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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
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January 15, 2021

VIA ELECTRONIC TRANSMISSION

Mr. Alejandro Mayorkas
Partner
WilmerHale
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Mayorkas,

During the Obama Administration, I wrote to you on multiple occasions in your capacity as Director of U.S. Citizenship and Immigration Services (USCIS) to raise concerns about your management of the EB-5 Regional Center Program.¹ My letters, which were part of my ongoing oversight of the EB-5 program, were informed by more than fifteen whistleblowers who contacted my office. Several of those letters pertained to allegations that during your time at USCIS, you provided special access to politically-connected stakeholders with applications pending before the agency, and pressured adjudicators to expedite the review of those applications. Despite the serious ethical concerns at the center of my letters, thus far, I have received only vague responses from you and have received no direct answers to the more than 25 questions that I have asked.²

¹ Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (July 18, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>; Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (July 24, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>; Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (July 31, 2013); Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (August 9, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/EB-5-08-09-13-Mayorkas-letter-no-response-to-first-letters-Mayorkas-AAO-rewrite-email.pdf>; Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (August 23, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/EB-5-08-23-13-Conflicting-testimony-letter-to-Mayorkas.pdf>.

² Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, to Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary (July 25, 2013); Hon. Alejandro Mayorkas, Director,

Your failure to fully respond to my questions during your time as Director of USCIS raises serious questions about the manner in which you will respond to congressional oversight requests in the future should you be confirmed as the next Secretary of Homeland Security.

Furthermore, as you may be aware, the concerns that I raised in my oversight letters in 2013 later proved consistent with the findings of a March 2015 Department of Homeland Security Office of Inspector General (DHS OIG) report.³ In that report, the DHS OIG found that you had “intervened with the career USCIS staff in ways that benefited... stakeholders” who were politically connected, and noted with respect to several cases that the OIG reviewed in depth, “but for [your] intervention, the matter would have been decided differently.”⁴ The OIG further found that your interventions “created significant resentment in USCIS” that “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.”⁵

For instance, the OIG report included an in-depth examination of a case I had previously asked you about in my letters concerning your multiple interventions on behalf of Gulf Coast Funds Management (Gulf Coast), a company with ties to Democratic politician Terry McAuliffe and former Secretary of State Hillary Clinton’s brother, Anthony Rodham.⁶ As I noted in one of my letters to you, documents indicate that you engaged in nearly a dozen contacts with Gulf Coast between 2010 and 2013, including direct communications with Gulf Coast’s attorneys.⁷ On one occasion, when you received an e-mail from Mr. Rodham inquiring about the status of cases involving his company in which Mr. Rodham stated, “[w]e really appreciate your assistance in looking into this matter for us to move our cases along,” you forwarded the e-mail to a subordinate overseeing the EB-5 program and added an “Importance: High” designation.⁸ You also intervened

U.S. Citizenship and Immigration Services, to Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary (August 20, 2013).

³ DHS Office of Inspector General, Memorandum for Hon. Jeh C. Johnson, Secretary, from Inspector General John Roth: Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services’ EB-5 Program (March 24, 2015), available at https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf.

⁴ *Id.* at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 38; *see also* Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Robert S. Mueller, III, Director, Federal Bureau of Investigation (July 23, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>; Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Janet Napolitano, Secretary, U.S. Department of Homeland Security (July 23, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Immigration-07-24-13-letter-to-HSGAC-Intelligence-EB-5-for-release.pdf>.

⁷ Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (July 31, 2013).

⁸ *Id.*

in an effort to revise a draft decision prepared by USCIS's Administrative Appeals Office (AAO) involving Gulf Coast that was not initially favorable to the company.⁹

According to whistleblowers who spoke with my office about your involvement with reshaping the AAO draft, at one point, you allegedly said of the decision, "Give it to me, I'll write the f---ing thing myself."¹⁰ Although the DHS OIG found that you were eventually "dissuaded...from rewriting the decision [yourself]," when the OIG reviewed the matter, it described your "intervention on technical adjudicative matters" as "corrosive and destabilizing" and noted that to their knowledge, it was the first instance of any USCIS director reviewing the merits of or intervening in an AAO decision.¹¹ The DHS OIG also said that your involvement "muzzled...candid discussion and healthy back-and-forth typically done in resolving complex issues" and noted that it had a "chilling effect" because "USCIS staff understood that the stakeholders were politically influential."¹² An official told the OIG that one participant in a meeting with you where the AAO decision was discussed was "reduced to tears."¹³ The AAO decision was ultimately altered in such a way that it was more favorable to Mr. Rodham's company.¹⁴ Regrettably, these reports concerning employee morale sound all too familiar. At least one whistleblower informed my staff that they felt uncomfortable during their meetings with you.

If you are confirmed to serve as the next Secretary of Homeland Security, you will be responsible for leading the third largest cabinet-level department in the federal government.¹⁵ An important part of a Secretary's role involves being a steward of good government and setting high standards of ethics, integrity, transparency, and accountability. President-elect Biden has repeatedly professed a commitment to good government ideals, having campaigned on a commitment to "[r]estore ethics in government," "[r]ein in Executive Branch financial conflicts of interest," and build on a purported ethics code from the Obama Administration which his campaign has described as ensuring "that all decisions [are] made on the merits, without bias, favoritism, or undue influence."¹⁶

⁹ DHS Office of Inspector General, Memorandum for Hon. Jeh C. Johnson, Secretary, from Inspector General John Roth: Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program (March 24, 2015), available at https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf at 43-50.

¹⁰ Letter from Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services (August 9, 2013), available at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/EB-5-08-09-13-Mayorkas-letter-no-response-to-first-letters-Mayorkas-AAO-rewrite-email.pdf>.

¹¹ DHS Office of Inspector General, Memorandum for Hon. Jeh C. Johnson, Secretary, from Inspector General John Roth: Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program (March 24, 2015), available at https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf at 47 and 49.

¹² *Id.* at 49.

¹³ *Id.*

¹⁴ *Id.* at 48-49.

¹⁵ "Homeland Security Mission Areas," available at <https://www.dhs.gov/homeland-security-careers/mission-areas>.

¹⁶ "The Biden Plan to Guarantee Government Works for the People," available at <https://joebiden.com/governmentreform/>.

The American people rely on DHS and its components to ensure their safety and security. To achieve its mission, DHS must be free from “bias, favoritism, or undue influence,” and it must be guided by positive leaders capable of building employee morale, trust, and confidence. Given your past posture toward congressional oversight and given the ethical and leadership concerns raised by your previous subordinates, as well as by the DHS OIG’s report, it is important for Congress and the American people to know where you stand with respect to your past actions as Director of USCIS and how, if confirmed, you would reshape the organizational culture and morale of DHS. Accordingly, please respond to the following no later than January 21, 2021.

1. Please explain why you have not provided answers to the questions in my letters of July 18, July 24, July 31, and August 9, 2013.
2. Please answer all of the questions in the aforementioned letters to the best of your recollection and to the fullest extent possible using the information currently available to you.
3. After reviewing the findings presented in DHS OIG’s report of March 24, 2015, is there anything you would change relating to actions you took while serving as Director of USCIS?
4. After reviewing the testimony provided by former subordinates to DHS OIG, have you made any changes to your approach to managing and communicating with subordinates?
5. If confirmed, please describe the ethical standards that you will set for DHS and its components.
6. If confirmed, will you commit to a policy of non-interference on behalf of external political stakeholders in decision-making by DHS and its components? If not, what types of interference do you consider to be acceptable and unacceptable?
7. If confirmed as the next Secretary of Homeland Security, do you:
 - a. Commit to ensuring that DHS and all of its components respond to congressional inquiries in a timely manner?
 - b. Understand that this obligation applies regardless of whether a member of Congress is a committee chairman?

Thank you for your attention to this important matter. Should you have questions, please contact Daniel Parker of my Finance Committee staff at 202-224-4515 or Drew Robinson of my Judiciary Committee staff at 202-224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Finance Committee

ATTACHMENT

cc: Senator Ron Johnson
Chairman
Senate Committee on Homeland Security and Governmental Affairs

Senator Gary Peters
Ranking Member
Senate Committee on Homeland Security and Governmental Affairs

Senator Rob Portman
Chairman
Subcommittee on Regulatory Affairs and Federal Management, Senate Committee on
Homeland Security and Governmental Affairs

Attachments

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 18, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
111 Massachusetts Ave NW
Washington, DC 20529

Dear Director Mayorkas:

The EB-5 Immigrant Investor Program is an employment-based immigration program designed to stimulate the U.S. economy and job creation through foreign capital investments.¹ The program allows U.S. Citizenship and Immigration Services (USCIS)-approved “Regional Centers” to coordinate investments within a geographic area in an effort to promote economic growth and create jobs.² Through a capital investment of at least \$500,000 in a Regional Center, foreign entrepreneurs can obtain an EB-5 visa and ultimately apply for permanent residency in the U.S.³ Each investment made through the program must result in the verifiable creation or preservation of at least ten jobs.⁴

Gulf Coast Funds Management, LLC (Gulf Coast), a USCIS-approved Regional Center serving Louisiana and Mississippi, originally targeted shipbuilding, food processing, and manufacturing projects for EB-5 investment funding.⁵ Today, Gulf Coast funnels investments to GreenTech Automotive (GreenTech), a producer of environmentally-friendly, energy-efficient vehicles.⁶ GreenTech is a McLean, Virginia-

¹ U.S. Citizenship and Immigration Services (USCIS), <http://www.uscis.gov/portal/site/uscis>, (Jun. 24, 2013).

² *Id.* A Regional Center is defined as “any economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment.”

³ *Id.*

⁴ *Id.*

⁵ Gulf Coast Funds Management Regional Center Approval and Designation Memorandum, Aug. 18, 2008, <http://gulfcoastfunds.com/pdf/GCFM-RC%20Approval%202008-08-18%5b9%5d.pdf>.

⁶ USCIS, (Jun. 24, 2013).

based company with manufacturing operations in Mississippi.⁷ In 2010, GreenTech acquired EuAuto Technology, a Hong Kong-based automaker that produces the neighborhood electric vehicle known as MyCar.⁸ GreenTech plans called for MyCar production in their Mississippi based plants. However, the Wall Street Journal suggests there is little to no evidence that GreenTech is actually meeting production promises or has done much to spur economic growth or job creation.⁹

Furthermore, records indicate that Gulf Coast and GreenTech share office space in McLean. A second Regional Center, the Virginia Center for Foreign Investment and Job Creation (Virginia Center), shares the same corporate suite. However, the relationship between these organizations is unclear.

As you know from my previous communications with you, I am concerned about the integrity of the EB-5 Regional Center program. To ensure that Gulf Coast is meeting its statutory requirements, and to better understand the role of USCIS in overseeing the EB-5 program, please provide answers to the following questions:

1. What is the relationship between Gulf Coast, the Virginia Center and GreenTech?
2. Please provide copies of the Gulf Coast and Virginia Center business plans provided to USCIS upon application for regional center status.
3. Please provide copies of all records, data, and information obtained from Gulf Coast and the Virginia Center related to mandatory record keeping for each Federal Fiscal Year, including forms I-924A.
4. How many Forms I-526 affiliated with Gulf Coast and the Virginia Center have been filed with USCIS? Of these, how many petitions resulted in the issuance of an EB-5 visa? Of those denied, what was the reason for denial?
5. What is the total capital investment generated for Gulf Coast and the Virginia Center through the EB-5 program?
6. How many EB-5 program participants investing through Gulf Coast and the Virginia Center applied for legal permanent status in the United States? How

⁷ WM GreenTech Automotive, <http://www.wmgta.com/en/>, (Jun. 24, 2013).

⁸ MyCar, <http://www.introducingmycar.com/#mycar>, (Jun. 24, 2013).

⁹ Kimberley A. Strassel, *Terry McAuliffe's Solyndra*, The Wall Street Journal (Apr. 11, 2013), <http://online.wsj.com/article/SB10001424127887323741004578416821313987276.html>.

- many were approved? What evidence did Gulf Coast and the Virginia Center provide to demonstrate the applicant's investment created at least 10 jobs?
7. How many direct and indirect jobs were created as a result of EB-5 investments affiliated with Gulf Coast and the Virginia Center? How many were created as a result of investments in GreenTech? What evidence was provided to corroborate these statistics?
 8. What is the total investor capital allocated to GreenTech? Of this, what is the breakdown of domestic and EB-5 investments?
 9. Specifically, to what other commercial enterprise activities or projects have Gulf Coast and the Virginia Center invested EB-5 funding?
 10. I understand the Office of the Inspector General is investigating the EB-5 Regional Center program. Did you personally play any role in the approval of Gulf Coast or the Virginia Center for regional center status, or of any visa related to investments in Gulf Coast or the Virginia Center? If so, please explain.
 11. Do you ever have any personal involvement in the approval of any other regional centers or of EB-5 visas? If so, please explain.

Thank you in advance for your cooperation in this matter. Please respond to these questions by July 24, 2013. Should you have any questions regarding this letter, please contact Tristan Leavitt of my staff at (202) 224-5225. I look forward to your prompt response.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 24, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
111 Massachusetts Ave NW
Washington, DC 20529

Dear Director Mayorkas:

As you know, I have considerable interest in the EB-5 Regional Center program and rooting out fraud and abuse in all of our immigration programs. I write out of concern on a number of issues, including the role you have played with particular EB-5 Regional Center applications and the fact that EB-5 applications appear to have been moved forward through your agency, and in your office particularly, without sufficient regard to security concerns.

In documents provided to my office, one e-mail exchange shows that in response to requests to expedite SLS's EB-5 Regional Center application, USCIS staff intended to send a Request for Further Evidence (RFE).¹ When this information was forwarded to you, e-mail correspondence indicates that you replied on January 25, 2013, that you were "surprised by our response."² Your e-mail references some evidence that was requested in the RFE and states, "Are we imposing that condition ourselves now?"³ The e-mail presents the impression that you are unhappy with the fact that USCIS adjudicators are imposing a high standard of proof in EB-5 cases.

Further, although you claimed that you "did not wish to get involved in the case itself," you then stated: "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

¹ Attachment 1.

² *Id.*

³ *Id.*

Department with the relevant expertise [Commerce] believes that, contrary to our adjudication, the expedite criteria have been met).”⁴

Despite having cited the independent authority of the Commerce letter to question your own agency’s decision, Department whistleblowers have alleged that you actually requested the Department of Commerce letter from Steve Olson, the Executive Director of SelectUSA. Mr. Olson was formerly an Assistant U.S. Attorney under your chain of command in the U.S. Attorney’s Office for the District of California and followed you to O’Melveny & Myers LLP.

USCIS determined to expedite the SLS Regional Center application. This decision is particularly troubling in light of security concerns which emerged with SLS. Days after the e-mail correspondence where you appear to have pushed for an expedite decision in the SLS matter, a different e-mail chain indicates that USCIS staff had concerns that the decision had been made without conducting the proper security checks.⁵ One USCIS employee wrote on January 29, 2013:

You indicated that the expedite request has been approved, is this true? I don’t know of any circumstance in which expedite requests are approved prior to security checks being conducted and cleared; are you sure that the request was approved? We have received information that there are significant security/criminal suspicions on several of the I-526 applicants. This is just on the few that we have checked, there is high side information on one applicant and others have highly suspicious money transfers[] such that the FBI has recommended that USCIS review the BSA data prior to approving these cases. Due to these findings, I highly recommend denying the request and submitting every applicant filing under this Regional Center for TIDE and NCTC checks and BSA data request and reviewed prior to adjudications. Obviously, if we are to request these security checks and FinCEN intelligence reports on these applicants, we cannot expedite the request.⁶

Ultimately, you claimed to support resolving the substantive issues prior to finalizing the petitions. However, you nevertheless directed that correspondence be issued to SLS granting their expedite request, preserving the impression—at least with SLS—that you were granting a favor.⁷

⁴ *Id.*

⁵ Attachment 2.

⁶ *Id.*

⁷ *Id.*

These security concerns seem to be part of a pattern. One March 12, 2013, e-mail to you relates the concerns with four separate EB-5 regional centers, including the SLS Las Vegas Regional Center, GreenTech (Gulf Coast Regional Center), the New York City Regional Center, and the New York Metropolitan Regional Center.⁸ The report on SLS states: “Although there are security concerns with some of the filers related to SLS Las Vegas, we hav[e] a sufficient number where there are no security concerns to meet the request.”⁹ The portion on GreenTech states: “The Automotive Partnership NCE has 21 related pending I-526 cases. There is a Fraud/National Security hold on all 21 of these cases.”¹⁰

Despite the fact that New York Metropolitan Regional Center application was placed on hold based on a request from the FBI and multiple Significant Activity Reports from FinCEN, the summary states: “We received an expedite request from Tom Rosenfeld last week regarding this regional center and that request was approved.”¹¹

The e-mail that you apparently sent in response states: “Thank you very much . . . **I will give some thought to how I should respond to the inquiry I rec’d from the Dept about these matters, as I want to keep the FDNS concerns close hold.**”¹²

To more fully explain your role in these matters, please respond to the following questions:

1. What inquiry did you receive from the Department on these matters as referred to in your March 12, 2013, e-mail?
2. Please produce all communications related to your involvement with SLS’s EB-5 Regional Center application.
3. According to the e-mails, the SLS request could be granted despite the security concerns with “some of the filers” because there was a “sufficient number where there are no security concerns.” What percentage of the filers had security concerns? What percentage of filers without security concerns is sufficient to grant a request and why?

⁸ Attachment 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* (emphasis added).

4. Please describe all interactions and produce all written communications connected with Steve Olson's letter in support of SLS's EB-5 Regional Center application, including any interactions prior to the letter being written.
5. Please produce all written communications with Tom Rosenfeld and describe all interactions with him, including phone calls or other meetings.
6. Please produce all communications related to your involvement with the New York City Regional Center's EB-5 application.
7. Please produce all communications related to your involvement with the New York Metropolitan Regional Center's EB-5 application.

Thank you in advance for your cooperation in this matter. Please respond to these questions by August 1, 2013. Should you have any questions regarding this letter, please contact Tristan Leavitt of my staff at (202) 224-5225. I look forward to your prompt response.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

ATTACHMENTS

Attachment 1

From: Mayorkas, Alejandro N
Sent: Friday, January 25, 2013 1:16 PM
To: USCIS4
Cc: USCIS2, USCIS5, USCIS6, USCIS7, USCIS8
Subject: RE: Expedite Request for SLS Lender, LLC

USCIS4 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

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., N.W.
Washington, DC 20529
(202) [REDACTED]
[REDACTED]@dhs.gov

From: USCIS4
Sent: Friday, January 25, 2013 12:56 PM
To: Mayorkas, Alejandro N
Cc: USCIS2, USCIS5, USCIS6, USCIS7
Subject: FW: Expedite Request for SLS Lender, LLC

I spoke with CSC a few minutes ago. They had already taken steps to expedite even though they have asked for evidence in support of the expedite requests. The files were delivered to the economists yesterday for their review with an understanding of the urgency. The thinking was that they wanted to be positioned to meet the deadline assuming the requested evidence would be provided.

From: USCIS2
Sent: Wednesday, January 23, 2013 8:34 PM
To: USCIS1
Cc: USCIS3, USCIS4
Subject: Re: Expedite Request for SLS Lender, LLC

Hi USCIS1

This looks great. Thanks for all your hard work on this.

Thanks,
USCIS2

From: USCIS1
Sent: Wednesday, January 23, 2013 08:26 PM Eastern Standard Time
To: USCIS2
Cc: USCIS3, USCIS4
Subject: FW: Expedite Request for SLS Lender, LLC

USCIS2
We have received several expedite requests submitted for the Las Vegas Regional Center (NCE SLS Lender, LLC). My last count was 17 requests. (There also appears to be several different names being used for the NCE, but we have confirmed all the requests are related.) We are planning to send the same response to all requesters using the

Immigrant Investor Mailbox. Just as a side note, there are currently only 47 of the potential 230 I-526 petitions filed at this time.

USCIS1

Mr. / Ms. ,

At this time, additional information is required to facilitate the adjudication of your request for expedited processing of the I-526 petition(s) associated with SLS Lender, LLC. Please provide the following:

- Copies of the executed agreement with JP Morgan securing funds held in escrow awaiting twenty three (23) EB-5 approvals.
- Explanation and evidence of efforts made to obtain an extension on the agreement with JP Morgan. If this is not an option for SLS Lender LLC, please provide an explanation with supporting evidence as to why this is not feasible.
- The expedite request indicates potential for severe financial loss and that expediting the adjudication of the petitions is of compelling interest to the US. Considering the nature and investment requirements of the immigrant investor program, please explain and provide evidence that demonstrates how this potential for loss is extraordinary and should mandate the prioritization of these petitions over other EB-5 investor petitions.

Respectfully,
USCIS Immigrant Investor Program

Attachment 2

From: USCIS2
Sent: Thursday, January 31, 2013 5:05 PM
To: USCIS4
Cc: USCIS5, USCIS6, USCIS7, USCIS9, USCIS10, USCIS11
Subject: FW: SLS Las Vegas USCIS Response Letters

Hi USCIS4.

The Director would like us to issue correspondence to the regional center to let them know that we granted their expedite request, but in our preliminary review of the files we have identified substantive issues that will need to be resolved before we can finalize processing of the petitions. While these issues will not be resolved prior to February 4th (the date the conditions for the Senior Loan are to be satisfied), we will continue to expedite the petitions.

Please let me know if you would like me to coordinate with USCIS4 in regards to this correspondence.

Thanks,

USCIS2

From: Mayorkas, Alejandro N
Sent: Wednesday, January 30, 2013 8:05 PM
To: USCIS5, USCIS12
Cc: USCIS2, USCIS4, USCIS5, USCIS6, USCIS7, USCIS9, USCIS10, USCIS12, USCIS13, USCIS14
USCIS15, USCIS16, USCIS17
Subject: RE: SLS Las Vegas USCIS Response Letters

Thank you, USCIS5. I have taken the liberty of adding everyone to my response, plus USCIS17.

I appreciate everyone's approach to the issues.

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

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., N.W.
Washington, DC 20529
(202)

@dhs.gov

From: USCIS5
Sent: Wednesday, January 30, 2013 6:42 PM
To: Mayorkas, Alejandro N; USCIS12
Subject: FW: SLS Las Vegas USCIS Response Letters

Ali and USCIS12.

FYI, I'm forwarding the below email chain to you, [REDACTED], for visibility given the legislative interest, and you, Ali, given your interest in enhancing EB-5 security vetting and program integrity in general.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, January 29, 2013 4:49 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: SLS Las Vegas USCIS Response Letters

The request in these cases involved multiple I-526 petitions (I believe there are about 47 currently pending and they requested that we expedite 23). It is my understanding that the decision to expedite a case just means that it will be moved up in the order in which it was received, but that the integrity of the process and the decision would remain the same. As far as I am aware CSC has already begun moving these cases up in the order but is otherwise processing them the same as they otherwise would be (e.g. holding those with security concerns in abeyance, issuing RFEs if the evidence is insufficient, etc).

Thanks,

[REDACTED]

From: [REDACTED]
Sent: Tuesday, January 29, 2013 4:42 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: SLS Las Vegas USCIS Response Letters

I must disagree, we do not approved an expedite request prior to reviewing the case for security issues. As in this case, there are significant security concerns that will cause significant delays in having the security checks completed.

If USCIS informs the requestor that the request to expedite was approved, the requestor will expect some sort of action rather soon. In this case, we need FinCEN reports that could take a month or two, therefore the request should be denied so the requestor doesn't start to question why they have not receiving any actions by USCIS.

Has there been a decision on this request?

Thanks,

[REDACTED]

From: [REDACTED]
Sent: Tuesday, January 29, 2013 04:20 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: SLS Las Vegas USCIS Response Letters

[REDACTED]

Thanks for that important clarification.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, January 29, 2013 4:09 PM
To: [REDACTED]
Cc: [REDACTED]

[REDACTED]
Subject: RE: SLS Las Vegas USCIS Response Letters

All:

I think it is important to note that any decision to expedite solely means that we will make a decision on a case as expeditiously as possible, but will still require security checks to be cleared, case otherwise must be approvable, etc. As such, even if the decision to expedite was granted, we still would work each case to 100% completion before issuing a decision. That means that some might get expedited RFE's, approvals, denials, security checks, etc., but it shouldn't mean that we have otherwise determined every case is approvable.

Hope that helps.

USCIS9

+++++

USCIS9
Threat Assessment Branch
Service Center Operations
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office: (949) [REDACTED]
Cell: (202) [REDACTED]

From: USCIS6
Sent: Tuesday, January 29, 2013 4:04 PM
To: USCIS11
Cc: USCIS2, USCIS4, USCIS5, USCIS7, USCIS9, USCIS10, USCIS12, USCIS13, USCIS14

Subject: RE: SLS Las Vegas USCIS Response Letters

[REDACTED] – can you confirm that the expedite request has been granted?

From: USCIS11
Sent: Tuesday, January 29, 2013 3:51 PM
To: USCIS6
Cc: USCIS2, USCIS4, USCIS5, USCIS7, USCIS9, USCIS10, USCIS12, USCIS13, USCIS14

Subject: Re: SLS Las Vegas USCIS Response Letters
Importance: High

USCIS6

You indicated that the expedite request has been approved, is this true?
I don't know of any circumstance in which expedite request are approved prior to security checks being conducted and cleared; are you sure that the request was approved?
We have received information that there are significant security/criminal suspicions on several of the I-526 applicants. This is just on the few that we have checked, there is high side information on one applicant and others have highly suspicious money transfers; such that the FBI has recommended that USCIS review the BSA data prior to approving these cases. Due to these finding, I highly recommend denying the request and submitting every applicant filing under this Regional Center for TIDE and NCTC checks and BSA data request and reviewed prior to adjudications.
Obviously, if we are to request these security checks and FinCEN intelligence reports on these applicants, we cannot expedite the request.

Thanks

USCIS11
11

[REDACTED]

Attachment 3

From: USCIS3
Sent: Tuesday, March 12, 2013 8:51 AM
To: Mayorkas, Alejandro N
Cc: USCIS4
Subject: RE: EB5 Update

has completed her review of the TO templates and has provided edits that should improve clarity and specificity. As I mentioned, I'd like these to get to California in final form this week.

We can discuss the reversals you mentioned. Since we have added the economist review, the adjudication has changed. The sophisticated review of the economic models used has resulted in some questions that were not previously asked. This did represent a shift in our adjudicative approach that made clear that previously approved cases may have been approved in error. At this point, we are on a more even keel with respect to case decisions. The economic review has provided the rigor and clarity that we had hoped.

There is good news. While we do not talk much about approval rates, they are 75% and 72% for I-526s and I-924s, respectively, during this fiscal year. We are very close to releasing the RFE template that will allow us to proceed on additional cases, and the economists that were relatively newly hired are beginning to hit their stride. We are training additional resources to get the program in the best possible shape prior to the transition.

I am hopeful that you will begin to see continued progress in the weeks and months ahead.

USCIS3

Department of Homeland Security | U.S. Citizenship and Immigration Services

From: Mayorkas, Alejandro N
Sent: Tuesday, March 12, 2013 8:34 AM
To: USCIS3
Cc: USCIS4
Subject: Re: EB5 Update

Thank you very much, USCIS3&4. I will give some thought to how I should respond to the inquiry I rec'd from the Dept about these matters, as I want to keep the FDNS concerns close hold.

I did not know we were awaiting TO templates, and am troubled by the length of time that has passed between resolution of TO issues and the preparation of the templates. In addition, I would like to make sure that Adriana is engaged on these issues, given her level of expertise.

Separately, the mistaken decisions on 526s and the consequent reversals continue to be deeply troubling. I intend to



address in our meeting.

Thank you again.

Ali

From: USCIS3 [REDACTED]
Sent: Tuesday, March 12, 2013 08:14 AM Eastern Standard Time
To: Mayorkas, Alejandro N
Cc: USCIS4 [REDACTED]
Subject: EB5 Update

[REDACTED] asked that I forward you an update on a few issues. Please let me know if you have questions or concerns.

New York Metropolitan Regional Center:

The regional center filing was received on 9/28/2012. We received an expedite request from Tom Rosenfeld last week regarding this regional center and that request was approved. Shortly thereafter, based on a request from the FBI, the Regional Center and related cases were placed on hold due to multiple Significant Activity Reports from FinCen. As a side note, we did receive an expedite request from Governor Cuomo's Office and Mayor Bloomberg's office for a project related to this regional center, but we were unable to process the request because it was not sent by the petitioner, applicant, or attorney of the Regional Center. Communication to the governor's office and the mayor's office has been managed through CSCPE.

New York City Regional Center:

New York City Regional Center Waterfront II was placed on a CFDO hold that was released in late December. The amendment is pending economist review. Several related I-526 petitions were received and two were approved in error. The approved I-526s were called back from NVC. Once the economic review is completed, we can proceed with the I-526 adjudication.

SLS Las Vegas Regional Center:

The initial economic review indicated that there were tenant occupancy concerns. The case has been routed back for economist review to confirm if a TO issue exists. Once we get a read on that, we will be able to proceed. If there IS tenant occupancy where the evidence establishes that facilitation has been met, we will be able to proceed. If facilitation has not been met, we will need to RFE. The request was to move on 23 I-526 petitions. Although there are security concerns with some of the filers related to SLS Las Vegas, we have a sufficient number where there are no security concerns to meet the request, provided the TO issues are resolved.

Green Tech Regional Center:

The Automotive Partnership NCE has 21 related pending I-526 cases. There is a Fraud /National Security hold on all 21 of these cases.

Deference Review Board:

Through the Immigrant Investor Mailbox, we will correspond today with [REDACTED] to provide a response to their questions related to the Deference Board Hearing on Friday. [REDACTED] and I finalized some language for that response yesterday.

Tenant Occupancy Status:

I have asked for an expedited final review process to get the RFE templates to the CSC for use. There are a number of cases on hold awaiting the release of the templates. I hope they will be final as early as Thursday so we can start moving these cases. There are four categories of TO cases. Group 2 and Group 4 are on hold pending the release of the templates. We are working Groups 1 and 3.



Group 1 – TO Issues Removed : The RC has amended the job creation analysis to remove any and all TO issues. Of the 47 cases in this Group, 12 have been approved, 2 denied, 6 withdrawn, and 27 are in process but still pending.

Group 2 – Facilitation Not resolved: A determination has not been made that the investment has facilitated the job creation

All 22 remain pending awaiting the RFE template.

Group 3 – Facilitation Resolved: A determination has been made that the investment has facilitated the job creation.

All 23 have completed Economist review. One was approved and 22 are pending officer review. They are in process but still pending.

Group 4 – Pending Initial RFE or Response to RFE not Reviewed. Pending review of whether facilitation has been met.

77 Cases – 5 approved, 1 withdrawn.

USCIS3



**U.S. Citizenship
and Immigration
Services**

July 25, 2013

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

I write in response to your questions regarding the EB-5 Immigrant Investor Program and my role with respect to individual EB-5 cases.

As Director of U.S. Citizenship and Immigration Services (USCIS), I have the responsibility to ensure that all cases submitted to the agency are processed in accordance with the best reading of the laws and policies underlying the programs that USCIS administers. I consistently emphasize to the agency's workforce that all cases must be decided consistent with the governing laws and policies and the facts.

Because the programs that USCIS administers often present novel, unsettled, and complex questions, the application of the relevant laws and policies in a set of cases or an individual case is not always straightforward; it may give rise to broader legal or policy questions that must be resolved at a leadership level. Accordingly, with respect to many of USCIS's programs, including EB-5, I have engaged with the agency's personnel when such novel or difficult legal or policy questions have arisen to ensure these questions are resolved in a way that adheres to and effectuates the laws and policies under which USCIS operates. Exercising leadership over policy matters is consistent with the responsibilities I swore to uphold when I became the USCIS Director.

On countless occasions, cases presenting such novel or complex legal or policy questions have been brought to my attention by Members of Congress, the public, the news media, or by applicants themselves. In those instances, if the issue presented involves a novel, unsettled, or complex legal or policy question, I will engage with the agency's personnel to ensure the proper resolution of the legal or policy question.

Throughout my tenure as Director, I have participated in the resolution of legal and policy issues based on the governing laws and policies and the facts. I have not used my position to benefit any particular party or individual. Any suggestion to the contrary is demonstrably untrue.

The Honorable Charles E. Grassley
Page 2

Please do not hesitate to contact me if you have further questions.

Thank you.

Respectfully,

A handwritten signature in blue ink that reads "Alejandro N. Mayorkas". The signature is written in a cursive, flowing style.

Alejandro N. Mayorkas
Director

Cc: The Honorable Patrick Leahy, Chairman

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 31, 2013

Mr. Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
111 Massachusetts Avenue NW
Washington, DC 20529

Dear Director Mayorkas:

Last Thursday, you testified before the Senate Committee on Homeland Security and Governmental Affairs. The hearing was held as part of the process for your nomination to become the Deputy Director of the Department of Homeland Security. The hearing was held despite protests from the Ranking Member and other Republicans on the Committee due to a pending Office of Inspector General inquiry. I also wrote to the Committee seeking a delay until the facts are more fully developed given new information provided to my office by whistleblowers raising questions about your role in providing preferential treatment for Terry McAuliffe and Anthony Rodham in connection with applications related to Gulf Coast Funds Management and/or GreenTech Automotive.

In an agency-wide memo of April 2, 2010, titled “Ethics and Integrity Memorandum No. 2: Preferential Treatment,” you wrote:

Any occurrence of actual or perceived preferential treatment, e.g., treating similarly-situated applicants differently, can call into question our ability to implement our Nation’s immigration laws fairly, honestly and properly.

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

- Working on, or *in any way attempting to expedite* or otherwise influence the processing of, an immigrant application, petition, or benefit for a friend, relative, neighbor or acquaintance;
- 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 treatment¹

¹ Memorandum from Director Mayorkas to USCIS Employees, “Ethics and Integrity Memorandum No. 2: Preferential Treatment,” April 2, 2010 (Attachment 1) (emphasis added).

Several documents call into question some of the statements you made regarding preferential treatment in your testimony at last Thursday's hearing. For example, you were asked in the hearing about communications with Terry McAuliffe with respect to Gulf Coast Funds Management. You testified: "I was asked to attend a meeting with Mr. McAuliffe so that I could hear in person his complaints . . . two years ago . . . I heard those complaints, and **that was the extent of the interaction. . . . I moved on with my work.**"²

Contrary to the impression left by your answer, documents indicate that both before and after that meeting, you actually engaged in nearly a dozen contacts with Gulf Coast Funds Management between 2010 and 2013, including direct communications with Gulf Coast's attorneys. That one meeting with Mr. McAuliffe was clearly not the extent of your interaction on that matter.³

Last Thursday you testified: "I have never ever in my career exercised undue influence to influence the outcome of a case."⁴ However, one of your senior career employees wrote in response to a question from the press office about whether Greentech had received special treatment: "**We absolutely gave special treatment to Green Tech at the directive of D1. D1 was working directly with the R[egional] C[enter]'s atty Additionally, I would call a wholesale rewrite of the AAO's decision by the front office special treatment.**"⁵ D1 is an apparent reference to you.

Several of the contacts from Gulf Coast were forwarded to you by Douglas Smith, the Assistant Secretary for the Office of the Private Sector in the Department of Homeland Security, who attended the groundbreaking for GreenTech's Mississippi plant on July 6, 2012, and reportedly attended a "private meeting session" with former President Bill Clinton and Chinese emigration executives.⁶ Smith forwarded you two e-mails from Mr. McAuliffe as early as July and August 2010. The first forward in July 2010 included a detailed e-mail from Mr. McAuliffe, who stated:

Doug, [i]t was great speaking with you today. . . . GCFM filed an Amendment Application in Jan 2010 to expand its operations to Virginia

² Testimony of Alejandro Mayorkas before the Senate Committee on Homeland Security and Governmental Affairs, July 25, 2013 (hereinafter HSGAC testimony), at 23.

³ See, for example, Attachment 18. (Gulf Coast attorney to Director Mayorkas: "I just wanted to check on the status of the Gulf cases and RFEs. . . . Any news on your end would be great as I need to call Terry [McAuliffe] back to update him." Special Assistant to USCIS Deputy Director reply: "I'm writing in response to the status inquiry that you sent to Director Mayorkas on August 10th. Could you please send me the receipt numbers of the cases you are inquiring about so the AAO can provide the most accurate status check?")

⁴ HSGAC testimony at 11.

⁵ Attachment 2.

⁶ EB-5 News Blog: Regional Centers in the USA, "Mr. Brian Su visits GTA facility July 6," <http://eb5news.blogspot.com/2012/07/mr-brian-su-visits-gta-facility-july-6.html> (accessed July 22, 2013).

and Tennessee to support G[reen] T[ech] A[utomotive]’s efforts. . . . I have been extremely frustrated by the USCIS approval process You should be aware that Senator Warner and other Members of Congress have made inquiries on this project.⁷

Assistant Secretary Smith forwarded Mr. McAuliffe’s e-mail to you after apparently speaking about it with you, as he simply stated: “A – Thanks! Looking forward to our dinner when you get back.”⁸ You forwarded Mr. McAuliffe’s e-mail to your subordinates in USCIS.

In August 2010, after USCIS denied Gulf Coast’s amendment application, Mr. McAuliffe sent another e-mail to Assistant Secretary Smith that Smith then forwarded to you. The first e-mail in the chain was from Gulf Coast’s attorney, who advised: “I suggest you do NOT appeal to the Administrative Appeals Office [AAO], as you will just lose there.”⁹ A GreenTech executive forwarded this to Mr. McAuliffe, stating: “Terry, [t]his approval process becomes ridiculous.”¹⁰ As Gulf Coast’s attorney had advised, instead of appealing to AAO, Mr. McAuliffe sent the chain to Assistant Secretary Smith, who forwarded it to you with the commentary: “This is what I called you about. Unless I am missing something, this is just crazy.”¹¹ Once again, you forwarded this to your subordinates in USCIS.

The next spring, Assistant Secretary Smith again contacted you about Mr. McAuliffe’s project with Anthony Rodham, this time related to an I-924 application of regional center status for the Virginia Center for Foreign Investment and Job Creation LLC. Mr. Smith wrote on May 26, 2011: “A – you mind seeing if you can get any intel on this one. Seems to be in a black hole.”¹²

Once again you forwarded this to your subordinates in USCIS, who apparently viewed the e-mail as inappropriate. One wrote: “[I]nquiries such as this should not be made unless we are ONPT.”¹³ You were informed the application had only been filed on one month before your e-mail.¹⁴ When a USCIS subordinate updated you on June 24, 2011, about the case—including its connection to Gulf Coast and GreenTech, your response shows you to be clearly in the weeds on the case: “I understand there to be two deficiencies, one with respect to the timeline for the project and the other with respect to the specific location of the automotive plant.”¹⁵ You proceeded to ask several questions about the specifics of the proposal.

⁷ Attachment 3.

⁸ *Id.*

⁹ Attachment 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² Attachment 5.

¹³ *Id.*

¹⁴ Attachment 6.

¹⁵ *Id.*

In last Thursday's hearing for your nomination, you were asked: "In this situation with Gulf Coast Funds Management, where you had multiple requests to intervene in the regular process, what structures, rules or practices did you put into place to ensure that no ethics or rules were violated during your tenure?"¹⁶ You testified in response:

[T]he issues, difficult issues, complex issues, novel issues of law and policy that challenge the agency and that present opportunities for resolution percolate up through the supervisorial chain to me when they need resolution and when they have broad application. The manner in which those . . . issues reach me is through cases. . . . I become involved in those complex, difficult legal policy issues when they are raised to my attention by my colleagues, . . . by member of the Congress, . . . by news accounts, by members of the public, or by applicants or petitioners themselves. . . . I do not adjudicate cases. I address legal policy issues that are brought to my attention through the channels I have outlined.¹⁷

Yet on June 28, 2011, the attorney for Gulf Coast sent you a detailed e-mail regarding Gulf Coast that involved neither law nor policy issues.

The attorney asked for your assistance in speeding up the approval of their visas, writing: "Any assistance you can provide would be much appreciated."¹⁸ The attorney sent you a list of 96 individual investors, their WAC numbers, and the dates they had applied for visas. You replied: "**Thank you We will follow up on this.**"¹⁹

On July 7, 2011, the attorney for Gulf Coast again e-mailed you about their case, writing: "[T]he sense of urgency has escalated and requires your attention" ²⁰ You replied: "**Thank you for your e-mail below, which you and I just discussed by telephone. I will follow up.**"²¹ You then immediately forwarded the e-mail chain to subordinates, stating: "**Please address with appropriate urgency.**"²² The e-mail chain shows that your subordinates began working to provide you with information immediately.²³ Meanwhile, Gulf Coast's attorney wrote back: "*Thank you for your quick response.* I am including below the updated chart that highlights the two errors I mentioned on the name and WAC."²⁴ You responded: "Thank you" ²⁵

Whistleblowers from within USCIS have indicated to me that this level of detailed interaction with a regional center's attorney regarding specific visa applications is extremely irregular. Nevertheless, on July 13, 2011, documents indicate that you were

¹⁶ HSGAC testimony at 9.

¹⁷ *Id.*

¹⁸ Attachment 7.

¹⁹ *Id.* (emphasis added).

²⁰ *Id.*

²¹ *Id.* (emphasis added).

²² *Id.*

²³ *Id.*

²⁴ Attachment 8 (emphasis added).

²⁵ *Id.*

again asking about the case.²⁶ On the evening of July 19, 2011, Gulf Coast's attorney e-mail you, "I am just following up on these cases listed below" ²⁷ You responded the next morning: "**I am back in the office and am following up right away.**"²⁸

The attorney replied: "Thank you very much. I spoke with Terry [McAuliffe] last night Whatever you can do would be much appreciated. . . . Terry asked me to remind you that we have not heard back yet on the VA Center's certification yet."²⁹ Once again, you forwarded this to your subordinates in USCIS.³⁰

Today the former Chief of the Administrative Appeals Office told my staff that while he headed the unit from 2009 to 2013, AAO did not provide copies of its draft or pending opinions to individuals in the front office, including you. When my staff asked him if it would be unusual for you to have a draft AAO opinion on your desk, he said that the only time anyone saw a case before it was completed was if it was being considered as a "precedent decision," which the Gulf Coast decision was not.

The former Chief of AAO told my staff that he was in Iraq from July 14 through August 16, 2011.

On July 20, 2011, a senior USCIS official e-mailed a group of USCIS employees: "It is my understanding that AAO wished to sustain the denial and that their draft decision is on Ali's desk pending review."³¹ Later on July 20, 2011, you e-mailed four senior USCIS officials, including the senior official referenced above but *not* including the AAO Chief:

I have been receiving inquiries about this regional center application and its status, including statements from [Gulf Coast's attorney] of unwarranted delays and denials. I have an AAO decision on my desk that was transmitted to me I need to meet with you tomorrow . . . to understand: The case chronology[;] What are the outstanding issues **This is time sensitive.**³²

One of the senior officials responded: "I recommend we include the AAO as they most likely considered additional arguments and evidence that were presented subsequent to our certification."³³ These documents appear to indicate that you became personally involved in reviewing a draft AAO decision in an unusual way without the Chief of AAO's knowledge just after he had left the country.

²⁶ Attachment 9.

²⁷ Attachment 8.

²⁸ *Id.* (emphasis added).

²⁹ *Id.*

³⁰ *Id.*

³¹ Attachment 10.

³² Attachment 11 (emphasis added).

³³ *Id.*

Last Thursday you were asked in the hearing: “Did you come to your agency and say after the meeting with [McAuliffe] . . . , ‘Let’s do things differently. Let’s change what we’re doing. Let’s change our course’ after this meeting?”³⁴ You replied: “[A]bsolutely not.”³⁵

Yet it is clear that between the time the draft AAO opinion was transmitted to you and the time the final opinion was issued, there was a change of course.

In last Thursday’s testimony, you apparently referenced the July 21, 2011, meeting, alluding to “the allegation . . . somehow that I, by sitting around the table and resolving a couple of difficult issues that were unsettled in our agency in the administration of the EB-5 program, I exercised undue influence.”³⁶ When asked for further detail on the “difficult issues,” you testified:

In the issue that the Gulf Coast case presented to my attention was the following: Is it the mere existence of a redemption agreement that disqualifies the individual from satisfying the legal requirement that the capital be at risk, or is it a question of looking at the terms of the redemption agreement and whether the terms militate against the requirement that the capital be at risk?

* * *

[T]he conclusion was reached around the table that, quite frankly, and as a matter of law in the interpretation of the deal document, the redemption agreement, the capital remained at risk because there may not ever be a market for that capital and, therefore, the redemption may never be realized.³⁷

However, it remains unclear why you became involved at all in this legal determination that should normally have been made by the career employees with experience and expertise within AAO.

In its draft opinion prior to your involvement, AAO had already concluded: “[T]he conversion price estimation . . . constituted an impermissible redemption agreement.”³⁸ The draft opinion stated:

The AAO concurs with the [California Regional Center] director . . . that the estimated fair market value five years in the future is problematic. For the alien’s money to be truly at risk, the alien cannot invest into a

³⁴ HSGAC testimony at 23.

³⁵ *Id.*

³⁶ *Id.* at 12.

³⁷ *Id.* at 14-15.

³⁸ Draft opinion, USCIS Administrative Appeals Office, In Re: Gulf Coast Funds Management, “Petition for Designation as a Regional Center . . . ,” at 2.

commercial enterprise knowing that he has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. *Matter of Izummi*, 22 I&N Dec. 169, 186 (Comm'r 1998). That decision further notes: "True fair market value cannot be known five years in advance" and "assumes the existence of a market." The decision continues:

The alien must go into the investment not knowing for sure if he will be able to sell his interest at all after he obtains his unconditional permanent resident status; and if he is successful in selling his interest, the sale price may be disappointingly low (or surprising[ly] high and more than what he paid). This way, the alien risks both gain and loss.

Id. at 186-87.

The applicant did not respond to the [California Regional Center] director's concern that the conversion to stock with an estimated fair market value of [redacted] constitutes a redemption agreement. As the applicant has not explained how it can estimate the fair market value five years in the future, especially if no market may exist at that time, the AAO upholds the [California Regional Center] director's concerns.³⁹

Although AAO's draft opinion transmitted to you stated that the conversion price estimation was an impermissible redemption agreement, about a month after your July 21, 2011, intervention in the issue, USCIS issued a Request for Additional Evidence to Gulf Coast on August 24, 2011.⁴⁰ The final opinion from AAO, issued after you became involved and dated September 1, 2011, stated: "[W]hile any stock conversion agreement must be examined carefully to that it does not effectively constitute a redemption agreement, the record now reflects that the proposed conversion of membership interests in each of the funds to common stock does not, in this case, amount to a redemption agreement."⁴¹

The opinion was completely rewritten, with the two-and-a-half page discussion in the draft opinion becoming a four-and-a-half page discussion in the final opinion that found exactly the opposite of the draft agreement. The final opinion concluded: "[T]he applicant has asserted through counsel that no such [redemption] agreement exists and all of the investors' funds will be fully at risk. In light of the above . . . the AAO is persuaded that no impermissible redemption agreement exists."⁴²

³⁹ *Id.* at 10.

⁴⁰ USCIS Administrative Appeals Office, In Re: Gulf Coast Funds Management, "Request for Additional Evidence," Aug. 24, 2011.

⁴¹ USCIS Administrative Appeals Office, In Re: Gulf Coast Funds Management, "Petition for Designation as a Regional Center . . .," Sep. 1, 2011, at 5.

⁴² *Id.* at 20.

An additional issue in the draft opinion was whether individual investors constituted “management.” The draft opinion stated that the facts “do not support a finding that the aliens would be sufficiently engaged in the management of the new commercial enterprise. . . . As the applicant made no attempt to resolve the director’s concerns on this issue, the AAO finds that the applicant has not overcome those concerns.”⁴³

In a reversal, the final AAO opinion stated: “The AAO is persuaded that the provision in GTA Automotive Investment Fund 1, LLC’s operating agreement indicated that the members will have certain rights, powers and duties normally granted to limited partners. . . . Accordingly, the AAO withdraws the director’s finding on this issue.”⁴⁴ Overall, the fourteen page draft opinion became a twenty-one page final opinion.

Documents indicate that the issues of the redemption clause and management were also a cause for individual visa applications to be held up. USCIS officials e-mailed each other before your July 21, 2011, meeting: “Do the I-526s that are on hold have the same problems with the redemption clause and management rights cited in the denial of the RC amendment request?”⁴⁵ The response came: “Yes, the I-526 petitions have the same documentation involving impermissible redemption clauses and the lack of management rights that are required by the regulation at 8 CFR 204.6(j)(5).”⁴⁶

Thus, the AAO’s final decision cleared the way for Gulf Coast’s many I-526 immigrant visa petition applications to be approved, which it appears the AAO’s draft opinion would not have permitted.

Additionally, the day of your July 21, 2011, meeting with senior USCIS officials to discuss Gulf Coast’s application—two days after Gulf Coast’s attorney e-mailed you “Terry [McAuliffe] asked me to remind you that we have not heard back yet on the VA Center’s certification yet”—the Virginia Center received its I-924 approval from USCIS.⁴⁷

Gulf Coast continued to make requests of USCIS in 2012 as increasing numbers of GreenTech investors applied for I-526 visas. It appears that as Gulf Coast’s I-526 investor petitions began to be processed in 2012, USCIS discovered fraud and national security issues with the investor applicants.⁴⁸

⁴³ Draft opinion, USCIS Administrative Appeals Office, In Re: Gulf Coast Funds Management, “Petition for Designation as a Regional Center . . .,” at 11.

⁴⁴ USCIS Administrative Appeals Office, In Re: Gulf Coast Funds Management, “Petition for Designation as a Regional Center . . .,” Sep. 1, 2011, at 11.

⁴⁵ Attachment 12.

⁴⁶ *Id.*

⁴⁷ USCIS, Re: Virginia Center for Foreign Investment and Job Creation, LLC, “Request for Designation as a Regional Center,” Jul. 21, 2011.

⁴⁸ See attachment to letter from Senator Grassley to Secretary Napolitano, Jul. 23, 2013.

In 2013, Gulf Coast continued to reach out to address these new issues. On January 23, 2013, Gulf Coast's general counsel (a different attorney than the one who represented Gulf Coast in 2010 or 2011) e-mailed you and a USCIS career employee responsible for overseeing the EB-5 program: "Further to our conversation today, I am writing to express our concern regarding the undue delay by USCIS in reviewing our petitions."⁴⁹ The e-mail concluded: "We greatly appreciate your assistance."⁵⁰

On January 29, 2013, Anthony Rodham followed up with an e-mail to you and the same USCIS career employee, stating: "*We really appreciate your assistance in looking into this matter for us to move our cases along.*"⁵¹ Two minutes later, you forwarded Rodham's e-mail to your subordinate overseeing the EB-5 program, adding an "Importance: High" designation.⁵² The subordinate subsequently e-mailed other USCIS employees: "The regional center has sent several inquiries into the cases and has requested that we expedite the pending cases."⁵³

Two days later after Rodham's e-mail to you, Gulf Coast's general counsel again e-mailed you, copying Anthony Rodham. The January 31, 2013, e-mail stated: "Further to my voicemail message this evening, we would like to request a brief in-person meeting with you tomorrow to discuss emergency issues regarding Gulf Coast Funds Management and GreenTech Automotive Inc."⁵⁴

Although you had spoken with Gulf Coast's general counsel on January 23, 2013, as well as met with Terry McAuliffe and spoken with Gulf Coast's prior attorney over the phone in 2011, you responded to the general counsel: "As the Director of this Agency, I do not adjudicate cases and am not the proper audience for a telephone call or a meeting about a particular case. I will forward your e-mail to the appropriate individual in the Agency."⁵⁵

Unlike the e-mail from Anthony Rodham, which you forwarded on with high priority, your forward of this e-mail simply stated: "Please handle however you deem appropriate."⁵⁶ Your e-mail sparked an extended discussion via e-mail which you were not included on. One of the attorneys from the Office of Chief Counsel e-mailed on February 1, 2013, in response to the request:

A meeting of this type would violate the Administrative Procedures Act because we are providing this applicant an extra opportunity that is not provided for [in] our regulations related to EB-5 applications. Providing an applicant an extra opportunity outside our regulations circumvents our

⁴⁹ Attachment 13.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Attachment 14.

⁵⁵ *Id.*

⁵⁶ *Id.*

regulations. The APA requires us to provide notice and comment of the procedures we follow in our adjudications. Every time we deviate from those regulations we are violating the APA.⁵⁷

The USCIS Ethics Officer followed up with an e-mail stating:

I concur I think the APA is the driving force here, but I think it also raises an impartiality issue if we entertain pre-decisional meetings of this sort with particular applicants and petitioners. It is not a concern to have meetings with particular industries, trade groups, bar associations, etc., on systemic issues that are not case specific, so long as we are willing to meet with all.⁵⁸

This does not seem to be the policy you followed in meeting with Mr. McAuliffe in the summer of 2011.

Just two hours after the e-mails from the Office of Chief Counsel and the USCIS Ethics Officer, you were forwarded an e-mail by DHS Assistant Secretary Douglas Smith, which DHS Chief of Staff Noah Kroloff was copied on.⁵⁹ The e-mail was written by Gulf Coast's general counsel and stated: "Doug, [p]er our discussion, see details below. Please call me back . . . for any status updates. I can't emphasize enough that this is an emergency situation for the Company so we really appreciate your efforts in helping to get these cases adjudicated as soon as possible."⁶⁰

The e-mail then included a list of twelve individual investors, their WAC numbers, and the date their petition was filed, the same type of non-legal or policy information Gulf Coast's attorney had provided you directly with in the summer of 2011. Assistant Secretary Smith's e-mail forwarding this information to you implied that the two of you had spoken about the issue separately, stating: "**Ali, [h]ere is a quick summary for you.**"⁶¹ Again, you forwarded the e-mail on to your USCIS subordinates.⁶²

Up to this date, the allegations that I had heard regarding your intervention in Gulf Coast's case revolved around their amendment application, not around the visa applications of specific investors. Last week I sent the Federal Bureau of Investigation a letter which referenced Gulf Coast's I-526 application for a vice president of Huawei Technologies.⁶³ I also sent you a letter that included a March 12, 2013, e-mail to you which indicated that there was a fraud or national security hold on "all 21" of Gulf

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Attachment 15.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Attachment 1 to letter from Senator Grassley to Director Mueller, Jul. 23, 2013.

Coast/GreenTech's pending I-526 visa cases.⁶⁴ You responded to the March 12, 2013, e-mail by writing: "I need to give some thought to how I should respond to the inquiry I rec'd from the Dept about these matters, as I want to keep the FDNS [Fraud Detection and National Security directorate] concerns close hold."⁶⁵

However, I have now obtained an internal USCIS document which states: "On May 23, 2013, FDNS HQ authorized release for the hold on all Gulf Coast filings. At this time, all files are being returned to adjudication for continued processing."⁶⁶ That same day, USCIS staff e-mailed within the agency: "[T]his RC has received some press. I think USCIS should prepare for potential negative press if we approve any investors."⁶⁷

This extensive documentary record appears to be at odds with your claims that you do not involve yourself in individual cases and that the one meeting you acknowledged with Mr. McAuliffe was "the extent of the interaction."⁶⁸ In fact, it appears that you inserted yourself into the AAO process in an unusual way by reviewing and allegedly rewriting a draft AAO opinion to benefit Gulf Coast and GreenTech. At a minimum, you clearly created the impression among senior career staff that you were giving special treatment to these applicants.

Therefore, please answer the following questions:

1. How do the interactions I have outlined above square with your testimony before the Senate Committee on Homeland Security and Governmental Affairs?
2. On what date and at what location did your meeting with Terry McAuliffe take place? Please provide a list of all individuals who attended any portion of the meeting.
3. Why did you tell Gulf Coast's general counsel in January 2013 that you were not the appropriate audience for a telephone call or a meeting about a particular case, when in the summer 2011 you had at least one telephone call with Gulf Coast's attorney and a meeting with Terry McAuliffe?
4. How and why did you obtain a draft copy of the AAO decision involving Gulf Coast?
5. According to the then-Chief of AAO, he was out of the country and unaware that you were reviewing the draft decision. Why did you not consult with him about your interest in the draft decision?

⁶⁴ Attachment 3 to letter from Senator Grassley to Director Mayorkas, Jul. 24, 2013.

⁶⁵ *Id.*

⁶⁶ Attachment 17.

⁶⁷ Attachment 16.

⁶⁸ Testimony of Alejandro Mayorkas before the Senate Committee on Homeland Security and Governmental Affairs, July 25, 2013 (hereinafter HSGAC testimony), at 23.

6. Did you meet with any other AAO personnel about the draft decision? If so, please describe those meetings in detail.
7. Can you cite to any other case in which you obtained a draft AAO decision and provided edits or feedback outside the “precedent decision” process or a Senior Policy Council meeting? If so, please describe any other such cases in detail.
8. Why do you believe it is appropriate for the Director to review draft AAO decisions in certain cases involving politically-connected applicants and suggest changes outside the normal AAO process that benefit those applicants?
9. Do you agree that your actions in this case created an appearance of special treatment which undermines the integrity of the agency’s work? If not, then how do you explain why several career officials have expressed those exact concerns in internal emails and in protected disclosures to my office?

Thank you in advance for your cooperation in this matter. Please respond to these questions by August 7, 2013. Should you have any questions regarding this letter, please contact Tristan Leavitt of my staff at (202) 224-5225. I look forward to your prompt response.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

ATTACHMENT

cc: The Honorable Thomas Carper, Chairman
U.S. Senate, Committee on Homeland Security and Governmental Affairs

The Honorable Tom A. Coburn, Ranking Member
U.S. Senate, Committee on Homeland Security and Governmental Affairs

Charles K. Edwards, Deputy Inspector General
U.S. Department of Homeland Security

Attachment 1



**U.S. Citizenship
and Immigration
Services**

APR 02 2010

Memorandum

TO: USCIS Employees

FROM: Alejandro N. Mayorkas 
Director

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

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

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

Purpose

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

Guidance

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

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

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

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

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

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

Contact Information

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

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

1. Online through the USCIS intranet at <http://osi.uscis.dhs.gov/Forms/Complaint>;
2. Fax at (202) 233-2453; or
3. Mail at the following address:

Chief, Investigations Division
Office of Security and Integrity MS 2275
U.S. Citizenship and Immigration Services
633 Third Street, NW, 3rd Floor
Washington, DC 20529-2275

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

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

Attachment 2

From: Senior USCIS Career Official
Sent: Friday, April 12, 2013 10:35 AM
To: USCIS Career Officials
Subject: RE: seeking deadline comment on Virginia senator's request for USCIS review

Hi USCIS Official

We absolutely gave special treatment to Green Tech at the directive of D1. D1 was working directly with the RC's atty, [REDACTED]. Additionally, I would call a wholesale rewrite of the AAO's decision by the front office special treatment. Look at the first draft in the attached email and the final version, attached. Here is a taste.

Thanks,

Senior USCIS Career Official

From: USCIS Official
Sent: Friday, April 12, 2013 9:55 AM
To: USCIS Officials
Subject: FW: seeking deadline comment on Virginia senator's request for USCIS review

From: USCIS press sec
Sent: Friday, April 12, 2013 9:53 AM
To: Mayorkas, USCIS officials
Subject: RE: seeking deadline comment on Virginia senator's request for USCIS review

Good morning, All.

I just spoke with [REDACTED]. He is heading out of the office for the majority of the day and wanted to touch base before he was unavailable.

I relayed to him that we're trying to determine if Senator Garrett's letter arrived. He understood completely as he didn't receive it until late last night himself.

With that, we are not on deadline today with Watchdog Virginia.

In talking to [REDACTED] he did ask two additional questions that we'll need to address.

[REDACTED]

- Did Terry McAuliffe and Director Mayorkas (or others at USCIS) have any face-to-face or telephonic meetings to discuss GreenTech or the EB-5 program?
- Did USCIS expedite or provide special treatment to any EB-5 petitions associated with GreenTech or Terry McAuliffe?

Any thoughts? Should we meet to discuss?

I'll let everyone know the direction the AP (Mississippi) reporter is taking as soon as I talk to him. He's currently dealing with tornado coverage in the state.

Adding [REDACTED] and [REDACTED] to last night's thread. r [REDACTED]

[REDACTED]
Press Secretary
U.S. Citizenship and Immigration Services
Department of Homeland Security
[REDACTED]

From: USCIS press sec

Sent: Thursday, April 11, 2013 11:57 PM

To: Mayorkas, Alejandro N [REDACTED]@uscis.dhs.gov); [REDACTED]

USCIS officials [REDACTED]

Subject: FW: seeking deadline comment on Virginia senator's request for USCIS review

All,

Here's the second GreenTech related email for tonight. [REDACTED] from Watchdog Virginia forwarded the following to my attention. It's from Virginia State Senator Tom Garrett. [REDACTED] would like USCIS to provide a response regarding the letter. We, of course, would only reply to acknowledge receipt of the letter (if it indeed has arrived) and ensure that we will respond directly to Senator Garrett in a timely manner.

Please note that [REDACTED] is also following up with ICE regarding what happened to the 1,271 conditional residents during the history of the EB-5 program who have been denied their request(s) to remove conditional status. He wants to know if they are still in the country or if they have departed/been deported. ICE is explaining their enforcement priorities to him, which will probably lead him to conclude the Department doesn't know if these people are or are not in the country.

Did we receive this correspondence from Senator Garrett today? Thanks.

r [REDACTED]

[REDACTED]
Press Secretary
U.S. Citizenship and Immigration Service, DHS
[REDACTED]

From: Watchdog Virginia [REDACTED]

Sent: Thursday, April 11, 2013 10:12 PM

To: USCIS press sec [REDACTED]

Subject: seeking deadline comment on Virginia senator's request for USCIS review

[REDACTED]


I was on the road yesterday and apologize for not getting back to you. Meantime, the attached letter landed on my desk and moved to the top of my to-do list.

Could you get a response that I can use Friday morning?

Thanks,



Senator Garrett Requests Federal Review

April 11, 2013

Louisa, Va-- Today, Senator Tom Garrett of Louisa sent a letter to Director Mayorkas of U.S. Citizenship and Immigration Service requesting a federal review. Please see the attached letter for further details.





Attachment 3

From: USCIS Employee
Sent: Wednesday, July 28, 2010 6:26 PM
To: USCIS Immigrant Investor Program
Cc: USCIS Employees
Subject: FW: GTA Project
Attachments: Letter to Senator Warner - GTA.pdf; Cover Letter.pdf

Hi [REDACTED]

Can you give us a status on this case, and an ETA for a decision (based on normal, non-expedite timeframes.) As [REDACTED] notes, there is no expedite request here. We just need to know what is going on with the case as they are going straight to the Director

Thanks,

[REDACTED]

From: USCIS Employee
Sent: Wednesday, July 28, 2010 3:06 PM
To: USCIS Employee
Subject: FW: GTA Project

[REDACTED]
Can you just see if CSC has received the response to the RFE and if it is currently with an officer? There is no expedite request here.

Thanks,

[REDACTED]

[REDACTED]

From: USCIS Employee
Sent: Wednesday, July 28, 2010 2:58 PM
To: USCIS Employee
Cc: USCIS Employees
Subject: FW: GTA Project

[REDACTED] – I vaguely remember responding to the Warner letter. Please just advise of the case status. I do note that even their initially rejected request was filed just 6 months ago. Considering our goal on adjudicating regional center requests is 6 months it's a little early to complain about delays.

From: Mayorkas, Alejandro N
Sent: Wednesday, July 28, 2010 2:12 PM

[REDACTED]

To: USCIS Employee [REDACTED]
Cc: USCIS Employees [REDACTED]
Subject: FW: GTA Project

[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

Alejandro N. Mayorkas
Director
United States Citizenship and Immigration Services

From: Smith, Douglas A [mailto:[REDACTED]@dhs.gov]
Sent: Wednesday, July 28, 2010 2:08 PM
To: Mayorkas, Alejandro N
Subject: FW: GTA Project
Importance: High

A – Thanks! Looking forward to our dinner when you get back. Have a great vacation.

From: Terry McAuliffe [mailto:[REDACTED]@wmgta.com]
Sent: Wednesday, July 28, 2010 1:31 PM
To: Smith, Douglas A
Subject: GTA Project

Doug:

It was great speaking with today. As I mentioned to you, I am the chairman of Greentech Automotive (GTA). GTA is a US-based company dedicated to developing and producing affordable, environment-friendly, and energy-efficient vehicles. We are committed to bringing "green" jobs to the U.S. GTA is partially funded by USCIS EB-5 program through Gulf Coast Funds Management (GCFM) regional center, which was initially approved in August 2008 to cover Mississippi and Louisiana. GCFM filed an Amendment Application in Jan 2010 to expand its operations to Virginia and Tennessee to support GTA's efforts.

I have been extremely frustrated by the USCIS approval process which has delayed our business plan and job creation efforts. The major delay was caused by incorrect information being given to us by USCIS officials regarding the extension process. You should be aware that Senator Warner and other Members of Congress have made inquiries on this project. I would greatly appreciate your attention to this matter as it is imperative to our country that we begin to get people back to work, especially in the manufacturing sector.

The following is GCFM's Amendment timeline:

- Aug 18, 2008: GCFM approved as Regional Center
- Jan 12, 2010: GCFM filed Amendment Application to USCIS – 1st try
- Feb 19, 2010: USCIS rejected on technical issue and GCFM refiled - 2nd try
- May 13, 2010: USCIS Request for Evidence (RFE) by Aug 3
- Jul 19, 2010: GCFM filed answers to RFE – 3rd try

Attached:

1. Apr 28, 2010: Sussex County Board of Supervisors inquiry letter to Senator Warner

2. Jul 19, 2010: GCFM cover letter to USCIS RFE

Terry

WM GreenTech Automotive Corp

Website: www.wmgt.com

Notice of Privilege/Confidentiality:

Privileged and Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply email. Please advise immediately if you or your employer does not consent to internet email for messages of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of this company shall be understood as neither given nor endorsed by it.

Attachment 4

From: USCIS Employee
Sent: Thursday, August 19, 2010 11:59 AM
To: USCIS Employees
Cc: USCIS Employee
Subject: RE: Gulf Coast Funds: amendment denial
Attachments: MCFI AAO decision final 12 21 09.doc; Gulf Coast RC amd denial 8-11-10.pdf

Tracking:	Recipient	Read
	[REDACTED]	Read: 8/19/2010 12:01 PM
	[REDACTED]	Read: 8/19/2010 12:01 PM
	[REDACTED]	Read: 8/19/2010 12:00 PM

Hi [REDACTED],

I have added [REDACTED] since you are in training today.

The CSC sent me a copy of the denial after it was sent - I thought that I had forwarded it to you - sorry if I forgot to. I agree with their decision to deny the amendment. The basic issues in the case are:

1. The EB5 Regional Center statutory framework requires that the geographic focus of a regional center must be on a contiguous area. Currently Gulf Coast's (GC) approved geographic area is the State of Louisiana and the State of Mississippi. A couple of years ago GC asked SCOPS (back when we were unfortunately entertaining these types of discussions) if they could add the State of Virginia to their geographic scope. SCOPS told them that USCIS couldn't approve this request because VA is not contiguous to LA and MS.

GC has now requested to add the State of Tennessee and certain counties in the State of Virginia to their geographic area in order to "link up" LA and MS to VA. However, the economic analysis provided does not provide data for the requested area; instead it simply focuses on three select counties located in MS, TN and VA. GC has not demonstrated that they will actually focus EB-5 capital investment activities within the requested expanded region.

2. 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 GC as required by the statutory and regulatory framework.

Recommendation: [REDACTED] should file an appeal if he feels that the CSC's decision to deny was inappropriate. If he files a brief and supporting evidence with the appeal then the CSC will review the documentation to see if it overcomes the denial of the amendment. If it doesn't then the case will be sent to the AAO will perform a de novo review.

[REDACTED] would rather try to wrangle an approval through political means by contacting the front office rather than follow established adjudicative processes.

Note that [REDACTED] is bitter because the AAO denied his MCFI proposal (attached). A quick read of that decision shows in painful detail the gamesmanship that [REDACTED] puts forth in the EB-5 Regional Center cases that he represents (for example, in the MCFI case the job creation estimates for the RC's one capital investment project exceeded the total number of unemployed within the proposed geographic area of the RC.)

[REDACTED]

Thanks,

██████████
-----Original Message-----

From: USCIS Employee
Sent: Thursday, August 19, 2010 11:01 AM
To: USCIS Employee ; USCIS Employee
Subject: Fw: Gulf Coast Funds: amendment denial

I thought CSC was going to tell us before a decision was made?

----- Original Message -----

From: USCIS Employee
To: USCIS Employee
Cc: USCIS Employee
Sent: Thu Aug 19 10:54:47 2010
Subject: FW: Gulf Coast Funds: amendment denial

██████████ – Please have someone take a look at this and let me know if we ██████████ in any way. To be clear, there is no desire to influence the outcome; simply to understand if there is any basis for the complaint.

From: USCIS Official [mailto:██████████]
Sent: Wednesday, August 18, 2010 11:22 AM
To: USCIS Official
Subject: FW: Gulf Coast Funds: amendment denial

From: Mayorkas, Alejandro N [mailto:██████████]
Sent: Tuesday, August 17, 2010 7:54 PM
To: USCIS Official
Subject: Fw: Gulf Coast Funds: amendment denial

----- Original Message -----

From: Doug Smith <██████████>
To: Mayorkas, Alejandro N
Sent: Tue Aug 17 19:52:13 2010
Subject: Fw: Gulf Coast Funds: amendment denial

██████████

This is what I called you about. Unless I am missing something, this is just crazy.

Doug Smith
[Redacted]
[Redacted]
Department of Homeland Security
(202) [Redacted]

----- Original Message -----
From: Terry McAuliffe <[Redacted]>
To: Doug Smith <[Redacted]@dhs.gov>
Sent: Tue Aug 17 17:27:24 2010
Subject: FW: Gulf Coast Funds: amendment denial

-----Original Message-----
From: [Redacted] [mailto:Green Tech Employee]
Sent: Tuesday, August 17, 2010 2:35 PM
To: 'Terry McAuliffe'
Cc: GreenTech
Subject: FW: Gulf Coast Funds: amendment denial

[Redacted] This approval process becomes ridiculous. [Redacted]

-----Original Message-----
From: Gulf Coast Attorney [Redacted]
Sent: Tuesday, August 17, 2010 1:37 PM
To: GreenTech Employees [Redacted]
Subject: Gulf Coast Funds: amendment denial

[Redacted]: Attached is a copy of the CSC's decision denying your amendment request, which we just received. The decision is poorly reasoned and wrong, in my opinion. However, I suggest you do NOT appeal to the Administrative Appeals Office, as you will just lose there.

I can explain more by phone, as well as discuss your various options. Let me know when you want to have a conf. call to discuss. [Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

This e-mail and any attachments may be confidential and may be protected by the attorney/client privilege, work product doctrine, or other nondisclosure protection. If you believe that it has been sent to you in error, you may not read, disclose, print, copy, store or disseminate the e-mail or any attachments or the information in them. Please reply to the sender that you have received the message in error. Then delete it. Thank you.



Attachment 5

From: USCIS career employee
Sent: Thursday, May 26, 2011 1:57 PM
To: USCIS employees
Cc:
Subject: FW: EB5 check

Status report please. I intend to push back somewhat on this if we can validate no failings on our part. At a minimum, our processing times should be respected and inquiries such as this should not be made unless we are ONPT.

From: USCIS Deputy Director
Sent: Thursday, May 26, 2011 1:50 PM
To: USCIS career employee
Subject: FW: EB5 check

Please see when this case was filed. We can then decide whether it's gone into a "black hole."

From: Mayorkas, Alejandro N [mailto: @dhs.gov]
Sent: Thursday, May 26, 2011 1:15 PM
To: USCIS Deputy Director
Subject: FW: EB5 check

Here is another EB-5 case about which there appears to be some concern re delays. Can you look into this? We need to continue to bring great focus with respect to this program.
Thanks very much. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services

From: Doug Smith [mailto: @dhs.gov]
Sent: Thursday, May 26, 2011 11:57 AM
To: Mayorkas, Alejandro N
Subject: EB5 check

A – you mind seeing if you can get any intel on this one. Seems to be in a black hole. Thanks

Petitioner: Virginia Center for Foreign Investment and Job Creation LLC
Petition Number: RCW 1111850202

Attachment 6

From: Mayorkas, Alejandro N
Sent: Friday, June 24, 2011 03:48 PM
To: USCIS Employee
Subject: RE: EB5 check

Thank you, [REDACTED]

I understand there to be two deficiencies, one with respect to the timeline for the project and the other with respect to the specific location of the automotive plant. A few questions come to mind:

- Were these deficiencies identified in response to the prior submission, or has the new submission changed so as to raise these issues for the first time?
- How can a proposal be required to identify the specific location of the plant before the proposal is approved? If I am a petitioner, I would not purchase real estate to build the plant before I knew the proposal was approved.
- Are time estimates sufficient for the timeline?

Thanks very much. I am eager to learn as much as possible about the EB-5 program because it is the source of considerable attention and, given the job creation potential, appropriate interest.

Thanks so much. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services



From: USCIS Employee
Sent: Friday, June 24, 2011 3:21 PM
To: Mayorkas, Alejandro N
Subject: FW: EB5 check

Here it is

From: USCIS Employee
Sent: Friday, June 17, 2011 4:44 PM
To: USCIS Employee
Cc: USCIS Employees
Subject: RE: EB5 check

Hi [REDACTED],



FYI - The CSC issued an RFE on this case for one specific issue (after I talked the ISO off of the ledge for including a ridiculous issue given the Gulf Coast history), attached.

I am going to be on leave this next week, but will be in DC on Monday morning through Friday afternoon.

Thanks,

From: USCIS Employee
Sent: Thursday, June 09, 2011 5:07 PM
To: USCIS Employee
Subject: RE: EB5 check

Please let me know when the case is assigned for adjudication.

Thanks,

From: USCIS Employee
Sent: Thursday, June 09, 2011 3:31 PM
To: USCIS Employee
Subject: RE: EB5 check

Yes. Please expedite based on the previous filing history.

From: USCIS Employee
Sent: Thursday, June 09, 2011 3:25 PM
To: USCIS Employee
Subject: RE: EB5 check

Hi,

This case is a re-filing in the sense that it is filed by the entity that is going to operate the VA-based factory for the Greentech Automotive plant. You may recall that we denied a succession of Gulf Coast RC amendments that sought to extend the geographic scope of that RC to Southern VA so that this VA automotive plant could be an EB-5 project for the LA/MS-based regional center. The last USCIS action in those cases was to deny a motion to reopen the Gulf Coast RC amendment denial and to certify the decision to the AAO where it remains pending.

Let me know if you want me to ask the CSC to consider expediting this case in light of this tortured history.

Thanks,

From: USCIS Employee
Sent: Tuesday, June 07, 2011 11:14 PM

To: USCIS Employee [REDACTED]
Subject: Fw: EB5 check

Hi [REDACTED] - do we know if this is a re-filed case?

From: USCIS Dep Dir [REDACTED]
Sent: Tuesday, June 07, 2011 03:49 PM
To: 'Mayorkas, Alejandro N' [REDACTED]
Subject: RE: EB5 check

Ali,

SCOPS checked the status of this case. It was filed on 4/28/11. The processing time for an I-924 is 6 months so this case is not off track or in a black hole. I don't know what the petitioner claims so if there is something else that we are not aware of please let me know.

Thanks Ali,
[REDACTED]

From: Mayorkas, Alejandro N [REDACTED]
Sent: Thursday, May 26, 2011 1:15 PM
To: USCIS Dep Dir [REDACTED]
Subject: FW: EB5 check

[REDACTED]
Here is another EB-5 case about which there appears to be some concern re delays. Can you look into this? We need to continue to bring great focus with respect to this program.
Thanks very much. Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[REDACTED]

From: Douglas Smith [REDACTED]
Sent: Thursday, May 26, 2011 11:57 AM
To: Mayorkas, Alejandro N
Subject: EB5 check

A - you mind seeing if you can get any intel on this one. Seems to be in a black hole. Thanks

Petitioner: Virginia Center for Foreign Investment and Job Creation LLC
Petition Number: [REDACTED]
[REDACTED]

Attachment 7

[REDACTED]

From: USCIS employee [REDACTED]
Sent: Thursday, July 07, 2011 5:01 PM
To: USCIS employees [REDACTED]
Cc: USCIS employees [REDACTED]
Subject: Fw: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Importance: High

Hi CSC,

Can you provide a list of GCFM RC-associated cases that are either beyond initial review target time or have been RFE'd with responses that are over 30 days without a final case action?

Also, can you please provide a synopsis of the outstanding issues in these cases, if any?

It would be very helpful if we could have this by COB tomorrow so that Director Mayorkas can be provided with the information this week.

Thanks,

[REDACTED]

From: USCIS employee [REDACTED]
Sent: Thursday, July 07, 2011 04:36 PM
To: USCIS employees [REDACTED]
Cc: [REDACTED]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

I thought we had addressed the GCFM concerns? What's the basis for the current delay?

From: Mayorkas, Alejandro N
Sent: Thursday, July 07, 2011 4:33 PM
To: USCIS employees [REDACTED]
Subject: FW: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Please address with appropriate urgency. Thank you.

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services

[REDACTED]

From: Mayorkas, Alejandro N [mailto:[REDACTED]@dhs.gov]
Sent: Thursday, July 07, 2011 4:32 PM
To: Gulf Coast attorney [REDACTED]
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

██████████
Thank you for your e-mail below, which you and I just discussed by telephone. I will follow up.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services

From: Gulf Coast attorney ██████████
Sent: Thursday, July 07, 2011 4:09 PM
To: Mayorkas, Alejandro N
Cc: ██████████
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)
Importance: High

Dear Director Mayorkas,

The Regional Center notified me earlier this week that they have received word of a possible lawsuit being filed against them for the delays associated with the I-526 petitions. I had not wanted to bother you with the concerns but feel the sense of urgency has escalated and requires your attention. Today they received word that investors are requesting refunds of their funds.

Please see quotes below from their offices in China:

"Have you got any positive news after the meeting with USCIS?? When do we expect to see the next I526, we ran out of excuses already.

"Because of the slow issuance of the I526, we are facing many unhappy agents"

...we are facing extreme pressure fr agents and clients. I am afraid if the I-526 situation cannot ratify in the very near future, clients will WD fr the program. Since the government had made announcement the fast processing of shelve ready project, five month I-526 and one month RFEs, why can't we take affirmative action base on this?

Is there anything we can do to have the RFE's adjudicated and direction provided on the remaining cases? The first RFE response was received on February 16, 2011 by the Service. The petitions that have not received RFE's are pending as far out as one year.

The framework of the entire EB-5 program could be threatened if there is a report of unrest combined with legal action taken against the Center and the GTA project. We want to avoid this and move forward on creating jobs while making green cars in the U.S.

Thank you for your time.



From: Mayorkas, Alejandro N [mailto: [REDACTED]@dhs.gov]
Sent: Tuesday, June 28, 2011 5:30 PM
To: Gulf Coast attorney [REDACTED]
Subject: RE: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)

Thank you, [REDACTED]. We will follow up on this.
Ali

Alejandro N. Mayorkas
Director
U.S. Citizenship and Immigration Services
[REDACTED]

From: Gulf Coast attorney [REDACTED]
Sent: Tuesday, June 28, 2011 10:13 AM
To: Mayorkas, Alejandro N
Cc: [REDACTED]
Subject: GULF COAST FUNDS MANAGEMENT REGIONAL CENTER (GCFM)
Importance: High

Dear Director Mayorkas:

I very much appreciate the opportunity to write to you today to bring my concerns to your attention. The EB-5 program is a wonderful opportunity for the United States and for foreign investors looking to invest in America. That being said when I-526 petitions are delayed indefinitely and USCIS processing times are inaccurate the investors begin to doubt the integrity of the individual investment as well as the Eb-5 program itself. GCFM is investing in the GreenTech Automotive project which is a United States automobile company committed to the advancement of clean automobile technology. GTA is developing vehicles that are energy-efficient, affordable, and built in the United States by American workers. Led by Terry McAuliffe, an international leader in politics, business, and promoting green energy, GTA was established to carry out his vision that "no green technology is truly green unless it is affordably green." Most importantly GTA is bringing jobs to the U.S. rather than sending jobs abroad.

GTA received 15 I-526 approvals on the project and during the time the issues were being addressed on the original amendment to the GCFM Regional Center, the adjudications came to an abrupt halt. Then earlier in 2011, the four investors received requests for additional evidence. Investor's counsel responded to the initial RFE and then moved to supplement each of the other pending petitions with additional information. The GCFM Regional Center worked directly with our office in responding to the remaining 3 RFEs. Once the responses were submitted, I contacted the Service to

[REDACTED]	[REDACTED]	[REDACTED]	

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