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MAR 24 2015

MEMORANDUM FOR: The Honorable Jeh C. Johnson  
Secretary

FROM: John Roth *John Roth*  
Inspector General

SUBJECT: Investigation into Employee Complaints about  
Management of U.S. Citizenship and  
Immigration Services' EB-5 Program

Attached is our report of the investigation on the allegations made against Deputy Secretary Alejandro Mayorkas. I have also attached the written statement he gave to our investigators. The report is furnished for whatever action you consider appropriate.

This report resulted from employees within USCIS who stepped forward to tell us what they witnessed. 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 who look to the Office of Inspector General to give them a voice.

Should you have any questions regarding the report, please feel free to contact me.

Attachments



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### Introduction and Summary

We undertook this investigation after receiving allegations from career U.S. Citizenship and Immigration Services (USCIS) employees that Alejandro Mayorkas, then-Director of USCIS and current Deputy Secretary of the Department of Homeland Security (DHS), 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 Employment-Based Fifth Preference (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.

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



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each instance he recollected, 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 external 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.

### *Employee Whistleblower Complaints and Other Sources of Information*

We started this inquiry as a result of a whistleblower complaint in September, 2012. 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



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confidential.<sup>1</sup> 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. 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 (AAO), 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.

Their allegations were unequivocal: Mr. Mayorkas gave special access and treatment to certain individuals and parties. They told us he created special processes and revised existing policies in the EB-5 program to accommodate specific parties. According to the employees, but for Mr. Mayorkas' actions, the career staff would have decided these matters differently. Employees felt uncomfortable and pressured to comply with managers' instructions that appeared to have come from Mr. Mayorkas or those working directly for him.

Again, these comments were not from one or even a couple of disgruntled employees with axes to grind; rather, these were individuals throughout the ranks of USCIS, in different locations, engaged in different functions, with different experience levels.

We looked to see whether the complaints stemmed from mere resentment about Mr. Mayorkas wanting to change how USCIS operated. As the Director, Mr. Mayorkas appeared to want to change the culture of USCIS. Employees told us that he exhorted individuals to "get to yes." To accomplish this mission, he made a number of reassignments within the Senior Executive Service corps, including within the EB-5 program. He restructured the EB-5 program, including relocating the processing center from California to Washington, DC, and he instituted broad new rules that, in the minds of many career USCIS employees, eased the ability of foreign investors to receive residency status.

Each of these decisions was legitimately within his purview, and we take no position as to the wisdom of any of these actions. However, the complaints we

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<sup>1</sup> We are obligated to protect whistleblowers from retaliation and have a duty under the *Inspector General Act* to not disclose the identity of an employee without his or her consent, unless we determine such disclosure is unavoidable. As a result, this report does not identify any employee witnesses.



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heard were not simply policy-based disagreement over the direction Mr. Mayorkas was taking USCIS. Rather, they centered on his actions that appeared to give special access and special consideration to a small group of applicants and stakeholders.

During the course of our investigation, we conducted approximately 50 interviews, including taking sworn statements, collected more than one million official emails and related files (including the email files of Mr. Mayorkas and other senior Department leaders), and analyzed more than 40,000 telephone call records.<sup>2</sup> We made several attempts to interview key external EB-5 stakeholders, many of whom declined to speak with us. Upon completion of our witness interviews and document review, we interviewed Mr. Mayorkas to obtain his perspective on what we had found. After the interview, Mr. Mayorkas provided a 32-page written statement and supporting exhibits. Mr. Mayorkas' written response is appended to this report. During our interview with Mr. Mayorkas, we learned of additional material he had left behind at USCIS headquarters; we also reviewed this material. We did all of this to gain a clearer and more accurate view of the events and circumstances central to this investigation.<sup>3</sup>

### *Appearance of Favoritism and Special Access*

We found that employees' belief that Mr. Mayorkas favored certain politically powerful EB-5 stakeholders was reasonable. In our view, Mr. Mayorkas created this perception:

Mr. Mayorkas was in contact, outside of the normal adjudication process, either directly or through senior DHS leadership, with a number of

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<sup>2</sup> We were unable to obtain records from Mr. Mayorkas' office telephone, so we do not have records of calls he may have made from or received in his office because the telephone system at USCIS (private branch exchange) switches calls between users on local lines and allows all users to share a certain number of external phone lines.

<sup>3</sup> Although we are confident in the fidelity of the data we did acquire, we often found that the "dataset" (i.e., email and like files associated with a user name) was incomplete for the time period requested or simply did not exist. We also identified similar problems with Mr. Mayorkas' calendar. For example, employees provided copies of emails from Mr. Mayorkas that we did not find when we searched Mr. Mayorkas' email dataset. Our investigation did not reveal that incomplete or missing datasets were the result of intentional efforts to delete them, but rather a combination of circumstances indicating a broader issue of data retention within the Department. For example, we encountered problems resulting from the migration between old and new email systems, significant limitations in searching and acquiring data from older tape backup systems, and inadequate component and departmental data retention policies (both past and present) or poorly enforced policies.



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applicants and other stakeholders having business before USCIS. This method of communication violated established USCIS policy for handling inquiries into the program. We do not have direct evidence of what Mr. Mayorkas and these applicants and stakeholders discussed; some emails suggest that the conversations were quite substantive. In Mr. Mayorkas' testimony for his confirmation as Deputy Secretary, and in his interview with us, he stated that he simply received information from a variety of stakeholders and then acted on it to improve the program. With few exceptions, the other parties to the conversations declined to speak with us.

- USCIS staff knew that Mr. Mayorkas was communicating with applicants and other stakeholders outside established USCIS policy; they also understood that these applicants were prominent or politically connected.
- After this communication, staff witnessed Mr. Mayorkas inserting himself in unprecedented ways into an adjudicative process governed by statute, regulation, and USCIS policy. As a result of his deviation from the normal process, applicants and stakeholders with whom he had just been in contact received a specific benefit.

Many employees concluded, not unreasonably, that the pressure exerted on them was because the individuals involved were politically connected. As one employee told us:

In January 2013 we received expedite requests for both Gulf Coast Funds and Las Vegas Regional Centers. Both of these requests made their way to Director Mayorkas and a whole slew of top USCIS people were involved in making these expedites happen. What is concerning is that we are very inconsistent as just a few weeks later, in early February 2013, we received expedite requests from two additional Regional Centers, Grand Canyon and Florida Equity and Growth Fund. Upon receipt of these requests, [senior-level USCIS management] forwards the request to the California Service Center and simply asks the CSC to handle as they deem appropriate. Why was there no commentary on the validity of their request as was the case with Las Vegas? Why did these not make their way to Director Mayorkas? Why were we not as concerned with these requests as we



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were with Gulf Coast Funds and Las Vegas Regional Centers?

### *Extraordinary Focus on a Handful of Matters*

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. The EB-5 program has hundreds of existing regional centers and, in the three years in question, received more than 700 applications for regional centers. Yet, Mr. Mayorkas largely focused on only a handful.

The EB-5 program itself was only a fraction of USCIS' operations, comprising only a few thousand adjudications out of a typical annual total of more than five million. Notwithstanding his other duties, Mr. Mayorkas' actions involving a handful of applicants—going so far, for example, as to offer to personally write a complex adjudicatory opinion—were seen by staff as evidence of special access and special favors. One senior-level manager told us that “the frequency of the interest shown by the Director's office in the AAO's EB-5 caseload escalated beyond any interest shown in other types of cases.”

### *Three Examples of Contact and Intervention*

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 timelines for two of these matters in appendixes.

- LA 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 handpicked, 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 Senate Majority Leader Harry Reid, Mr. Mayorkas intervened to allow expedited review of



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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. It also lowered the morale of those involved.



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## Background

### USCIS

Within DHS, USCIS is responsible for granting immigration and citizenship benefits while ensuring the integrity of the U.S. immigration system.

USCIS is massive, comprising about 19,000 employees and contractors and 223 office locations. It supports dozens of different immigration benefit programs affecting millions of individuals. In 2012, for example, USCIS received more than six million requests to grant or adjust immigration status, including almost 900,000 requests for naturalization and 1.2 million requests for work authorization. According to its website, USCIS issues 6,100 Permanent Resident Cards (green cards) and naturalizes 3,200 civilians *every day*.

The EB-5 program is one of five employment-based visa programs, which include programs for skilled and professional workers. USCIS also administers family based visas, humanitarian and refugee visas, and citizenship programs.

### The EB-5 Program<sup>4</sup>

In 1990, Congress created the USCIS Immigrant Investor Program, also known as the EB-5 program, to stimulate the U.S. economy through job creation and capital investment by foreign investors.

Through the EB-5 program, foreign investors may obtain lawful, permanent residency in the United States for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. Three years later, the Departments of Commerce, Justice and State, the Judiciary, and *Related Agencies Appropriations Act, 1993* created the concept of the regional center pilot program to pool investor money in a defined industry and geographic area to promote economic growth.<sup>5</sup> U.S. citizens or foreign nationals can operate regional centers, which can be any economic unit, public or private, engaged in

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<sup>4</sup> In December 2013, we published a report of an audit of the EB-5 program, which can be found at [http://www.oig.dhs.gov/assets/Mgmt/2014/OIG\\_14-19\\_Dec13.pdf](http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf). Much of the description of the EB-5 program is derived from that audit report.

<sup>5</sup> On August 3, 2012, Congress removed the word “pilot” from the regional center program’s name; however, the program expiration date is currently September 30, 2015.



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the promotion of economic growth, improved regional productivity, job creation, or increased domestic capital investment.

The EB-5 program requires that the foreign investor make a capital investment of either \$500,000 or \$1 million, depending on whether or not the investment is in a high-unemployment area, known as a Targeted Employment Area. The foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs for qualifying U.S. workers, within two years of receiving conditional permanent residency. There are two distinct EB-5 pathways for a foreign investor to gain lawful permanent residency; each pathway differs in job creation requirements:

- 1) The Basic Immigrant Investor Program requires the new commercial enterprise to create or preserve only direct jobs that provide employment opportunities for qualifying U.S. workers by the commercial enterprise in which capital has been directly invested.
- 2) The Regional Center Program, formerly known as the Regional Center Pilot Program, allows the foreign investor to fulfill the job creation requirement through direct jobs or projections of jobs created indirectly. Jobs created indirectly are the job opportunities that are predicted to occur because of investments associated with the regional center. According to USCIS, as of March 2, 2015, USCIS had approved approximately 641 regional centers.

Because the EB-5 program distributes a very significant benefit for a specific public purpose, admittance to the program is controlled by a detailed statutory and regulatory scheme. Title 8, Section 1153(b)(5) of the U.S. Code sets forth the statutory requirements; USCIS has promulgated rules for eligibility in the Code of Federal Regulations (8 CFR 204.6). The process for adjudicating these Government benefits is in 8 CFR, Sections 103.2 to 103.10. USCIS is required by law to follow those procedures in administering the program.

### **EB-5 Application and Petition Process**

#### *Regional Center Applications*

Individuals or entities must file a Form I-924 application with USCIS to become an approved regional center or to amend a previous approval. Once the application is approved, USCIS requires the regional center to report operational and financial data annually on a Form I-924A. The regional center can only operate within a self-defined geographic area and within a self-



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designated industry. USCIS documents show that regional centers generally collect unregulated management and administrative fees between \$25,000 and \$50,000 from each foreign investor. These fees include travel and marketing expenses, legal fees, and sales commissions.

To support the application, a regional center must submit initial evidence including:

1. A detailed map of the geographic area of the regional center;
2. An explanation of how 10 new full-time jobs will be created, directly or indirectly, by each petitioner who will invest in the regional center, including an economic analysis forecasting how jobs will be created that includes a business plan;
3. A detailed description of promotional activities for the regional center;
4. A general prediction of the prospective impact of the capital investment projects sponsored by the regional center; and,
5. A full description of the organization structure of the regional center.

If an I-924 application is denied, then a regional center may appeal to the USCIS AAO, the office that, pursuant to regulation, is required to decide appeals of unfavorable decisions issued by USCIS adjudicators.

#### *Individual Immigrant Investor Petitions*

Each foreign investor must file a Form I-526 petition to apply to the EB-5 program. If the Form I-526 petition is approved, the investor obtains conditional permanent residency and has two years to fulfill the program requirements of job creation and capital investment. At the end of the two-year period, the investor must file a Form I-829 petition to demonstrate that the investor has met all of the terms and conditions of the program. When approved, the foreign investor becomes a legal permanent resident of the United States and is no longer under the jurisdiction of the EB-5 program.

In addition to the Form I-526 petition, the individual investor must file initial evidence to support the petition. Initial evidence includes:

1. Evidence that a petitioner has established a lawful business entity in the United States under the law of the jurisdiction in which the company is



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located, or, if an investment was made, that the investment led to at least a 40 percent increase in net worth of the business, the number of employees, or both, such as articles of incorporation, partnership agreement, stock purchase agreements, investment agreements, or payroll records;

2. Evidence, if applicable, that the enterprise was established in a Targeted Employment Area;
3. Evidence that a petitioner has invested or is investing the amount required for the business locations, such as bank statements, evidence of assets purchased, property transferred, or monies transferred;
4. Evidence that capital was obtained through lawful means, such as foreign business registration records, tax records filed within the last five years, evidence of other sources of capital, and certified copies of any civil or criminal action against the petitioner in a court outside the United States in the past 15 years;
5. Evidence that the enterprise will have at least 10 full-time employees, such as tax records or Form I-9s or a business plan that shows that such employees will be hired within the next two years; and
6. Evidence that the petitioner will be engaged in the management of the enterprise, such as statement of position title and complete list of duties, evidence that a petitioner is a corporate officer or holds a seat on the board of directors, or, if the new enterprise is a new partnership, evidence that the petitioner engages in either direct management or policymaking activities.

If initial evidence originally provided by the petitioner does not establish eligibility, then a USCIS adjudicator may issue a Request for Evidence (RFE) or a Notice of Intent to Deny that give the petitioner adequate notice and sufficient information to respond. If an I-526 petition is denied, the petitioner may appeal to the AAO.



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In fiscal year 2012, 6,041 immigrant investor petitions were filed in this program, and USCIS granted 3,677 petitions for temporary residency. In that same year, 736 alien investors were granted permanent residency status.<sup>6</sup>

After two years, the petitioner may file a Form I-829, *Petition by Entrepreneur to Remove Conditions*, to receive permanent resident status. Petitioners must submit evidence with the I-829 petition, including:

1. Evidence of the commercial enterprise and evidence that the required amount of investment was made, such as Federal tax returns and audited financial statements;
2. Evidence that the enterprise was sustained during the period of conditional permanent residence, such as invoices, bank statements, and contracts; and
3. Evidence of the number of full-time employees, such as payroll records.

If an I-829 petition is denied, the petitioner does not have appeal rights and deportation proceedings will commence. The petitioner may challenge the I-829 denial during deportation proceedings.

### **EB-5 Adjudication Guidance**

USCIS' process for considering and adjudicating applications is governed by regulations, which address how a petitioner may file for a benefit, who may represent the petitioner in dealing with the Government, the processes of agency decision-making, how to appeal an unfavorable decision, and other matters.

On April 2, 2010, Mr. Mayorkas distributed a memorandum to provide guidance to staff on avoiding or preventing situations that could give the appearance of preferential treatment. According to the memo:

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

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<sup>6</sup> USCIS publishes wait times for the EB-5 program. As of January 2015, USCIS had the following wait times for decision: I-526, 14.2 months; I-829, 12.3 months; I-924, 11.7 months. <https://egov.uscis.gov/cris/processTimesDisplayInit.do>



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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:

...

Meeting with certain stakeholders to the exclusion of others ...

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 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...." [MOA-0003467]

In December 2009, soon after Mr. Mayorkas was confirmed as Director, USCIS management instituted a policy that governed how USCIS personnel could communicate with stakeholders, including applicants. The policy reemphasized that "transparency in the administration of this program is critical to its success."

Because USCIS is responsible for administering an important Government benefit pursuant to a specific regulatory regime, the policy required that communication between USCIS and applicants and other stakeholders be formalized and documented. This policy mandated that USCIS staff include in the formal file "all case-specific written communication with external stakeholders involving receipt of information relating to specific EB-5 Regional Center Proposals or individual petitions." In those "very limited instances where oral communication takes place between USCIS staff and external stakeholders regarding specific EB-5 cases, the conversation must either be recorded, or detailed minutes of the session must be taken and included in the record of proceeding." [MOA-0003475]



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Additionally, because confusion can result from stakeholders receiving advice and updates from multiple USCIS sources, the same policy established a singular process for applicants and stakeholders to make inquiries. Specifically, to ensure orderly and fair processing of communication from stakeholders, all inquiries were to be made and tracked through an email account set up for that purpose. Also, all contact, whether general or case-specific, with EB-5 stakeholders was to be through a central email account created for that purpose, which could be tracked. In that way, there would be a central record of the communication to and from petitioners and others with an interest in specific cases. [MOA-0003475]



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## Results of Investigation

### LA Film Regional Center

#### *Allegations Related to Reversing Adjudicators' Decisions and Establishment of a New Hearing Process*

In early 2013, Mr. Mayorkas created an extraordinary and unprecedented hearing process that many alleged resulted in preferential treatment to a specific regional center. They also alleged that the process was established as a result of improper personal access that Mr. Mayorkas gave to Tom Rosenfeld and former Pennsylvania Governor Edward Rendell. Specifically, we received allegations that Mr. Mayorkas established a Deference Review Board (DRB), purportedly to ensure that foreign investor petitioners in similar situations were treated equally, but in fact was intended to and gave preferential treatment to a project of the Los Angeles Film Regional Center (LA Film Regional Center) and its principal, Tom Rosenfeld. Many witnesses further alleged that in 2011 there was similar preferential treatment because of improper personal access when Mr. Mayorkas ordered the reversal of a decision to deny more than 200 investor petitions.

#### *LA Film Regional Center Approved*

CanAm Enterprises LLC (CanAm) operates LA Film Regional Center and several other regional centers, including the Philadelphia Industrial Development Corporation (PIDC). Tom Rosenfeld is the President and CEO of CanAm. On March 24, 2008, USCIS approved CanAm's application for LA Film Regional Center to be a designated regional center. The focus of the investment activity, according to the application, would be the production of (1) motion pictures for theatrical release; (2) motion pictures for direct to video or DVD release; (3) television shows, segments, and series; and (4) made-for-television feature movies. The LA Film Regional Center would provide loans for film projects. On November 19, 2009, USCIS approved LA Film Regional Center's amendment to create the LA County Regional Center, which added nine industrial clusters—agriculture and food processing, alternative energy, health services, higher education, leasehold improvements, manufacturing and trade, technology, tourism, and transportation—to LA Film's already approved industries. As a result of this amendment, the LA Film Regional Center became the LA County Regional Center, referred to hereinafter as LA Films.



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#### *LA Films I – Lions Gate Entertainment*

The first LA Films funding project (LA Films I) involved an investment in movie projects produced by Lions Gate Entertainment (Lions Gate). In February 2009, USCIS approved most of the petitions from investors, who placed their money in escrow and were granted conditional permanent residence status (temporary residence status). However, LA Films never used a large portion of the investors' money because Lions Gate was not legally obligated to and decided not to accept the funding from the EB-5 investors. Many of the investors, whose I-526 petitions had been granted based on the LA Films I business plan, would probably have their I-829 petitions for permanent residence denied because they would not be able to demonstrate that any jobs had been created. Many within USCIS understood that it was an error to have approved this project relying on a "non-commitment letter" with Lions Gate in which there were no assurances that the investors' money would actually be used.<sup>7</sup> [EM-0000328]

As a result, on August 27, 2010, LA Films requested that it be allowed to amend its project proposal by substituting Time Warner for Lions Gate. (This proposal was known as LA Films II.) On September 23, 2010, USCIS denied the amendment. In doing so, USCIS determined that the amendment constituted an impermissible material change and advised LA Films that the investors would have to withdraw their petitions and submit new ones. USCIS based its denial on a December 11, 2009, USCIS policy memorandum, which required the resubmission of petitions when the proposed project underwent a material change since its original submission. USCIS also questioned whether, under the described plan, the investors' money would be used for job creation.

#### *LA Films III – Sony Pictures*

In the spring and early summer of 2011, USCIS received more than 200 investor petitions proposing to invest in movies made by Sony Pictures. EB-5 officials saw the Sony project (LA Films III) as having the same problem as the unsuccessful Lions Gate proposal: Sony was not obligated to accept the investors' money. The supporting documentation submitted with the petitions showed that Sony provided a non-commitment letter. Additionally, there was no proof of the source of the funds or that money would be spent in a Targeted

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<sup>7</sup> A non-commitment letter between a lender and a film company gives the film company the option to accept the loan financing from the lender, but does not commit the film company to accepting the money.



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Employment Area.<sup>8</sup> By June 2, 2011, the California Service Center had prepared a draft denial of the petitions from the LA Films III investors because the project did not meet the EB-5 program's eligibility criteria. [EM-0000326, 332]

### *LA Films III Stakeholders Appeal Directly to Mr. Mayorkas*

On June 13, 2011, Katherine Hennigan, the Senior Policy Director at the Los Angeles Mayor's Office of Economic & Business Policy, emailed Mr. Mayorkas about the progress of the investor petitions involving the Sony project and included a letter from the California Film Commission. Hennigan was apparently unaware that USCIS had already prepared draft denial letters for the LA Films III investor petitions. [EM-0000326, 333]

Mr. Mayorkas forwarded Hennigan's email to senior EB-5 staff to follow up on the issue, noting that "the EB-5 cases have an urgency" because of the time sensitivity of the investment vehicles and job creation potential. Over the next two weeks, Hennigan sent three follow-up emails to Mr. Mayorkas, which he also forwarded to senior EB-5 staff. Other than Hennigan's representation, we found no evidence showing how or why Mr. Mayorkas determined these cases were urgent compared to other pending investor petitions. According to Mr. Mayorkas in his interview, he may not have known about the urgency of the petitions other than what Hennigan wrote in her email. He also stated he did not recall knowing Hennigan.<sup>9</sup> [EM-0000330, 335], [MOA-0004916-4917]

Senior EB-5 officials looked into the issues raised by Hennigan and, after reviewing the status of the petitions, explained to Mr. Mayorkas that it did not appear the individual investors were able to meet the EB-5 approval requirements. They informed him that the California Service Center was working with OCC to draft denial notices. On June 17, 2011, Mr. Mayorkas asked to discuss the matter with senior staff, noting that he had previously disagreed with some of EB-5 officials' legal interpretations. On June 29, 2011, Mr. Mayorkas wrote to senior USCIS headquarters officials that "I understand from [a senior official] that [the petitions] may have some fatal deficiencies." It appears Mr. Mayorkas' earlier concerns were satisfied because, according to a July 7, 2011, email from a senior USCIS headquarters official, "Ali said to go ahead and issue the denials without any further briefings or meetings." On

<sup>8</sup> By investing in a Targeted Employment Area an investor only has to invest \$500,000 (rather than \$1,000,000 in other areas) to be eligible for temporary residence status.

<sup>9</sup> We did not find any evidence that Mr. Mayorkas forwarded an email from Hennigan in which she mentioned that she had met a mutual acquaintance from O'Melveny & Myers LLP, a law firm where Mr. Mayorkas was a partner prior to becoming the Director of USCIS.



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July 13, 2011, another senior official told staff to proceed with the LA Films III denial. [EM-0000332, 339], [MOA-0003870, 4933]

*Mr. Mayorkas Directs EB-5 Staff to Stop Denying All LA Films III Investor Petitions*

On July 15, 2011, Mr. Mayorkas, while on vacation, spoke by telephone with former Pennsylvania Governor Edward Rendell, with whom he had previously had dealings.<sup>10</sup> Within an hour of the Rendell phone call, Mr. Mayorkas directed the California Service Center staff to reopen any LA Films III denials and to stop processing any more LA Films III denials. Mr. Mayorkas' decision to reverse course was unexpected and surprised the California Service Center staff. An urgent message, emailed that afternoon from USCIS headquarters to the California Service Center and forwarded to Mr. Mayorkas, described the situation: [EM-0000343], [MOA-00003871-3872, 4830-4837], [CAL-0000737]

We're in crisis mode—please see if these denials have gone out. It wouldn't surprise me if they did because we gave you the go ahead to do so. If they have, we need to reopen them pending further review. Ali wants this to happen today, so at the very least we need to send them an email telling them to disregard the prior denial notices while we sort through this. Feel free to give me a call, this is very urgent. [EM-0000343]

EB-5 officials could not understand the basis for the reversal because, in their view, the denials had been based on regulations and an economist's feedback. For them, the Sony proposal had an almost identical funding scheme as the Lions Gate project and therefore the same problem meeting EB-5 program requirements. In the view of the EB-5 officials, the Sony project, if approved, would suffer the same fate.

Mr. Mayorkas told us in his interview that he could not recall the basis of his initial concerns about the LA Films III denial, but noted that the case involved a "financing" issue. He said there would have been a discussion among senior

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<sup>10</sup> In 2010, while he was governor, Rendell had personally contacted Mr. Mayorkas about a CanAm project, PIDC. On June 15, 2010, Governor Rendell wrote to Mr. Mayorkas asking for support on three PIDC investments and expressing concerns about the processing of related investor petitions. On August 2, 2010, Rendell sent a second letter to Mr. Mayorkas, and on August 20, 2010, Mr. Mayorkas had a scheduled phone call with the Governor to address the issues raised in the two letters. Shortly after Rendell left office in January 2011, Mr. Mayorkas notified senior EB-5 staff that he had informed Rendell that USCIS would give fair and careful consideration to some PIDC investor petitions.



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management about the correct adjudicative action to take on the case. He told us he did not recall the reason(s) he directed that the decisions be reversed, but asserted that it was not as a result of a request from Rendell.

When asked about his phone conversation with Rendell, Mr. Mayorkas told us, "The DHS Secretary's Office requested that I speak with Pennsylvania Governor Edward Rendell and I obliged. Governor Rendell complained to me that the agency's mishandling of the Aqua project EB-5 case was costing Pennsylvania the investment of funds and the creation of jobs. I looked into the case with my staff."

Mr. Mayorkas did not provide any details about the July 15, 2011, phone call or any notes from any other discussion with Rendell. We also found no evidence of a 2011 request from the Secretary's Office that Mr. Mayorkas speak with Rendell. The only evidence that such a request may have been made was in August 2010 when Rendell was still the governor of Pennsylvania.

That same evening (July 15, 2011), Mr. Mayorkas spoke with Tom Rosenfeld, President and CEO of CanAm, by telephone about LA Films III. Rosenfeld followed up the telephone call with an email, attaching a summary of the Sony funding project and several USCIS documents sent to the petitioners. Rosenfeld arranged to have the materials couriered to Mr. Mayorkas on July 18, 2011. In the email, he agreed to contact Mr. Mayorkas the following week. On July 20, 2011, Rosenfeld emailed Mr. Mayorkas thanking him "for your offer to call you." Mr. Mayorkas responded, "I would not have the time to review any materials before a call. I could participate in a call after 5:15 pm." On July 21, 2011, Rosenfeld thanked Mr. Mayorkas for taking the time to discuss the Sony (LA Films III) project and Aqua project. On July 28, 2011, Rosenfeld sent a third email to Mr. Mayorkas expressing his gratitude "for your personal attention, time and sensitivity" to the Sony and Aqua projects. There was at least one other call, on August 1, 2011, between the two, again about what Rosenfeld described as his "urgent" concerns about the Sony and Aqua projects. In response to Rosenfeld's August 3, 2011, email thanking him for his call on August 1, Mr. Mayorkas for the first time told Rosenfeld, "To clarify, it is the EB-5 program as a whole that is a priority of ours, and not particular projects." Senior EB-5 officials were copied on this response to Rosenfeld, as well as the chain of emails beginning with Rosenfeld's July 21, 2011, email. [EM-0000347, 349-350, 354-355]

When interviewed, Mr. Mayorkas said he did not recollect speaking with Rosenfeld other than a conference call directed and arranged by the DHS



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Secretary's Office. He did not provide a date for this call, and we found no evidence of a 2011 call with Rosenfeld arranged by the Secretary's Office.

Mr. Mayorkas' contacts with Rosenfeld were against the advice of USCIS counsel. Previously, in October 2010, OCC advised Mr. Mayorkas to cancel a scheduled meeting with Rosenfeld and his attorneys, Ronald Klasko<sup>11</sup> and Ira Kurzaban, because they had recently filed an action in Federal district court against USCIS.<sup>12</sup> OCC also advised Mr. Mayorkas that it was inappropriate for him to have contact with stakeholders, including Rosenfeld, who had filed suit against USCIS. At the time of the contacts in the summer of 2011, the litigation was still pending. In Mr. Mayorkas' written statement, he indicated that he did not recall being advised not to communicate directly with an individual involved in litigation. [EM-0000999], [MOA-0004844-4845]

On August 23, 2011, Rosenfeld again attempted to contact Mr. Mayorkas. For the first time, Mr. Mayorkas declined to speak with Rosenfeld. He responded to Rosenfeld's email, "It would be inappropriate for me to speak with you about these pending matters at this time." In his interview, Mr. Mayorkas said he changed how he dealt with Rosenfeld either because USCIS was already aware of the issues that needed to be addressed or the matter was in capable hands. [EM-0000356]

Rosenfeld nevertheless found indirect ways to bring his concerns before Mr. Mayorkas. Through an intermediary, he contacted John Emerson,<sup>13</sup> who has been described in emails as Mr. Mayorkas' "career advisor." We found several emails from as early as August 8, 2011, in which Emerson reached out to Mr. Mayorkas inquiring about the Sony petitions. On September 1, 2011, Emerson contacted Mr. Mayorkas, forwarding another email from Rosenfeld. In his reply to Emerson, which he forwarded to OCC for follow-up, Mr. Mayorkas indicated he was not involved in the adjudication of particular cases; however, there is a record of three calls between Mr. Mayorkas' personal cell phone and Emerson that evening. [EM-0000352, 1019], [MOA-0004985]

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<sup>11</sup> Mr. Klasko also served as the chair of the EB-5 Committee of the American Immigration Lawyers Association and was in direct contact with Mr. Mayorkas from 2011 through 2013 on more than 20 occasions. He also represented EB-5 investors in the SLS Hotel and Casino case discussed later in the report.

<sup>12</sup> The attorneys filed a lawsuit against USCIS in the Central District of California on September 22, 2010, on behalf of investors in two CanAm regional centers, LA County Regional Center, and PIDC, challenging USCIS' material change policy.

<sup>13</sup> The U.S. Senate confirmed Mr. Emerson as the U.S. Ambassador to Germany on August 1, 2013.



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Mr. Mayorkas told us that Emerson was an acquaintance from Los Angeles who had contacted him about LA Films III and that he did not speak to Emerson about the substance of the case. Mr. Mayorkas did not remember calling Emerson from his personal cell phone the evening of September 1, 2011, but if he had, he said it could have been about something else because “he was on a board with Emerson's wife.” We were unable to reconcile this statement with our understanding that Mr. Mayorkas had relinquished all his positions outside the Federal Government.<sup>14</sup>

On September 1, 2011, Mr. Mayorkas participated in a conference call with USCIS senior officials to discuss the LA Films III case. During this call, senior EB-5 leadership told Mr. Mayorkas that he did not need to be involved in cases; Mr. Mayorkas responded that he was involved because he had “no confidence in the people administering the program.” [EM-0000359], [CAL-000787]

*USCIS Approves LA Films III Investor Petitions Based on Email from Sony*

By late October 2011, a USCIS senior official notified Mr. Mayorkas that they were prepared to deny the LA Films III petitions because of the failure to receive any assurances that the financing arrangement compelled Sony to accept the investors’ money. [EM-0000364]

We were unable to determine the exact course of events between October 31, 2011, when USCIS was on the cusp of denying the petitions, and November 17, 2011, when USCIS deemed the financing acceptable, based on Sony’s commitment to use the EB-5 investors’ financing.

On October 31, 2011, Rosenfeld left two telephone messages for Mr. Mayorkas. Mr. Mayorkas, telling his senior staff it would be inappropriate for him to return Rosenfeld’s calls, asked whether someone else should return the call. A senior official agreed to call Rosenfeld, but was unsuccessful because of an incorrect phone number. Mr. Mayorkas expressed disappointment that Rosenfeld was not contacted that day. The next day, November 2, 2011, the senior official contacted Rosenfeld, who began pressing the official for an immediate decision. In addition to emails to the senior official, Rosenfeld, after speaking with the senior official, left two voice messages requesting to speak directly to Mr. Mayorkas. [EM-0000364, 368-369, 373, 379-380]

<sup>14</sup> On May 21, 2009, Mr. Mayorkas informed the DHS Designated Agency Ethics Officer that he no longer held positions with the American Bar Association, the California Commission on the Fair Administration of Justice, and the Charles R. Drew University of Medicine and Science. On June 13, 2012, Mr. Mayorkas submitted his OGE-278, *Public Financial Disclosure Report*, for 2011 in which he reported holding no positions outside the Federal Government.



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On November 10, 2011, in response to the voice messages from Rosenfeld wanting to speak directly with Mr. Mayorkas about perceived processing delays, Mr. Mayorkas again emailed his staff that it would not be appropriate for him to speak with Rosenfeld. [EM-0000379-380]

The same day, November 10, 2011, counsel for Sony sent an email to USCIS stating that Sony was committed to using the EB-5 investors' funds for its projects. One week later, based on the email from Sony, USCIS headquarters sent instructions to EB-5 staff to approve all the pending investor petitions that had been held up until Sony's commitment could be established. [MOA-0002166-68]

The process for approving the LA Films III petitions led some in USCIS to question whether Rosenfeld had been given special consideration. One career EB-5 official told us staff were forced "to go above and beyond for Tom Rosenfeld," reflecting their belief that Rosenfeld was receiving preferential treatment. Another EB-5 official also believed the LA Films III petitions were given preferential treatment, noting that other petitions with similar issues, such as those from the South Dakota Regional Center, had been denied. A third EB-5 official expressed to us concern that officials at USCIS accepted a "mere email" as substantive evidence in response to a formal Request For Evidence. That official also indicated that USCIS headquarters' involvement in these applications was "not normal."

### *LA Films IV – Time Warner*

From late August 2012 to November 2012, Rosenfeld and others acting on behalf of LA Films, including Rendell, began contacting Mr. Mayorkas, DHS Chief of Staff Noah Kroloff, and a senior EB-5 official about the status of a new set of 240 pending investor petitions in films made by Time Warner (LA Films IV). The following is a summary of those contacts. A full recounting of the various contacts is shown in the LA Films timeline in appendix A. [EM-0000402, 404, 406], [MOA-0005051], [CAL-0001402]

In August 2012, Rosenfeld sent an email to a senior USCIS headquarters official (with whom he previously had been in contact with about LA Films III) about LA Films IV investor petitions. [EM-0000402]

On September 13, 2012, former Governor Rendell and Mr. Mayorkas spoke by telephone. Like the earlier call between Rendell and Mr. Mayorkas, we were



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unable to determine its substance and Mr. Mayorkas did not recall it. [EM-0000404], [CAL-0001402]

In October 2012, Kroloff received an email through an intermediary about the status of the LA Films IV petitions. In his response, Kroloff informed the intermediary that he believed Mr. Mayorkas and Rendell had already spoken. [EM-0000406]

Rosenfeld also attempted to contact Mr. Mayorkas directly during this time. Mr. Mayorkas' response was that he could not discuss a pending matter and that it would not be appropriate to have case-specific discussions. [EM-0001029], [MOA-0005051]

In late 2012, the California Service Center staff was poised to deny the LA Films IV applications and was preparing documentation to that effect. According to a senior EB-5 official, the denial of the petition was a "slam dunk." [MOA-0000658, 1855]

Specifically, an EB-5 official noted there were not enough specifics about the projects Time Warner would complete; Time Warner had not committed to borrowing the money; the job creation estimates were not sourced; there was insufficient evidence that the Time Warner productions would result in more jobs; the jobs created would be intermittent, temporary, or seasonal; and some petitioners had problematic escrow agreements.

USCIS prepared and approved a "template," essentially a draft denial decision to be used as the model for the more than 240 pending investor petitions. By January 18, 2013, the template had been reviewed and cleared at the staff level. [EM-0000415-416]

However, in December 2012 or early January 2013, prior to the anticipated denial decision, one Time Warner investor petition had been inadvertently approved when a staff member mistakenly believed an economist had reviewed the file as required when in fact it had not been reviewed.

Other EB-5 officials confirmed that approving the single petition was an error. As one EB-5 official noted, "I don't think [the staff member] made a deliberative decision. [The staff member] was not on the specialization team and ... did not consult with the team. It appears that it was a simple mistake." [EM-0000468]

When senior EB-5 officials discovered the error in approving the petition, they began taking steps to revoke the decision. USCIS' ability take such action was



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established by law, and the authority to do so had been recognized by USCIS as far back as 1997. Because the visa had not yet been issued, by January 23, 2013, USCIS officials were preparing the standard form used to correct such an error. [EM-0000414]

### *Mr. Mayorkas Directs Establishment of a Deference Review Board*

On January 18, 2013, Mr. Mayorkas was informed that Rosenfeld had left a message to call him saying it was “urgent” and he would know the subject matter. Sometime before January 25, 2013, Rosenfeld spoke to Mr. Mayorkas by telephone raising the issue of the single granted petition and asking that as a result, all the Time Warner petitions be granted.<sup>15</sup> According to a senior EB-5 headquarters official who listened in on the call, Rosenfeld “was elevating issues regarding deference to the Director.” In raising deference, Rosenfeld was asserting that the single investor petition, which had been mistakenly approved, should govern all subsequent investor petitions related to the project. The senior official also told us that although Mr. Mayorkas said during the call that he would not discuss the specifics of the case, he said “he would look into the claim that USCIS was not adhering to the deference policy.” Again, when asked, Mr. Mayorkas did not recollect this call; he only recalled speaking with Rosenfeld on a conference call directed and arranged by the Secretary’s Office. Rosenfeld declined to be interviewed. [EM-0000457, 1093]

Shortly after the call from Rosenfeld, on Friday, January 25, 2013, Mr. Mayorkas sent an email to his EB-5 staff directing the immediate establishment of a “decision board”<sup>16</sup> and a determination as to whether USCIS’ deference policy needed to be revised. According to new policy outlined in his email, whenever USCIS denied a petition in a matter in which a related petition had been approved, USCIS would give the “impacted parties” “an opportunity to be heard in person before the decision board.” Mr. Mayorkas also identified a number of EB-5 experts who could comprise the board. He directed that a “letter of notice and invitation to appear” be drafted by January 29, 2013, and sent to “parties impacted by recent reversals.” The email did not identify any specific parties. [EM-0000422-423]

We did not find anyone in the EB-5 program who knew in advance Mr. Mayorkas was going to issue this policy, and EB-5 headquarters staff viewed

<sup>15</sup> OCC’s advice that Mr. Mayorkas not have contact with Rosenfeld was still in effect because Rosenfeld still was a party in litigation against USCIS.

<sup>16</sup> In his January 25, 2013, email, Mr. Mayorkas referred to the 2013 entity as a decision board; the two senior officials in charge of holding the hearing referred to it as the DRB.



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the establishment of a board as a dramatic change in direction. One EB-5 headquarters official told us that offering this relief to LA Films was “extraordinary and unprecedented” and one that was not available to any other regional center or investor. The official also complained about the “consistent lack of transparency in these decisions.” There was significant confusion among EB-5 staff as to what Mr. Mayorkas meant by “parties impacted by recent reversals.” [EM-0000433, 452-453]

Other than the telephone call with Rosenfeld, we were unable to determine the reason for the decision not to use the denial template to process the LA Films IV investor petitions. Emails from senior EB-5 officials from the California Service Center, Service Center Operations, and OCC, as well as those from Mr. Mayorkas, reveal no discussion or explanation of any facts or events that would have caused this abrupt change from planning to deny the petitions to holding a hearing for the “impacted parties.” We interviewed all available senior EB-5 officials and none knew why Mr. Mayorkas decided to create a DRB and why it was necessary to convene it immediately without first establishing policies and procedures. Mr. Mayorkas told us that he may well have urged his staff to convene a DRB to address the LA Films IV issues, but he had no specific recollection of this.

In his written statement, Mr. Mayorkas said that the DRB was based on a proposal developed in 2011. He referred to a May 19, 2011, USCIS press release about some EB-5 proposals. We found no evidence that Mr. Mayorkas or any other USCIS official referred to that proposal when developing the DRB in 2013.

Moreover, the DRB Mr. Mayorkas established in January 2013 was quite different from the 2011 proposal. According to the 2011 press release, the proposed board would be composed of an economist and adjudicators, supported by counsel, to render decisions on regional center applications. The 2013 DRB would be set up to hear issues of deference involving individual petitioners unrelated to a regional center’s application. In addition, unlike the 2011 proposal, no adjudicators were assigned to the 2013 DRB. [EM-0000423]

#### *Process and Timeline for Holding Deference Review Board Hearing*

Mr. Mayorkas conveyed his desire for quick action, but EB-5 headquarters officials believed Mr. Mayorkas’ timeline was unreasonable. Immediately after he sent the email establishing the policy, senior officials in the OCC began identifying key issues that needed to be addressed. For example, it was not



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even clear to whom a notice or invitation could be sent. According to one senior EB-5 official: [EM-0000422, 433, 472]

The real challenge however (setting aside any legal issues that OCC will need to review) will be determining who will be representing the investors before the board when the issue involves a change at the [immigrant investor] stages. How many representatives will be allowed to appear (do they have to designate just one, or should we allow multiple so that someone from the regional center as well as one or two attorneys representing the investors may appear)? [EM-0000426]

The EB-5 staff was also concerned about the process and lack of procedural guidance. One official worried that if USCIS could not accommodate an investor at a hearing, the investor could appeal the decision in Federal district court, adding “I am really uncomfortable with creating a hearing process that is not grounded in statute and [regulations] – we can be sued six ways til [sic] Sunday.” [EM-0000438], [MOA-0005478]

Mr. Mayorkas continued to receive communications from third party stakeholders regarding LA Films. On January 28, 2013, for example, Chief of Staff Kroloff forwarded Mr. Mayorkas an email from Rendell, who wrote that there had to be a decision by January 31 or the investment would be lost. Kroloff asked Mr. Mayorkas, “What, if anything, would you like me to say back? Or should I loop him with you directly?” We found no record of Mr. Mayorkas’ reply. [EM-0000450]

In a January 30, 2013, meeting with EB-5 headquarters staff, Mr. Mayorkas directed that the DRB hear the LA Films IV case. Mr. Mayorkas also selected a second case involving a Wisconsin Regional Center, although it was not clear to the staff how or why he chose that case.<sup>17</sup> At the meeting, Mr. Mayorkas directed that notices for the DRB hearing be sent to the LA Film Regional Center the next day. One participant in the meeting said the meeting “left a clear impression that the Director and [his chief of staff] wanted to accommodate LA Films and Tom Rosenfeld.” The same participant told us Mr. Mayorkas selected the case based on an interested party contacting him and complained about the consistent lack of transparency in the decisions. The

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<sup>17</sup> The Wisconsin Regional Center case was never reviewed by the DRB because none of the staff were able to identify any issues to review. There were no pending petitions and the time for appeal had lapsed.



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participant also noted that the relief being offered was extraordinary and unprecedented. According to one email between two USCIS managers, reflecting on the meeting, “The whole thing is unsettling. Hopefully we can wash our hands soon.” [EM-0000451, 453]

As staff members were leaving the meeting, Mr. Mayorkas received a phone call from Rosenfeld. During this call, Mr. Mayorkas told Rosenfeld about the decision to give him a DRB hearing. An EB-5 official who overheard Mr. Mayorkas taking a telephone call from Rosenfeld described this as “uncomfortable” and added that “the appearance of impropriety” was “overwhelming.” That official ultimately reported the appearance concern to a supervisor, who consulted with an ethics official in USCIS. The ethics official, who was told the facts as a hypothetical question but was not informed it involved Mr. Mayorkas, told the EB-5 official that the conduct should be reported to the Office of Inspector General or the Office of Special Counsel. [EM-0000457], [MOA-0005073]

Although the EB-5 staff understood that Mr. Mayorkas wanted the DRB set up immediately, his proposed timeline puzzled and troubled them. The staff believed that, given the abrupt change in procedures this represented, they needed some time to sort out the legal and logistical issues associated with a DRB hearing. According to one official, “This really needs to slow down. OCC had major comments and legal issues. I understand that Ali wants it immediately, but at what cost?” Even in the week before the hearing for LA Films IV was scheduled to take place, the EB-5 staff still did not know how the process would work. One senior EB-5 manager wrote to another and complained, “As far as I know we have no real plan in place for conducting this Deference Review Board hearing.” Another staff member responded, “Ali made it clear he wants the Board to meet on the week of the 11<sup>th</sup>. We need to throw together a process, board members, and get people reviewing the issues related to deference.” [EM-0000441, 463]

### *Deference Review Board Hearing and Directive to Give Deference to All LA Films IV Investor Petitions*

On Friday, March 15, 2013, the DRB met. The only external participants were Rosenfeld, representing LA Films, a California-based private economist, and two private attorneys from the EB-5 Committee of the American Immigration Lawyers Association (one of whom, Dawn Lurie, had extensive dealings with Mr. Mayorkas in the Gulf Coast Funds case discussed below). Although the only issue was a decision about the investor petitions, no investors were represented. According to USCIS policy and Federal regulation, the investors



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could only be represented by individuals who had filed an appearance form. The hearing was neither recorded nor transcribed, and we have no reliable basis to determine exactly what took place at the hearing.

After the hearing, on March 21, 2013, the members of the DRB held a teleconference with California Service Center staff who had recommended denial of the petitions. The staff expressed their opposition to giving deference. One adjudicator said:

I explained to the review board that we did not feel that the project was creating new jobs, and that [LA Films IV] [was] just using the money to replace other funds available to Time Warner, including cash reserves and their \$5 billion revolving credit facility with Citibank. So the EB-5 money was not really resulting in any new projects that would not have otherwise been produced in the absence of EB-5 capital.

In the opinion of the California Service Center staff, the net effect of deference was to improperly approve hundreds of investor petitions that would have been otherwise denied, based on an error in approving a single earlier petition. Nevertheless, on March 22, 2013, an EB-5 headquarters official sent a memo to the California-based adjudicators, reflecting the decision of the DRB, which directed the adjudicators to give deference to all LA Films IV investor petitions based on the initial approval of the earlier petition. This was in effect a de facto approval of the investor petitions as long as there were no national security issues and each investor could demonstrate having the necessary funds to invest. [MOA-0001749]

The directive was not well received. One official described the decision as "incorrect" and the "wrong" application of the law and claimed that the guidance outlined in the memo went "totally" against how these petitions were normally processed. Another official wrote, "It appears that [the decision to grant the initial single petition] was a simple mistake. And it is absurd to me to accord deference to simple mistakes." Others believed that, because headquarters issued the directive only hours after the teleconference to the California Service Center, headquarters had already made the decision. They thought they had simply wasted their time on the conference call. [EM-0000468]

After the decision to approve all the LA Films IV petitions, the adjudicators were told that they had only two weeks to approve all 249 petitions. One staff



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member described the situation as a “mad rush” to approve the LA Films IV petitions.

Six weeks after the DRB hearing, a senior EB-5 official noted there was not yet a formal DRB policy and that the entire policy consisted of a “bunch of emails.” [EM-0000472]

To our knowledge, the March 15, 2013, DRB hearing is the only one USCIS held.

### *USCIS Issues Deference Policy*

On May 30, 2013, USCIS issued a comprehensive EB-5 policy memorandum that included a deference policy:

Unless there is reason to believe that a prior adjudication involved an objective mistake of fact or law, USCIS should not reexamine determinations made earlier in the EB-5 process. Absent a material change in facts, fraud, or willful misrepresentation, USCIS should not re-adjudicate prior USCIS determinations that are subjective, such as whether the business plan is comprehensive and credible or whether an economic methodology estimating job creation is reasonable.

Under this new policy, it is at least an open question whether the single initial petition approved by mistake in LA Films IV would have received deference, thereby compelling the granting of 249 other petitions regardless of whether they met the requirements of the statute and regulations.

### **Las Vegas Regional Center**

#### *Allegation Related to SLS Hotel and Casino in Las Vegas*

We also received allegations that Mr. Mayorkas gave special treatment to the Las Vegas Regional Center (LVRC). USCIS employees complained that, in January 2013, after speaking with U.S. Senator Harry Reid, Mr. Mayorkas personally directed that USCIS expedite processing of investor petitions related to the SLS Hotel and Casino in Las Vegas (SLS) even though, in the staff’s view, there was no basis for expediting the petitions.



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### *LVRC Approved as a Regional Center*

On September 29, 2009, the LVRC filed an application with USCIS for recognition as a regional center. According to the proposal, the regional center planned to focus its investments in new commercial enterprises in 10 industry economic clusters: hotel, manufacturing, retail shopping centers, restaurant, casino, general retail, office, medical office, assisted living/nursing home, and sports and recreation centers. USCIS approved the application on May 27, 2010.

### *Requests to Expedite Processing of SLS Investor Petitions*

On October 2, 2012, the first investor petition related to a proposal for about 230 investors to partially fund SLS, an LVRC project, arrived at USCIS. Other investor petitions followed.

About two months after individual SLS investors started filing petitions, USCIS began receiving congressional inquiries about the petitions. On December 5, 2012, a member of Senator Harry Reid's staff emailed USCIS' Office of Legislative Affairs asking whether USCIS could expedite processing of the SLS investor petitions. By granting expedited processing, SLS petitions would move ahead of previously filed petitions. [MOA-0001773-1774]

Senator Reid's staff member asserted that the SLS investor petitions needed expedited processing because the terms of the bank financing for SLS required that 10 percent of all visas for the project be approved by mid-January 2013. Failure to do so would result in losing the financing for the project. At that time, 25 investor petitions had been submitted, with an additional 205 to follow. The staff member indicated that the project had already received a number of local government permits for construction, at a cost of several hundred thousand dollars, which would expire in January. The staff member forwarded correspondence to USCIS from LVRC claiming that submission of the SLS petitions had been delayed because of potential changes to USCIS' policy on tenant occupancy.<sup>18</sup> [EM-0000509], [MOA-0001777]

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<sup>18</sup> On December 20, 2012, USCIS finalized new tenant occupancy guidance. Normally, USCIS requires evidence from an investor that a specific amount of investment is connected to new jobs created by prospective tenants of its commercial spaces. Under the revised guidance, the investor would not have to connect a specific amount to new jobs, but would get credit for job creation if it could demonstrate that the economic benefits of the project would remove "a significant market-based constraint."



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In response to the request for expedited processing, a senior EB-5 official commented that SLS should have followed established procedures and submitted a request for expedited processing directly to USCIS, rather than make the request through Congress. The official also noted that a formal request should have been made to the Director of the California Service Center who decides whether to grant such requests. [MOA-0001773]

The same EB-5 official questioned whether the SLS investor petitions met the criteria for expedited processing. The official noted it would be difficult to grant the request for expedited processing because SLS itself, not USCIS, had created the urgency. Specifically, under the financing agreement SLS had with the bank, it had to meet certain deadlines to receive financing. In May 2012, SLS entered into an agreement under which it had to receive USCIS approval by November 2012, with an option to extend the deadline to February 2013. The first investors began sending petitions to USCIS in October 2012, only a month before the initial deadline for financing.

This posed a problem for EB-5 staff because requests to expedite processing are normally granted only in very rare circumstances, generally when USCIS' action causes extreme hardship.<sup>19</sup> In analyzing the situation, an EB-5 official wrote:

If they didn't have investors lined up when they signed that agreement, and they didn't start filing individual investor filings until October 2012, I think it is fair to say that USCIS has not caused any of this to happen (i.e. long delays, [tenant occupancy] holds, etc.) and therefore, how much do we exercise our discretion to grant expedites when it appears that it was their business/contractual agreements and negotiations that lead to the issue? Why would you sign a May 2012 document with a deadline to secure investors by November 2012 if you don't have the investors? If you do, then why did it take from May to October to get investors to file 526's [sic]? I just think I would have a lot of questions as to why we at USCIS should expedite something based on

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<sup>19</sup> According to the USCIS website, criteria for "expedite consideration" include severe financial hardship to company or individual, an extreme emergent or humanitarian situation, nonprofit status of requesting organization in furtherance of the cultural and social interests of the United States, Department of Defense or National Interest Situation (the request must come from an official U.S. Government entity and state that delay will be detrimental to the Government), and USCIS error or compelling interest of USCIS.



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what could possibly be argued a bad business deal/negotiation? [MOA-0001773]

During the week of December 10, 2012, SLS officially submitted its request to expedite processing of its investors' petitions. On December 17, 2012, USCIS denied the request. The denial of SLS' request meant that USCIS would process the SLS petitions normally, that is, in the order they were received.

On January 8, 2013, Mr. Mayorkas spoke by telephone with Senator Reid during which, we were told, he made no guarantees, but promised the Senator that USCIS would take a "fresh look" at the request to expedite processing. In his interview, Mr. Mayorkas told us that, at the conclusion of the January 8 call, he might have said "we will look into it" and he believed that USCIS looked into the matter. [EM-0000537], [MOA-0005958], [CAL-0001546]

After his call with Senator Reid, Mr. Mayorkas asked a senior headquarters EB-5 official (whom he had just appointed to a leadership position) to look into the issue.<sup>20</sup> Subsequently, this official emailed EB-5 personnel at the California Service Center about their decision to deny the request to expedite processing of the SLS petitions. The official was skeptical about the decision, contending that the staff involved did not fully consider the potential economic loss and the timing of the financing, concluding, "I guess I am a little surprised that this request did not warrant expedited treatment." [EM-0000748-749]

Historically, the EB-5 program did not grant requests for expedited processing under circumstances like that of the SLS case. However, decisions whether to grant such requests were not governed by regulation or statute. Normally, the Director of the California Service Center had discretion to decide whether to expedite processing of an individual petition, but it appears such requests were rarely granted. One senior EB-5 official told Mr. Mayorkas that he did not believe USCIS had granted any EB-5 expedite requests in the prior year. [EM-0000592]

On January 22, 2013, staff at the California Service Center recommended to a headquarters-level EB-5 official that the request for expedited processing again be denied. According to the staff, SLS based its request solely on the delays in filing the investors' petitions, which threatened its arranged terms of financing.

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<sup>20</sup> In July 2012, Mr. Mayorkas announced his plans to create a new office at USCIS headquarters for administration of the EB-5 program. EB-5 adjudications were transferred from the California Service Center to a newly created headquarters office, later called the Immigrant Investor Program Office. A USCIS senior official said that front office involvement in creating this new EB-5 office in headquarters was unusual.



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Staff members noted that EB-5 regulations did not require using this specific investment vehicle and, in any event, its processing of the petitions was within normal processing times. This echoed the reasoning behind USCIS' denial of the first expedite request. [EM-0000553]

In recommending against expedited processing, a staff member expressed concern about a lack of resources, treating petitioners differently, and opening up the floodgates to such requests. In an email, the staff member expressed fear of an “inadvertent opening of the proverbial Pandora’s box,” in that investors could structure their financing arrangements to ensure they received expedited handling. Because the people representing EB-5 investors made up a “small and tightly knit community,” the staff member thought they would quickly figure out which financing arrangements would receive expedited processing. According to this official, this would “set a precedent that we won’t be able to sustain, the resources we will expend [to] adjudicate the requests and possible fallout if we treat folks differently.” [EM-0000750]

*Request by Executive Director of SelectUSA for Expedited Processing*

On January 24, 2013, USCIS requested additional information from the SLS investors who sought expedited processing, including copies of the financing agreements and a better explanation as to how these petitions were different from other EB-5 investor petitions.

Later that same day, USCIS received a letter from Steve Olson, the Executive Director of SelectUSA, an initiative under the U.S. Department of Commerce,<sup>21</sup> requesting expedited processing of the SLS investor petitions. Olson wrote, “[SLS] presented a comprehensive, shovel-ready hotel/casino development plan, including sound financials ... a track record of past successes of casino/hotel developments, and compelling case utilizing EB-5 capital that will conservatively create 8,600 jobs in Las Vegas.” He explained that not adjudicating the investor petitions by February 4, 2013, could put the capital at risk and derail the project. [EM-0000483]

Notably, the letter did not address the main concern of many EB-5 staff members—that LVRC, SLS, and the investors had control over the timing of the financing arrangements and that USCIS was still within its normal processing times for the SLS investors. Nevertheless, a senior EB-5 official, in

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<sup>21</sup> The SelectUSA initiative was established on June 15, 2011, by President Obama, through Executive Order 13577. According to Olson, it is a “government-wide initiative to attract and retain investment in the American economy.”



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recommending expedited processing of the SLS investor petitions, cited the letter, calling the argument “very compelling.” [EM-0000482, 553]

To the staff’s knowledge, this was the first time that SelectUSA ever weighed in on such an issue. Some staff members were suspicious about how the letter had been issued and feared undue influence. One senior official noted that Olson had worked with Mr. Mayorkas at the United States Attorney’s Office in Los Angeles and at the law firm of O’Melveny & Myers LLP. Another staff member noted in an email, “I don’t recall seeing these folks opine before and wonder how they even know who to send this to. I fear we are entering a whole new phase of yuck.” [EM-0000482]

Mr. Mayorkas believed the letter was evidence that the SLS petitions should be expedited and disapproved of asking for more information from SLS before making the determination to expedite. As he noted in a January 25, 2013, email to senior EB-5 officials:

I mentioned to you the Department of Commerce letter, which I believe underscores our need to develop expertise on a fast/urgent track (the Department with the relevant expertise believes that, contrary to our adjudication, the expedite criteria have been met). I did not wish to get involved in the case itself. Having now read your email, I am surprised by our response. For example, the petitioner has to present evidence of a request for an extension of time from the funder, or an explanation of why such a request was not submitted? Are we imposing that condition ourselves now? I will defer to those with adjudications experience. I must ask whether, based on the deal document and given the Department of Commerce’s views, are we following the law applicable to the standard of proof? [EM-0000485]

In deciding whether to grant the SLS request to expedite processing, a senior EB-5 manager explained to Mr. Mayorkas in an email:

There is a genuine concern with the need to distinguish this case from others. Given this community, we anticipate this [request to] expedite will garner attention and that similar requests will increase significantly. Additionally, folks are already asking why some cases are being adjudicated before theirs so a rigorous expedite protocol is perceived as



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necessary for fairness and to defend against criticism. [EM-0000593]

Mr. Mayorkas, in his written statement, indicated that he “became concerned that USCIS's position was improper, a violation of its own expedite criteria, and *ultra vires* insofar as USCIS was not adhering to the standard of proof to which petitioners were to be held under the law.” He added, “USCIS's position was detached from business reality.” In his interview, Mr. Mayorkas told us his involvement in the SLS case was limited and “as needed” to resolve the broader legal and policy issues that had arisen. He specifically cited as broader issues, the standard of proof for “expedite criteria” and what expediting actually meant. Mr. Mayorkas said, “Once those issues were resolved, my limited involvement in the SLS case ended.” Mr. Mayorkas indicated to staff in an email that granting the SLS expedite request meant that the SLS petitions moved “to the front of the line.” [EM-0000487]

EB-5 program officials thought the decision to expedite processing was ill advised. In an email among them, they vented their frustration with the process, “There will be 200 of these? And we just give full deference to [the Department of Commerce]? And now we have to explain ourselves to the director? Will anyone ever deny an expedite again?” Additionally, the staff saw little need to expedite the current SLS petitions because only a fraction of the total number of SLS investors had filed their petitions. As of January 23, 2013, only 47 of the 230 investors had filed petitions. Nevertheless, a senior official within USCIS directed that the request to expedite processing be granted. [EM-0000482, 485], [MOA-0001258]

The EB-5 staff expressed concern that granting the SLS request to expedite its investors’ petitions would make USCIS vulnerable to criticism of disparate treatment. After the decision to expedite the SLS petitions, a senior official observed that other EB-5 stakeholders were complaining about the preferential treatment of SLS. For example, on June 9, 2013, the President of CMB Regional Centers sent an email to an EB-5 official about the perceived disparate treatment, noting it was “blatantly unfair” that SLS petitions were processed faster than those for one of CMB’s projects, which were filed earlier. The President of CMB asked the official to “look into who is getting favorable treatment before it becomes an extreme political football.” [EM-0000593, 746]

#### *Confusion about Expedited Processing*

Even after USCIS granted SLS’ request for expedited processing, EB-5 staff appeared to be confused about what expedited processing involved. Because



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such requests had been rarely granted, staff members were uncertain about the steps to take. Some thought that requests to expedite could not be granted until full security background checks of the applicants were completed. Others were not certain whether granting the request meant shortcuts could be taken during processing, including not conducting full security background checks. [EM-0000592, 629-630]

On January 29, 2013, a senior EB-5 official argued that USCIS should not grant SLS' request for expedited processing because USCIS' Threat Assessment Branch had received "significant security/criminal suspicions regarding several of the SLS petitioners." [MOA-0001808]

In response to these concerns, Mr. Mayorkas clarified in an email:

I agree that to grant an expedite request means only that we have agreed, based on some articulated and supported time sensitivity, to review the case on an accelerated basis. It does not mean or in any way suggest that we have rendered any decision on the merits of the petition. If, for example, a security issue arises that will take time to resolve, then—regardless of whether we have agreed to expedited review—we will take the time needed to resolve the security issue and we will not act until we have achieved resolution.

I agree that we need to run enhanced security and integrity checks. ... I think we should review and discuss the chronology to better understand the process and whether we need to make adjustments system-wide. [EM-0000489]

The lack of an established process and the ad hoc decision-making in the SLS case meant that some senior EB-5 officials were not even aware the request to expedite had been granted.

### *Mr. Mayorkas Agrees to Weekly Briefings of Senator Reid's Staff*

We were told that, during a January 8, 2013, phone call with Senator Reid, Mr. Mayorkas agreed to provide "regular" weekly updates on the status of the SLS petitions. Staff described providing updates to members of Congress as routine, but not "down to that level and degree" as with the SLS case. According to one senior EB-5 official, from January through July 2013, they were asked to provide weekly updates on the status of the SLS petitions to the Office of Legislative Affairs; these updates purportedly went to Senator Reid's



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office. The same official said that processing the SLS petitions was “stressful” because of the “undue pressure” from USCIS headquarters.

On January 31, 2013, Mr. Mayorkas had a teleconference with Senator Reid’s staff. Afterward, Reid’s staff expressed appreciation to USCIS officials that Mr. Mayorkas “took the time to call us personally, even though it was to deliver bad news.” The “bad news” appeared to be that the substantive issues could not be resolved by February 4, 2013. [EM-0000762]

Mr. Mayorkas stated in his interview that he did not recall agreeing to provide Senator Reid with weekly updates on the status of the SLS petitions. When told we had been informed that weekly updates had been provided for six months, Mr. Mayorkas said that sounded “ridiculous.” More than three months after the decision to expedite the SLS petitions, Mr. Mayorkas’ calendar listed a meeting with Senator Reid on May 6, 2013, in which he was advised that the “SLS expedite” was one of the topics. [CAL-0001675]



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## **Gulf Coast Funds Management Regional Center**

As with the other two matters, we received complaints from a number of USCIS employees that the application for a politically connected regional center, Gulf Coast Funds Management (Gulf Coast), received extraordinary treatment as a result of Mr. Mayorkas' intervention.<sup>22</sup> In this case, the intervention resulted in the AAO, which decides on appeals of unfavorable decisions by USCIS adjudicators, changing its decision on an appeal. [MOA-0004887]

### *Gulf Coast's Application and First Amendment Request*

On January 17, 2008, Gulf Coast filed an application with USCIS for recognition as a regional center. According to its application, Gulf Coast planned to focus foreign investments on three target industry economic clusters in Mississippi and Louisiana: shipbuilding, food processing, and manufacturing. On August 18, 2008, USCIS approved Gulf Coast's application to participate in the EB-5 program.<sup>23</sup>

On May 7, 2009, Gulf Coast filed a request with USCIS to amend its original application to include investments in the Gulf Coast Automotive Investment Fund and Gulf Coast Fund I. According to the request, the Gulf Coast Automotive Investment Fund would be used to construct and operate a hybrid car manufacturing facility. On July 13, 2009, USCIS approved the requested changes, noting in its written approval that Gulf Coast "shall continue to have a geographical scope that includes the entire states of both Mississippi and Louisiana as a Regional Center."

### *Gulf Coast's Second and Third Amendment Requests*

On January 15, 2010, Gulf Coast filed a second amendment request with USCIS. In its request, Gulf Coast sought to expand the geographic area of its

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<sup>22</sup> People outside of USCIS were also concerned about preferential treatment. On June 21, 2011, Mr. Mayorkas was informed USCIS received a public comment, "I would like to respectfully submit that the Regional Centers themselves have not been given the type of unprecedented access to USCIS officials as that of the 'Law Lobby.' I have concerns here and they grow out of the varied interests within the EB-5 community. As a Regional Center Principal, I believe the immigration attorneys are being, and have been granted unprecedented access to the USCIS at all levels." Dawn Lurie, then-counsel for Gulf Coast, was an active member of the EB-5 Committee of the American Immigration Lawyers Association. Ronald Klasko, who represented CanAm and Rosenfeld, was the chair of the EB-5 Committee from 2010-2013. Both had direct access to Mr. Mayorkas.

<sup>23</sup> Throughout the time period of the events we reviewed, Anthony Rodham was listed as the Chief Executive Officer of Gulf Coast.



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investment footprint to include parts of Virginia. Gulf Coast also sought approval to invest in GreenTech Automotive, Inc. (GTA), formerly known as Hybrid Kinetic Automotive Corp. On February 18, 2010, USCIS denied the request citing among other reasons that the proposed areas for the regional center did not qualify as “a limited geographic area.”

On February 22, 2010, Gulf Coast filed a third amendment request with USCIS, asking that its designation as a regional center be changed to expand its industrial scope to include manufacturing, education and training, research and development, and wholesale trade and to add Tennessee and the tobacco-dependent counties of Virginia to its investment area. Gulf Coast planned to offer investment “units” for a subscription price of \$555,000 only to foreign investors; \$500,000 of the subscription price would be EB-5 investment. Gulf Coast also proposed building a car manufacturing plant in Mississippi, a car parts manufacturing plant in Virginia, and a warehouse in Tennessee, near the Mississippi border.

### *USCIS Denies Gulf Coast’s Amendment Request*

On August 11, 2010, USCIS denied Gulf Coast’s amendment application, based on issues relating to geographic location, stock valuation, and investor roles. Gulf Coast also wanted to provide investors with a guaranteed stock value of \$550,000 in 5 years, which conflicted with an EB-5 requirement to ensure that the investor’s money is at risk. Additionally, USCIS adjudicators were concerned about whether investors actually had a management role in the project.

In interviews, several USCIS adjudicators expressed skepticism about Gulf Coast’s hybrid vehicle project. According to one adjudicator, the consensus of those involved was that the project did not appear to be “credible” because “it claimed a ridiculous amount of jobs would be created.” Another adjudicator described the project as “pie in the sky.” A third characterized it as “really not so good of a project.”

In a June 7, 2010, email, one USCIS adjudicator highlighted a number of the flaws with the project:

The projects lack adequate business plans and an economic analysis showing the promotion of growth through increased productivity, job creation and increased capital investment. An updated economic analysis is needed to [sic] for the new geographic areas and new kinds of businesses. The



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business plan submitted does not identify total costs of development, number of investors, sources of other financing, permits and licenses, etc... The amendment proposal assumes all of the investment will be done in targeted areas but provide no MSA information showing the proposed areas actually are rural or high unemployment. ... The case is not approvable as filed. [MOA-0003502]

An email from a senior official discusses why that official agreed with the decision to deny the Gulf Coast amendment:

The economic analysis is flawed because it mixes national data with county-level data (compares apples to oranges), and relies on estimated production levels for the project for 2019, nine years from now. This analysis did not use "reasonable methodologies" in developing the job creation estimates and the other estimated economic impacts that will result from EB-5 capital investments through [Gulf Coast] as required by the statutory and regulatory framework.<sup>24</sup> [MOA-0000514, 3536]

### *Gulf Coast Begins Contacts with DHS and USCIS Leadership*

Contacts with DHS and USCIS leadership began shortly before USCIS had denied Gulf Coast's third amendment request. The major contacts are included in the body of this report. All the contacts we were able to find are listed in the Gulf Coast timeline in appendix B.

On July 28, 2010, after Gulf Coast's third request had been pending for five months, Douglas Smith, Assistant Secretary for the Private Sector at DHS, forwarded to Mr. Mayorkas an email from Terry McAuliffe, the chairman of GTA. GTA was to be partially funded through Gulf Coast's EB-5 investors. McAuliffe's email expressed his frustration with the USCIS approval process. Mr. Mayorkas immediately forwarded Smith's email to senior EB-5 officials

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<sup>24</sup> Career adjudicators continued to have reservations about the project. A written analysis of Gulf Coast's fourth amended application, which was filed a year later in August 2012, concluded that "the business plan does not provide a detailed, credible and verifiable expenditure plan that delineates how the EB-5 funds will be spent by [GTA] in the job creating activities; In response to the [Notice of Intent to Deny], it is still unclear how all of the EB-5 funds will be infused into the project."



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requesting that the case receive “prompt, full, and fair consideration” and not to provide “any preferential treatment.” [EM-0000001, 266]

On August 11, 2010, the acting Director of the California Service Center informed Gulf Coast that USCIS was denying its third amendment request. On August 17, 2010, Assistant Secretary Smith forwarded another email from McAuliffe to Mr. Mayorkas complaining about the merits of the decision. In forwarding the email, Assistant Secretary Smith added, “... unless I am missing something, this [denial] is just crazy.”<sup>25</sup> [EM-0000019]

On September 10, 2010, Gulf Coast filed a motion requesting that USCIS reconsider the decision to deny the amendment request. On December 15, 2010, while the motion to reconsider was still pending, McAuliffe wrote a letter to DHS Secretary Janet Napolitano complaining about the denial of the Gulf Coast amendment and requesting her assistance to get the amendment approved and to expedite more than 200 investor petitions. USCIS was instructed to prepare a response to McAuliffe’s letter for the Secretary. Over the next few weeks, EB-5 staff drafted a memorandum for the Secretary and a letter for her signature. [MOA-0003543]

We were unable to determine whether Mr. Mayorkas discussed this matter with the Secretary. At Mr. Mayorkas’ request, staff prepared talking points for a January 24, 2011, call he was to have with the Secretary to discuss the issues raised in the McAuliffe letter. Although during his interview, Mr. Mayorkas said he did not recall a phone call or conversation with the Secretary taking place that day, he indicated in his written statement “my staff prepared ... talking points for a call I was to have with the Secretary...” [MOA-0004856]

*USCIS Certifies Decision to Deny Amendment Request*

On January 31, 2011, the California Service Center “certified” USCIS’ decision to deny the amendment request to the AAO. Under EB-5 regulations, the

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<sup>25</sup> As reflected in the timeline in appendix B, McAuliffe, Chief of Staff Kroloff, and Assistant Secretary Smith continued to communicate about the Gulf Coast application throughout 2010 and 2011. For example, Smith and McAuliffe (or a representative) were in contact by telephone, email, or in person on July 28, 2010; August 18, 2010; (when Smith assures McAuliffe he is “on it.”); November 5, 2010; March 4, 2011; May 11, 2011; (when Smith asks a GTA representative for the file numbers, because Smith “wants to make sure it’s on top of the pile”); August 15, 2011; August 30, 2011; and February 1, 2013. Likewise, McAuliffe and Kroloff communicated about the Gulf Coast matter on January 20, 2011; June 20, 2011; June 22, 2011; June 24, 2011; August 22, 2011; August 24, 2011; and September 2, 2011. In some instances, we have evidence the message was passed on to Mr. Mayorkas; in other instances we do not.



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decision must be certified in order to appeal an adverse decision to the AAO. The bases of the decision to deny the amendment were:

(1) that the investors would have reduced management rights; (2) that the purchase of stock undermined the congressional intent to promote pooled investment; (3) that the proposal to convert each membership unit to an estimated price of \$550,000 in common stock in five years constituted an impermissible redemption agreement; and (4) that the amendment did not propose investments in a distinct, contiguous geographic region.

*Meeting with Terry McAuliffe*

On February 2, 2011, Mr. Mayorkas informed senior staff that the Secretary's office requested that he meet with McAuliffe the next day.<sup>26</sup> He told counsel, because the case was still pending, he would not discuss it or provide information. Instead, he said he would be in "listen-only mode." Counsel noted that although it would be better for him not to be involved in the meeting, his planned approach would be appropriate. In his written statement, Mr. Mayorkas asserted that he requested not to attend such a meeting, but had nevertheless been asked to do so and, thus, intended to participate in "listen-only mode." [MOA-0004781]

On February 3, 2011, Mr. Mayorkas attended a meeting with McAuliffe.<sup>27</sup> Mr. Mayorkas indicated during his interview that he did not bring anyone from USCIS to the meeting because he did not want to get into substantive discussions about the case. He also said he only shared with McAuliffe what he had said at a national stakeholder engagement the day before. We found no contemporaneous record of what was discussed at the meeting, and we were

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<sup>26</sup> According to its policy, USCIS can provide only limited information about matters affecting third-party stakeholders. Because McAuliffe was not a principal of Gulf Coast—Gulf Coast planned only to invest in his company, GTA—USCIS considered him a "third-party stakeholder" in Gulf Coast's application. Adjudicators are instructed to document and include in the case file any information they receive about an application from anyone other than a principal or an attorney for a regional center. USCIS will not disclose information about a case to someone other than the affected party, including the party's representative, unless the individual has on file a completed *Notice of Entry of Appearance as Attorney or Accredited Representative* (Form G-28). According to the most recent documented Form G-28, McAuliffe was not listed as an accredited representative.

<sup>27</sup> We were not able to determine who attended the meeting from the Secretary's Office or any other component of DHS. Mr. Mayorkas did not have any notes of the meeting.



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unsuccessful in our attempts to interview McAuliffe. Mr. Mayorkas stated that he left the meeting before it ended.

Although he asserted in his statement that he was in listen-only mode, Terry McAuliffe believed Mr. Mayorkas promised an expedited review of the Gulf Coast application. On June 20, 2011, four months after meeting with Mr. Mayorkas, McAuliffe emailed Chief of Staff Kroloff, complaining that Mr. Mayorkas had not followed through: “Unfortunately, we have heard nothing from USCIS since our meeting four months ago. At that meeting, we were promised by the Director that our application would receive an expedited review, due to the fact that we had been given erroneous information by the USCIS.” In reply to Kroloff, Mr. Mayorkas wrote, “I will check tomorrow. I won't get into a back and forth at this point.” [EM-0000036, 315]

Mr. Mayorkas' summary of the meeting, which he recounted in an email to his staff and counsel the same afternoon, contradicts McAuliffe's claim that he was promised an expedited review. Consistent with this contemporaneous email, Mr. Mayorkas told us that he made no promises during the meeting to expedite the review of the Gulf Coast application and again noted he was in listen-only mode. [MOA-0004782]

There appears to be at least one other direct contact between Mr. Mayorkas and McAuliffe. On June 24, 2011, Kroloff emailed McAuliffe that Mr. Mayorkas would be calling him shortly. About 30 minutes later on the same day, senior USCIS personnel responded to a number of requests from Mr. Mayorkas for information about the deficiencies with the Gulf Coast and the Virginia Center for Foreign Investment (Virginia Center) applications.<sup>28</sup> During his interview, Mr. Mayorkas did not specifically recollect a call to McAuliffe on this date, but told us that McAuliffe called him a “handful of times” over the course of the next two years. Mr. Mayorkas said he did not take notes during any of these calls. In his written statement, Mr. Mayorkas recalled McAuliffe complaining to him over the telephone one time, but was unable to provide the date. [EM-0000318]

### *Mr. Mayorkas Personally Reviews the AAO's Draft Decision on Gulf Coast's Appeal and Meets with Staff*

<sup>28</sup> On April 28, 2011, while the Gulf Coast amendments were pending, Gulf Coast counsel submitted a separate regional center application on behalf of the Virginia Center for Foreign Investment containing essentially the same proposal as Gulf Coast with the same managing agent. This proposed regional center contained the same proposal as the denied Gulf Coast amendment except that it reduced the geographic center to just Virginia. USCIS approved the Virginia Center on July 21, 2011.



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By July 12, 2011, the AAO had completed and was prepared to issue its final decision on Gulf Coast's appeal. The AAO decision would have denied Gulf Coast's appeal on three grounds: (1) providing the directors with common stock was an impermissible redemption, meaning the investment would not be at risk; (2) the investors did not have a sufficient managerial role, and (3) the proposal did not encompass a single, contiguous region.

On July 12, 2011, Mr. Mayorkas told his staff that he wanted to review the decision before the AAO issued it. Many EB-5 officials found this highly unusual because past USCIS Directors typically had not scrutinized individual decisions; they found this level of scrutiny unsettling. The staff told us that they had not recalled Mr. Mayorkas, who became Director of USCIS in 2009, previously request to review a decision before it was issued by the AAO. [MOA-003614]

In the three weeks running up to his request to review the AAO decision, we found evidence of at least six emails or phone calls, either directly or through senior DHS officials, between Mr. Mayorkas and McAuliffe or counsel for Gulf Coast. The number of contacts may be understated because we were unable to obtain records of Mr. Mayorkas' office telephone calls. We were also unable to obtain any contemporaneous notes about what was discussed in any of the phone calls; Mr. Mayorkas did not keep such notes and the non-government parties declined to speak with us.

Some of the emails that Mr. Mayorkas received in this time period, purporting to summarize telephone conversations, are quite detailed and reflect Mr. Mayorkas' substantive responses to specific issues. For example, on June 28, 2011, Dawn Lurie, counsel for Gulf Coast, sent an email to Mr. Mayorkas confirming a telephone conversation they had that day. Lurie noted that USCIS had issued multiple, serial Requests for Evidence (RFE) to address specific concerns, rather than a single request. According to her email, she believed the phone call with Mr. Mayorkas confirmed that USCIS would not issue further RFEs and the Virginia Center application would be approved. In his emailed response, Mr. Mayorkas corrected Lurie, but appears to have invited adjudication outside of the regulatory process: [EM-0000170]

I appreciated our call yesterday and the time you took to express your position in response to the RFE your client received. The efficient processing of EB-5 petitions and applications is very important to our agency. I do not believe I represented that there will be "no additional requests



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outside the scope of this [pending] RFE.” I have not analyzed the case file. What I did express is my general view that the serial issuance of RFEs does not seem fair unless everyone understands at the outset that outstanding issues or deficiencies are being addressed in serial fashion. I will forward your e-mail as appropriate, and I will ask whether there are any other issues to be addressed. If the response is other than “no,” we can discuss the equities of the situation that creates. [EM-0000169]

On July 20, 2011, the day before he met with EB-5 and AAO senior staff to discuss the merits of the AAO’s draft decision, Mr. Mayorkas communicated with Lurie by phone and email. In one email, Lurie wrote that she “spoke with Terry last night and learned that we now have two investors who have requested funds to be returned ... We are expecting a mass exodus and possible suit due to what the immigration firms in China, and our investors, perceive as some act of bad faith on GCFM/GTA's part.” [EM-0000151]

Mr. Mayorkas replied by email, “I will be addressing your concerns with my colleagues tomorrow afternoon. I look forward to being in touch after then.” In response, Lurie wrote, “Terry has requested a meeting with you and the Secretary. Right now the fund is in the process of returning the first of the monies to investors who ‘want out.’ The entire project and the associated job creation is in jeopardy. So, as you can imagine tensions are running high.” In another email, Mr. Mayorkas then asked Lurie to call him at his private desk line. We were unable to determine the substance of that call because Mr. Mayorkas could not recollect it and counsel declined to be interviewed. [EM-0000150]

In his statement, Mr. Mayorkas wrote:

The dire feedback from Ms. Lurie, the alarming internal report I received on the case status, and my inability to receive from within the agency a clear and comprehensive understanding of what was going on led me to conclude that my personal involvement in this case was necessary. I engaged with [counsel for Gulf Coast] as needed to understand the issues raised by the case. I consistently kept my senior staff, including the attorneys, fully informed about my communications with Ms. Lurie and at no point, as I recall, did any of my staff raise a concern about those communications.



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On July 21, 2011, Mr. Mayorkas met with senior staff, including individuals from Service Center Operations, the AAO, and OCC. Prior to the meeting, Mr. Mayorkas had reviewed the draft AAO decision, as well as Gulf Coast's responses, to the RFEs on stock conversion and investors' management control.

Mr. Mayorkas' opening remarks, as summarized in a participant's contemporaneous email (emphasis added), set the tenor of the meeting:

The Director stated that he believes that nothing is more important to the United States at this time than the creation of jobs for U.S. workers. This will inform how he views every classification. So, if the regional center claims that it will create jobs for U.S. workers, he will read the statute and the [regulations] as generously as possible. For other classifications, such as H-1 B, where there are statutory provisions designed to ensure that U.S. workers are protected, he will read the statute and [regulations] more narrowly. *The director noted several times that these cases are affiliated with "people of influence" and "people with money" and that he has several more of these on his radar.* It seemed clear to me that since "people of influence" have raised other cases to him (or a higher authority at DHS or the White House), the AAO will be requested to defend our draft I-924 and EB-5 decisions to the Director in the future, prior to issuance. [MOA-0007279]

In his interview, Mr. Mayorkas said he did not remember making the above statement about people with influence or money. He said this statement sounded "absurd" because neither the rich nor the poor deserve special treatment or a wrong decision. He added that in deciding a case, he was "impervious to pressure."

During the meeting, Mr. Mayorkas told his staff that he did not agree with the AAO's decision on the Gulf Coast case and argued against each of the three bases for the AAO's rejection of the application. Specifically, Mr. Mayorkas believed as long as there was some management control, it satisfied the regulations; that the money was at risk; and that the states did not have to be contiguous. He did acknowledge that for the petition to suggest that the geographic area in this case – Mississippi, Louisiana, Tennessee and Virginia – to be a single area is "a sham." [MOA-0007281]



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Additionally, Mr. Mayorkas suggested that the appeal not be decided on and that headquarters could simply tell the California Service Center employees that the petitions should be adjudicated in line with his views. The participants dissuaded him from doing so, asserting that such action would essentially be a “directed decision,” a practice USCIS does not follow. Instead, Mr. Mayorkas agreed the AAO would write the appeal decision. [MOA-0007282]

However, Mr. Mayorkas requested the AAO’s file, saying he would rewrite the decision himself. He said he felt bad about asking the AAO to do more work. The career staff involved in the adjudication process believed the request was highly improper. One meeting participant said that “everyone froze” when Mr. Mayorkas said, “Let me take it home and rewrite the report.” The participant was “stunned” by Mr. Mayorkas’ suggestion, saying “the entire turn of events made me extremely uncomfortable.” Another participant told us the request made it appear that Mr. Mayorkas was dictating the results, which “looked bad.” Ultimately, the participants dissuaded Mr. Mayorkas from rewriting the decision himself. [MOA-0007280]

In an email summarizing the meeting, the same participant mentioned above indicated there was agreement with Mr. Mayorkas’ point about management control and tentative agreement with his other two points, but noted other issues.

We found his arguments ... helpful ... We can agree to the last point, and are tentatively in agreement to the first two points ... Frankly, I can’t say that we will be able to convince ourselves to agree with his first points in writing, in which case we know that we will have to go back to the table. He agreed that none of this is decided and that we should feel free to contact him with any questions ... [MOA-0007279]

According to Mr. Mayorkas’ written statement, “the consensus reached by the group was that the agency had erred in its prior adjudication in several respects that were first forecast by career staff in the summary memorandum provided to me in January.” Mr. Mayorkas told us he offered to rewrite the AAO’s decision on Gulf Coast to help and to lighten the AAO’s load. He also said, “the [AAO’s] decision was well written, but incorrect,” and he “thought there was unanimity on the correct decision.”

A day after the meeting, another participant raised “lingering” concerns about the issue of multiple unconnected geographic areas, to which Mr. Mayorkas



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responded, “the issue is by no means settled.” A senior USCIS attorney also indicated having difficulty understanding Mr. Mayorkas’ interpretation of the other two issues in the case. [MOA-0007272-7273]

### *The AAO’s Draft Decision on Gulf Coast’s Appeal is Revised*

After the meeting, over the next few weeks, EB-5 staff debated and discussed the issues of management control and whether the Gulf Coast stock redemption plan caused the funds to be at risk. Several drafts of a revised AAO decision were circulated.

During this same period, there was a flurry of contacts with USCIS involving the principals and counsel for both Gulf Coast and GTA. On August 10, 2011, Mr. Mayorkas forwarded an email from Lurie to senior staff asking about the status of the Gulf Coast case and an RFE. Several days later, Mr. Mayorkas forwarded an email from a senior DHS official to his staff with a list of pending GTA investor petitions. On August 22, 2011, within an hour of receiving an email from Chief of Staff Kroloff, Mr. Mayorkas emailed his staff asking whether an RFE had been issued on the Gulf Coast case. [EM-0000101, 107, 116], [MOA-0003653, 7415]

On August 24, 2011, adjudicating officials issued an RFE to Gulf Coast requesting additional information about the stock redemption plan. On August 30, 2011, Gulf Coast responded to the RFE. On the same day, Mr. Mayorkas responded to an email from Assistant Secretary Smith, who had forwarded an email from McAuliffe indicating that the RFE had been filed, that “this case is proceeding through the normal channel and receiving due attention.” [EM-0000076] [MOA-7456]

On August 31, 2011, Mr. Mayorkas and senior officials from the AAO had a teleconference to discuss the AAO’s proposed final decision on Gulf Coast, which had findings that were contrary to the draft AAO decision. The AAO’s opinion now concluded that the investments were at risk and that there was sufficient managerial control. A contemporaneous email set the tone of the discussion:

The director asked whether we believe the investment is at risk. I started to talk about the different kinds of risk described in the regs (loss and gain) but he immediately cut me off and said that he is not really interested at that level (i.e., how the investment is at risk), just whether the AAO has determined that it is at risk. The Director advised us



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that he would be "hunkering down" with USCIS staff in the future on two specific issues: EB5 and Kazarian.

The Director then asked whether the investment is at risk, "yes or no." I answered "yes." Then he asked whether we have come to this determination on our own or whether we have come to this determination because we feel pressured. I didn't answer. [A USCIS manager] started to respond that this has been an unusual case and then started to discuss some of our concerns about the legitimacy of the entire enterprise. While valid, the director does not want to hear about our suspicions without documentation to confirm there is something shady, so I am afraid I jumped in and admitted that we didn't have derogatory evidence that would preclude approval. Then the director again asked something very close to this, (I can't remember the exact phrase): "did you come to the determination that there is risk of your own free will? Yes or no?" I said "yes." [MOA-0007628]

#### *A "Consensus" Decision?*

Mr. Mayorkas, in both his written statement and during his interview, stated that the group had reached a consensus with regard to the issues involved in the Gulf Coast appeal. In a technical sense, that may be true, but it overlooks the corrosive and destabilizing nature of Mr. Mayorkas' intervention on technical adjudicative matters. This was the first time that Mr. Mayorkas, or to our knowledge any other USCIS Director, had ever reviewed the merits of or intervened in an AAO decision. The effect of such high level involvement, as the above email and the employees' interviews reflect, muzzled the candid discussion and healthy back-and-forth typically done in resolving complex issues. The chilling effect of such intervention was particularly pronounced when, as in this case, USCIS staff understood that the stakeholders were politically influential. One official told us that one of the main participants was "reduced to tears" as a result of this meeting with Mr. Mayorkas.

During the course of our review, we found that a number of staff members described Mr. Mayorkas' communication and management style as very aggressive. He was described as "smart, charismatic, and persuasive," but encounters with him were also described as "uncomfortable, aggressive, unusual, and unsettling." One staff member said Mr. Mayorkas was "full of emotion, impulsive, volatile, and tenacious." Another high-ranking USCIS



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official told us that employees were afraid to speak up in the meetings because if they had a different view, Mr. Mayorkas would “cut them up, take them apart, or put them in their place.” Another high-level employee said that Mr. Mayorkas’ *modus operandi* would be to eliminate those who disagreed with him from the group or future discussions. This same individual participated in meetings in which, because of the way Mr. Mayorkas ran the meeting and communicated his views, “it would be clear to me that others disagreed but were apprehensive about speaking up.” Another high-ranking official described going to a meeting with Mr. Mayorkas as feeling like “going into the lion’s den to justify our existence as a Christian” and said, “That scenario always comes to a predicable end.” [MOA-0007974]

We also observed this fear of speaking up in the LA Films case. In preparing to raise a list of objections developed by different operational components at a January 31, 2013, meeting to discuss setting up the DRB, one senior official wrote, “I just want to make sure the pain of delivering potentially unwelcomed news is shared and borne [sic] by the appropriate parties.” After the meeting, this official noted “Ali insists that the notices go out tomorrow ... OCC said nothing about their significant objections so I stayed quiet.” [MOA 0006909, 6927]

### *The AAO Issues Final Decision on Gulf Coast’s Appeal*

On September 2, 2011, the AAO issued its final decision, finding there was sufficient management control and the investments were at risk, but denying the appeal because the project was not in a contiguous geographical area. Even though it denied Gulf Coast’s appeal, management control and investment risk were no longer issues. The Virginia Center, which USCIS had approved in July 2011, was essentially the same as Gulf Coast, except that it included only Virginia. Therefore, because it did not have the same geographical issue, the resolution of the management control and investment risk issues in the Gulf Coast case cleared the way for approval of the Virginia Center’s investor petitions.

### *USCIS Adjudicates Individual Investor Petitions for the Virginia Center*

The Virginia Center issues were resolved, but individual investor petitions needed to be processed. Investor petitions had been pending while USCIS decided the overarching issues of the qualifying investment. Over the next 18 months, DHS leadership and Mr. Mayorkas continued to be contacted by interested parties. Nearly every time Mr. Mayorkas was contacted, he



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forwarded the communication on to others in USCIS. Often, Mr. Mayorkas replied to the sender that he was not involved in adjudicating individual cases.

Nevertheless, Mr. Mayorkas expressed his desire to continue to oversee the Gulf Coast matter. For instance, Mr. Mayorkas is notified on September 13, 2011, that a team is preparing “a ‘roadmap’ to share with adjudicators laying out how these cases [Gulf Coast] should be reviewed in light of the AAO decision” and asked if the roadmap should be shared with him. Mr. Mayorkas replied that he would “like the opportunity” and was “available tomorrow” for this review.” [MOA-0003713]

In addition, USCIS headquarters’ constant inquiries and requests for updates on specific investor petitions affected staff. In interviews, staff said they began to feel pressure to expedite the petitions and that headquarters was exerting more scrutiny on their decisions. Moreover, some staff described being pressured by the front office to use special handling procedures for these investors, which one employee described as “unusual [and] inappropriate.” One supervisor directed that the cases be “fast tracked” and “expedited” because they were “of interest to counsel and HQ.” Email inquiries from Lurie to Mr. Mayorkas and Assistant Secretary Smith were forwarded directly to USCIS staff, strengthening the perception of added scrutiny. Staff attempting to process and adjudicate the petitions understood that DHS leadership and the applicants were communicating, which lent to a feeling among some that Gulf Coast was “wired in” with politically connected individuals. [MOA-0004076, 4086]

### *Mr. Mayorkas Does Not Intervene in Gulf Coast’s Fourth Amendment Request*

On August 6, 2012, Gulf Coast filed its fourth amendment request, seeking to include additional industry categories (ship and boat building, food manufacturing, manufacturing, automobile manufacturing, and motor vehicle parts manufacturing); change the administrative personnel of the regional center; and change its economic analysis and underlying business plan to use a specific economic model to establish indirect job creation.

The staff, in analyzing the amendment request, continued to have significant doubts about the validity of the project. According to a written analysis of the fourth amendment request, “the business plan does not provide a detailed, credible and verifiable expenditure plan that delineates how the EB-5 funds will be spent by [GTA] in the job creating activities; In response to the [Notice of Intent to Deny], it is still unclear how all of the EB-5 funds will be infused into the project.” In an email response to a request from Mr. Mayorkas, one USCIS



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staff member summarized the continuing economic issues with Gulf Coast, including an incomplete business plan, insufficient economic impact analysis, and lack of support for estimating direct employment. [EM-0000251], [MOA-0000514]

In early 2013, the new counsel for Gulf Coast and Assistant Secretary Smith attempted to personally involve Mr. Mayorkas in continuing issues related to Gulf Coast investor petitions. Mr. Mayorkas refused to do so, writing in an email to Smith, "I cannot weigh in. It is not appropriate for me to do so. The attorney sent an email to me and I responded that I could not weigh in, but that I would forward her email to the appropriate individual. I will do the same here." Nevertheless, as with the LA Films petitions, staff understood these applications were getting high-level attention. For example, on January 29, 2013, Anthony Rodham, the Chief Executive Officer of Gulf Coast, emailed Mr. Mayorkas about delays in processing petitions. Mr. Mayorkas forwarded the email to the staff with a "high importance" designation. [EM-0000245, 884]

USCIS approved Gulf Coast's fourth amendment request on February 12, 2014.



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**Abbreviations**

|       |   |
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| AAO   | Administrative Appeals Office                   |
| CFR   | Code of Federal Regulations                     |
| DRB   | Deference Review Board                          |
| DHS   | Department of Homeland Security                 |
| EB-5  | Employment-Based Fifth Preference Program       |
| GTA   | GreenTech Automotive, Inc.                      |
| LVRC  | Las Vegas Regional Center                       |
| OCC   | Office of the Chief Counsel                     |
| PIDC  | Philadelphia Industrial Development Corporation |
| RFE   | Request for Evidence                            |
| USCIS | U.S. Citizenship and Immigration Services       |



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### Appendix A – LA Films Timeline

| Date     | Event   | Document       |
|----------|---|----------------|
| 02/04/08 | CanAm files application to establish LA Films as a regional center  |                |
| 03/24/08 | USCIS approves initial regional center (I-924) application for motion pictures and TV   |                |
| 11/12/09 | LA Films submits request to amend designation by adding nine industries   |                |
| 11/19/09 | USCIS approves amended request  |                |
| 08/16/10 | LA Films submits another request to amend the regional center designation to include a new project from Time Warner and loan by LA County Regional Center limited partnership to Time Warner under LA Films III |                |
| 08/27/10 | LA Films submits request to amend proposal to obtain USCIS' concurrence that changing investment from Lions Gate to Sony or Time Warner is not a material change  |                |
| 09/09/10 | USCIS approves request to amend filed on 08/16/10 (LA Films III)  |                |
| 09/23/10 | USCIS denies 08/27/10 request to change investment from Lions Gate to Sony or Time Warner because change of investment to another company is a material change  |                |
| 05/19/11 | LA Films submits request to amend regional center designation to include Time Warner project<br><i>(Note: this project was approved on August 29, 2013)</i>   |                |
| 05/26/11 | California Film Commission contacts California Service Center asking for investor petitions to be handled expeditiously   | EM-0000325     |
| 06/02/11 | EB-5 staff prepares proposal to deny 200 LA Films' investor (I-526) petitions   | EM-0000326     |
| 06/13/11 | Katherine Hennigan, Senior Policy Director at LA Mayor's office, emails Mr. Mayorkas about Sony investor petitions; he responds that he will bring it to the attention of his staff right away                  | EM-0000332-333 |
| 06/13/11 | Mr. Mayorkas forwards email to USCIS senior   | EM-0000330     |



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|          | official, stating cases having urgency because of time sensitivity of investment vehicles and job creation potential   |                        |
| 06/17/11 | Hennigan sends follow up email to Mr. Mayorkas, who responds he will make an inquiry. Email is forwarded to senior staff   | EM-0000332, 335        |
| 06/17/11 | Senior EB-5 official informs Mr. Mayorkas that there is no confusion about industry standards and that staff will brief the senior official after OCC clears the denial notices and before the denial notices are sent | EM-0000332             |
| 06/17/11 | Mr. Mayorkas responds to the senior official that he would like to discuss   | EM-0000332             |
| 06/20/11 | Hennigan emails Mr. Mayorkas mentioning she ran into a mutual acquaintance from O'Melveny & Myers LLP  | EM-0000335             |
| 06/28/11 | Hennigan sends follow-up email to Mr. Mayorkas asking for update, which he forwards to senior USCIS officials. Mr. Mayorkas tells Hennigan that he has brought the issue to the attention of his colleagues            | MOA-0004916-4917       |
| 06/29/11 | Senior official provides Mr. Mayorkas the denial notice drafted in collaboration with OCC  | EM-0000344             |
| 06/29/11 | Mr. Mayorkas acknowledges to a senior attorney that he understands that there may be some "fatal deficiencies" with the LA Films application   | EM-0000339             |
| 07/07/11 | Senior official indicates, "Ali said to go ahead and issue the denials without any further briefings and meetings."  | MOA-0004933            |
| 07/13/11 | Adjudicators told to process LA Films III denials  | MOA-0003870            |
| 07/15/11 | Mr. Mayorkas has phone call with former Governor Rendell in the early afternoon  | CAL-0000737            |
| 07/15/11 | Within an hour of Rendell phone call, Mr. Mayorkas directs staff to reopen any denials and stop any other denials  | EM-0000343, EM-0000349 |
| 07/15/11 | Rosenfeld and Mr. Mayorkas have phone call later in the day  | EM-0000347             |
| 07/20/11 | Rosenfeld and Mr. Mayorkas have telephone call, which includes discussion of LA Films  | EM-0000350, 355        |
| 07/21/11 | Rosenfeld sends follow-up email to Mr. Mayorkas  | EM-0000355             |



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|          | thanking him for taking time to discuss concerns about the Sony project and one other. Mr. Mayorkas response indicates he will follow up   |                  |
| 07/28/11 | Rosenfeld emails Mr. Mayorkas thanking him for personal attention, time, and sensitivity to Sony   | EM-0000354       |
| 08/01/11 | Mr. Mayorkas and Rosenfeld have phone call   | EM-0000354       |
| 08/03/11 | Rosenfeld sends email thanking Mr. Mayorkas for his call on August 1   | EM-0000354       |
| 08/03/11 | Mr. Mayorkas responds to Rosenfeld, noting that EB-5 program as a whole is his priority and not particular projects  | EM-0000354       |
| 08/08/11 | Emerson (described as Mr. Mayorkas' career advisor) emails Mr. Mayorkas about LA Films   | EM-0000352, 1019 |
| 08/12/11 | Rosenfeld emails Mr. Mayorkas regarding status of LA Films   | EM-0000354       |
| 08/23/11 | Rosenfeld emails Mr. Mayorkas, who responds that it would be inappropriate for him to speak with Rosenfeld about pending matters   | EM-0000356       |
| 08/23/11 | Mr. Mayorkas tells senior official that he wants to discuss the LA Films decision  | EM-0000358       |
| 08/26/11 | Senior official informs staff that Mr. Mayorkas wants a meeting early the next week on LA Films  | EM-0000359       |
| 09/01/11 | Emerson emails Mr. Mayorkas to obtain a status update on the LA Films  | EM-0000360       |
| 09/01/11 | Mr. Mayorkas responds to Emerson, stating he is focused on improving the administration of the EB-5 program and not involved in the adjudication of particular cases. Mr. Mayorkas forwards to a senior official | EM-0000360       |
| 09/01/11 | Phone company records indicate three phone calls of 2, 1, and 4 minutes occur between Mr. Mayorkas and Emerson   |                  |
| 10/31/11 | Rosenfeld leaves two phone messages for Mr. Mayorkas regarding LA Films; Mr. Mayorkas asks senior official to return call for him  | EM-0000364       |
| 11/01/11 | Mr. Mayorkas communicates his disappointment when senior official is unable to contact Rosenfeld that day  | EM-0000368-369   |
| 11/01/11 | Mr. Mayorkas informs senior staff that he does not intend to be involved in adjudications but  | EM-0000371       |



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|          | only to understand issues from a policy perspective   |                  |
| 11/03/11 | Senior official reports to Mr. Mayorkas the results of conversation with Rosenfeld and recommends against departing from established adjudicative procedures  | EM-0000373       |
| 11/08/11 | Rosenfeld emails senior staff member about the need to decide on Sony by the next day   | EM-0000374       |
| 11/10/11 | Rosenfeld leaves phone message asking to speak directly with Mr. Mayorkas; message is forwarded to senior staff   | EM-0000380       |
| 11/10/11 | Rosenfeld leaves another voicemail wanting to speak directly with Mr. Mayorkas; Mr. Mayorkas reiterates it would not be appropriate for Rosenfeld to speak with him   | EM-0000379       |
| 11/10/11 | Sony contacts USCIS indicating it still plans to borrow under the loan agreement and is committed to matching the EB-5 funds per the program guidelines   | EM-0000389       |
| 11/17/11 | Senior staff member who had discussed issues with Rosenfeld recuses self from reviewing draft memo to adjudicators allowing California Service Center to process LA Films petitions                         | EM-0000383       |
| 11/17/11 | Memo is issued to adjudicators allowing them to process LA Films petitions  |                  |
| 08/25/12 | Rosenfeld contacts senior EB-5 staff member about LA Films IV (Time Warner) and discusses the issue of slate financing and 240 investor petitions   | EM-0000402       |
| 09/13/12 | Rendell and Mr. Mayorkas have phone call regarding the Sony project and 240 outstanding investor petitions  | EM-0000404       |
| 10/19/12 | Chief of Staff Kroloff forwards to Mr. Mayorkas a third party email sent on behalf of Rosenfeld. Mr. Mayorkas tells Kroloff that USCIS will not review Rosenfeld's case independent of program-wide efforts | EM-0000406       |
| 10/19/12 | Kroloff copies Mr. Mayorkas on email reply to third party, indicating he believes Mr. Mayorkas and Governor Rendell have already spoken about LA Films IV; Mr. Mayorkas replies that it would               | EM-0000406, 1029 |



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|                     | not be appropriate to have case-specific communications   |                         |
| 11/15/12 & 11/16/12 | Rosenfeld emails Mr. Mayorkas about LA Films; Mr. Mayorkas responds that he cannot speak about a pending matter   | EM-0000408; MOA-0005051 |
| December 2012       | USCIS staff prepares to material to deny the LA Films IV petitions  |                         |
| 01/17/13            | Staff email informs Mr. Mayorkas that that OCC has approved the template that will be used to deny the LA Films IV petitions  | EM-0000416              |
| 01/18/13            | Rosenfeld leaves a phone message for Mr. Mayorkas, stating that Mr. Mayorkas “knows the subject;” Mr. Mayorkas takes a phone call with Rosenfeld; Rosenfeld raises the issue of deference | EM-0000457, 1093        |
| 01/25/13            | Mr. Mayorkas send email to EB-5 staff, establishing a decision board (DRB); he directs that staff draft invitations to appear by 1/29/13  | EM-0000422-423          |
| 01/28/13            | Kroloff forwards Rendell email to Mr. Mayorkas about the need for a decision in LA Films by 1/31/13   | EM-0000450              |
| 01/30/13            | At the conclusion of a senior staff meeting to discuss the DRB, Mr. Mayorkas takes Rosenfeld phone call   | EM-0000451              |
| 03/15/13            | DRB meets to determine whether to give deference to initial mistaken approval of one petition to subsequent petitions   |                         |
| 03/21/13            | Headquarters conducts teleconference with California Service Center adjudicators who advise not to give deference to initial single mistaken approval                                     |                         |
| 03/22/13            | Headquarters directs California Service Center to grant 249 investor petitions  | MOA-0001749             |



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**Appendix B – Gulf Coast Timeline**

| Date      | Event  | Document   |
|-----------|--|------------|
| 01/17/08  | Gulf Coast files application to become a regional center   |            |
| 08/18/08  | USCIS approves application   |            |
| 05/07/09  | Gulf Coast requests to amend application, intending to build hybrid cars   |            |
| 07/13/09  | USCIS approves amendments to the application   |            |
| Late 2009 | First investor petitions filed   |            |
| 01/15/10  | Gulf Coast files second amended request to expand Gulf Coast’s geographic footprint to include Virginia  |            |
| 02/18/10  | USCIS denies the amendment because region is not contiguous  |            |
| 02/22/10  | Gulf Coast files third amendment request, asking to change nature of investment, and to include Tennessee and Virginia   |            |
| 07/28/10  | Assistant Secretary Smith forwards Terry McAuliffe’s email to Mr. Mayorkas, expressing frustration at USCIS approval process. Mr. Mayorkas requests senior staff to look into issue, writing “I want to make sure that we are providing customer service consistent with our standards but that we are not providing any preferential treatment. Please address as appropriate.” | EM-0000001 |
|           | Assistant Secretary Smith separately replies to McAuliffe and says he will “dig down on this” and “be in touch”  | EM-0000264 |
| 08/11/10  | USCIS denies amendment based on issues with geographic location, stock valuation, and investor roles   |            |
| 08/17/10  | Assistant Secretary Smith forwards McAuliffe email complaining about the merits of the August 11 decision to Mr. Mayorkas, writing “unless I am missing something, this [denial] is just crazy.”   | EM-0000019 |
| 08/18/10  | McAuliffe complains to Smith, who replies he’s “on it.”  | EM-0000268 |
| 09/10/10  | Gulf Coast files motion requesting reconsideration of third amendment filed on February 22, 2010   |            |
| 11/05/10  | McAuliffe emails Smith to determine status   | EM-        |



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|          |  | 0000269                |
| 12/15/10 | McAuliffe sends letter to Secretary Napolitano asking her to reverse the decision to deny the Gulf Coast amendment and asks for help expediting the adjudication of more than 200 investor petitions | MOA-0003549            |
| 12/27/10 | USCIS is instructed to prepare response to McAuliffe letter for the Secretary's signature  | MOA-0003546            |
| 01/20/11 | Chief of Staff Kroloff emails McAuliffe and requests a call  | EM-0000314             |
| 01/24/11 | Staff prepares talking points for Mr. Mayorkas to use for telephone call with the Secretary regarding Gulf Coast   | MOA-0003558, 4851-4859 |
| 01/24/11 | Gulf Coast counsel asks senior official about Mr. Mayorkas' meeting with Secretary Napolitano  | MOA-0001933            |
| 01/25/11 | Mr. Mayorkas meets with staff to discuss Gulf Coast issues   | MOA-0003558, 4858      |
| 01/28/11 | California Service Center Director issues decision denying Gulf Coast amendment and "certifies" decision to the AAO  |                        |
| 01/28/11 | Courtesy copy of Gulf Coast decision is provided to Gulf Coast counsel   | MOA-0001932            |
| 02/03/11 | Mr. Mayorkas meets with McAuliffe  | MOA-0004782            |
| 03/04/11 | McAuliffe and Smith meet at GTA office   | EM-0000915             |
| 04/28/11 | Gulf Coast counsel files application for Virginia Center with same proposal as Gulf Coast amendment  |                        |
| 05/11/11 | GTA representative asks Smith for status of Virginia Center application; Smith asks for file number because he wants "to make sure it is on the top of the pile"                                     | EM-0000203, 274        |
| 05/26/11 | Smith emails Mr. Mayorkas regarding the status of the Virginia Center petition; Mr. Mayorkas forwards Smith's email to senior USCIS official   | EM-0000202-203         |
| 06/09/11 | Senior official orders staff to expedite Virginia Center petition based on filing history  | EM-0000201             |
| 06/17/11 | RFE sent to Virginia Center; senior official notifies Mr. Mayorkas that RFE has been issued  | EM-0000201             |
| 06/20/11 | McAuliffe emails Kroloff, writing that Mr. Mayorkas  | EM-                    |



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|          | promised expedited review four months ago; Mr. Mayorkas responds to Kroloff that he will check on it, but will not “get into in a back and forth at this point”   | 0000036, 280                        |
| 06/21/11 | Mr. Mayorkas emails Smith that he is having someone assess the RFE and they are considering the matter with urgency given the history, including USCIS’ communications shortfall  | EM-0000040                          |
| 06/22/11 | Kroloff emails McAuliffe, writing that the issue is “on track” and asking if he wants to have a call with Mr. Mayorkas  | EM-0000317                          |
| 06/24/11 | Kroloff emails McAuliffe, indicating that Mr. Mayorkas will be calling him shortly  | EM-0000318                          |
| 06/24/11 | Mr. Mayorkas begins to raise policy issues with senior staff about June 17 RFE  | EM-0001075                          |
| 06/27/11 | Gulf Coast counsel and Mr. Mayorkas have telephone conversation regarding RFE sent to the Virginia Center   | EM-0000169, 188                     |
| 06/28/11 | Gulf Coast counsel emails Mr. Mayorkas and raises questions about RFE-related issues discussed by telephone; Mr. Mayorkas replies that she did not accurately represent what he said about additional requests; he forwards the email to senior staff | EM-0000168-170, 187-189             |
| 06/28/11 | Gulf Coast counsel sends a second email a half hour later to Mr. Mayorkas with a list of outstanding petitions; Mr. Mayorkas promises to follow up and forwards email to senior staff, noting “as indicated”  | EM-0000193-194                      |
| 06/29/11 | Mr. Mayorkas receives from staff substantive reply about the merits of the Gulf Coast application   | EM-0000193                          |
| 07/07/11 | Gulf Coast emails Mr. Mayorkas warning of possible investor lawsuits because of delays in petition approvals; Mr. Mayorkas indicates he will follow up and forwards email to senior staff, directing them to “address with appropriate urgency”       | MOA-0003607-3608;<br>EM-0000175-176 |
| 07/12/11 | The AAO completes its final decision to deny the Gulf Coast amendment (certified in January 2011) but cannot issue because Mr. Mayorkas wants to read it  | MOA-0003613 - 3614                  |
| 07/13/11 | Senior official emails other senior staff to inquire about status of Virginia Center RFE, writing “we   | MOA-0003615                         |



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|          | need to monitor and provide updates to the front office” and asking to be notified when they receive the RFE response   |                            |
| 07/20/11 | Mr. Mayorkas responds to Gulf Coast counsel’s email inquiry, stating that he will be addressing Gulf Coast’s concerns with staff the next day   | EM-0000151                 |
| 07/20/11 | Mr. Mayorkas asks Gulf Coast counsel to call him later that day and provides the number for his private desk line   | EM-0000150                 |
| 07/21/11 | Virginia Center application approved  |                            |
| 07/21/11 | Mr. Mayorkas chairs internal meeting, indicating he disagrees with the AAO and offering to write the opinion himself; Mr. Mayorkas tells senior staff to send email to California Service Center stating that all issues are decided and Gulf Coast investor petitions should be adjudicated in line with his views; staff convinces Mr. Mayorkas to allow the AAO to issue the decision. | MOA-0007279-7280           |
| 08/03/11 | Very senior official contacts the AAO wanting to see the revised decision before it goes out  | MOA-0007285                |
| 08/06/12 | Gulf Coast files fourth amendment request   |                            |
| 08/10/11 | Gulf Coast emails Mr. Mayorkas asking about status of Gulf Coast and the Virginia Center RFE; Mr. Mayorkas forwards the email to senior staff for handling as they deem appropriate   | EM-0000101, 104            |
| 08/15/11 | Mr. Mayorkas forwards Smith’s email about pending Gulf Coast investor petitions to senior official  | EM-0000107;<br>MOA-0003653 |
| 08/16/11 | Mr. Mayorkas indicates to senior official that he wants to speak directly with the AAO adjudicator who wrote specific section of the decision, “the sooner the better”  | MOA-0007340                |
| 08/22/11 | Kroloff forwards McAuliffe email to Mr. Mayorkas in which McAuliffe requests a meeting with the Secretary and Mr. Mayorkas  | EM-0000116                 |
| 08/22/11 | Mr. Mayorkas speaks with the AAO chief, who then urges the staff to issue the RFE as soon as possible   | MOA-0007415                |
| 08/23/11 | Senior staff member remarks, “this [RFE] is consuming an inordinate amount of the Director’s time,” and the next day writes, “I do not want to  | MOA-0007419, 7422          |



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|          | have to explain a delay to him at this point”   |                      |
| 08/23/11 | Mr. Mayorkas responds to Kroloff’s August 22 email that Gulf Coast will receive “an analysis of the perceived deficiency” and have an opportunity to address it   | EM-0000119           |
| 08/24/11 | Kroloff gives status update to McAuliffe, promising “expeditious” review if there is any error in USCIS’ analysis   | EM-0000320           |
| 08/24/11 | USCIS faxes the RFE to Gulf Coast counsel and mails hard copy   | MOA-0003665          |
| 08/30/11 | Gulf Coast counsel submits response to the RFE  | MOA-0007456          |
| 08/30/11 | Smith forwards email from McAuliffe to Kroloff complaining about the RFE and continuing inquiries by USCIS; Mr. Mayorkas replies to Smith that the “case is proceeding through the normal channel and receiving due attention”  | EM-0000076           |
| 08/31/11 | Mr. Mayorkas chairs an internal teleconference with the AAO to discuss the revised decision   | MOA-0007628          |
| 09/02/11 | The AAO issues the final decision denying Gulf Coast’s amendment because it is not geographically contiguous, but rules favorably on management control and investment risk   |                      |
| 09/02/11 | McAuliffe sends email to Mr. Mayorkas and Kroloff, writing that investors continue to withdraw because of USCIS delays  | EM-0000321           |
| 09/02/11 | Gulf Coast counsel emails Mr. Mayorkas asking for an update on the AAO case and the RFEs; Mr. Mayorkas asks staff to reach out to counsel when the decision is finished.  | EM-0000082           |
| 09/02/11 | In response to Kroloff’s suggestion, Mr. Mayorkas tells Kroloff he will not call McAuliffe to notify him that a favorable decision is expected that day, noting he is “focused on programmatic improvements and not specific cases”   | EM-0000079           |
| 09/12/11 | Gulf Coast counsel sends email to USCIS staff requesting an update and including a list of pending investor petitions; counsel then forwards the same email to Mr. Mayorkas for an update, noting that “Terry has a call with the Secretary tonight;” Mr. Mayorkas responds he is aware of the time | EM-0000027-28, 65-66 |



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| 09/14/11 | Staff inform Mr. Mayorkas that they are working on a road map for adjudicators in light of the AAO's decision; Mr. Mayorkas indicates that he would like to review the road map   | EM-0000059        |
| 09/19/11 | Counsel emails Mr. Mayorkas for update on investor petitions, which he forwards to senior staff asking for update   | EM-0000026        |
| 09/21/11 | Gulf Coast counsel begins to contact adjudicator directly   | MOA-0003725, 3723 |
| 09/21/11 | Gulf Coast counsel copies Mr. Mayorkas on an email to an adjudicator about a substantive issue; Mr. Mayorkas is advised not to respond  | EM-0000035        |
| 09/22/11 | An attorney consulting for GTA emails Mr. Mayorkas complaining of delays; Mr. Mayorkas tells counsel he will forward the email "as appropriate."  | EM-0000061-62     |
| 11/16/12 | McAuliffe calls Mr. Mayorkas  | MOA-0005542       |
| 11/19/12 | USCIS Threat Assessment Branch begins to raise national security concerns with senior officials about Gulf Coast investors  | EM-0000218-219    |
| 12/04/12 | New Gulf Coast counsel emails McAuliffe about meeting Mr. Mayorkas at a public EB-5 outreach event, writing that she discussed adjudication delays in Gulf Coast investor petitions with Mr. Mayorkas who said he would look into the issue | EM-0000890-891    |
| 12/05/12 | McAuliffe forwards an email from a GTA executive to Mr. Mayorkas complaining about USCIS delays; Mr. Mayorkas forwards it to staff "for handling however you deem appropriate"  | EM-0000223-225    |
| 12/05/12 | Attorney for I-829 petitioner sends email to the USCIS Ombudsman at Smith's suggestion  | EM-0000304        |
| 12/14/12 | Gulf Coast counsel contacts the USCIS Ombudsman about the outstanding RFE   | EM-0000298        |
| 01/10/13 | USCIS Ombudsman meets with Mr. Mayorkas and then informs Gulf Coast counsel that Mr. Mayorkas is aware of the issues  | EM-0000297        |
| 01/23/13 | Gulf Coast counsel calls Mr. Mayorkas, and follows up with an email to Mr. Mayorkas and a senior USCIS official about the delay and merits of specific  | EM-0000231        |



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|          | petitions; Mr. Mayorkas informs counsel, "I would not engage in a discussion of a particular case or cases"   |             |
| 01/29/13 | Anthony Rodham emails Mr. Mayorkas about delays in processing EB-5 petitions; Mr. Mayorkas forwards the email to staff with a "high importance" designation | EM-0000245  |
| 01/31/13 | Gulf Coast counsel requests a meeting with Mr. Mayorkas, who declines to meet with her and forwards email to staff  | EM-0000237  |
| 02/01/13 | Smith forwards Gulf Coast counsel email to Mr. Mayorkas, complaining about delays; Mr. Mayorkas forwards to staff.  | EM-0000252  |
| 02/04/13 | McAuliffe calls Mr. Mayorkas  | MOA-0005542 |
| 02/07/13 | USCIS Threat Assessment Branch places hold on processing any Gulf Coast investor petitions  | EM-0001076  |
| 02/18/13 | Mr. Mayorkas receives call on government-issued Blackberry phone from a phone belonging to Terry McAuliffe  | MOA-0005542 |
| 05/23/13 | Fraud Detection and National Security releases hold on petitions  | MOA-0001458 |
| 02/12/14 | Gulf Coast's fourth amendment is approved   |             |

### Statement of Alejandro N. Mayorkas

Thank you for the invitation to provide a written statement. I welcome the opportunity to explain in further detail how the allegations that I provided preferential treatment and created an appearance of impropriety are entirely unfounded.

I have had the privilege of serving our Nation for approximately 17 years. I served for nearly 12 years as a federal prosecutor in the United States Attorney's Office for the Central District of California, including almost three years as the United States Attorney. In August 2009, I was unanimously confirmed by the United States Senate and became the Director of United States Citizenship and Immigration Services ("USCIS"), a post I held for more than four years. Throughout my government service I have been uncompromising in my commitment to excellence and to integrity. At no time during my service, including as the Director of USCIS, did that commitment wane.

I understand that you and your team have done a great deal of work in this investigation, including your review of numerous documents and interview of numerous witnesses. I hope that the narrative responses below and the attached documentation prove helpful as you complete your investigation. They supplement the information I provided to you in my in-depth interview on December 5, 2014.

I respectfully submit that a complete and total repudiation of the allegations against me is the only correct and just conclusion.

I am aware that there may be pressure in cases such as this, where the allegations have become a matter of public controversy, to find something to criticize. To take such an approach in this case would be fundamentally unfair. I did not engage in any conduct that is properly subject to such criticism. The final record should so reflect.

I have organized this submission to address the following topics:

- My leadership approach as Director, the challenges facing the agency when I started, and the significant structural reforms I instituted to address those challenges;
- The realities of the agency's inconsistent and unreliable adjudications as a whole and how individual cases provided the means to consider broader legal, policy, and process issues at the program level;
- The significant shortcomings in the administration of the EB-5 program in particular and the far-reaching programmatic changes that I instituted to address the unique complexities of the program; and
- Responses to the specific questions and issues raised in your December 9, 2014 e-mail.

If you have any follow up questions or would like additional detail on these or any other topics, please do not hesitate to reach out to me. This matter is of the utmost importance to me.

## **My Actions as Director of USCIS Typified My Hands-on Leadership Approach.**

I am and always have been a hands-on leader, and this was certainly true of my leadership as the Director of USCIS. Shortly after becoming the Director I commissioned a top-to-bottom review of the agency. I felt very strongly that this review was necessary to ensure that the agency's priorities were appropriately aligned and that its organizational structure and allocation of resources reflected the priorities. What I found as a result of this review was an agency filled with dedicated public servants but one that faced significant challenges executing its mission. These challenges included (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.

I undertook substantial efforts to address these challenges. First and foremost, I stated clearly and consistently that the agency's top priority was national security and fraud detection. I also made significant structural changes to the agency's organization to realign resources to reflect this and other priorities, including:

- Creating the Fraud Detection and National Security Directorate ("FDNS") to appropriately prioritize its critical mission, embed it throughout the agency's adjudicative processes, and give it a vital seat at the leadership table and consequently a voice in policy and other agency decisions;
- Separating the Domestic Operations Directorate into the Service Center Operations Directorate ("SCOPS") and the Field Operations Directorate to achieve greater efficiency in our delivery of immigration services;
- Creating the free-standing Office of Performance and Quality to help prioritize and focus on the quality of our adjudications rather than on less-important historic metrics;
- Creating the Management Directorate to bring greater cohesion and unity to management functions and decisions across the agency and to spur greater oversight and accountability; and
- Creating the Office of Public Engagement to openly exchange information and views with stakeholders and the public at large.

In connection with these and other structural changes, I made personnel changes and decisions to ensure a meritocracy, to place the best people in the roles most suited to and in the service of the agency's responsibilities, and to reflect an organization where integrity was paramount. The changes were not met with unanimous approval -- such change rarely is -- but I made them in my steadfast commitment to the best interests of the agency I served.

I believe openness and accountability help drive progress and improvement. I held regular formal meetings with senior leadership to discuss the alignment of management responsibilities and resources and with component leadership to discuss issues of concern. I also

routinely discussed issues informally with my staff. My leadership approach was, and remains, premised on the belief that a work environment that fosters open dialogue and collaboration will generate the best ideas, greater accountability, and a shared commitment to excellence.

### **USCIS Adjudications Often Fell Short Of Fulfilling the Agency's Mission.**

When I became Director the most common complaint from the public about the agency was that it rendered inconsistent adjudications and failed to adhere to the law. This complaint concerned me profoundly. Rendering case adjudications lawfully and consistently is an essential aspect of impartial government. Throughout my government service I have been guided by the words of Justice Sutherland in *United States v. Berger*, 295 U.S. 88 (1935), that the sovereign's "obligation to govern impartially is as compelling as its obligation to govern at all." The agency consequently has an obligation to adjudicate cases in adherence to the law, without fear or favor, such that a case that should be denied is denied and a case that should be approved is approved. This is a matter of enforcing the law.

At USCIS I found that a lack of clear and consistent policies contributed to inconsistent and, at times, incorrect adjudications. As part of my top-to-bottom review of the agency I discovered that the agency's operations were so decentralized that not only were we failing to apply agency policies consistently, but we also had different policies from office to office despite USCIS's obligation to enforce a single set of laws. I cannot overstate the impact of this agency failure on me as a public servant. For nearly 12 years as a federal prosecutor I advocated in court or otherwise represented the United States and, in that capacity, I stood with great confidence in how I was applying the law and in the legal and factual positions I presented to courts and juries. Not to have that same confidence in the work we were performing at USCIS was most upsetting and unacceptable. I ordered a Policy Review that entailed (1) collecting all of the agency's immigration policy pronouncements, (2) reviewing them to eliminate inconsistencies and deviations from what the law required, and (3) starting the lengthy process of creating an agency-wide Policy Manual to achieve adherence to a single, controlling federal statutory and regulatory framework. I also created the Senior Policy Council, which included all senior leadership in the discussion of significant policy issues consistent with the culture of inclusivity and collaboration that I emphasized. And I rolled up my sleeves and jumped into cases when necessary to ensure that the agency was enforcing the law as Congress intended.

USCIS is an adjudicative body and the principal way that I, as the Director, learned about policy and legal issues facing the agency was through my review of individual cases. I became involved in individual cases to the extent they presented complex, novel, or otherwise important issues that needed my personal attention to resolve, clarify, or shape the agency's broader policies and procedures. These cases were extraordinarily varied. They included cases that raised difficult questions of law or policy, cases that raised questions of the efficiency of our processes, and cases that raised questions whether we understood properly the business, family, or humanitarian realities that the agency's work is designed to address. My personal involvement was thus driven by my role as the ultimate arbiter of difficult issues for the agency and as the person responsible for ensuring that the agency was utilizing fair, efficient, and effective adjudicative processes that were consistent with the law and the agency's mission.

I took a hands-on approach with the cases that warranted my personal involvement. This was my approach regardless of the program implicated by the case, EB-5 or otherwise, and regardless of the parties involved. I learned of these cases from varied sources, including agency personnel who brought the cases to my attention, media reports, Members of Congress, other government officials, and the public. The depth of my involvement corresponded to the nature and complexity of the issue presented and what was necessary to resolve it. Depending on the case, I would, for example, meet repeatedly on a matter and discuss it intensely with my staff, communicate with counsel on a case, immerse myself in the law and relevant agency pronouncements, and speak with outside experts and members of the private sector to gain a different perspective. I was involved in scores of cases, of all types, throughout my tenure as Director. Just a few examples of cases outside of the EB-5 arena that required my personal involvement are:

- *International adoption cases:* I learned through a variety of channels, including from Members of Congress, that the processing of international adoption cases frequently suffered from lengthy delays, often after adoptive parents had already met, been matched with, and fallen in love with their children. Through my involvement in particular cases I made my view clear that the agency -- and the entire government -- owed a duty to process these cases at a pace commensurate with the humanitarian urgency they presented. As a matter of systemic response, our handling of international adoption cases improved during my tenure as Director. My personal involvement in particular international adoptions cases included the following:
  - Senator Mary Landrieu brought to my attention that cases involving Guatemalan children had been languishing in the system for years, with children declining in mental and physical health in poorly resourced orphanages while their adoptive American parents yearned to bring them home. In one case I remember clearly, the American adoptive parents had moved to Guatemala for several years to be with their child as much as possible until one of the parents had to return to the United States because of financial need. I learned from Senator Landrieu that neither USCIS nor the Department of State maintained a list to track these adoption cases to their completion, an omission I viewed as extremely problematic. I immediately created a USCIS task force to liaise with the Department of State and work with the Government of Guatemala. I also became personally involved, traveling to Guatemala three times to meet with officials there and break through logjams and visiting one of the orphanages during one of my trips. I spoke with American adoptive parents. As a result, USCIS, together with the State Department, created a tracking list for Guatemalan adoption cases and, during my tenure, the number of unresolved cases dropped from, to the best of my recollection, more than 180 cases to fewer than 30. (The number is even smaller now according to my recent meeting with the Guatemalan Ambassador.) I did not provide preferential treatment or create an appearance of impropriety in any of these cases. I did my job to ensure that justice was done.

- Senator Charles Grassley bought an international adoption case to my attention and raised concerns about government ineffectiveness that was causing the child and the American adoptive family undue hardship. He asked that I get personally involved in the case and, given the gravity of the issue, I responded that I would:

Thanks to the Director for listening to the Senator today [and] for making assurances that he would dive into this case.

(November 10, 2009 e-mail from the Senator's staff to my staff.)

I looked into the case and discussed it with my staff. We agreed that the Senator's concerns were well-founded. USCIS resolved the case swiftly and the child was united with the adoptive family. I did not provide preferential treatment to the child in the case or to the American adoptive family, nor did I create an appearance of impropriety. In fact, Senator Grassley thanked me for my personal involvement in the case, both in a telephone call and in a subsequent letter:

Also, thanks again for your assistance on international adoption cases, particularly the case for Mr. and Mrs. [REDACTED] of Iowa. Your personal attention to this matter will make a significant difference in the lives of a special family. Also, I know your agency is working hard to improve the situation for children affected by the earthquake in Haiti. Please don't hesitate to contact me if I can be of service as the process for future adoptions in this devastated country are developed.

(January 28, 2010 letter from Senator Grassley to me.)

I have attached a copy of the above-quoted correspondence and other related correspondence at Tab 1.

- *Cases involving the exercise of discretion on behalf of the needy:* I received a call one day from a reporter for a leading national newspaper who informed me that she was going to write a story about the agency's mistreatment of two chronically ill and disabled children from Africa. I asked the reporter to allow me a brief amount of time to look into the case. I quickly learned that (1) USCIS had granted the children deferred action or parole (I do not recall the precise form of relief); (2) the children had been receiving free medical attention at the local Good Samaritan Hospital for more than one year, and the hospital had committed to continuing this free treatment; and (3) USCIS had decided to not renew the relief and had issued a letter giving the family, including the two chronically ill and wheelchair-bound children, 30 days to leave the country and return to Africa. I discussed this matter immediately with my staff, including the agency's local leadership handling the matter. We considered whether relief should be renewed for the children and, even if not, whether it was just and compassionate to provide the family with only 30 days to make all of their plans, accommodate the ill and disabled children's medical and other needs, gather their

belongings, and leave our country for Africa. We made the decision to renew the humanitarian relief for the children. This case provided a vehicle to recognize and better understand the realities that the vulnerable confront when they appear before us and the impact each and every aspect of our decisions can have on them. The USCIS counsel on the case, [REDACTED], commended me for exercising true leadership through my personal involvement. I did not provide preferential treatment or create an appearance of impropriety. I did my job to ensure that justice was done.

- *National security cases:* My colleagues presented to me a case in litigation in which we could not disclose the national security-sensitive information that bolstered our denial of citizenship to an individual with a dated criminal record. My colleagues, including counsel, advised me that we had to grant the individual citizenship given that we did not have adequate public evidence to present at trial and risked not just an unfavorable verdict but the imposition of attorney's fees as a penalty for our litigation of a very weak evidentiary case. I did not think the individual was deserving of citizenship and did not agree with the assessment of the strength of our case at trial. I discussed the case and the evidence repeatedly with my colleagues and offered to try the case myself. In the end, the decision was made to have our counsel proceed to trial. We won, and citizenship was properly denied. I did not provide preferential treatment or create an appearance of impropriety. I did my job to ensure that justice was done.
- *Cases implicating our business processes:* Intel, one of the large companies that submitted business visa applications to us, informed me that it had a proposal to improve the processing of business visa applications. I met with company officials and counsel, along with other USCIS personnel, on more than one occasion to discuss the proposal, which involved bundling multiple applications from the same company together so that certain common issues of fact could be adjudicated together. Doing so would obviate the need to have different adjudicators review the very same set of facts at different times and possibly render inconsistent decisions (as had been the case previously and about which we had received many complaints). After analyzing Intel's proposal with my colleagues, we instituted it on a pilot basis. I did not provide preferential treatment or create an appearance of impropriety by meeting with and considering Intel's approach, but rather focused on how to improve our agency's operations.
- *Administrative appeals decisions:*
  - My leadership team was well aware of my concern for how our agency was administering the EB-5 program. I included the Administrative Appeals Office in discussions of the issues and our efforts to resolve them. In late December 2011, the Administrative Appeals Office reached out and invited my office to engage in a pending appeal that the adjudicators had certified given the complex or novel issues involved:

██████████

As you are well aware the Victorville EB-5 case resulted in both a CSC decision being certified to the AAO and litigation in federal court. We are operating under a DOJ deadline to decide the case before us before next Monday, and are ready to issue a decision. After working with an economist on the issues, we are affirming the CSC Director's May, 2011 decision to terminate the regional center's designation. The only alternative would have been to remand the case back to CSC, but we saw no legitimate need to prolong the case.

Given Ali's recent concerns around EB-5 issues, do you want to see the decision before we issue it?

██████████

██████████ replied:

Hi ██████████,

Please leave a copy of the decision on my chair. I'll be in tomorrow.

Thanks

██████████

I have attached a copy of the December 13-14, 2011 e-mail exchange between ██████████ Administrative Appeals Office, and ██████████ which ██████████ later forwarded to ██████████, at Tab 2.

- In another instance, I read a front-page newspaper article about the agency's decision to deny a performing arts visa for a music group's failure to meet the eligibility requirement of being "culturally unique." USCIS had determined that the group's music was not culturally unique because it did not originate from one single culture but instead was a blend of different cultures. To the best of my recollection, the music group was a Jewish klezmer band. I reviewed the law, conferred with my colleagues, and together we determined that the definition of "culturally unique" could and should embrace multi-cultural elements in the performing arts. As a result, USCIS published a precedential administrative appeals decision stating that the definition of "culturally unique" encompasses multi-cultural elements.

As these few examples make clear (and there are many, many more), my involvement in a case was triggered by the issue presented and whether it was of significance to the agency and its mission, not by the particular parties involved and certainly not their wealth or status. In all cases, I worked collaboratively with my USCIS colleagues to reach the outcome that best served the law, the program's purpose, and our agency's responsibilities.

## **The Administration of the EB-5 Program Faced Enormous Challenges.**

My involvement with EB-5 cases proceeded in the same way. I became involved in an EB-5 case when it raised a legal, policy, or process issue of programmatic significance. The EB-5 program differed, however, from other programs because of the magnitude of the problems the agency had in administering the program. No other program presented as many complaints (from all quarters) and challenges as the EB-5 program, which necessitated more frequent and in depth involvement on my part.

The EB-5 program is the most complex program USCIS administers and it is unlike any other the agency handles. It does not primarily involve an immigration-related adjudication but instead requires complicated business and economic analysis and expertise. An EB-5 adjudication requires determinations whether, among other eligibility criteria, the requisite amount of capital is invested in a new commercial enterprise, whether the capital is lawfully sourced, and whether it is “at risk”; whether the business project’s plans are sufficiently detailed and the plan is viable; whether the econometric models used to estimate future job creation are sound and reasonable; and, whether those models demonstrate job creation as required by statute.

Moreover, the EB-5 program’s unique business and economic aspects created a complex adjudicative process at USCIS. Unlike traditional immigration applications that involve a single application and review, the EB-5 process involves different stages of agency review depending on the life cycle of the EB-5 business enterprise and the stage of its development. For example, the agency is often first asked to review an EB-5 petition to approve the EB-5 business proposal and business plans. The petition is supported by many legal and econometric analyses. Unlike traditional immigration applications that are a few pages in length, EB-5 submissions can consume thousands of pages. If the business proposals and plans are approved, numerous foreign investor applications follow, and their applications require separate and distinct economic and forensic review. Each investor, once approved, submits another application to USCIS within two years and, at that point, the agency must adjudicate whether the number of legally-required jobs have been created or are likely to be created within a reasonable period of time.

The complex business and economic issues raised by the adjudication of EB-5 cases were not covered in the typical immigration training that USCIS provided to its adjudicators. The agency’s adjudicators are dedicated, talented, and hard-working individuals who aspire to execute their responsibilities ably. But unlike every other program administered by the agency, the EB-5 program requires that adjudicators have the expertise to understand and analyze business plans and proposals and legal and business documents such as financing contracts, loan agreements, redemption agreements, stock purchase agreements, and other complicated financial instruments. The EB-5 program requires that adjudicators also have the expertise to assess econometric models and economic analyses that include input and output flows involved in assessing future job creation. Our adjudicators simply did not have this expertise. In my opinion, the agency did not treat the adjudicators fairly by placing them in the untenable position of having to adjudicate cases involving such complex business, economic, and legal issues.

It is also important to understand the under-developed state of the EB-5 program when I arrived at USCIS in August 2009. At that time, the program had approximately nine

adjudicators on staff. The agency did not have meaningful economic, business, or corporate law experience to support the adjudicators. To apply to start a new regional center, an applicant did not have to even file a form; an informal letter correspondence could initiate the process. The agency's national security and fraud detection screenings for EB-5 applicants were also inadequate.

The fee structure the agency had in place for the EB-5 program when I became Director in 2009 was inexcusable and provided an unwarranted windfall to wealthy investors. I promptly acted to correct that inequity. Despite the fact that in 2007, USCIS had raised its other application fees by an average of approximately 86%, and notwithstanding the fact that EB-5 cases were the most challenging, time-consuming, and therefore expensive applications the agency handled, the agency did not charge the regional center petitioners any fee whatsoever in 2009. I directed that a fee study be conducted and, as a result, our impartial study concluded that the fee for a regional center application fee should be \$6,230 -- the highest fee the agency charged, commensurate with the complexity and time-consuming nature of these applications. We began to charge the new fee upon promulgation of the new fee rule in 2010.

In 2009, the agency's EB-5 adjudication policy was similarly under-developed and inadequate. Policy was found across a number of memoranda issued over the years and those memoranda did not address many of the significant issues that frequently arose in the program. Our policy guidance had also not yet been strengthened by the input of economists and business experts. As a result, the agency's administration of the EB-5 program suffered extremely long delays and inconsistent and incorrect adjudications. Complaints about USCIS's administration of the program were legion. I encountered outraged stakeholders from all corners. The EB-5 program was the one that received the most complaints from Members of Congress of both parties (substantially outpacing inquiries and complaints about any other program we administered). Government partners at the federal, state, and local levels wrote complaint letters, demanded meetings, and spoke out in public about what they perceived to be our abysmal administration of the program. Critical media accounts of our work were mounting. And I encountered all of these issues at the worst possible economic time, when the domestic capital markets were unusually dry, unemployment was high, and the need for the infusion of capital from foreign investors and the consequent creation of jobs for U.S. workers made the EB-5 program extremely important.

### **I Instituted Programmatic Change To Realign the EB-5 Program With its Mission.**

The number and tenor of the complaints and reports that USCIS was receiving about the EB-5 program compelled me to study and learn as much about the EB-5 program as I could. I studied the applicable statutes and regulations and our policy memoranda, read treatises and articles about the program, consulted with the government's economic advisers, and engaged with stakeholders. I learned that EB-5 projects were collapsing, project developers were facing lawsuits, investors were withdrawing funds, and the program faced other economic and legal problems. I recognized that a material number of our agency's decisions -- when they finally issued -- were often poorly reasoned and not based on a proper reading of the law. Once I understood that the program was consistently failing both the petitioners and the country, I became directly involved in addressing its problems. Rather than opine abstractly about the best way to proceed, I became involved in cases that were vehicles for the resolution of the issues that

plagued our administration of the EB-5 program. I did this in order to repair the program and solve its problems, not to benefit or burden any particular petitioner. My involvement led to approvals and denials alike, depending on the facts and the law. And I made substantial progress toward solving the program's problems.

On December 3, 2012, after a series of significant reforms and the infusion of expertise and resources, I publicly announced the realignment of the EB-5 program. I created a new program office at DHS Headquarters that was devoted exclusively to EB-5 adjudications. The new program office, which officially opened on May 6, 2013, was to be staffed primarily with officers who have economic, business, and legal backgrounds and expertise, and with new, GS-14 level economists who have the subject matter expertise to evaluate EB-5 petitions. The new program office was also to include staffing increases for FDNS personnel in the intelligence and officer categories. The consolidation of the program into one office created a collaborative workspace in which experts from a variety of agency components, including FDNS and USCIS's Office of Chief Counsel, would be available to provide support and advice to EB-5 adjudications officers and economists in the most effective manner possible. I hired a new leader of the office, at the SES level, who had expertise in combating financial fraud.

The agency's responsibilities to uphold the integrity of the immigration system, including in the EB-5 program, increasingly involve inter-agency dialogue, coordination, and protocols. Indeed, when the problems of administering the EB-5 program first came to my attention, I met with an Assistant Secretary of the Department of Commerce to seek that Department's assistance in administering the program. My realignment of the EB-5 program office was one direct way to facilitate and enhance this sort of inter-agency collaboration as well.

I also spearheaded the effort to improve guidance on the standards for adjudicating EB-5 cases in order to increase transparency and predictability. Under my leadership, USCIS issued both operational and policy memoranda to guide adjudicators in the EB-5 program. Most significantly, on May 30, 2013, USCIS published a comprehensive 27-page EB-5 policy memorandum. (See Tab 3.) It marked the first time in the program's history that our agency had a single inclusive policy document to guide its work in the EB-5 program. The final policy memorandum was the result of a multi-year, iterative process in which we published three successive draft versions for public comment. I was personally involved in the commencement of this effort, having drafted the first iteration of the policy memorandum to ensure its rapid publication in response to the urgency of the situation.

The publication of the EB-5 policy memorandum was a seminal event for the program. For the first time our adjudicators and the public had clear guidance on the range of statutory and regulatory criteria, which facilitated our ability to make adjudications more predictable and thereby address a long-running concern in the program. The memorandum also eliminated certain procedural requirements that had developed over the years but which did not advance our administration of the program and were not required by law. The result was a streamlined process that allowed us to focus our resources on adjudicating the core eligibility requirements and on ensuring the integrity of the program.

The external reaction to the steps the agency took to improve the EB-5 program was extremely positive. Members of Congress from both parties recognized the uniqueness of this

program and applauded the important step of realigning the program in a dedicated office staffed with appropriate expertise. A wide range of stakeholders -- from the business community to state and local officials to developers who leverage the program as an important source of capital -- also praised our substantial efforts.

As will often be the case with any significant realignment in a large organization, some staff embraced the changes and others did not. The realignment entailed personnel changes, including the installation of new program leadership, a new model for the profile of EB-5 adjudicators, and the realignment of fraud detection and national security responsibilities directly to FDNS headquarters. Such operational change is always challenging, but it was a critical part of my leadership of this program in particular and the well-being of the agency as a whole. Notwithstanding the predictable opposition the required changes would receive, I did not shrink from making them.

### **My Personal Involvement in EB-5 Cases Was Dedicated To Ensuring the Program's Integrity.**

I have never provided preferential treatment in any case, EB-5 or otherwise. As with all cases, I became involved in an EB-5 case when it came to my attention and served as a vehicle to consider a broader legal, policy, or process issue. The parties involved had no bearing on my interest in a case, and I had no interest in whether a particular application or petition was approved or denied. My sole motivation for involvement in any EB-5 case was to strengthen the integrity of the program by ensuring that the agency was utilizing a fair, effective, and efficient process in accordance with the law and in furtherance of the program's purpose. That motivation existed regardless of the stakeholder's identity. My judgments were guided by strict adherence to the law; it was my paramount responsibility to ensure that we enforced the law.

To be clear, I did not adjudicate EB-5 cases. I did not review applications and petitions and all the supporting evidence, conduct the requisite security checks, or execute the standard operating procedures that adjudicators perform. However, if a case presented an unsettled or difficult legal, policy, or process issue, I addressed and resolved those issues together with my colleagues. As part of that process I brought people within the agency to the table because I wanted the benefit of multiple perspectives and it was my ethic to foster an inclusive and collaborative process and working environment. When useful or necessary I also sought opinions and feedback from individuals outside the agency, associations, or large stakeholder gatherings to gain the benefit of their different points of view. What resulted was a more rigorous consideration of programmatic issues than would otherwise have occurred. If during that process the agency became aware that it had erred in a case, we corrected it. If the agency became aware of the need for legal or policy clarifications or revisions to execute our statutory obligations more rigorously, we made them.

The frequency of my personal involvement in EB-5 cases changed over time, as the need for my direct involvement was at first intense and eventually diminished with the introduction of new personnel and implementation of other programmatic changes. In the first two years as Director my attention to EB-5 cases grew as the administrative shortcomings of the program became clearer to me. It was during this time that the agency was bombarded with complaints about deficiencies in program administration and inconsistent and incorrect adjudications. Many

of the communications that appear to be the focus of this investigation fall within the heart of this time period, when I found it necessary to intervene personally to drive change and improve a gravely flawed program. But once I had implemented significant structural and personnel changes to the program, which culminated in the complete programmatic realignment announced in late 2012, my personal involvement decreased significantly. What had changed was not the identity of the petitioners -- which never mattered to me -- but the need for my personal involvement.

When I was involved I was an open book. My general practice when a stakeholder contacted me directly was to acknowledge receipt and to inform the Service's senior leadership, either by copying USCIS supervisors and attorneys directly into e-mail communications with stakeholders or by forwarding the communications immediately afterwards. I consistently sought input, counsel, and guidance from senior leadership, including USCIS attorneys, on how to handle communications with various constituencies and was instinctively and consistently open and forthcoming about those communications. I was also mindful of the need to avoid even the appearance of undue influence over the adjudicative process and addressed that issue squarely and responsibly. I avoided direct contact with adjudicators on case-specific matters and relied upon my senior staff to handle any necessary communications with adjudicators. In the one instance that I can recall when a representative copied me into an e-mail chain with an adjudicator, I immediately recognized the potential appearance issue and sought guidance from senior leadership on how to handle the communication, then followed the advice I received not to respond. (See September 21, 2011 e-mail exchange between [REDACTED], [REDACTED], [REDACTED], and me regarding the Gulf Coast EB-5 case, attached at Tab 4.) I did not operate in secret or in the shadows when communicating with stakeholders. I was open and consultative with my colleagues about those communications. The USCIS attorneys whom I consistently copied or consulted did not, as I recall, advise me to proceed differently, nor did others.

More broadly speaking, I also made a concerted effort to increase the transparency of USCIS, which had been criticized for years as unduly insular. I created the Office of Public Engagement to facilitate direct and transparent dialogue with external stakeholders. I also made senior staff and myself available for public engagement in a variety of settings, ranging from the "Conversation with the Director" series, which were in-person focus groups open to the first 25 or so people who registered, to national stakeholder engagements with sometimes more than 1,000 in-person and telephonic attendees in total. I also drove the practice of posting USCIS draft policies for public comment online; the three successive drafts of what became the May 30, 2013 EB-5 policy memorandum went through this public comment process. Such public engagement was in keeping with my leadership approach emphasizing openness and accountability.

Ultimately, my role as Director was to act as the final quality assurance officer to strengthen the integrity of the EB-5 program and to ensure that the agency adjudicated EB-5 cases in accordance with the law and in the most effective and efficient way possible. When I discovered that the agency was not meeting its responsibilities with respect to this program, it was my duty to act. I did so by researching the law, becoming involved in cases, collaborating with agency personnel and other enforcement, intelligence, and regulatory agencies, hosting public engagements and speaking with outside parties, and most significantly, by creating a dedicated EB-5 program office with new expertise and more enhanced processes in place.

Throughout, my involvement was in accord with and upheld all legal, regulatory, and ethical requirements and guidelines.

**Specific Topics Raised by the Office of Inspector General**

- 1. Details of my involvement in the following regional center cases and reasons for such involvement: Gulf Coast/GreenTech Automotive; SLS Las Vegas; and LA Films and Aqua Project P.A. (CanAm Enterprises).**

*Gulf Coast/GreenTech Automotive*

My involvement with the Gulf Coast/GreenTech Automotive case was consistent with my general approach to all cases, EB-5 and otherwise: it was limited to the consideration of the broader legal and policy issues raised by the case. With respect to "GC/GTA" (I refer to them as one entity here), the broader issues included, among others, when capital should be considered "at risk" and how to define a "limited geographic area," issues which I discussed and vetted with senior leadership from a programmatic standpoint. As the record makes clear, at no point was my involvement premised on the involvement of Terry McAuliffe or any other party to the case. Indeed, when the case first came to my attention Mr. McAuliffe's name did not prompt any personal involvement on my part. At that time the case presented no more than the all-too-typical complaints of processing delays that did not necessarily require my attention, and thus the case did not receive it.

To the best of my recollection, my involvement with GC/GTA was as follows:

- I first became aware of GC/GTA in mid-2010 when I received an e-mail from [REDACTED] Office of Communications, reporting that Mr. McAuliffe had complained of USCIS processing delays for an EB-5 application. Because this e-mail focused on processing delays, all I did was forward [REDACTED] e-mail to [REDACTED], [REDACTED], [REDACTED], and [REDACTED]:

Thank you, [REDACTED], for the heads up. I am notifying our colleagues for handling as appropriate.

(I have attached a copy of this June 7, 2010 e-mail chain at Tab 5.)

- On July 28, 2010, Douglas Smith, the DHS Assistant Secretary for Private Sector, forwarded another complaint by Mr. McAuliffe of undue processing delays. I forwarded Mr. Smith's e-mail to [REDACTED], [REDACTED], and [REDACTED] and wrote:

[REDACTED],

Douglas Smith, the Assistant Secretary for Private Sector in DHS, just forwarded to me the attached regarding an EB-5 petition (he called me in advance a minute ago and indicated that he would be doing so)[.] I am copying [REDACTED] and [REDACTED] so that they have visibility. I want to make sure that

we are providing customer service consistent with our standards but that we are not providing any preferential treatment. Please address as appropriate.

Thanks very much. Ali

After [REDACTED] responded to my initial e-mail, my reply reflected my vigilance in being open and seeking counsel's advice as to how best to proceed:

Thank you, [REDACTED]. As long as this case receives prompt, full, and fair consideration -- as we wish for all cases -- that is great. I would like to know of the decision only so that I may inform our colleagues at DHS, as long as [REDACTED] concurs that is appropriate.

Thanks. Ali

(I have attached a copy of this July 28-29, 2010 e-mail chain at Tab 6.)

- In early 2011 I received a request for information from the DHS Secretary's Office regarding the GC/GTA matter. The Secretary had received a letter from Mr. McAuliffe complaining of USCIS's handling of the case. In response to the Secretary's request, my staff prepared a summary memorandum for me to send to the Secretary, talking points for a call I was to have with the Secretary, and a draft response letter from the Secretary to Mr. McAuliffe for my review. Of note, the talking points indicated that:
  - USCIS now believed that it had interpreted its regulations too narrowly in denying the application;
  - Certain issues, including what the agency had deemed an impermissible redemption agreement and insufficient management agreement, "may be surmountable"; and
  - A separate proposal for a Virginia regional center "could be approvable."

(I have attached a copy of the relevant documents at Tab 7.) The potential path forward suggested in these talking points -- which others developed and wrote -- are precisely how certain issues in the GC/GTA matter were resolved several months later.

- On February 2, 2011, consistent with my practice of seeking legal and ethical advice, I e-mailed [REDACTED] about a request from the DHS Secretary's Office that I attend a meeting the following day with Mr. McAuliffe. I indicated that I had previously requested not to attend such a meeting but that I had nevertheless been asked to do so and, under the circumstances, intended to attend in listen-only mode:

[REDACTED]  
I have been requested by S1's office to join a meeting with Terry McAuliffe about the EB-5 program. I believe Mr. McAuliffe, whom I have not met before, has an interest in particular cases that are pending with us. Previously

I requested that I not join such a meeting given the pendency of the cases. I now have been asked to join the meeting. I will not discuss the cases or provide information about them. I will be in listen-only mode. May I, though, inform him only that our agency representatives recently had a discussion with the attorney of record?

Thank you. Ali

██████████ affirmed that I was proceeding in the best way possible:

Thanks Ali. While it would have been better, as you note below, for you not to be involved in this type of meeting – given the current situation – what you outline below is the most appropriate course of action. I do not see any harm in indicating that the agency has been in touch with the regional center’s attorney of record and that that will remain the avenue for any agency communications on this matter.

(I have attached a copy of this February 2, 2011 e-mail exchange at Tab 8.)

- On February 3, 2011, I met with Mr. McAuliffe and others at the request of the Secretary’s Office. In keeping with my intent and the advice of counsel, I did not speak about the specifics of the EB-5 case pending before the agency and shared only what I had said at a national stakeholder engagement the day before. (I have attached a copy of my February 3, 2011 e-mail to ██████████ and ██████████ memorializing the portion of the meeting that I attended at Tab 9.)
- Several months later, on May 26, 2011, I received a request from Mr. Smith to check on a GC/GTA case that he characterized as “in a black hole.” I directed an inquiry into the case status through ██████████ and learned from career staff that:
  - This case had a tortured history;
  - An appeal had been self-certified to the Administrative Appeals Office (“AAO”) by the USCIS career adjudications staff under a regulation reserved for cases “involv[ing] an unusually complex or novel issue of law or fact” (8 C.F.R. Section 103.4(a)(1)); and
  - In connection with this case, ██████████, one of the career staff who worked on the EB-5 program, had to “talk[] the ISO [Immigration Service Officer] off of the ledge.” (I have attached a copy of a May 26-June 24, 2011 e-mail chain that includes an e-mail from ██████████ using this language on June 17, 2011, at Tab 10.)

At a time when my visibility of the mounting complaints and criticisms of our administration of the EB-5 program was increasing, ██████████ e-mail spoke to a broken process.

- Around the same time I also received complaints from Dawn Lurie, outside counsel for GC/GTA, that USCIS processing delays had the potential to lead to a lawsuit

against the regional center and to investors requesting the withdrawal of funds. These complaints came at the very same time that government and public attention on the EB-5 program grew significantly as an avenue to introduce investment into the United States, create jobs for U.S. workers, and spur the economy. The dire feedback from Ms. Lurie, the alarming internal report I received on the case status, and my inability to receive from within the agency a clear and comprehensive understanding of what was going on led me to conclude that my personal involvement in this case was necessary. I engaged with Ms. Lurie as needed to understand the issues raised by the case. I consistently kept my senior staff, including the attorneys, fully informed about my communications with Ms. Lurie and at no point, as I recall, did any of my staff raise a concern about those communications.

- In mid-July 2011 I received a draft of the AAO opinion in the appeal that the adjudicators had self-certified for review because of the complex or novel issues of fact or law. On its face the draft opinion presented the sort of broader legal and policy issues that prompted my involvement in a particular case. I called a meeting that included senior leadership of the EB-5 program, including USCIS attorney [REDACTED], and representatives of the AAO to discuss the issues presented by the case. The consensus reached by the group was that the agency had erred in its prior adjudication in several respects that were first forecast by career staff in the summary memorandum provided to me in January. One of those errors was the erroneous finding that the capital was not “at risk” under the terms of the stock conversion agreement, as the existence of that agreement did not guarantee that a market would exist for any stock, regardless of whether it was converted to common or preferred shares. Indeed, the issue of when capital should be considered “at risk” was of such programmatic importance that it was included in the new May 30, 2013 EB-5 Policy Memorandum to provide guidance in future cases.

From my inquiries in the meeting with staff and subsequently, I determined that the agency imprudently (and possibly unlawfully) had defined a “limited geographic area” as imposing a contiguity requirement when that contiguity requirement was not found in any statute or regulation. The agency had created the contiguity requirement by merely adding it to its Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program (“Describe the geographic area of the regional center. Note: This area must be contiguous.”). In other words, the agency had added an eligibility requirement without undergoing formal rulemaking.

- Once these broader legal and policy issues were resolved, I did not need to and therefore did not engage to the same degree on the GC/GTA matter, including with respect to communications with Ms. Lurie or others. As I previously described above, a few months later -- on September 21, 2011 -- Ms. Lurie copied me into an e-mail chain with [REDACTED], a USCIS adjudicator. My immediate response was to seek counsel from [REDACTED], [REDACTED], and [REDACTED] on how to avoid any appearance of impropriety:

I am cc'd on this message. Should I respond or not, and if so, with what message? Thank you. Ali

██████████ responded:

You should not have been copied and should not respond.

Two minutes later I responded:

Will do.

(See Tab 4.) As indicated, I followed the advice of ██████████ to ignore the communication.

- Complaints about the continued adjudication delays in this case continued into 2013 and I rebuffed efforts to become involved. These efforts included outreach from Palma Yanni, Simone Williams, Anthony Rodham, and Mr. McAuliffe. (I have attached a copy of illustrative e-mails at Tab 11.)
- In or around early 2013, I read a report bearing on integrity issues in the case and promptly transmitted the report to FDNS.
- To the best of my recollection, I had no other involvement in the GC/GTA case, nor do I know the final results of any of its applications or petitions pending before the agency. I do know that Terry McAuliffe and others continued to complain into 2013 about our handling of the case (I describe below the inflammatory words I received from Mr. McAuliffe in 2013).

#### SLS Las Vegas

My involvement with the SLS Las Vegas Regional Center (“SLS”) was also limited to resolving a programmatic issue raised by this case, which involved when to grant an expedite request and what the effect of an expedite was. The record makes clear that (1) I became involved only when the broader policy issues regarding expedite requests were raised to my attention, and (2) I did not remain involved in the case once those issues were resolved.

To the best of my recollection, my involvement in the SLS matter was as follows:

- In late 2012, I received an inquiry about a case-specific processing issue that did not require my attention. In keeping with my general practice, I forwarded the e-mail to senior leadership for appropriate handling:

██████████,  
Fyi, for handling as you deem appropriate.  
Thank you. Ali

(I have attached a copy of my November 26, 2012 e-mail to ██████████ at Tab 12.)

- In early 2013, I learned from senior staff that USCIS was not adhering to its published and long-standing expedite criteria. I believe that around this time the agency and I also received communications from Senator Harry Reid and his staff

expressing concerns about the same problem. I looked into the issue and learned the following:

- The agency had established criteria that, if met, would enable an applicant or petitioner to have its case moved up in line for adjudication. The criteria pertained to an application or petition in any visa program and were based on a showing of good cause as follows: severe financial loss to company or individual; extreme emergent situation; humanitarian situation; nonprofit status of requesting organization in furtherance of the cultural and social interests of the United States; Department of Defense or National Interest Situation; USCIS error; or compelling interest of USCIS. (*See [www.uscis.gov/forms/expedite-criteria](http://www.uscis.gov/forms/expedite-criteria).*)
  - The petitioner in SLS sought expedited consideration based on the fact that it was confronting the expiration of its financing loan.
  - USCIS was taking the position that the petitioner had to first prove that it had sought an extension of its financing loan or present reasons to USCIS why it could not do so before USCIS would be satisfied that one of the expedite criteria had been met.
- I became concerned that USCIS's position was improper, a violation of its own expedite criteria, and *ultra vires* insofar as USCIS was not adhering to the standard of proof to which petitioners were to be held under the law. I also became concerned that USCIS's position was detached from business reality (as I explained in greater detail during my interview). As my e-mail to a group of senior USCIS staff provided:

■, I mentioned to you the Department of Commerce letter, which I read, because it underscores our need to develop expertise on a fast/urgent track (the Department with the relevant expertise believes that, contrary to our adjudication, the expedite criteria have been met). I did not wish to get involved in the case itself. Having now read your email, I am surprised by our response. For example, the petitioner has to present evidence of a request for an extension of time from the funder, or an explanation of why such a request was not submitted? Are we imposing that condition ourselves now? I will defer to those with adjudications experience. I must ask whether, based on the deal document and given the Department of Commerce's view, are we following the law applicable to the standard of proof? I would like each of your views.

Thanks. Ali

(I have attached a copy of my January 25, 2013 e-mail to a group of USCIS senior staff at Tab 13.)

In an e-mail a minute later, upon receiving case-specific information that I did not request or need in order to address the broader legal and policy issues that had been brought to my attention, I wrote:

Please drop me from the case-specific chain. Adding [REDACTED] Office of Legislative Affairs] to the extent a legislative inquiry is involved.

Thanks. Ali

(I have attached a copy of this January 25, 2013 e-mail to a group of USCIS senior staff at Tab 14.)

- I also learned that there was disagreement and confusion within USCIS as to what it meant for a case to be expedited. This was disconcerting given that the agency's expedite criteria had been in operation for a considerable period of time and applied to all visa programs. One view, which proved to be the minority view, was that an expedited case meant that the adjudication itself was expedited and that, therefore, all security checks had to be performed before the expedite decision could be made. The competing, majority view was that an expedited case meant only that the case moved up in the line to be adjudicated but that the adjudication itself, including all security checks, was performed as usual. After receiving the viewpoints of a number of individuals I responded as follows:

I agree that to grant an expedite request means only that we have agreed, based on some articulated and supported time sensitivity, to review the case on an accelerated basis. It does not mean or in any way suggest that we have rendered any decision on the merits of the petition. If, for example, a security issue arises that will take time to resolve, then – regardless of whether we have agreed to expedited review – we will take the time needed to resolve the security issue and we will not act until we have achieved resolution.

I agree that we need to run enhanced security and integrity checks.

From my review of the chronology outlined below, I am concerned that a process breakdown occurred in this case. I think we should review and discuss the chronology to better understand the process and whether we need to make adjustments system-wide. I look forward to discussing.

Thank you again.

Ali

(I have attached a copy of my January 30, 2013 e-mail and relevant e-mail exchanges at Tab 15.)

- I was involved in the SLS case as needed to resolve the broader legal and policy issues that had arisen, specifically the issues of the standard of proof applicable to the expedite criteria and, distinctly, what it meant for a case to be expedited. Once those issues were resolved, my limited involvement in the SLS case ended.

LA Films and Aqua Project P.A. (CanAm Enterprises)

To the best of my recollection, my involvement in each of these two cases was very limited. I would note that my recollection of these two cases is quite vague and has not been refreshed to supplement the few e-mails shown to me during my interview. To the best of my recollection:

- The Aqua Project P.A. came to my attention first. The DHS Secretary's Office requested that I speak with Pennsylvania Governor Edward Rendell and I obliged. Governor Rendell complained to me that the agency's mishandling of the Aqua Project EB-5 case was costing Pennsylvania the investment of funds and the creation of jobs. I looked into the case with my staff.
  - I believe the issue presented by this case was whether the movement of water through pipes could be classified as part of the transportation industry. While my and my staff's instincts were that it should not be classified as such, state or local authorities submitted a letter to USCIS classifying that activity as falling within the purview of the relevant transportation authority. We debated whether, in adhering to the standard of proof and other relevant law that guided our adjudications, we were required to defer to the state or local authority governing the activity at issue. I believe, though I am not certain, that we determined that we were obligated to do so.
- With respect to LA Films, I received a number of calls from public officials, including officials from the City of Los Angeles, complaining about our handling of the case. They accused USCIS of being ignorant of how financing in the film industry worked and consequently misinterpreting facts and misapplying the law, thereby costing the City of Los Angeles the infusion of much-needed investment dollars and preventing the creation of jobs. The DHS Secretary's office arranged for me to join a conference call with Department personnel, Tom Rosenfeld, and others, which I did. In that call I heard again the complaints I just described.
  - I recall speaking with [REDACTED], [REDACTED]  
[REDACTED] I recall expressing concerns on a few occasions about our ability to interpret complex film financing documents and the fact that our position in the case struck me as analytically weak.
  - I recall receiving messages from Mr. Rosenfeld expressing an urgent need to speak with me. I do not recall whether I spoke with him on any occasion other than in the conference call that the DHS Secretary's office arranged and that I referenced above. If I had, I would have reported that fact, and the substance of any communication, to my staff.
  - I believe, although I am not certain, that there were different phases of the LA Films case.

- I recall that the LA Films case went before the Decision Board under the leadership of [REDACTED], whom I had selected to lead the effort of building the new EB-5 program office in headquarters. The issue of our failure to adhere to our own deference policy arose in the LA Films case, and I may well have urged my staff to convene the Decision Board to address that issue in the case, although I have no specific recollection of doing so. [REDACTED] reported to me that the proceeding was very effective. I did not participate in the Decision Board proceeding or adjudication and do not recall its outcome. I describe the intent and use of the Decision Board generally in greater detail later in this statement.

**2. Details of communications with Dawn Lurie, Tom Rosenfeld, Ron Klasko, and Terry McAuliffe, each of whom were either involved in litigation against the agency or had cases pending before the agency. Reasons for the communications with these individuals/entities.**

As a general matter, it is important to keep in mind that my communications with Dawn Lurie, Tom Rosenfeld, and Terry McAuliffe were very difficult and unpleasant. They occurred in my capacity as the Director of USCIS because the agency was failing in its administration of the EB-5 program, including failing to enforce the law, adhere to its own policies, promote sound policy, understand business facts and realities, correctly apply economic principles, and honor its own representations. My communications with these individuals were borne of these failures and, candidly, compelled because of our agency's complacency in curing these failures with the urgency that was incumbent upon a responsible, dutiful, and high-performing government agency.

I would have much preferred not to have had to listen to individual stakeholders' complaints, sometimes caustic and high-volume, about how we were failing to correctly address complex issues of law, policy, or fact. Yet I engaged because it was necessary. I could not allow the agency to fail in its responsibility to enforce the law and adjudicate cases correctly. This guiding principle was true regardless of the identity or stature of the applicant or petitioner. I worked incredibly hard to build that ethic in USCIS, and I devoted my time to ensuring that it prevailed in the cases that were brought to my attention.

Dawn Lurie

I have detailed above the context in which I engaged with Ms. Lurie about the GC/GTA matter. I discussed Ms. Lurie's inquiries and concerns with my staff, including the USCIS attorneys, considered and addressed the broad legal and policy issues raised by the case, and at times responded to Ms. Lurie on the agency's behalf. I engaged with Ms. Lurie for the reasons I have previously cited, including the agency's acknowledgement of its failure to adjudicate the GC/GTA case correctly and the agency's inability to provide me with a clear and comprehensive understanding of the issues and the case status. My communications with Ms. Lurie typified the care I took to engage appropriately with stakeholders. For example, and in part as I have previously described:

- I focused on the broad policy and legal issues:

I do not believe I represented that there will be no “additional requests outside the scope of this [pending] RFE.” I have not analyzed the case file. What I did express is my general view that the serial issuance of RFEs does not seem fair unless everyone understands at the outset that outstanding issues or deficiencies are being addressed in serial fashion.

(I have attached a copy of my June 28, 2011 e-mail to Ms. Lurie at Tab 16).

- I was mindful of and vigilantly protected against the appearance of undue influence. A June 28, 2011 e-mail I sent to [REDACTED] and [REDACTED], two USCIS attorneys with whom I systematically shared and consulted about my communications with Ms. Lurie, is but one example:

[REDACTED],

I understand that [REDACTED] has spoken with you about the fact that Dawn Lurie contacted me about the Virginia EB-5 case. I am forwarding to you now her follow-up email to me, along with my brief response. I defer to you as to what should or should not be shared with SCOPS, as we are all mindful of the need to ensure that our adjudicators do not feel any pressure in their adjudication of these (or any) cases.

I will forward to you another e-mail from Dawn that I received this morning as well.

Thank you very much. Ali

(I have attached a copy of this June 28, 2011 e-mail, which I also forwarded to [REDACTED], at Tab 17.)

- I was transparent, open, and consultative with senior leadership, including the USCIS attorneys, regarding my communications. The record is clear that I systematically shared my communications with Ms. Lurie with senior USCIS leadership, including the USCIS attorneys, and discussed those communications with them.
- I sought advice on potential appearance issues, as exemplified by the September 21, 2011 e-mail exchange I initiated with [REDACTED], [REDACTED], and [REDACTED] after Ms. Lurie copied me into an e-mail chain with [REDACTED], as previously described. (See Tab 4.)

When it was necessary for me to communicate with Ms. Lurie in the service of the agency’s obligations, I did so; when it was not, I did not. I was open and transparent and consulted with my leadership staff about those communications and the important legal or policy issues they involved. Not once do I recall being advised by the USCIS attorneys or other leaders to proceed differently.

Tom Rosenfeld

As I have previously described and to the best of my recollection, the DHS Secretary's office directed and arranged for me to join a conference call with Department personnel, Mr. Rosenfeld, and others (possibly including Governor Rendell) regarding the LA Films case. I joined the call and listened to the complaints from Mr. Rosenfeld and others regarding USCIS's mishandling of the case. I was open and transparent and consulted with my leadership staff about the conference call.

I recall receiving messages from Mr. Rosenfeld expressing an urgent need to speak with me. I do not recall whether I spoke with him on any occasion other than in the conference call directed and arranged by the DHS Secretary's office. I do not recall whether I received any letters from Mr. Rosenfeld or otherwise communicated with him about LA Films, the Aqua Project, or any other matter. It is possible, although I have no specific recollection of it occurring, that I met Mr. Rosenfeld at a public EB-5 program stakeholder engagements in which I and other USCIS leaders participated. If I had any other communications with Mr. Rosenfeld in addition to the conference call in which Mr. Rosenfeld and others participated, I would have been equally open, transparent, and consultative with my leadership staff about them and the issues they presented.

Ronald Klasko

For much of my tenure as Director, Ronald Klasko was the Chair of the EB-5 Committee of the American Immigration Lawyers Association ("AILA"). AILA was one of the most significant stakeholders of USCIS. Its membership consisted of more than 10,000 immigration lawyers across the country who interacted with our agency on a daily basis. AILA was one of the most vigilant critics of USCIS's performance as a government agency.

I do not recall communicating with Mr. Klasko about a specific case. When Mr. Klasko reached out to me on the SLS matter, I declined to communicate with him about case-specific matters:

Ron,

We were pleased to answer process questions in our call with the Senator's office yesterday. We cannot speak with you about the case.

Thank you for your understanding.

Ali

(I have attached a copy of my February 1, 2013 e-mail exchange with Mr. Klasko, on which [REDACTED] and [REDACTED] of USCIS are copied, at Tab 18.)

I engaged with Mr. Klasko in a number of public settings. First, I engaged with him on EB-5 programmatic issues during my periodic meetings with AILA leadership. Other USCIS leaders attended those meetings. In addition, Mr. Klasko was an active participant in my broader and varied public engagements on the EB-5 program. I hosted or participated in public conference calls, in-person stakeholder events (with public call-in access), and "Conversations with the Director" that involved approximately 25-30 people attending in person and hundreds

more participating by phone. USCIS staff joined me in these engagements as well. Often in these engagements Mr. Klasko would raise legal, policy, or process issues or concerns and ask questions. I found him to be an expert on the EB-5 program, including the applicable law.

I also recall engaging with Mr. Klasko when we published for public comment a draft of the proposed EB-5 policy memorandum. USCIS received comments from a variety of sources, including the AILA EB-5 committee, and the Office of Public Engagement prepared for me a matrix of the public comments. After reviewing the matrix, I requested a copy of the actual comments themselves and read each one. I also recall reading position papers that AILA prepared on various EB-5 subjects. I reached out to Mr. Klasko, whose subject matter expertise I respected, to better my understanding of the views and positions that expressed by the AILA EB-5 Committee. I did so in the service of ensuring that USCIS was enforcing the law and promulgating sound supporting policies. I was open, transparent, and consultative with my leadership staff about my engagement with Mr. Klasko, which I found to be of value.

I should note that, as a general matter, some within USCIS (including some within USCIS leadership) resisted engaging with the public, resisted my creation of the Office of Public Engagement, and resisted the practice I began of posting for public comment our draft policy memoranda. They preferred the insularity that USCIS had exhibited for years. I, along with many others, did not agree, and I led the agency in the direction of transparency and openness. We benefited and learned from robust engagement with the public, including the input of Mr. Klasko and others.

#### Terry McAuliffe

I did not engage with Mr. McAuliffe on substantive issues at any point in time.

- I previously described the meeting that the DHS Secretary's office directed me to attend with Mr. McAuliffe and others and about which I sought the advice of counsel.
- On December 5, 2012, Mr. McAuliffe sent an e-mail to me to complain about USCIS's handling of the GC/GTA case. I forwarded the e-mail to [REDACTED], copying [REDACTED] and [REDACTED]:

[REDACTED],  
For handling however you deem appropriate. I am adding [REDACTED] given the reference to contacts with members of Congress. I am adding [REDACTED] due to a reference to contact with the Secretary's office.

Thanks. Ali

(I have attached a copy of this December 5, 2012 e-mail chain at Tab 19.)

- I recall that over the course of many months I received several voice messages from Mr. McAuliffe complaining about USCIS's handling of the GC/GTA case. The messages were caustic. I remember in particular one voice message that I played for [REDACTED], as it was laced with expletives at a high volume. I recall one occasion on which Mr. McAuliffe complained to me directly over the telephone.

- In or around January 2013, I happened to walk by Mr. McAuliffe in a large crowd and, as we walked by each other he said words to the effect of, “your agency is killing the project.”

I do not recall whether I had any other communications with Mr. McAuliffe. I do recall admonishing Douglas Smith, Assistant Secretary of the DHS Private Sector office, for having communications with Mr. McAuliffe when those communications were not appropriate. (See, e.g., April 5, 2013 e-mail exchange with Mr. Smith -- which includes my admonition, “I recommend that you cease communications with Mr. McAuliffe on USCIS matters in which he has an interest” -- attached at Tab 20).

More than two years after the GC/GTA case first rose to my attention, the complaints from Mr. McAuliffe and others persisted. The complaints and my responses were open, transparent, and in consultation with my leadership staff, including the USCIS attorneys.

**3. Criteria used to engage or disengage with stakeholders or petitioners on a particular case.**

While I am not aware of any written criteria that applied to my engagement or disengagement with stakeholders or petitioners on a particular case (the December 11, 2009 memorandum from [REDACTED] that you referenced in my interview was directed to his personnel in the field), the foundational principle of my engagement was equality of access. Whether a case involved an individual or entity that was rich or poor, represented by counsel or *pro se*, powerful or voiceless, I became engaged when I was needed to address a novel, complex, or otherwise important legal, policy, or process issue.

Stakeholders and petitioners used a variety of avenues to engage with the agency on a matter or issue. For example, they communicated with adjudicators and other agency personnel; they reached out to the USCIS Ombudsman, the DHS Private Sector Office, or the Department of Commerce; they communicated with the Secretary or Deputy Secretary of the Department; they communicated with Members of Congress; and they reached out to members of the press. Cases were presented to me through these varied channels. When an issue warranted my involvement, I engaged as I have previously described; when it no longer warranted my involvement, I disengaged; when it did not warrant my involvement in the first instance, I did not engage.

I took on the responsibility of engaging when necessary. I did so not because I wanted to but because I needed to. It was not easy or pleasant to hear complaints of how poorly our agency was performing, how we were failing to apply the law correctly, how broken we were in our processes, and how incompetent we were in the performance of some of our work, especially in our administration of the EB-5 program. I engaged in particular matters because I was obligated to ensure that the agency I led acted lawfully and justly.

**4. Explanation and/or reason for personally drafting the new EB-5 policy memorandum. Explanation and/or reason for not utilizing or involving the Chief, USCIS Office of Strategy and Policy.**

The topic above suggests something that is not true, that [REDACTED] the USCIS Office of Policy and Strategy was somehow deprived of involvement in the drafting and development of the new EB-5 policy memorandum. That is false.

I identified our dire need for a new, single, overarching EB-5 policy memorandum that was comprehensive and that effectively governed our administration of the EB-5 program. I drafted the first draft of the new memorandum for one simple reason: it was important, we needed it done right, and we needed it done urgently. Regrettably, I had developed more expertise in the governing law and the policy issues in the EB-5 program than had the [REDACTED] Office of Policy and Strategy or [REDACTED] with whom I interacted. In addition, I was frustrated with the quality and pace of the development of some important policy pronouncements from the Office of Policy and Strategy. For approximately two weeks I stayed in the office beyond my already extremely long hours in order to complete the first draft of the new EB-5 policy memorandum. It is not unusual for leaders to draft documents of critical importance to the agencies they lead.

Once I completed my first draft of the new EB-5 policy memorandum, I distributed it internally so that everyone, including the [REDACTED] the Office of Policy and Strategy or anyone in that office, could comment and revise as they deemed warranted. USCIS personnel provided input and their comments were incorporated when valid (if [REDACTED] Office of Policy and Strategy did not provide comments, that is unfortunate; [REDACTED] certainly had ample opportunity to do so). In addition, subsequently revised drafts were posted for public comment. Public comments were incorporated when valid. Ultimately, legal, policy, economic, and operational experts within and outside the agency contributed significantly to the new memorandum, leading to the final product that was issued on May 30, 2013. The final product, the drafting and preparation of which I did not lead, was a significant and marked improvement on my initial draft.

If there has been some suggestion or allegation that I drafted the first draft of the new EB-5 policy memorandum in order to favor some party or improperly favor some legal or policy interpretation, that is one of the more absurd allegations to which I have had to respond.

**5. Motives behind direct contact with particular stakeholders, petitioners, or agents acting on their behalf (i.e. Lurie, Rosenfeld, Klasko, McAuliffe, Gov. Rendell, Sen. Reid) and end results of such contact.**

As Director, cases came to my attention in a variety of ways. Matters were brought to my attention by, for example, my staff, the Secretary's Office, press accounts, the USCIS Ombudsman, members of the public, and Members of Congress from both parties. When matters did come to my attention, I decided to become personally involved when those matters presented complex, novel, or otherwise important issues that needed my personal attention to resolve, clarify, or shape the agency's broader policies and procedures. It was with the singular motive of improving the quality of our work and more ably enforcing the law that I

communicated externally with the individuals you have identified and with many others. Regardless whether the matters that came to my attention involved the poor or the rich, the powerful or the otherwise voiceless, I engaged based on the equalizing principle I have described: whether the cases presented complex, novel, or otherwise important issues that required my personal attention. When they did not, I refrained from personal involvement no matter how prominent, powerful, or wealthy the person seeking my involvement. When they did, I engaged. And the goal and end result of my communications with particular stakeholders, petitioners, or their agents was always the same: to promote adherence to the law and the facts in the adjudication of every case, regardless of whether that meant an approval or denial. Nothing more, nothing less.

In each instance, it bears repeating, I engaged in the external communications openly, transparently, and in consultation with my staff.

**6. Position on the appearance of impropriety as a result of direct communications with stakeholders, petitioners, or agents acting on their behalf (i.e. Lurie, Rosenfeld, Klasko, McAuliffe, etc.).**

I was vigilant in guarding against any appearance of impropriety. I consistently and systematically consulted with USCIS attorneys about my communications. I consistently and systematically shared the communications with them. I actively sought their counsel and the advice of others. Not once do I recall being advised to proceed differently.

I engaged with the individuals and entities at issue in the EB-5 program no differently than stakeholders for other programs, governed always by the principles I have articulated in this statement and championed as the Director of USCIS. I was praised for my leadership when I engaged with the poor and the needy. It cannot be the case that the affluent or those with more resources are less entitled to an adjudication that is governed by and adheres to the law and the facts. My sole motive in everything I did as Director was to ensure that USCIS was performing with excellence and integrity regardless of who or what was involved. As the record makes clear, I was vigilant in guarding against any appearance issue throughout my engagements in the EB-5 program:

- On July 28, 2010, Mr. Smith forwarded a complaint by Mr. McAuliffe of undue processing delays. I forwarded Mr. Smith's e-mail to [REDACTED], [REDACTED], and [REDACTED] and wrote:

[REDACTED],

Douglas Smith, the Assistant Secretary for Private Sector in DHS, just forwarded to me the attached regarding an EB-5 petition (he called me in advance a minute ago and indicated that he would be doing so)[.] I am copying [REDACTED] and [REDACTED] so that they have visibility. I want to make sure that we are providing customer service consistent with our standards but that we are not providing any preferential treatment. Please address as appropriate.

Thanks very much. Ali

After [REDACTED] responded to my initial e-mail, my reply reflected my vigilance in being open and seeking counsel's advice as to how best to proceed:

Thank you, [REDACTED]. As long as this case receives prompt, full, and fair consideration -- as we wish for all cases -- that is great. I would like to know of the decision only so that I may inform our colleagues at DHS, as long as [REDACTED] concurs that is appropriate.  
Thanks. Ali

(See Tab 6.)

- On February 2, 2011, consistent with my practice of seeking legal and ethical advice, I e-mailed [REDACTED] about a request from the DHS Secretary's Office that I attend a meeting the following day with Mr. McAuliffe. I indicated that I had previously requested not to attend such a meeting but that I had nevertheless been asked to do so and, under the circumstances, intended to attend in listen-only mode:

[REDACTED],  
I have been requested by S1's office to join a meeting with Terry McAuliffe about the EB-5 program. I believe Mr. McAuliffe, whom I have not met before, has an interest in particular cases that are pending with us. Previously I requested that I not join such a meeting given the pendency of the cases. I now have been asked to join the meeting. I will not discuss the cases or provide information about them. I will be in listen-only mode. May I, though, inform him only that our agency representatives recently had a discussion with the attorney of record?  
Thank you. Ali

[REDACTED] affirmed that I was proceeding in the best way possible:

Thanks Ali. While it would have been better, as you note below, for you not to be involved in this type of meeting -- given the current situation -- what you outline below is the most appropriate course of action. I do not see any harm in indicating that the agency has been in touch with the regional center's attorney of record and that that will remain the avenue for any agency communications on this matter.

(See Tab 8.)

- On June 28, 2011, I sent the following e-mail to [REDACTED] and [REDACTED], two of the USCIS attorneys with whom I systematically shared and consulted about my communications with Ms. Lurie:

[REDACTED],

I understand that [REDACTED] has spoken with you about the fact that Dawn Lurie contacted me about the Virginia EB-5 case. I am forwarding to you now her follow-up email to me, along with my brief response. I defer to you as to

what should or should not be shared with SCOPS, as we are all mindful of the need to ensure that our adjudicators do not feel any pressure in their adjudication of these (or any) cases.

I will forward to you another e-mail from Dawn that I received this morning as well.

Thank you very much. Ali

(See Tab 17, also subsequently forwarded to [REDACTED].)

- On September 21, 2011, Ms. Lurie copied me into an e-mail chain with [REDACTED] a USCIS adjudicator. My immediate response was to seek counsel from [REDACTED], [REDACTED], and [REDACTED] on how to avoid any appearance of impropriety:

I am cc'd on this message. Should I respond or not, and if so, with what message?

Thank you. Ali

[REDACTED] responded:

You should not have been copied and should not respond.

Two minutes later I responded:

Will do.

(See Tab 4.) As indicated, I followed the advice of [REDACTED] to ignore the communication.

- In the SLS case, when I received case-specific information that I did not request or need in order to address the broader legal and policy issues that had been brought to my attention, I wrote:

Please drop me from the case-specific chain. Adding [REDACTED] [REDACTED] Office of Legislative Affairs] to the extent a legislative inquiry is involved.

Thanks. Ali

(See Tab 14.)

- When I thought that Mr. Smith was overstepping his role as the Assistant Secretary of the DHS Office of Private Sector, I admonished him accordingly:

I recommend that you cease communications with Mr. McAuliffe on USCIS matters in which he has an interest.

(See Tab 20.)

In my interview you raised the issue of my involvement in a matter that was in litigation. That a particular matter might have been in litigation was not a factor dispositive of whether I should become involved or not. There were at least several matters in which I determined that our course in litigation was ill-advised under the law or as a matter of policy, and I took action to change course. One example is the national security-related citizenship case I referenced earlier; another is the *Chang* EB-5 litigation I referenced in my interview. That case, which Senator Jeffrey Sessions brought to my attention, was a litigation in which the agency was attempting to impose retroactively new EB-5 rules in the processing of investor petitions. In 2003, the Court of Appeals for the Ninth Circuit soundly rejected the agency's approach in a published opinion that was embarrassing for the agency. *See Chang v. United States*, 327 F.3d 911 (9th Cir. 2003). Senator Sessions asked me to look into the case, suggesting that it was incumbent upon the government "to do the right thing." I did so and consulted with the USCIS staff involved in the case and personnel from the Department of Justice's Office of Litigation who, in my opinion, were executing an ill-advised litigation strategy. I also researched the applicable law. I came to agree with Senator Sessions: the agency got it wrong under the law, and it was my duty to make it right. I participated in the development of the agency's litigation strategy and even offered to attend the settlement conference myself. The matter was settled in 2013, 15 years after the complaint against us had been filed. Senator Sessions commended me for my leadership.

To the extent I felt my involvement in a litigation -- any litigation, regardless of the parties involved -- was necessary to safeguard the agency's integrity and purpose, then I would become involved. That I needed, for the reasons discussed at length above, to communicate directly with an individual in order to honor the agency's obligations and duty to the law, was not a need I failed to fulfill because the matter was in litigation. I do not recall ever being advised to the contrary. On April 2, 2010, I promulgated to all USCIS employees a memorandum about preferential treatment. I have attached at Tab 21 a copy of that memorandum. I have always adhered to the guidance in my April 2, 2010 memorandum. I vigorously object to, and frankly cannot accept, any suggestion to the contrary.

**7. Reason/specific case(s) that prompted the implementation of the deference review board.**

As I learned of our poor administration of the EB-5 program, I developed a number of ideas and took a series of steps, some very significant, to improve our work. I have described a number of those steps previously. One of the ideas I had was the creation of a Decision Board that would permit a party to appear before USCIS experts and argue a factual or legal issue in person, thereby gaining greater efficiency for all concerned and facilitating the resolution of contested issues. On May 19, 2011, we announced, among other proposed reforms, our proposal to "convene an expert Decision Board to render decisions regarding EB-5 Regional Center Applications." *See [www.uscis.gov/news/public-releases-topic/business-immigration/uscis-proposes-significant-enhancements-eb-5-visa-processing-help-america-win-future](http://www.uscis.gov/news/public-releases-topic/business-immigration/uscis-proposes-significant-enhancements-eb-5-visa-processing-help-america-win-future)*. The proposal changed over time, in part based on stakeholder feedback that was generated as a result of my continuing commitment to public engagement.

I was disappointed that, after the passage of more than 18 months, Service Center Operations had not yet convened the Decision Board. It was not in my view a complex undertaking. The failure to convene the Decision Board reflected a failure to act in response to our deficient performance in the administration of the EB-5 program. The failure was more acute given our representation to the public that we would convene the Decision Board and the public's enthusiastic and endorsing response.

At the same time, one of the complaints we were consistently receiving about our administration of immigration programs, including the EB-5 program, was our failure to adhere to our own deference policy. Our deference policy guided when we were to defer to our prior adjudication of an issue in a case. One adjudicative failure could lead to drastic adverse results in the context of an EB-5 regional center case. For example, there were cases in which we approved a regional center petition and approved a number of immigrant investor petitions, the investors invested their funds and immigrated to the United States (often with their families), and then we suddenly and without notice determined that our original adjudication was incorrect. We would then begin denying subsequent investor petitions in the same case, the EB-5 regional center that we previously approved faced collapse and the loss of hundreds of millions of dollars and lawsuits, and the investing immigrants and their families, most of whom moved to the United States from across the world, could not remain in the United States despite their good faith reliance on our prior (and apparently erroneous) adjudication. (I have attached as one example of the harm that such errant adjudicative conduct caused a series of e-mail exchanges I had with my staff leadership concerning an EB-5 regional center case from Colorado at Tab 22.)

The issue of our failure to adhere to our own deference policy arose in the LA Films case, and I may well have urged my staff to convene the Decision Board to address that issue in the case, although I have no specific recollection of doing so. It was a perfect subject for the Decision Board given the gravity and complexity of the issues and the need for a thorough and vibrant exchange of views. Although I do not recall specifically, it was perhaps because of the Board's application to the subject of our deference policy that the Board was referred to as the "Deference Board." ████████ convened the "Deference Board" in the LA Films case and reported to me that the proceeding was very effective. I did not participate in the "Deference Board" proceeding or the adjudication, and I do not recall the outcome that others reached.

I do not know whether the "Deference Board," or the Decision Board of broader application, has been convened since the LA Films case. If it has not been convened since, I hope it is because the quality of USCIS's EB-5 adjudications has improved and, for example, the agency is no longer reversing its prior adjudications as having been erroneously granted. If that is not the case, I hope there is a performance-based reason why and that has communicated accordingly to the public.

**8. Reason for convening the deference review board without any established policy, protocols, or procedures in place.**

I respectfully do not agree with the characterization of this issue. Instituting the Decision Board, or the "Deference Board," was not a complex undertaking and could be effected rather easily and swiftly. I understand that some in USCIS did not like the idea of the Decision Board and did not do anything to advance its progress. I have confidence that the Decision Board was

in the capable hands of individuals whom I moved into place, including [REDACTED] Service Center and whom I selected to build the new EB-5 program office at Headquarters; [REDACTED] from the Office of Chief Counsel, whom I selected to spearhead the legal work in the EB-5 program; and [REDACTED] economics professor who served as the Department [REDACTED] economist and whom I hired to serve our agency as a consultant in the EB-5 program. As I mentioned above, [REDACTED] reported that the "Deference Board" proceeding [REDACTED] led was very effective.

**9. Any ethical advice sought and/or received regarding the communications with Lurie, Rosenfeld, Klasko, or others and my actions after receiving any advice.**

I believe I have fully addressed this issue in my response to issue number 6 above, throughout this statement, and in my in-depth interview.

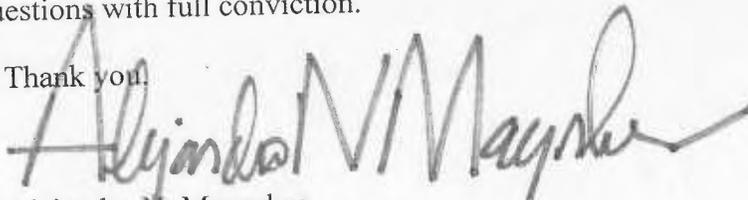
**10. Describe your management practices and/or style as it relates to the administration of the EB-5 program in comparison to other immigration programs.**

I was a hands-on Director of USCIS who worked extremely hard and was committed with all my energy to the improvement and advancement of the agency and to the highest ideals of government service. I sought to build USCIS into an agency heralded for its excellence and integrity. In the service of that drive, I led change in structure, policy, legal interpretation, personnel, discipline, performance management, financial management, technology, transparency, public engagement, fraud detection and national security, administrative process, and every other aspect of our work and our responsibilities. I focused more intensely on areas of greater need, including the EB-5 program.

I could have taken a far easier path as the Director of USCIS, assumed a more ceremonial role, traveled far and wide on trips of interest, and enjoyed the perks. Instead, I worked tirelessly and tackled the agency's biggest challenges. Conquering those were the greatest chance of realizing my, and the public's, aspirations for an agency of excellence and integrity.

Thank you for the opportunity to submit this written statement and for the in-depth interview that preceded it. I am prepared to submit this statement under oath, submit to a polygraph examination as to any matter you have raised, or to otherwise address any question or issue you might have. This matter is of the utmost importance to me and I have responded to your questions with full conviction.

Thank you!



Alejandro N. Mayorkas

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