



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

March 25, 2015

VIA CERTIFIED MAIL

Hon. Raymond Hulser
Acting Chief, Public Integrity Section
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Request for investigation of Hon. Alejandro Mayorkas, Senator Harry Reid, & Governor Terry McAuliffe, for violations of 18 U.S.C. §§ 371, 610, & 1346 for their participation in unlawful political activity, coercion and fraud related to the U.S. Citizenship and Immigration Services' EB-5 Immigrant Investor Program.

Dear Mr. Hulser:

On behalf of Cause of Action, a nonprofit, nonpartisan government oversight group, I am writing to request that you immediately investigate Hon. Alejandro Mayorkas, Senator Harry Reid and Virginia Governor Terry McAuliffe for violations of 18 U.S.C. §§ 371, 610, or 1346 for their participation in unlawful political activity, possible coercion and fraud related to the U.S. Citizenship and Immigration Services' EB-5 Immigrant Investor Program. The Immigrant Investor Program, or Employment-Based Preference Five ("EB-5"), allows foreigners to apply for a conditional U.S. visa by investing \$500,000 in an area of high unemployment under the Pilot Program.¹ For several years, the EB-5 visa program -- in addition to other government-issued visa programs -- has been subject to public scrutiny due to concerns that the programs can be abused for political or fraudulent purposes.²

¹ *EB-5 Immigrant Investor*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fac83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=fac83453d4a3210VgnVCM100000b92ca60aRCRD> (last visited Sept. 4, 2013).

² 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; Frances Robles, *Ecuador Family Wins Favors After Donations to Democrats*, N.Y. TIMES, (Dec. 16, 2014), available at http://www.nytimes.com/2014/12/17/world/americas/ecuador-isaias-obama-campaign-robert-menendez-hillary-clinton.html?_r=0 ("The Obama administration overturned a ban preventing a wealthy, politically connected Ecuadorean woman from entering the United States after her family gave tens of thousands of dollars to Democratic

Summary

Since 2013, the U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) has investigated widespread allegations of wrongful interference by Mr. Mayorkas, the former Director of the U.S. Citizenship and Immigration Services (USCIS) and current DHS Deputy Director, in the adjudication of visa applications by USCIS under the EB-5 visa program.³

On March 24, 2015, the OIG reported that a “significant” number of DHS employees, including some very senior managers who each had direct contact with Mr. Mayorkas and who were in a position to witness the events, stated that “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 thereof.” In fact, the Inspector General identified three cases where, “but for Mr. Mayorkas’ intervention the matter would have been decided differently.”⁴

In one such case, Mr. Mayorkas “intervened” in the adjudication of a regional center’s application for EB-5 funding via investments in a company led by current Virginia Governor Terry McAuliffe.⁵ At the time, McAuliffe was working with former Secretary of State Hillary Clinton’s brother, Anthony Rodham, on the project.⁶ Cause of Action raised these concerns to Congress in 2013.⁷

In another case, Mr. Mayorkas used his influence to provide former Senate Majority Leader Harry Reid with special benefits and access.⁸ According to the Inspector General, Mr. Mayorkas “intervened” at Senator Reid’s request “to allow expedited review of investor petitions involved in funding a Las Vegas hotel and casino, *notwithstanding the career staff’s original*

campaigns, according to finance records and government officials”). The OIG Report states that Mayorkas created a USCIS task force to “liaise with the Department of State.” DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ EB-5 PROGRAM (2015) (“OIG REPORT”) at 71, *available at* http://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf.

³ Fredrick Kunkle and Tom Hamburger, *McAuliffe’s Business Partners Under Scrutiny amid Federal Inquiry into GreenTech*, WASH. POST, Aug. 24, 2013, http://articles.washingtonpost.com/2013-08-24/local/41442795_1_mayorkas-gulf-coast-funds-management-wang.

⁴ OIG REPORT at 1,3 (2015).

⁵ *Id.* at 7; *see also* Tom Hamburger & Peter Wallsten, *GreenTech formula has made big profits for McAuliffe*, WASH. POST (Sept. 21, 2013), http://www.washingtonpost.com/politics/greentech-formula-has-made-big-profits-for-mcauliffe/2013/09/21/3c6e332c-2136-11e3-b73c-aab60bf735d0_story.html.

⁶ OIG REPORT at 38, 41.

⁷ Letter, Cause of Action to former Chrm. Darrell Issa, Comm. Oversight & Gov’t Ref., <http://causeofaction.org/wp-content/uploads/2013/09/2013-9-24-Letter-to-Issa-w-Enclosures.pdf>; *see also* CAUSE OF ACTION, *GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* at 15-18 (2013), *available at* <http://causeofaction.org/assets/uploads/2013/09/130922-REPORT-Final-GreenTech-Automotive-FINALIZED.pdf>.

⁸ OIG REPORT at 6.

*decision not to do so.*⁹ It should be noted that Cause of Action raised concerns about Senator Reid's conduct in a 2013 letter to the Senate Select Committee on Ethics, and two follow-up letters in 2014.¹⁰ However, John Sassaman, then-Chief Counsel and Staff Director of the Committee responded by stating "[a]fter looking into the matter, the Committee concluded that there was no evidence or information to support the allegations, and it closed the matter."¹¹

In all of these cases, immigration authorities have been circumvented or manipulated for political gain. To protect the integrity of USCIS and to deter future abuse, the Public Integrity Section must investigate Mayorkas, Reid, and McAuliffe for possible criminal misconduct related to these improprieties.

Alejandro Mayorkas

The OIG concluded that Mr. Mayorkas, while recognizing 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" such matters, intervened on three matters in a dispositive way that resulted in different adjudicatory results.¹² He noted that "The number of variety of witnesses" willing to come forward was "highly unusual."¹³ According to the OIG: "Being a whistleblower is seen to be hazardous in the Federal Government, and a typical investigation would have one or perhaps two. 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."¹⁴ The OIG also noted that it was "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."¹⁵

Terry McAuliffe

On September 24, 2013, Cause of Action wrote to the U.S. House of Representatives Committee on Oversight and Government Reform. In that letter, Cause of Action stated:

⁹ *Id.* at 6-7.

¹⁰ Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Oct. 23, 2014), *available at* <http://causeofaction.org/assets/uploads/2014/10/2014-10-23-Signed-Senate-Ethics-Letter-2.pdf>; Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Oct. 21, 2014), *available at* <http://causeofaction.org/assets/uploads/2014/10/2014-10-21-Ethics-Letter.pdf>; Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Dec. 16, 2013), *available at* <http://causeofaction.org/assets/uploads/2013/12/2013-12-16-Ltr-Sen-Ethics-Comm-Reid.pdf>; Burgess Everett, *Conservative group: Ethics panel ignored Reid complaint*, POLITICO (Oct. 21, 2014), <http://www.politico.com/story/2014/10/harry-reid-ethics-committee-cause-of-action-112085.html>.

¹¹ Letter from John C. Sassaman, Chief Counsel and Staff Director, Sen. Select Comm. on Ethics (Nov. 14, 2014), <http://causeofaction.org/assets/uploads/2015/03/Senate-Ethics-Response-Letter-2014-11-141.pdf>

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 2-3.

As you may be aware, the U.S. Securities and Exchange Commission is currently investigating GreenTech regarding its conduct in soliciting foreign investors through the EB-5 visa program. In addition, the U.S. Department of Homeland Security (DHS) is examining whether GreenTech benefitted from special treatment by Andrew Mayorkas, the Director of the U.S. Citizenship and Immigration Services (USCIS) and President Obama's nominee to be DHS's Deputy Director.

During the course of our own six-month investigation, we obtained records evidencing a variety of troubling conduct by GreenTech. For example, in an e-mail to Mississippi's then Governor Haley Barbour, GreenTech Chairman Terry McAuliffe cited the efforts of Mississippi's two U.S. Senators to pressure Mayorkas to fast-track EB-5 visa applications for GreenTech's benefit.¹⁶

According to the OIG, in an EB-5 application associated with the Gulf Coast Funds Management Regional Center, Mr. Mayorkas' "intervened" in an administrative appeal related to the denial of the regional center's application to manufacture electric cars through investments in GreenTech Automotive, Inc., where now-Virginia Governor was Chairman of the Board.¹⁷ Moreover, Anthony Rodham, former Secretary of State Hillary Clinton's brother, was "listed as Chief Executive Officer" of the Gulf Coast regional center.¹⁸ The U.S. Securities and Exchange Commission is currently investigating GreenTech regarding its conduct in soliciting foreign investors through the EB-5 visa program.¹⁹

Harry Reid

The OIG concluded that Mr. Mayorkas "intervened" at the request of then-Senate Majority Leader Harry Reid "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.*"²⁰ Cause of Action informed the Senate Select Committee on Ethics about these abuses in 2013, and in two 2014 follow-up letters after Senate Ethics failed to response to Cause of Action.²¹ When media pressure finally forced a response in late 2014, John Sassaman, then-Chief Counsel

¹⁶ See note 7, *supra*.

¹⁷ OIG REPORT at 39, 40-45.

¹⁸ *Id.* at 38, n.22.

¹⁹ Tom Hamburger and Ben Pershing, *Car Company with Ties to Terry McAuliffe is Under SEC Investigation*, WASH. POST, Aug. 2, 2013, http://www.washingtonpost.com/politics/company-with-ties-to-terry-mcauliffe-is-under-sec-investigation/2013/08/02/da483b36-f956-11e2-b018-5b8251f0c56e_story.html?wpisrc=al_lclpolitics.

²⁰ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES' EB-5 PROGRAM at 6-7 (2015), *available at* http://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf (emphasis added).

²¹ Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Oct. 23, 2014), *available at* <http://causeofaction.org/assets/uploads/2014/10/2014-10-23-Signed-Senate-Ethics-Letter-2.pdf>; Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Oct. 21, 2014), *available at* <http://causeofaction.org/assets/uploads/2014/10/2014-10-21-Ethics-Letter.pdf>; Letter from Cause of Action to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (Dec. 16, 2013), *available at* <http://causeofaction.org/assets/uploads/2013/12/2013-12-16-Ltr-Sen-Ethics-Comm-Reid.pdf>.

and Staff Director of the Committee stated, “[a]fter *looking into the matter*, the Committee concluded that there was *no evidence or information* to support the allegations, and it closed the matter.”²²

The OIG Report now makes clear that any investigation or review by the Senate Ethics Committee was insufficient. To begin with, it appears that the Senate Ethics Committee conducted a preliminary inquiry based on the press reports without deeming Cause of Action a complainant. While its rules are unclear, its own FAQ clarifies that it conducts a preliminary inquiry on any complaint “or information from virtually any source”:

Q: What are the stages of an investigation?

A: Whenever the Committee receives a complaint, allegation, or information from virtually any source suggesting that a Senator or staffer may have violated rules within the *Committee’s jurisdiction*, the Committee will initiate a preliminary inquiry. Please see the *Rules of Procedure for the Select Committee on Ethics* for additional guidance[.]

To determine there was “no” evidence after conducting a preliminary inquiry seems unlikely, given the various ongoing investigations.

Furthermore, Mr. Sassaman stated “In evaluating the allegations, the Committee took into account that USCIS’s regulations permit communications from external stakeholders, such as elected officials at all levels. According to reports issued by the agency, it receives hundreds if not thousands of such communications and inquiries each year concerning EB-5 applications. The Committee also considered that Senate Rule 43 permits Members to request a status report from an agency or seek reconsideration of an administrative decision.” This is a misreading of relevant law and the Senate’s own rules and guidance.

First, neither Senate Rule 43 nor any of its guidance permits Members to seek reconsideration of an “administrative decision.” In fact, Chapter 8 of the Senate Ethics Manual provides interpretive guidance on Rule 43’s “administrative response” language, suggesting that a Member consider “the nature of the agency proceedings”. Further, the Committee distinguishes between formal adjudications which involve an agency “performing a quasi-judicial, adjudicative, or enforcement function” versus other types of agency decisions, including “rulemaking”.

Second, despite Mr. Sassaman’s apparent review of USCIS regulations, he failed to recognize that, for purposes of *ex parte* rules, USCIS is governed by the Administrative Procedure Act (APA), which prohibits *ex parte* communications. 5 U.S.C. § 706.²³

²² Letter from John C. Sassaman, Chief Counsel and Staff Director, Sen. Select Comm. on Ethics (Nov. 14, 2014).

²³ See Case File WAC 08 184 50343 (Nov. 18, 2008) (Opinion by John F. Grissom, Acting Chief, Administrative Appeals Office, USCIS), http://www.uscis.gov/sites/default/files/err/K1%20-%20Request%20for%20Participation%20as%20Regional%20Center/Decisions_Issued_in_2008/Nov182008_01K1610.pdf (“the AAO notes that *ex parte* communications are prohibited by the Administrative Procedure Act[.]”)

Third, independent of USCIS regulations, Senate Ethics guidance prohibited Reid's conduct. Chapter 8 of the Senate Ethics Manual states, "[s]uch formal adjudications and rulemaking proceedings require that the agency's decision be based only upon a record developed during a trial-like hearing. Ex parte communications (oral or written communications made without notice and off the public record) are generally prohibited during formal adjudication periods."

Fourth, given that the guidance concerns ethics, sound public policy would suggest that even if no law or regulation prohibited Senator Reid's request for reconsideration of an adjudicative decision, the spirit of the Ethics Guidance would prohibit it. In fact, the Guidance states that "the most stringent limitations placed on congressional contacts involve[e] pending agency adjudications."

Fifth, other laws prohibited Senator Reid's conduct as described in the OIG Report. The Government in the Sunshine Act, Pub. L. No. 94-409, section 557(d)(1)(A), prohibits *ex parte* communications by an interested party, which may include Members of Congress, with an agency employee reasonably expected to be involved in decision-making regarding the merits of a proceeding. Mayorkas clearly was a decision maker and the OIG Report demonstrates that there was significant, ongoing communication.

Finally, given statements in the press concerning the IG investigation into EB-5 and Senator Reid's conduct, even if Senate Ethics Rules did not prohibit Reid's conduct, historical practice suggest that if the Senate has reason to believe a Senator violated laws within an other agency's jurisdiction, it "shall" report to those proper authorities. *See* Procedural Rule 7(a). Unfortunately, it appears the Committee's determination that "no evidence" supported the allegations was based on a cursory and insufficient review. This fact only further highlights the importance of your conducting an independent review.

Conclusion

Because the law concerning foreign campaign contributions makes an exception for foreign nationals who have obtained a green card, there is an incentive to any local, state or federal candidate to exchange visas for political contributions. Given the evidence that Senator Reid, Governor McAuliffe and others pressured government officials to fast-track visas of favored individuals, it is reasonable to wonder whether visas were being used as vehicles for campaign contributions or other funds. If these individuals intended to secure visas for investors who would then contribute to a campaign, then the pressure to have DHS employees fast-track visas might constitute threats or commands of Federal Government employees to engage in political activity, therefore violating federal law.²⁴

²⁴ *See* 18 U.S.C. § 610 ("It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322 (1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political

Hon. Raymond Hulser

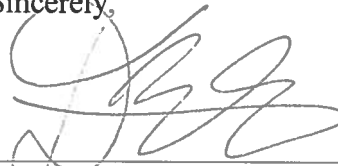
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Moreover, 18 U.S.C. § 1346 defines “scheme or artifice to defraud” in the federal fraud statute, 18 U.S.C. § 1341, as including “a scheme or artifice to deprive another of the intangible right of honest services.” In *United States v. D’Alessio*,²⁵ the federal district court for the District of New Jersey extended the Supreme Court’s reasoning in *McNally v. United States*²⁶ to conclude that 18 U.S.C. § 1346 applies to candidates for public office. Therefore, a politician’s use of a visa program to secure contributions may involve a breach of the fiduciary duty of honest services owed by a public official to the body politic. Finally, under 18 U.S.C. § 371, “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.”

Your section has jurisdiction over public corruption crimes, including bribery of or from public officials, extortion, acceptance of gratuities, election crimes, and conflicts of interest involving criminal misconduct and other public integrity related offenses. Given the individuals involved, the pattern of malfeasance and the importance of public oversight, it is incumbent your division immediately investigate these matters. We would welcome the opportunity discuss the issues raised in this letter and in the OIG Report with you or your staff. If you have any questions, please do not hesitate to contact me by phone at 202-499-4232 or by email at Daniel.Epstein@CauseOfAction.org. Thank you for your time and consideration.

Sincerely,



DANIEL EPSTEIN
EXECUTIVE DIRECTOR

cc: Hon. Eric H. Holder, Jr., Attorney General

Hon. Ron Johnson, Chairman, U.S. Senate Committee on Homeland Security and
Governmental Affairs

Hon. Jason Chaffetz, Chairman, U.S. House Committee on Oversight & Government

contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both”).

²⁵ 822 F. Supp. 1134 (D.N.J. 1993).

²⁶ 483 U.S. 350, 363 (1987).

Reform

Hon. Tom Carper, Ranking Member, U.S. Senate Committee on Homeland Security and
Governmental Affairs

Hon. Elijah Cummings, Ranking Member, U.S. House Committee on Oversight and
Government Reform

Hon. Michael McCaul, Chairman, U.S. House Committee on Homeland Security

Hon. Bennie G. Thompson, Ranking Member, U.S. House Committee on Homeland
Security

Hon. Charles Grassley, Chairman, U.S. Senate Committee on the Judiciary

Senator Patrick Leahy, Ranking Member, U.S. Senate Committee on the Judiciary

John Roth, Inspector General, U.S. Department of Homeland Security

Eduardo Aguirre, Director, U.S. Citizenship and Immigration Services

Mary Jo White, Chair, U.S. Securities and Exchange Commission