



A 501(c)(3) Nonprofit Corporation

October 21, 2014

VIA CERTIFIED MAIL

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

Re: Request for Notice of Committee Determination Regarding December 16, 2013, Complaint Regarding Senator Harry Reid's Interference with USCIS's Review of EB-5 Immigrant Investor Applications for the SLS Hotel & Casino Project.

Dear Senators Boxer and Isakson:

On December 16, 2013, Cause of Action, a non-profit, nonpartisan government accountability organization, submitted a letter to the Senate Ethics Committee ("Committee") alleging that Senator Harry Reid (D-NV) violated Rule 43 of the U.S. Senate Code of Official Conduct¹ through *ex parte* communications with the U.S. Citizenship and Immigration Services ("USCIS"). These communications were apparently for the purpose of altering or affecting USCIS's review of EB-5 immigrant investor applications related to the SLS Hotel & Casino project.

Over 300 days have passed since the Committee has received Cause of Action's complaint, but it apparently has taken no action. It may be that the Committee's silence reflects its decision that the complaint's allegations do not justify a preliminary inquiry.² Or it may be that the Committee's silence reflects a failure to properly discharge duties. Consequently, the purpose of this letter is to request a reasoned notice of the Committee's determination in this case.

¹ 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>; *see also* U.S. S. SELECT COMM. ON ETHICS, SENATE ETHICS MANUAL (S. PUB. 108-1) 177-78 (2003), *available at* <http://www.ethics.senate.gov/downloads/pdf/manual.pdf> (discussing Senate Code of Official Conduct Rule 43); David Sherfinski, *Harry Reid on the hot seat: Ethics probe demanded by watchdog group*, WASH. TIMES (Jan. 21, 2014), <http://www.washingtontimes.com/news/2014/jan/21/watchdog-group-calls-ethics-investigation-reid>; *Ethics Complaint Filed Against Harry Reid*, WASH. FREE BEACON (Jan. 21, 2014), <http://freebeacon.com/politics/ethics-complaint-filed-against-harry-reid/>; Kenric Ward, *Complaint: Reid meddled in casino visa-investor cases*, WATCHDOG.ORG (Jan. 21, 2014), <http://watchdog.org/124635/reid-visa-investor/>.

² U.S. S. SELECT COMM. ON ETHICS, S. PRT. 111-53, RULES OF PROCEDURE, RULE 3(b), (g)(1) (1999 ed., reprinted in 2010), *available at* http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=551b39fc-30ed-4b14-b0d3-1706608a6fcb.

Cause of Action's December 16, 2013 letter alleged Senator Reid inappropriately interfered with an agency adjudicative function³ when he lobbied then-USCIS Director Alejandro Mayorkas and another official in USCIS's Office of Legislative Affairs to reconsider and approve a number of EB-5 immigrant investor visa petitions after they had been rejected for expedited review due to "suspicious financial activity."⁴ Senator Reid's efforts are especially troubling because the principal entity receiving this foreign funding is a major contributor to the Democratic Party and, at the time, was represented by the Senator's son, Rory Reid, and his law firm, Lionel, Sawyer & Collins P.C.⁵

This letter was a "complaint or other allegation or information" under Rule 2(a) of the Committee's Rules of Procedure.⁶ It alleged a violation of the U.S. Senate Code of Official Conduct by Senator Reid and was submitted in the preferred form and content specified under Rule 2(c).⁷ Therefore, upon receipt the Committee should have conducted a preliminary inquiry to determine whether the complaint contained "substantial cause...to conclude that a violation within [its] jurisdiction" had occurred.⁸ However, there is no evidence that the Committee conducted such an inquiry or, in fact, did anything at all.

According to a recent report from the *National Journal*, the Committee has not "publicly acted on any violations by senators since May 2012."⁹ This claim is corroborated by the Committee's Annual Report, which states that it processed twenty-six complaints alleging the violation of Senate rules during 2013—perhaps including Cause of Action's complaint concerning Senator Reid's inappropriate interference in the EB-5 program—but dismissed them all for "lack of subject matter jurisdiction or in which, even if the allegations in the complaint are true, no violation of Senate rules

³ Under Senate ethics rules, Members are limited to "urg[ing] prompt consideration" when attempting to impress upon agency decision-making. SENATE ETHICS MANUAL, *supra* note 1 at 177. Members are directed to avoid interfering in "quasi-judicial, adjudicative, or enforcement matters," such as petitions for expedited review under the EB-5 Program. *Id.* at 178.

⁴ John Solomon & David Sherfinski, *VEGAS RULES: Harry Reid Pushed Feds to Change Ruling for Casino's Big-money Foreigners*, WASH. TIMES (Dec. 10, 2013) <http://www.washingtontimes.com/news/2013/dec/10/harry-reids-visa-pressure-cooker/>.

⁵ Ethics Letter, *supra* note 1 at 2-3; *see also* Solomon & Sherfinski, *supra* note 4. Rory Reid is no longer listed as an attorney at Lionel, Sawyer & Collins P.C. *See* <http://www.lionelsawyer.com/attorneys/>.

⁶ U.S. S. SELECT COMM. RULE OF PROCEDURE, *supra* note 2, at RULE 2.

⁷ *Id.* at RULE 2(c).

⁸ *See id.* at RULE 3(a)-(c). If the Committee dismissed the complaint for lack of substantial credible evidence after conducting a preliminary inquiry, it would have been required to provide notice of its dismissal to Cause of Action under RULE 3(g)(1).

⁹ Sarah Mimms & Billy House, *Is the Senate Ethics Committee Working?*, NAT'L J. (Oct. 1, 2014), <http://www.nationaljournal.com/congress/is-the-senate-ethics-committee-working-20141001>.

would exist” or for failure to “provide sufficient facts as to any material violation of the Senate rules beyond mere allegation or assertion.”¹⁰

The Committee’s failure to publicly provide reasoned notice for its apparent findings of insufficiency shows an unacceptable opacity. Government watchdogs have described the Committee’s review process as a “‘black hole’ into which allegations go to ‘cool off’ and perhaps disappear.”¹¹ The legitimacy of our constitutional order depends upon the ethical conduct of our elected representatives. Article 1, § 5, Clause 2 of the U.S. Constitution states, “[e]ach House may . . . punish its Member for disorderly behavior, and with the Concurrence of two thirds, expel a Member.” As the Committee itself has recognized, “a public office is a public trust” and its apparent failure to respond to the violations alleged here violates that trust.¹² When the Committee quietly dismisses a complaint without explanation where independent material evidence supports the allegations of misconduct, there is cause for concern.

By its silence in this case, the Committee has apparently disregarded the publicly-available evidence regarding Senator Reid’s inappropriate political interference with USCIS’s decision-making. At the very least, the Committee should have required Senator Reid to disclose all conflicts of interest he, or his son, might have had in the approval of EB-5 visa petitions for the SLS Hotel & Casino. Disclosure would have helped to maintain public faith our political institutions, avoided well-founded suspicions of executive branch politicization, and dispelled any appearance of impropriety by Senator Reid. Also, the Committee should have explained what happened to Cause of Action’s complaint (and all of the other complaints reviewed since May, 2012, for that matter) to protect public faith and confidence in the integrity of the Senate ethics process.

Cause of Action remains committed to exposing political misconduct, fraud and abuse in the EB-5 program.¹³ It will continue its investigation into the very credible allegations of political interference that it has received regarding this program. It will continue to petition the Department of Homeland Security Office of the Inspector General for an independent review. And, it will continue to demand that this Committee protect both the Senate and the public by investigating the wrongdoing alleged in this case.

¹⁰ U.S. S. SELECT COMM. ON ETHICS, ANNUAL REPORT OF THE SELECT COMMITTEE ON ETHICS—113TH CONGRESS (Jan. 30, 2014), *available at* http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=2e8ff6f6-7391-4abb-813e-3ad46af03580.


¹¹ Letter from the Campaign Legal Center & Public Citizen, to Hons. Barbara Boxer & Johnny Isakson, U.S. S. Select Comm. on Ethics (June 16, 2014), *available at* http://www.campaignlegalcenter.org/images/Boxer_Isakson_Ethics_Committee_Letter_6-16-14.pdf.

¹² *Jurisdiction*, U.S. S. SELECT COMM. ON ETHICS, <http://www.ethics.senate.gov/public/index.cfm/jurisdiction> (last visited Oct. 20, 2014).

¹³ *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>.

Hon. Barbara Boxer
Hon. Johnny Isakson
October 21, 2014
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Epstein', written over a horizontal line.

Daniel Z. Epstein
Executive Director

cc:

Hon. Harry Reid, U.S. Senate
Hon. Alejandro Mayorkas, Deputy Secretary of Homeland Security
Hon. John Roth, Inspector General of the Department of Homeland Security
Hon. León Rodríguez, Director, U.S. Citizenship & Immigration Services
Hon. Carolyn Lerner, Special Counsel, U.S. Office of Special Counsel