

STATEMENT OF JOHN ROTH

**INSPECTOR GENERAL
U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE
COMMITTEE ON HOMELAND SECURITY
U.S. HOUSE OF REPRESENTATIVES**

***CONCERNING*
LEADERSHIP CHALLENGES AT THE DEPARTMENT OF HOMELAND
SECURITY**

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Chairman McCaul, Ranking Member Thompson, and members of the Committee, thank you for your invitation to testify today regarding our investigation into the complaints made against Alejandro Mayorkas regarding his management of the Employment-Based Fifth Preference (EB-5) program when he was Director of U.S. Citizen and Immigration Services (USCIS). As you know, we recently issued a written report of the results of our investigation, and my testimony here today will summarize what we found.

We undertook this investigation after receiving allegations from career USCIS employees that Alejandro Mayorkas, then-Director of USCIS and current Deputy Secretary of the Department of Homeland Security, was exerting improper influence in the normal processing and adjudication of applications and petitions in a program administered by USCIS. Specifically, we were told that Mr. Mayorkas was in contact, outside the normal adjudication process, with specific applicants and other stakeholders in the EB-5 program, which gives residency preference to aliens who agree to invest in the U.S. economy to create jobs for U.S. citizens. We were also told he was exerting influence to give these individuals preference and access not available to others.

The scope of our investigation was to determine whether Mr. Mayorkas engaged in conduct that would lead a reasonable person to believe that specific individuals or groups were given special access or consideration in the EB-5 program.

What we found

As a result of our inquiry, we found:

- USCIS personnel, including Mr. Mayorkas, recognized the risks to the EB-5 program if benefits were granted without transparency and were not adjudicated according to statute, regulations, and existing USCIS policy governing EB-5 matters. USCIS therefore took pains to ensure all communications with stakeholders were properly documented and to ensure the process for deciding on petitions and applications closely followed statute, regulations, and established policy. Indeed, USCIS was obligated by law to follow the procedures set forth in the regulations. We found a number of instances in which Mr. Mayorkas declined to become involved in certain matters, stating that he did not think it would be appropriate for the Director to do so.
- In three matters pending before USCIS, however, Mr. Mayorkas communicated with stakeholders on substantive issues, outside of the normal adjudicatory process, and intervened with the career USCIS staff in ways that benefited the stakeholders. In each of these three instances, but for Mr. Mayorkas' intervention, the matter would have

been decided differently.

- We were unable to determine Mr. Mayorkas' motives for his actions. In each instance he remembered, Mr. Mayorkas asserted that he intervened to improve the EB-5 process or to prevent error. As a result, he claimed that he took a hands-on approach when a case warranted his personal involvement. Mr. Mayorkas told us that his sole motivation for such involvement was to strengthen the integrity of the program; he said he had no interest in whether a particular application or petition was approved.
- Regardless of Mr. Mayorkas' motives, his intervention in these matters created significant resentment in USCIS. This resentment was not isolated to career staff adjudicating within the EB-5 program, but extended to senior managers and attorneys responsible for the broader USCIS mission and programs.
- The juxtaposition of Mr. Mayorkas' communication with outside stakeholders on specific matters outside the normal procedures, coupled with favorable action that deviated from the regulatory scheme designed to ensure fairness and evenhandedness in adjudicating benefits, created an appearance of favoritism and special access.

Our witnesses

During the course of our work, we identified a significant number of DHS employees—more than 15—with varying levels of responsibility and authority, including some very senior managers at USCIS and USCIS' Office of the Chief Counsel (OCC), who each had direct contact with Mr. Mayorkas and were in a position to witness the events. Each conveyed the same factual scenario: certain applicants and stakeholders received preferential access to DHS leadership and preferential treatment in either the handling of their application or petition or regarding the merits of the application or petition. Other employees with whom we spoke did not have direct contact with Mr. Mayorkas, but witnessed significant deviations from the normal process for certain applicants. Many witnesses provided emails, written contemporaneously with the events, to support their allegations of special access and treatment.

The number and variety of witnesses is highly unusual. It is also quite unusual that a significant percentage of the witnesses we interviewed would talk to us only after being assured that their identities would remain confidential. Being a whistleblower is seen to be hazardous in the Federal Government, and a typical investigation would have one or perhaps two. That so many individuals were willing to step forward and tell us what happened is evidence of deep resentment about Mr. Mayorkas' actions related to the EB-5

program. These employees worked in both USCIS headquarters and the California Service Center. Headquarters staff worked in Service Center Operations (the unit that supervised the California Service Center), the Administrative Appeals Office, the EB-5 program office, in USCIS leadership offices, and in OCC. The employees include current and retired career and non-career members of the Senior Executive Service, attorneys, all levels of supervisors, immigration officers, and those involved in fraud detection and national security.

We will protect the confidentiality of these courageous employees, who are protected from retaliation by the Whistleblower Protection Act and whose identities are protected under the provisions of the Inspector General Act. We hope that their actions will set an example for all potential whistleblowers that look to the Office of Inspector General to give them a voice.

Three examples

USCIS personnel consistently made allegations about the same three matters. In each instance, Mr. Mayorkas was in contact with individuals perceived by career USCIS employees to be politically powerful and intervened in the adjudicative process in unprecedented ways to the stakeholders' benefit. We describe these three instances in more detail in the body of this report. To help understand the facts, we have also included timelines for two of these matters in appendixes.

- LA Films Regional Center: Mr. Mayorkas ordered that a USCIS decision to deny a proposal to fund a series of Sony movie projects in Los Angeles be reversed after he was in contact with politically prominent stakeholders associated with the venture. Mr. Mayorkas later created a "deference review board," staffed with individuals he handpicked, to review a separate series of Time Warner movie projects. This board did not previously exist and was never used again after it voted to reverse the adjudicators' proposed denials. Remarkably, there is no record of the proceedings of this board.
- Las Vegas Regional Center: At the request of a U.S. Senator, Mr. Mayorkas intervened to allow expedited review of investor petitions involved in funding a Las Vegas hotel and casino, notwithstanding the career staff's original decision not to do so. The career staff noted that the purported urgency was of the applicant's own making and that the decision to expedite fell outside EB-5 program guidelines. Nevertheless, Mr. Mayorkas pressured staff to expedite the review. He also took the extraordinary step of requiring staff to brief Senator Reid's staff on a weekly basis for several months.

- Gulf Coast Funds Management Regional Center: Mr. Mayorkas intervened in an administrative appeal related to the denial of a regional center's application to receive EB-5 funding to manufacture electric cars through investments in a company in which Terry McAuliffe was the board chairman. This intervention was unprecedented and, because of the political prominence of the individuals involved as well as USCIS' traditional deference to its administrative appeals process, staff perceived it as politically motivated.

Mr. Mayorkas' actions in these matters created a perception within the EB-5 program that certain individuals had special access and would receive special consideration.

This concludes my testimony, I am happy to answer any questions you may have.