of pending cases were discussed. Is that correct?

Mr. MAYORKAS. Yes.

Mr. WALKER. Okay. These email communications occurred through your USCIS email and not the established EB-5 email, National Customer Service, or other established communication channels. Is that correct?

Mr. MAYORKAS. They were with me through email on occasion, and then I would share the emails with my colleagues for the recordkeeping to which you refer.

Mr. WALKER. How would you go about sharing those emails with your colleagues?

Mr. MAYORKAS. So, for example, in the GreenTech case, when my involvement was needed to address the issues with which the agency was grappling, I would forward my emails to counsel, and I—

Mr. WALKER. Mr. Mayorkas, would you say that was in line with the policy, the EB-5 policy, or not?

Mr. MAYORKAS. I’d have to take a look at that policy, but it was in line with our ultimate obligation to adhere to the law.

I became involved when my involvement was necessary, when the complexity of the legal or policy issues warranted it. When my involvement was not necessary, I did not engage. In fact, if one takes a look at the chronology of these cases, one will see that I was involved when the issues warranted and when the issues were resolved I withdrew from my involvement.

Mr. WALKER. Okay.

I have a couple more I want to squeeze in here. But there seems to be a pattern here, as far as kind-of overriding the policy, when, in your interpretation, you felt like the overall law was more important.

My question is: Your telephone calls and in-person meetings were not recorded and/or detailed minutes were not taken and submitted into the record of proceeding; true or false?

Mr. MAYORKAS. I couldn't speak to that. I certainly communicated—if I may, Congressman, I communicated the fact of communications with my colleagues. How those were recorded I'm not certain.

But I will say this. This is very important—

Mr. WALKER. Let me pause before you just move on there, because, at this point, I have counted about 14 or 15 times where you have said, "I believe so, but I'm not certain," "to the best of my recollection," and then on to something else.

So let me go back to the question: Did you follow in line with the policy? Do you need to reread the policy? Or, in your interpretation that you are testifying, that you felt that there was a larger scope to go by instead of the policy itself?

Mr. MAYORKAS. Congressman, I sought each and every day—

Mr. WALKER. That is my last question. After he responds, I will yield back.

Please go ahead.

Mr. MAYORKAS. Thank you, Congressman.

I sought each and every day to adhere to the highest legal and ethical legal standards that guide a public servant. The protocols that Secretary Johnson directed and that the Office of General Counsel promulgated will bring improvements to the very issue about which you inquire.

Mr. WALKER. Thank you, Mr. Mayorkas.

Mr. MAYORKAS. Thank you.

Mr. WALKER. Mr. Chairman, I yield back.

Chairman MCCAUL. I thank the Member.

The Chairman now recognizes Miss Kathleen Rice from New York.

Miss RICE. Thank you, Mr. Chairman.

Mr. MAYORKAS. you have made reference to, in your testimony and in your written statement, that you support and embrace Secretary Johnson's protocols that were developed to more ably ensure that employees understand the involvement of their supervisors in specific cases.

Forgive me if I missed this, but did you tell us what those protocol changes were?

Mr. MAYORKAS. No, I haven't. I believe they were issued formally this past Monday.

The Office of General Counsel set forth protocols that speak to a clearance process before certain leaders become involved in particular cases that define very generally the circumstances in which that involvement is warranted or, I should say, optimal. They speak—to Congressman Walker's issue in question—they speak to the recording of the involvement, so there's clarity and understanding by all employees with respect to the reasons for and the fact of that involvement.

I clearly would have benefited from those protocols.

Miss RICE. What about whether or not, in order to address Mr. Katko's line of questioning about perception, are you or someone in your position—you are not there anymore—but in charge of CIS, are they able to accept phone calls from elected officials?

Mr. MAYORKAS. Under the protocol, I would—I believe so, and I believe the protocol speaks to that and the fact that those communications should be recorded.

Miss RICE. Okay. So, you know—

Mr. MAYORKAS. By "recorded," I mean memorialized, not necessarily audibly recorded.

Miss RICE. I will agree with Mr. Katko that very often perception becomes reality. Perception is an issue that we all have to deal with.

You have gone through and been questioned very much about, you know, the actions that you took and the perceptions that they actually gave other people, whether accurate or not.

But I think the more relevant question, Mr. Chairman, that we to ask on this committee is—and maybe we do this in a closed session—do those phone calls that all of us make to various Federal agencies inquiring about specific issues, is that a negative perception right there, and should we not do that?

Or can we figure out a way that we can serve our constituents—because that is what these phone calls do—in a nonpartisan way—because Republicans and Democrats both do it—and do it in a way that makes sure that the perception is not misconstrued and there is a transparency?

So I just throw that out there, and I thank you for your consideration, Mr. Chairman. Thank you.

Mr. MAYORKAS. Thank you.

Chairman MCCAUL. The Chairman now recognizes Mr. Perry.

Mr. PERRY. Thank you, Mr. Chairman.

Mr. Mayorkas, good morning.

Americans pride themselves on a transparent Government where any person from any background has an equal chance of success, where a person's success or failure is blind to privilege or association and that success is solely based upon merit as it relates to a set of objective criteria established for the express purpose of ensuring fairness, while denying individuals in positions of power and influence the latitude to use their position to unethically benefit for themselves or for those whom with they wish to curry favor.

Based on that premise, under what circumstances do you consider preferential treatment by a Government official acceptable?

Mr. MAYORKAS. Congressman, if I may, the principle which you espoused is—

Mr. PERRY. That is mine. Okay. Use your own.

Mr. MAYORKAS. No, no, no.

Mr. PERRY. Just use your own then. Under what premise, under what circumstances is preferential treatment by a Government official acceptable?

Mr. MAYORKAS. I embrace your articulation of that principle—

Mr. PERRY. Okay. So there aren't any. There is no time.

Mr. MAYORKAS. Preferential treatment is not acceptable.

Mr. PERRY. Okay. Thank you.

With that understanding—with the understanding that you worked throughout your tenure to revise the EB-5 visa adjudicative process, and, as a former United States attorney, is it accurate to state that you were aware that the adjudicative process was governed by statute, regulation, and USCIS policy?

Mr. MAYORKAS. Absolutely so.

Mr. PERRY. Okay. So that is a “yes.”

Is it also accurate that you violated established USCIS policy for handling inquiries into the program?

Mr. MAYORKAS. I do not believe I did, Congressman. I am—

Mr. PERRY. Okay. Well, I am just—so you are saying that the office of OIG is wrong. That is okay if you are saying that, but—

Mr. MAYORKAS. No, I am not. This is very—this is very important because the Office of Inspector General is one that I have profound respect for, and I understand its importance.

The Office of Inspector General found that employees—

Mr. PERRY. I am talking about what you did, sir.

Mr. MAYORKAS [continuing]. Had a—yes—had a perception that I granted preferential treatment to individuals with an interest in these cases. I am responsible for the perception that my employees have of the work that I do.

Mr. PERRY. Okay.

Mr. MAYORKAS. I bear that responsibility. I regret the perceptions that my work created.

Mr. PERRY. Okay. So it is their perception—

Mr. MAYORKAS. However—

Mr. PERRY [continuing]. But you disagree that you violated the policy. That is fine. You can.

Do you consider the EB-5 visa valuable? You know what the value is of the EB—what is the cost, generally speaking, within the parameters of the program?

Mr. MAYORKAS. When you’re asking what does it cost, the fee?

Mr. PERRY. Five hundred thousand dollars to \$1 million, right?

Mr. MAYORKAS. Oh, I’m sorry. To obtain—

Mr. PERRY. Yeah.

Mr. MAYORKAS [continuing]. To obtain a visa—

Mr. PERRY. That is what kind of money we are talking about here, right?

Mr. MAYORKAS. We are talking about a million dollars unless the investment is in an area of high unemployment or rural area—\$500,000.

Mr. PERRY. Right. So we are talking, to me, significant money. I don’t know about anybody else, but—

Mr. MAYORKAS. Yes.

Mr. PERRY. So, as of July 15—and I don’t mean to rush, but—

Mr. MAYORKAS. That’s okay.

Mr. PERRY [continuing]. I only have so much time.

As of July 15, 2011, did you have a previously existing relationship with former DNC Chairman and PA Governor Ed Rendell?

Mr. MAYORKAS. Before when? I’m sorry.

Mr. PERRY. July 15, 2011.

Mr. MAYORKAS. Not to my recollection.

Mr. PERRY. Okay. So the answer is “no” there.

Is it true that, as of July 13, 2011, USCIS adjudicators were going to deny EB-5 visa applications for a firm known as L.A. Films?

Mr. MAYORKAS. I believe, from my reading of the Inspector General's report, that is the case.

Mr. PERRY. Okay. So you believe so.

Is it also true that, on July 15, 2 days later, getting a phone call from somebody that you did not know—probably knew of him—you received a call from former Pennsylvania Governor Ed Rendell, and, within an hour of this call, you directed your staff to reopen the denied application for L.A. Films. True or false?

Mr. MAYORKAS. If I may, I want to clarify something in your question—

Mr. PERRY. Sure.

Mr. MAYORKAS [continuing]. Congressman. Because I believe that Governor Rendell reached out to me about an EB-5 case earlier. As I mentioned, and I believe it was in response to the Chairman's query, perhaps another Member of this committee, I don't remember the chronology—

Mr. PERRY. Well, I have the—

Mr. MAYORKAS [continuing]. Of L.A. Films—

Mr. PERRY [continuing]. Chronology from the Inspector General report. You just told me you didn't have a previous relationship with the Governor. Now you told me that he reached out to you previously, so that is a little cloudy for me.

I guess, finally—so you are telling us it is a coincidence that former DNC Chairman and PA Governor Ed Rendell was a paid consultant representing L.A. Films and he just happened to call you 2 days after it was known the L.A. Films EB-5 request was going to be denied and that, within hours of receiving the Governor's call, you, Mr. Mayorkas, directed your staff to reopen the denied application for L.A. Films. Is that a coincidence?

Mr. MAYORKAS. I would respectfully take issue, Congressman, with your characterization of the question.

Mr. PERRY. I understand it. You are an attorney, right? It doesn't seem like you came very prepared for the meeting, knowing that it was coming.

One final question, Mr. Chairman.

What is DHS's policy for employee use of personal emails in the context of—on April 7, 2015, this year, I sent a letter to the Secretary requesting to see a copy of your email usage policy. Why has it taken so long to—I know you can't answer that question.

What was the policy for the employee use of personal emails? Do you know?

Mr. MAYORKAS. To the best of my knowledge, official business is to be conducted on official Government email.

I will follow up with your question, Congressman, with respect to your request for a copy of our email usage policy.

Mr. PERRY. Thank you.

Mr. Chairman, I yield.

Chairman MCCAUL. The Chairman recognizes Mr. Loudermilk from Georgia.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

Mr. Mayorkas, thank you for being here today.

As subcommittee Chairman on another committee on oversight, it is amazing how, I guess, being in the committee room with oversight causes selective memory with some people. So I am understanding the process a little bit more of asking multiple questions over and over. I appreciate you being here and willing to share with us what you recall.

First, I want to ask you about the deference review board. When you established that, did they already have—when they first met, were there policies and procedures in place when they convened their first meeting?

Mr. MAYORKAS. Congressman, the board was first considered and formulated in concept about 2 years earlier, in 2011. It was discussed when first published as a proposal and evolved since then.

The board convened in the L.A. Films case, and I am not aware of what procedures it did or did not have in place at that time.

Mr. LOUDERMILK. Well, according to the IG's report, it indicates that they had no policies and procedures in place when they first convened.

Now, how many times did the DRB convene?

Mr. MAYORKAS. My understanding, from the report, Congressman, is that it convened once.

Mr. LOUDERMILK. It was only regarding the L.A. Films case?

Mr. MAYORKAS. That is correct.

My hope is two-fold: One, that with the issuance of a governing EB-5 policy memorandum approximately 2 months after the board convened that gave better guidance to our adjudicators, we were no longer making decisions that we deemed to be incorrect and had to reverse, at the great expense and consternation of stakeholders as well as Members of Congress; and that we were adhering to our deference policy with greater orthodoxy than had previously been the case. Because the concern was that we were failing to honor our own substantive EB-5 policies.

Mr. LOUDERMILK. So the DRB was formulated as an appeals board for someone who was denied. It was used once. Then it was disbanded because now you had a policy and a way that an appeal could be done. Is that correct?

Mr. MAYORKAS. Congressman, I would say that the decision board was contemplated as an issue resolution board when a case, an EB-5 case, reached a certain point.

Mr. LOUDERMILK. So, once the DRB was disbanded, what was the process when someone was denied their application? What was the appeal process then?

Mr. MAYORKAS. I don't know that the DRB, by its acronym, was ever disbanded or just not utilized. But if an issue was not resolved yet, the USCIS adjudicators could, for example, pose inquiries to the party in interest, they could request evidence, and there could be a line of communication of written questions and written responses, usually fact-based, trying to obtain evidence that addressed one of the elements of the particular visa category at issue.

The decision board was contemplated in 2011 to bring greater efficiency to that process so that the party in interest could convene with the appropriate USCIS representatives to seek to resolve the legal or policy or factual issues that had not yet been resolved.

Mr. LOUDERMILK. So, based on what you are telling me in the OIG report, the DRB met one time, they heard an appeal, and they overturned it. It was disbanded.

How many denials since then have been appealed and then approved?

Mr. MAYORKAS. How many denials of EB-5 cases or—

Mr. LOUDERMILK. EB-5 cases. Because my concern with this program is that—and it looks like staff has done a pretty good job with this, but my concern is, this is an avenue that could be abused for someone who has money to buy citizenship in the United States.

Mr. MAYORKAS. Congressman, if I can, two things.

No. 1, the program contemplates not only the investment of capital but, importantly, the investment of capital that leads to the creation of a certain number of jobs for U.S. workers, No. 1.

No. 2, and what I think you might be hinting at, which is a subject that Mr. Chairman referenced, is a concern of an avenue for people to come into the United States and the importance of ensuring that our National security interests are well-protected in this program. I actually made significant reforms in our administration of the EB-5 program to bring that National security vetting rigor to the program. I brought in our Fraud Detection and National Security Directorate to get involved in and engaged with the EB-5 cases.

I should say also, if I may, Congressman, that it was I who created the Fraud Detection and National Security Directorate to bring greater fraud detection and National security rigor to all of our adjudications across the agency.

Mr. LOUDERMILK. If I may, Mr. Chairman, one more question.

Regarding Gulf Coast, Mr. McAuliffe had contacted you beginning in 2008, and, from questions we have had, that continued on 'til 2011. I assume that, although Mr. McAuliffe had several roles during that time period—CEO of GreenTech Automotive; he was also a chairman of Hillary Clinton's Presidential campaign and chair of the DNC in various times there—I assume that the contact he made was regarding CEO of GreenTech Automotive.

Now, during that time period, when we read the IG's report, Gulf Coast was denied, I guess, investment for GreenTech for three different reasons. All of them, when you read those reasons, was to prevent against someone just being able to buy citizenship into the United States. One was investment funds would not be at risk. The investor did not have a managerial role in the regional center, and the proposal did not encompass a single contiguous region.

But with several emails and phone calls with Mr. McAuliffe, it seems that you decided then to engage and, according to the IG's report, said you were willing to rewrite the decision.

Mr. MAYORKAS. If I may, Congressman, first, just a point of clarification. The time frame was not 2008 to 2011. I became the director of the agency in August 2009. I think it was well subsequent to that.

These very legal issues that were involved in the GreenTech case our own agency certified for internal administrative appellate review because of their complexity. My involvement was to ensure that we were resolving those issues in adherence to the laws that

Congress passed and the regulations that we as an agency promulgated in the service of those laws.

Mr. LOUDERMILK. But isn't that what the DRB would have done had it stayed in place, to avoid your direct involvement?

Mr. MAYORKAS. I don't recall the timing of the DRB, but we did not launch the DRB, to the best of my recollection, Congressman, at the time that these legal issues rose to my attention. I would have to look at the timing, but we were not ready for the decision review board at that time. Whether we had published the concept of it by that time, I just don't—I don't recall.

Mr. LOUDERMILK. Okay.

Mr. MAYORKAS. I will say this, that the resolution of those three issues was reached in adherence to the law. The issue of "at risk" and the correct reading of "in the matter of Izummi" was decided correctly.

Mr. LOUDERMILK. So you are inferring that the staff did not correctly interpret the law, but, once your engagement came in, then there was a correct interpretation of the law.

Mr. MAYORKAS. I think that our collaborative review of these issues led to the correct result in these cases, because I did not decide them alone.

Mr. LOUDERMILK. So does the law need to be clarified? Because it sounds like the law must be pretty subjective then.

Mr. MAYORKAS. I think that, at that time, the agency, and as I referenced in my opening statement, the agency did not have adequate guidance to its adjudicators, and we fixed that. Two months after the deference review board met, approximately 2 months after, we promulgated for the first time a comprehensive policy memorandum that better guided adjudicators in the administration of this program.

Mr. LOUDERMILK. Thank you, sir.

Yield back, Mr. Chairman.

Chairman MCCAUL. The Chairman now recognizes Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman and the Ranking Member.

Mr. Deputy Secretary, thank you very much.

As I indicated, I had to step away. We were in the Judiciary Committee marking up the USA FREEDOM Act, an opportunity to protect the civil liberties and the privacy rights of Americans while we protect domestic security—another aspect of responsibility that I know that you take very dear, as the deputy secretary for Homeland Security.

Let me just indicate that I missed the discussion on the swearing in or not swearing in. I draw support for my colleagues who raise the point, and I support them, that, although you willingly were sworn in, I do think it is appropriate that, if the answerer of the report is sworn in, then the presenter of the report should be, as well, with no, in any way, denigrating of the Inspector General.

So I thank you for your presence here.

I want to quickly go through some points, first, to acknowledge that you came to the deputy secretary's responsibility to improve a lot of infrastructure aspects of one of the largest departments in this Government, Department of Homeland Security.



Many of us on this committee were there when this Department and this committee ultimately was founded, if you will, after the Select Committee on Homeland Security. We are well aware of the monumental responsibilities of security and many other very important duties that this agency has, including the oversight of the Secret Service and our border security.

So I believe that this is a matter that we should put to rest so you can get back to the office and do the work that adheres to the securing of this Nation.

But what I would say—and you can listen as I say it. My understanding is that the IG's report found no wrong-doing, found no unlawful act committed for an unlawful purpose, and found no lawful act for an unlawful purpose.

My understanding is that there was nothing attributed to you that you did unlawfully. Is that accurate?

Mr. MAYORKAS. I believe the Inspector General did not make a finding that I violated any laws. I do believe the Inspector General found that I did not adhere—

Ms. JACKSON LEE. I will get to that. I will let you answer that in a moment. I just want to answer the unlawful at this point. Is that what the—to your understanding, that the Inspector General found, that you did not do anything unlawful?

Mr. MAYORKAS. That is my understanding.

Ms. JACKSON LEE. That is my understanding, so I will not ask you to do yourself in. I will indicate that that is my understanding of the beginning parts of the report.

The report found that there were three unusual acts, but none were determined to be unlawful. So we will get to, in quotes, the “unusual acts.”

But I think you answered the question, as I was listening to the inquiry made by my colleague, that there are adjudicators and decision makers on the EB-5, and then you ultimately sign off on their work that is done. Am I clear on that?

Mr. MAYORKAS. Congresswoman, I don't sign off on their work. What I meant to articulate, if I did not do so clearly, is that I, as the leader of the agency, bear ultimate responsibility for the correctness of our decisions, our administration of the law.

Ms. JACKSON LEE. So they do the work. There is not a signature that you have on it, but you are taking responsibility for making sure that whatever comes out of the Department of Homeland Security that may have been under your jurisdiction as director or now the deputy secretary is accurate. Is that what you are saying?

Mr. MAYORKAS. Yes.

Ms. JACKSON LEE. We thank you for that.

But there was work done by other persons on the EB-5 applications; is that correct?

Mr. MAYORKAS. Yes.

Ms. JACKSON LEE. You are now saying that that work is now being directed with better criteria and guidelines that can be checked and double-checked by others to make sure that the work is correct.

Mr. MAYORKAS. I think we made a tremendous number of improvements, very significant improvements, to the administration

of the program and better equipped our personnel to administer that program in adherence to the law, Congresswoman.

Ms. JACKSON LEE. When the Inspector General said “unusual acts,” that played into—or did it play into, in your interpretation, as poor guidelines or structure for the EB-5?

Mr. MAYORKAS. Congresswoman, I did—my involvement in these cases was as my involvement in many, many other cases, whether EB-5 or otherwise. When a case presented issues that warranted my involvement, I became involved. My own employees brought cases to me because of the issues involved. Members of Congress brought cases to my attention. Stakeholders brought cases to my attention. I learned from the media of certain cases. If the issue warranted my involvement, I engaged, and if the issue didn’t, I did not.

I think that is evidenced by the chronology of my actions in these very cases that were the subject of the Inspector General’s review. When an issue, for example, in the GreenTech case warranted my involvement, I worked with my colleagues to resolve the issue. When the case no longer warranted my involvement, I withdrew.

Ms. JACKSON LEE. So let me, if I can interpret what you are saying, you have a commitment to this country, and you have a commitment to the better workings of the U.S. Department of Homeland Security, is that correct, to make this department an effective department?

Mr. MAYORKAS. I do.

Ms. JACKSON LEE. So your intervention came about through newspapers, stakeholders, or other to make the Department better and to be a problem solver where it was brought to your attention. Would you interpret your intervention or your work in that category?

Mr. MAYORKAS. Absolutely so, Congresswoman. I would say I also have an additional calling, and that is an abiding duty to the law.

Ms. JACKSON LEE. Let me just be very clear. I am a strong supporter of EB-5 for the poor and minority communities across America. I would really hope that, as the Department looks to that process, that those communities may be the ultimate benefactors in many instances and that there are structures in place. But I would tell you, if there is anyone that I believe that can put those structures in place, it would be you and Secretary Johnson, because I do have a sense that you both want to be problem solvers.

So here is my question: Would you comment on the value of investment in some of these poor communities where jobs can be created?

No. 2, in any of the decisions that you have been noted for, cited for, if you will, did you have any personal stake, was there any self-interest, and did you benefit financially from any involvement of any of those particular incidents?

Mr. MAYORKAS. Congresswoman, I did not have any personal interest or benefit in any way from the disposition of any case pending before U.S. Citizenship and Immigration Services. The dramatic increase in interest in the EB-5 cases during my tenure was a reflection of the great interest in seeing an infusion of capital in

the creation of jobs in communities that were suffering high unemployment at the time.

Ms. JACKSON LEE. I think the final point of my inquiry—and I thank the Chairman and the Ranking Member for their indulgence—is, first, to get on the record that EB-5, done right, can infuse economic opportunity and jobs to struggling communities across America.

So let me ask you this question, as you are the deputy secretary: Are those some of the elements that you look at in directing, or the procedures of your now persons that do the initial review or decision making, have those kinds of framework in their mind, in their eyesight, of creation of jobs and helping underserved communities across America?

Mr. MAYORKAS. Those are some of the specified elements of an EB-5 adjudication, that a certain amount of capital must be invested. If it is an area of high unemployment—and that is defined specifically—then that impacts the amount of investment capital that must be made.

Also, there are—one of the elements is the likely—I hope I have my legal terminology correct—but the creation of jobs in the United States. For the amount of capital, 10 jobs must be created or are reasonably likely to be created.

Ms. JACKSON LEE. Well, I will work with you to increase that number. But I would just end on the note of saying, Mr. Deputy Secretary, you did not benefit from any of these decisions personally?

Mr. MAYORKAS. I did not.

Ms. JACKSON LEE. Let me thank you for your service. I think that we have gotten a thorough review of your service, your commitment to this country, and the fact that we are better off that you are serving Department of Homeland Security, but, more importantly, that EB-5 will be what it should be, which is an investment in the American people and job creation where it is needed.

With that, Mr. Chairman, I yield back.

Chairman MCCAUL. I thank the gentlelady.

The Chairman recognizes the Ranking Member for purposes of entering a document into the record.

Mr. THOMPSON. Thank you, Mr. Chairman.

For purposes of entering into the record, I have a statement from the International Brotherhood of Teamsters.

Chairman MCCAUL. Without objection, that is so ordered.\*

Let me close, sir, by saying thank you for coming here today to give your side of the story.

Oh, I am sorry. Mrs. Torres just arrived.

You are recognized.

Mrs. TORRES. I apologize, Mr. Chairman, for the late arrival. We were marking up another bill.

Chairman MCCAUL. Understood.

Mrs. TORRES. Deputy Secretary Mayorkas, thank you so much for being here. I know that this was not, you know, quite an easy task for you today.

\*The information was not submitted at the time of publication.

I am new to the committee and new to this issue, and I really would like for you to outline the steps that you took as the director of the U.S. Citizenship and Immigration Services and now as deputy secretary to improve the transparency of the EB-5 program.

Mr. MAYORKAS. Thank you very much, Congresswoman.

I made a number of reforms to the EB-5 program, culminating, I think, in the ultimate public development and publication of a governing policy memorandum that set forth clear resolutions to issues in the EB-5 program with which the agency was grappling for quite a number of years.

I created a new EB-5 program office and created a Senior Executive Service leadership position for that office. We created it in Washington, DC, in part because of the amount of interchange that we had with other Government agencies and stakeholders here in our Nation's capital. We selected an individual in the new leadership position that came from a financial regulatory background.

We strengthened fraud detection in National security protocols and safeguards to the program. There were a series of reforms that we made to the program to address the loud chorus of concerns and complaints that we received not only from Members of Congress from both parties but especially from the public at large.

Mrs. TORRES. Moving forward—you have already identified some changes—what else would you say that you and the Department can work on, lessons learned? How can we improve transparency?

Mr. MAYORKAS. Two things come immediately to mind.

One, to which I referred earlier in my testimony, Congresswoman, one is the very important protocols with respect to leadership involvement in certain cases that were promulgated this past Monday at the direction of the Secretary of Homeland Security, Jeh Johnson. They were promulgated by the Office of General Counsel. I think that will bring greater transparency to leadership involvement in particular cases.

We also welcome the opportunity, as Secretary Johnson wrote earlier this week, we welcome the opportunity to provide technical advice to Members of Congress as they review the EB-5 program as it approaches its sunset period of time. There are programmatic changes that can buttress the National security and anti-fraud regime that is currently in place.

Mrs. TORRES. Thank you so much.

Thank you for your patience.

Chairman MCCAUL. The Chairman recognizes—it is a closing statement, but it may be a question, so I am going to open it up to one last round of questions, and then we will close.

Sir, I had some interest—in the case of the Gulf Coast case, with the DNC former chair, Terry McAuliffe, it involved EB-5 visas for Chinese foreign nationals. Do you know who these foreign nationals are?

Mr. MAYORKAS. I do not.

Chairman MCCAUL. Okay. Yet you did intervene in this case and said that you would rewrite the decision yourself.

Mr. MAYORKAS. What I did do, Mr. Chairman, is I offered to write a legal analysis of one of the issues that we resolved around the table. It was the matter of whether the requisite amount of in-

vestment capital was at risk. That is my best recollection of that discussion. I certainly—

Chairman MCCAUL. Which is the standard, is it at risk or not. Correct. I understand that standard.

Were these Chinese foreign nationals properly vetted for National security reasons?

Mr. MAYORKAS. I would hope so. It is our responsibility, of course, to ensure that individuals who are granted visas do not pose a National security risk to our Nation. One of the critical improvements that I made, Mr. Chairman, to our administration of the EB-5 program was to bring our fraud detection and National security expertise to bear in the vetting of EB-5 petitioners.

Chairman MCCAUL. I commend you for that. But do you know if in this case they were vetted for National security reasons?

Mr. MAYORKAS. I had no involvement, to the best of my recollection, in—

Chairman MCCAUL. Would you have intervened in a case like this and rewritten the decision if you knew there was any National security concern?

Mr. MAYORKAS. Mr. Chairman, let me say two things.

No. 1, I was brought—I became involved in a case to address discrete issues, No. 1, and not all of the issues involved in a case. But I was involved—

Chairman MCCAUL. This does draw an issue and a concern—

Mr. MAYORKAS. If I may, Mr. Chairman—

Chairman MCCAUL [continuing]. If the Department was properly vetting these applicants.

Mr. MAYORKAS. If I may, Mr. Chairman, because this is very important, and it goes to a number of the issues.

I read a report that raised concerns of National security or fraud in this case, and I referred this case immediately, myself, to our Fraud Detection and National Security Directorate.

When an issue arose in the GreenTech case—and I believe it was subsequent to our resolution of the at-risk management and contiguity issues involved in the case. I learned of a concern. I believe it was a public concern, not one that percolated within our own agency. I brought in our fraud detection and National security personnel to look at it.

Chairman MCCAUL. In this case?

Mr. MAYORKAS. In this case.

Chairman MCCAUL. Okay. I am glad to hear that. At first, you said “I hope so,” but now you have a more definitive response to that.

I would like to know—because I don’t know who they are. I would like for the Department to produce to me the names of these individuals who applied and their background and the National security vetting of these individuals. Of course, I make that request, if you will agree to that.

Mr. MAYORKAS. Of course.

Chairman MCCAUL. Okay.

Last, just, you know—and Ms. Sheila Jackson Lee asked you questions earlier, previously, and you said, we are always focused on the fact there should be no communication that provides an avenue for undue influence on the adjudication, and it should be inde-

pendent, based on the laws and the facts, which you stated previously.

I think the only issue is, you know, if you create a policy, which you did, I think you need to follow it. Maybe, if you don't follow it, then create a new policy. But when you say that there shouldn't be preferential treatment as the policy and yet you make—I mean, it is one thing, as Miss Rice points out, Members of Congress do contact all the time, and we just ask, you know, that you take a look at the case.

These cases are a little different from that. These cases, you set up a separate board to deal specifically with 249 petitions. In another case, you overrule cases you have already approved, and in one case deciding to rewrite the decision yourself. It seems to me that is more than just a phone call from a Member, which Miss Rice points out we are entitled to do, and you are entitled to act upon that. In these cases, you really went out of your way, in very much an exception to the rule, that has the appearance, as you stated in your opening statement, of preferential treatment.

You know, you say that is the purpose. Then, of course, you do have penalties here even if the appearance is violated, that there should be disciplinary penalties, including removal from office. What do you think is appropriate in your case?

Mr. MAYORKAS. Mr. Chairman, I was involved in these cases as I was involved in many, many cases, both in the EB-5 program and outside the EB-5 program. The level of my involvement depended on the need for my involvement to help resolve difficult issues. My level of involvement in these cases is mirrored in other cases, as well. It wasn't a question of who brought the case to my attention but, rather, what the case needed to resolve it in adherence to the law and the policy.

Chairman McCAUL. All right. Just so I am clear, because I want you on the record: In your opinion, you did not violate your own ethics policy.

Mr. MAYORKAS. If I may, Mr. Chairman, the Inspector General found that, by virtue of my involvement in these three cases, employees perceived that I exercised undue influence in these cases.

I thought I had taken steps to guard against that. I bear responsibility for the perception of my employees. That is my responsibility, and I acknowledge that.

I have profound respect for the Office of Inspector General and this investigation and throughout their work.

Chairman McCAUL. Then we appreciate your honesty and candor. Do you believe that there should be any disciplinary action in your case?

Mr. MAYORKAS. Mr. Chairman, Secretary Johnson has spoken with me about this case—about this matter, I should say. He has spoken with me, and we discussed not only my involvement in this case, but we discussed lessons learned. We also discussed the protocols that at the time he directed and has since promulgated, which I support and embrace.

Chairman McCAUL. I thank the witness for your candor, as always, and honesty.

Chairman recognizes the Ranking Member.

Mr. THOMPSON. Thank you very much.

Deputy Secretary, the EB-5 program, can you, for the committee, indicate whether or not—those individuals who invest in the programs, can you describe the vetting of that investor for the committee?

Mr. MAYORKAS. There are two issues, as best as I recall, Congressman, that are at issue. One is the need to ensure that the funds that are invested are from a lawful source. Then there is the vetting of the individual, him- or herself, to determine whether they—to ensure that they do not pose a National security risk or otherwise pose a public safety danger such that their admission to the United States should be denied.

More specific than that, I cannot at this moment articulate.

Mr. THOMPSON. So, during your tenure at the Department, were you involved in either of those two processes within the EB-5 program?

Mr. MAYORKAS. I did not conduct the vetting or the forensic work myself.

Mr. THOMPSON. Is it commonplace for Members of Congress to contact USCIS on behalf of the EB-5 program?

Mr. MAYORKAS. Congressman, as I mentioned, we receive more than 1,500 communications from Members of Congress per year about the EB-5 program. The number of communications we received from Congress about this program dwarfed the number of communications we received about any other program we administered.

Mr. THOMPSON. Is it not uncommon for Governors or other interested individuals to contact USCIS on behalf of the EB-5 program?

Mr. MAYORKAS. The EB-5 program was the subject of communications from all corners and all quarters by virtue of two distinct forces at play: No. 1, the increasing importance of the program because of the challenges our economy faced at that time; and, No. 2, the poor administration of the program by our agency, which I should underscore was not the fault of our adjudicators but, rather, the fault of the institution in not providing those adjudicators, who are tremendously hard-working and dedicated and talented public servants, not providing them with the support they needed. These are very complicated legal, business, economic cases.

Mr. THOMPSON. That contact, either by Members of Congress or Governors or other State and local officials, has been by both Democrats and Republicans?

Mr. MAYORKAS. Yes, sir.

Mr. THOMPSON. So did you or have your staff felt that this kind of contact should not take place?

Mr. MAYORKAS. We were proud of our responsiveness to Members of Congress. It is our responsibility.

Mr. THOMPSON. So, if anybody contacted you on behalf of the EB-5 program under your direction, you did not feel that that contact was improper or would have changed your decision making on that particular project.

Mr. MAYORKAS. The fact of the contact would not influence our decision making. The question is: What would the law require based on the facts at issue in the particular case?

Mr. THOMPSON. I yield back, Mr. Chairman.

Chairman MCCAUL. Let me thank the witness for being here today.

Oh, Ms. Torres, do you have an additional question? I apologize. Okay. You do not. Okay. Thank you.

I want to thank the witness for being here today.

Members of the committee may have some additional questions for the witness, and we will ask you to respond to these in writing.

Pursuant to the committee rule 7(c), the hearing record will be open for 10 days.

Without objection, the committee stands adjourned.

[Whereupon, at 12:16 p.m., the committee was adjourned.]

