



December 16, 2013

VIA CERTIFIED MAIL

Hon. Barbara Boxer, Chair
Hon. Johnny Isakson, Vice Chair
U.S. Senate Select Committee on Ethics
Senate Hart Office Building, Room 220
Washington, D.C. 20530

Re: Request for Investigation of Conflicts of Interests

Dear Senators Boxer and Isakson:

Cause of Action is a non-profit, nonpartisan government accountability organization that fights to protect economic opportunity whenever federal regulations, spending, and cronyism threaten it. We seek, among other things, to ensure that elected officials are forthright about any attempts they make to use political influence to achieve ends that are personally profitable, but not in the public interest.

In January 2013, Senator Harry Reid (D-NV) contacted two officials at the U.S. Citizenship and Immigration Services (USCIS)—Office of Legislative Affairs Agent Miguel Rodriguez and USCIS Director Alejandro Mayorkas—in what *The Washington Times* characterized as an attempt to influence the approval of a number of EB-5 immigrant investor applications—some of which had not been approved due to “suspicious financial activity”¹—and to set them aside for expedited review.²

Despite the fact that these applications were ineligible for appeal,³ Senator Reid’s efforts to lobby USCIS resulted in the reconsideration and approval of these applications, as well as the subsequent securing of millions of dollars in foreign and domestic funds for the SLS Hotel & Casino and American Dream Fund EB-5 Regional Center—both of which are major contributors to the Democratic Party and its candidates.⁴ Even more

¹ All potential immigrant investors must demonstrate in the Form I-526 conditional application that the “capital” being used to invest in the EB-5 project has been “obtained through lawful means,” as demonstrated by “foreign business registration records,” “[foreign] tax returns,” and other forms of evidence. 8 C.F.R. § 204.6(j)(3). It is likely that the “suspicious financial activity” associated with the applications in the present case implicate this regulation.

² John Solomon & David Sherfinski, *VEGAS RULES: Harry Reid Pushed Feds to Change Ruling for Casino’s Big-money Foreigners*, WASH. TIMES (Dec. 10, 2013), available at <http://www.washingtontimes.com/news/2013/dec/10/harry-reids-visa-pressure-cooker/>.

³ See generally 8 C.F.R. § 204.6.

⁴ Solomon & Sherfinski, *supra* note 2.

troublesome is the fact that Senator Reid's son, Rory Reid, and his law firm, Lionel, Sawyer & Collins P.C., are legal counsel to the SLS Hotel & Casino.

Rule 43 of the U.S. Senate Code of Official Conduct permits members "to assist petitioners before executive and independent government officials and agencies."⁵ Such advocacy, however, ought not to be undertaken for the sake of personal benefit and should avoid any semblance of "special treatment."⁶ Indeed, the Select Committee on Ethics has suggested that members avoid interfering in "quasi-judicial, adjudicative, or enforcement" matters, since an Executive agency decision should be "based only upon a record developed during a trial-like hearing."⁷

Ex parte communications of the kind made by Senator Reid arguably violate the Code of Official Conduct. Urging the expedited approval of a specific set of visa applications that are flagged for "suspicious financial activity" goes beyond "urg[ing] prompt consideration"⁸ or typical constituent advocacy. This is especially the case given the relationship between Senator Reid and legal counsel for the SLS Hotel & Casino.

As you are no doubt aware, the rules and administration of the EB-5 program have been subject to increasing public concern. Career employees at the U.S. Department of Homeland Security, for example, have claimed that "top managers have given . . . politically connected applicants special treatment."⁹ Further misconduct has been reported at the state and local levels, where officials have manipulated U.S. Census data to accommodate favored corporations¹⁰ or abused the program under the guise of "economic development" while embezzling funds.¹¹ Even individuals who make their living representing Regional Centers or companies participating in the Pilot Program have been found guilty of fraud¹² and subjected to actions bought by the U.S. Securities and Exchange Commission.¹³

⁵ U.S. SEN. SELECT COMM. ON ETHICS, SENATE ETHICS MANUAL (S. PUB. 108-1) 177 (2003), available at <http://www.ethics.senate.gov/downloads/pdf/files/manual.pdf>.

⁶ *Id.* at 178.

⁷ *Id.*

⁸ *Id.* at 177.

⁹ Tom Hamburger & Peter Wallsten, *GreenTech Fits Pattern of Investment That Has Made Big Profits for Terry McAuliffe*, WASH. POST (Sept. 21, 2013), available at http://www.washingtonpost.com/politics/greentech-formulahas-made-big-profits-for-mcauliffe/2013/09/21/3c6e332c-2136-11e3-b73c-aab60bf735d0_print.html.

¹⁰ CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICA'S TAXPAYERS (Dec. 9, 2013), available at <http://causeofaction.org/assets/uploads/2013/12/131204-FINAL-Forest-City-Report-III.pdf>.

¹¹ See, e.g., Scott Waltman, *More Answers Wanted: Area Lawmakers Call for More Investigations of State Economic Development Efforts*, ABERDEEN NEWS (Dec. 15, 2013), available at http://www.aberdeennews.com/news/local/some-lawmakers-call-for-more-investigation-of-eb--state/article_39f49d3e-ddfa-5745-a99e-e7f82983aa25.html.

¹² See, e.g., Aisling Swift, *Former Naples Attorney Sentenced on Fraud Charge in Immigration Cases*, NAPLES NEWS (Dec. 9, 2013), available at <http://www.naplesnews.com/news/2013/dec/09/former-naples-attorney-sentenced-fraud-charge-immi/>.

¹³ See, e.g., Complaint at 18 ¶ 57, *Sec. Exch. Comm. v. A Chicago Convention Center, LLC* (N.D. Ill. Feb., 2013), available at <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-20.pdf>; see also 15 U.S.C. § 77q(a)(2).

These concerns—in addition to others we have raised to the attention of your colleagues in the House of Representatives¹⁴—demonstrate the extent to which EB-5 is abused. Indeed, a recent U.S. Immigration and Customs Enforcement memo released by Senator Grassley (R-IA) details how the program “inherently creates an opportunity for fraud” and may pose a serious threat to national security.¹⁵ Further, the program can be abused as a tool to finance local, state, or federal elections as Federal Election Campaign Act regulations permit contributions from foreign nationals who have obtained a green card.¹⁶

The American people deserve better. It is unfair for politicians to attempt to influence the enforcement of our laws, especially when they—or their close family members—stand to benefit. Even more importantly, such unethical efforts threaten the integrity of our immigration system and our national security.

Consequently, we request that the Select Committee on Ethics investigate this matter and ask Senator Reid to disclose all conflicts of interests he, or his son, might have had in the approval of EB-5 visa petitions for the SLS Hotel & Casino. Senator Reid’s full and honest disclosure will help to maintain public faith in the integrity of our political and legal institutions, avoid suspicion of the politicization of the Executive branch, and dispel any appearance of impropriety amongst members of the Senate.

Sincerely,



Daniel Z. Epstein
Executive Director

cc: Hon. Harry Reid, U.S. Senate

Hon. Alejandro Mayorkas, Director, U.S. Citizenship & Immigration Services

¹⁴ E.g., Letter from Cause of Action to Hon. Darrell Issa, U.S. House of Representatives (Sept. 24, 2013), available at <http://causeofaction.org/wp-content/uploads/2013/09/2013-9-24-Letter-to-Issa-w-Enclosures.pdf>; Letter from Cause of Action to Hon. Darrell Issa, U.S. House of Representatives (Dec. 9, 2013), available at <http://causeofaction.org/assets/uploads/2013/12/Letter-to-Issa-re-Forest-City.pdf>.

¹⁵ Letter from Hon. Charles E. Grassley, U.S. Senate, to John Sandweg, Acting Director, U.S. Immigration & Customs Enforcement (Dec. 12, 2013) (ICE Memo included as Attachment 1), available at <http://www.grassley.senate.gov/judiciary/upload/EB-5-12-12-13-ICE-memo-security-vulnerabilities.pdf>.

¹⁶ See Issa Letters, *supra* note 14.