

**Opening Statement of Chairman Thomas R. Carper  
Business Meeting  
December 11, 2013**

*As prepared for delivery:*

This Committee is responsible for working with the Administration and others to help protect our nation's security at home and abroad. At the same time, we strive to make sure that federal agencies work better and more efficiently with the resources we entrust to them.

During my years of public service, I've learned that the most important ingredient in enabling organizations to work is leadership. That is the case both in government and the private sector, and in organizations large and small. Part of our shared responsibility here, then, is ensuring that we have effective leaders in place across our federal government. And, it's every Senator's constitutional role to provide advice and consent on the President's nominations in a thorough and timely manner as part of the Senate's confirmation process.

While Congress will soon wrap up the 2013 session with far less to show for it than many of us would have liked, this Committee today has the opportunity to take a small step toward filling a key leadership post in the Department of Homeland Security (DHS).

This Department, as we all know, plays a critical role in protecting our nation from harm whether the threat relates to terrorism from abroad, home grown extremists, cyberattacks, or natural disasters.

Leading this Department is a tough job even on a good day. It is made up of 22 disparate agencies spread out across the country. It does not yet have a consolidated headquarters here in Washington. And its employees have some of the lowest morale in the federal government.

An already difficult job has been made even harder because the Department does not have a Senate-confirmed leadership team in place.

I mean no disrespect to the current leaders serving in acting roles as Secretary and Deputy Secretary at DHS. They have done an admirable job, but acting management is no substitute for Senate-confirmed leadership. We need Senate-confirmed management at this critical Department. We don't need it next February or March. We need it now.

As of this week, eight months have passed since Deputy Secretary Holl Jane Lute stepped down from her post. And, nearly six months have passed since the President nominated Alejandro Mayorkas, currently the Director of U.S. Citizenship and Immigration Services, for that post.

That is simply too long for such a critical position to be vacant especially given that DHS has been without Senate-confirmed leadership in a number of other senior leadership positions, as well. The list of vacancies includes that of Secretary, as well as the heads of Customs and Border Protection, Immigration and Customs Enforcement, and the Inspector General. Working with the President, we need to do something about it. Today, we can.

Director Mayorkas has a distinguished record of leadership and public service. In fact, he has been confirmed by the Senate not once but twice – first as the U.S. Attorney for the Central District of California and again, in his current capacity, as the leader of U.S. Citizenship and Immigration Services (USCIS). He has also served as a partner at a major U.S. law firm, O’Melveny and Myers.

Notably, while serving as US Attorney, he was also appointed by the U.S. Attorney General to serve on her advisory committee on the subcommittee on ethics and government. Moreover, while a partner at O’Melveny & Myers, he served as chair of the firm’s Values Committee and was the recipient of the firm’s annual Values Award.

Everything I have learned about Director Mayorkas over the past year has led me to conclude that he is an exceptional candidate to be the next Deputy Secretary at DHS.

Since his confirmation—by voice vote—by the Senate in 2009, Director Mayorkas has led the effort to turn around an agency that was widely considered to be foundering and helped put it on the path to professionalism and competence.

He has worked to address national security and fraud risks. One of his first steps after being confirmed was to create an entire new Directorate responsible for policing visa issuance, reporting directly to him. Furthermore, even as Director Mayorkas and his team ratcheted up security checks, they have also dramatically reduced wait times for all categories of visas—no easy task, I’m sure.

And his implementation last year of the President’s Deferred Action for Childhood Arrivals program—a hugely complicated and challenging undertaking that has affected hundreds of thousands of people— has been widely praised. We need more of that kind of proven and committed leadership at DHS.

But don’t take my word for it. Director Mayorkas has received glowing accolades from a number of our colleagues who have worked closely with him. Among them are Senators Mary Landrieu, a valued member of this committee, and Dianne Feinstein, who recommended Director Mayorkas for his positions in both the Clinton and Obama Administrations.

We have also received dozens of letters from a distinguished, bipartisan group of individuals and organizations asking us to move forward with this nomination. I would ask consent that these letters be included in the record.

Among those writing on Ali’s behalf are many individuals whom a lot of us deeply respect -- Jane Holl Lute, the former Deputy Secretary, and Richard Skinner, the last Senate-confirmed Department of Homeland Security Inspector General who was nominated by President George W. Bush.

The list also includes other senior officials in the George W. Bush Administration -- Kenneth Wainstein, who was President George W. Bush's Homeland Security Advisor, and Robert Bonner and Ralph Basham (BASH-am), the last two Senate-confirmed Commissioners of Customs and Border Protection.

All of these individuals who have worked closely with Director Mayorkas have spoken highly of him, citing his integrity, his commitment to excellence, and his tenacity.

Now, I understand that some of our colleagues believe that we cannot move forward with consideration of Director Mayorkas' nomination until the OIG finishes its investigation into his management of the complex EB-5 investor visa program.

Respectively, I disagree. I believe we have waited long enough. Let me explain why.

I mentioned before that six months have passed since Director Mayorkas was nominated. Three days before his confirmation hearing on July 25, information about the OIG investigation was leaked to Congress and the media in a highly irregular manner.

The information that was leaked indicated that in September 2012, the OIG had received allegations about potential wrongdoing by Director Mayorkas. We now know that the OIG did not actually begin investigating these allegations for almost a year after receiving them.

To my amazement, Director Mayorkas has never been contacted by the OIG about this EB-5 related investigation. No phone call. No letter. No email. Nothing. He only learned of it after its existence had been leaked to Congress. Even then, he vigorously and effectively disputed the allegations in his interviews with Committee Members and staff, as well as at his confirmation hearing in July.

Unfortunately, rather than question the nominee about this matter and give him a chance to refute rumors, innuendo and hearsay, Republican members of the Committee boycotted his confirmation hearing and have continued to refuse to meet with Director Mayorkas to give him an opportunity to respond to these allegations from people whose names and faces we don't even know.

On July 31, Dr. Coburn and I sent the Inspector General a letter, seeking a status update on the investigation. I/We(?) was subsequently informed that the investigation would likely conclude in October.

On October 21, Dr. Coburn and I sent the Inspector General another letter asking for a status update. We received a response on November 4 offering a status update in 20 business days.

Last week on Monday, December 2nd, we took the IG up on this offer and a bipartisan group of Committee staff participated in a telephone call with the head of investigations at the OIG to receive an update on the status of the Mayorkas investigation.

During this call, the OIG confirmed that, to date, they have found no evidence of criminal wrongdoing by anybody at DHS, including Director Mayorkas. That's right. No evidence. None. Nada.

The OIG also estimated that it would still likely take several more months for the investigation to be completed. That's right. Months!

I appreciate that there are well-meaning career staff of the OIG who have been doing their best to conduct this investigation. But this lack of progress is unacceptable. It's also unfair. Not just to Mr. Mayorkas, but to a Department in need of leadership and to a nation that is counting on DHS to help protect its citizens every day.

With all of the turmoil surrounding the acting Inspector General right now—one of our sub-Committees is actually holding a hearing to examine the challenges facing his office next week and the President having just nominated a new IG – we have no guarantee that this investigation won't simply drag on and on.

Given that the investigation may well be months away from conclusion and that its expected end has already slipped several times -- and given the confirmation by the OIG that there is no evidence of criminal wrongdoing -- I have come to the conclusion that it is time to move forward.

I understand that Dr. Coburn will speak about the allegations that he has been hearing from whistleblowers. My staff asked to be put in contact with these individuals, but to date we have been unable to speak with them.

It is regrettable that these individuals have spoken with the press and with the staffs of Dr. Coburn and Senator Grassley, but this Committee's majority staff is being denied the opportunity to speak with them.

I am deeply disappointed that Dr. Coburn has taken the time to hear about these complaints, but he continues to refuse to meet with Director Mayorkas to allow him the chance to respond to any of the charges being made against him.

I just think that's unfair, particularly when Director Mayorkas vigorously refutes allegations of wrongdoing and has repeatedly sought the opportunity to speak with any Senators who have questions about his decisions and actions.

I just don't understand how a number of our Republican colleagues can repeatedly deny Director Mayorkas a simple meeting to discuss these allegations. Whatever happened to the Golden Rule?

And to top it off, the Minority still has not shared information about the allegations they have received with the Committee's Majority staff.

The allegations that have been made public, mostly by Senator Grassley, cluster around Director Mayorkas' administration of the EB-5 visa program. It is an extremely complicated

program that provides foreign investors an opportunity to immigrate to the United States in exchange for significant investments in job-creating enterprises here.

The primary complaint concerns an EB-5 related application by the Gulf Coast Funds Management regional center which has ties to Governor-elect Terry McAuliffe.

Anonymous sources have reportedly alleged that Director Mayorkas improperly intervened to help change a draft legal decision that would have adversely impacted Terry McAuliffe's former company, Greentech Automotive so that it would instead come out in Greentech's favor.

First of all, I think it is important that everybody understands that Greentech did not get what they wanted. I say again, the final decision in this case DID NOT come out in Greentech's favor.

Second, it is important to know that the author of the Greentech decision -- the former head of the Administrative Appeals Office at US Citizenship and Immigration Services, Mr. Perry Rhew (RUE) told my staff this week that he strongly disputed the allegation that Director Mayorkas had inappropriately influenced this decision.

Mr. Rhew told my staff that he was the person who made the final determination as to what went into the Appeals Office decision in this case—and he specifically stated that Director Mayorkas did not influence his decision making. If our friends on the Minority don't want to take our word for it, ask him for yourselves.

Many of the other allegations that have been made public about Director Mayorkas' management of the EB-5 program contend that applications appear to have been moved forward through Director Mayorkas's agency, and in his office particularly, without sufficient regard to security concerns.

However, in reviewing the leaked emails that were attached to these accusations, Director Mayorkas actually says the exact opposite.

I found this disconnect between the allegations and the emails presented as evidence so striking that I am going to read exactly what Director Mayorkas said in his email to subordinates on January 30 this year concerning an application for a Regional Center in Las Vegas:

“I agree that to grant an [expedited] request...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.”

This email directly refutes the claim that Director Mayorkas was pushing to expedite applications despite the security concerns raised by his subordinates.

In another email attached to one of the letters making accusations against Director Mayorkas, Director Mayorkas forwards a question about Mr. McAuliffe's company to subordinates and notes "I want to make sure that we are providing customer service consistent with our standards, but that we are not providing any preferential treatment."

Are these the actions of someone who is trying to exert improper influence or subvert security checks? I think any fair minded person would agree that the answer is NO!

The fact of the matter is that Director Mayorkas has been proactively addressing national security and fraud concerns in the EB-5 program for years. As I've discussed earlier, soon after being confirmed, Director Mayorkas took a number of administrative steps to address national security concerns. Where he lacked the administrative authority to improve the EB-5 program, he repeatedly appealed to Congress for the legislative authority that he needed.

Unfortunately, Congress dealt Director Mayorkas and his entire agency a bad hand when we reauthorized the EB-5 program in 2012. We failed to give the agency any of the legal authorities that Director Mayorkas and his team at USCIS had specifically requested in order to enable them to address the national security and fraud vulnerabilities that it could not address on its own.

Let me take a minute to walk you through some of Director Mayorkas' efforts to address some of this program's challenges.

In May of 2012, U.S. Citizenship and Immigration Services (USCIS) proactively reached out to the Majority and Minority staff of the Judiciary Committee and briefed them on several national security and fraud concerns in the EB-5 program under current law. USCIS followed up a month later, in June of that year, with a detailed set of legislative proposals that would have addressed many of these risks.

Unfortunately, the EB-5 program was reauthorized in September of 2012—with bipartisan support—without any of these changes. This reauthorization was a simple three-year extension of current law.

Earlier this year, during the Judiciary Committee debate on S. 744, the immigration reform bill, Senator Leahy introduced an amendment that made virtually all of the national security fixes that Director Mayorkas had requested.

While the comprehensive immigration reform bill passed the Senate with strong bipartisan support, as we all know, it is unfortunately stalled in the House.

Fortunately, Senate Judiciary Committee chairman Pat Leahy is working on a stand-alone bill to address these national security and fraud concerns. I would urge all of my colleagues concerned about security issues in the program to join me as a cosponsor of that bill.

That said, it strikes me as grossly unfair to punish Director Mayorkas for the inability of Congress to address the vulnerabilities in the EB-5 program that Director Mayorkas and his

team brought to our attention and asked us to fix. In essence, those of us in Congress failed to do our job, yet Director Mayorkas is taking the fall for our failure. How is that fair? It isn't!

Despite the absence of legislative authority to address the concerns he and others had, Director Mayorkas has still done much to address the national security and fraud vulnerabilities in the EB-5 program.

He created a new program office in Headquarters to manage the program and give it more oversight.

He increased staffing from nine people in 2009 to more than 80 today, including hiring senior economists and embedding national security officers.

And, he proactively engaged other agencies, such as the Securities and Exchange Commission, the FBI, and the Treasury Department to help police the program.

These are the actions of a dedicated, thoughtful, and committed public servant. They are the actions of a leader who is willing to make tough – but necessary – decisions in order to shake things up and improve a program. That is exactly the kind of leadership we need at DHS and across the federal government.

Not surprisingly, several of Director Mayorkas' actions have created unhappiness among some people who were involved in administering the EB-5 program. It's not always pleasant for people to hear they're not doing a very good job or that their skillset might be a better fit elsewhere. At the end of the day, though, Director Mayorkas made the difficult—and sometimes unpopular—decisions that he felt were needed to improve this program and move his agency forward. We may disagree, but I believe we need more leaders like that in our federal bureaucracy, not less of them.

I also believe that we need leaders who are committed to doing what they believe in their hearts is the right thing to do. At his confirmation hearing in July, I specifically asked Director Mayorkas about the allegations raised by some of these anonymous sources. Director Mayorkas testified before this Committee—under oath—that he has never put his finger on the scales of justice. I have seen no evidence since then that would lead me to question his veracity.

I said at Director Mayorkas' confirmation hearing, and I will say it again: “I do not believe that we can let rumor and innuendo spread by anonymous sources to rule the day.”

Some of our colleagues have been very critical of DHS' shortcomings and are quick to point out its failures. However, one of the major reasons the Department fails to live up to expectations more than they – and the rest of us – would like is because their top leadership ranks have been riddled with vacancies for much of this year. And, the same is true of too many other federal agencies!

Again, it's just not fair to criticize the agency on the one hand, and yet seem content, on the other to leave them without any Senate-confirmed leadership for months on end. We can't have it both ways.

Nor do I think it is acceptable to let a highly qualified nominee twist in the wind for months on end. How can we hope to attract and retain the kind of high caliber people we need for these leadership posts if we continue to treat those who are willing to serve in such a way.

While I'm at it, let me also mention here that I often hear our friends across the aisle complain that this Administration is not responsive enough to the needs and concerns of the business community. That the Administration focuses too little on creating jobs.

Does anyone else find it ironic that Director Mayorkas is being attacked here for being willing to engage the business community?

As a Congressman and as a Governor, I met regularly with constituents and business people on a regular basis to hear their concerns and see if we could address them. I still do. I'd be surprised if the same weren't true of all of us.

Not surprisingly, USCIS routinely hears from Governors and Members of Congress of both parties at the request of their constituencies about the EB-5 program. From what I understand, some of these requests from elected officials of both parties were even about helping Gulf Coast Funds Management and Greentech Automotive.

In fact, USCIS receives more than 1,500 inquiries each year from Congress about the EB-5 program. 1,500 inquiries from people like us!

As my colleagues know, listening to someone express their concerns or opinions doesn't mean that we ultimately have to agree with them if we conclude they're wrong or ever do anything they ask that's inappropriate.

What it does mean, however, is that we are serious about carrying out a central responsibility of a government, and that is listening to the people we represent and serve.

To punish Director Mayorkas for a willingness to listen to concerns about the fairness of some government policies seems deeply unfair to me. It's shortsighted, too, if we do in fact want our government to support rather than hinder job creation.

Let me conclude by saying this. In a perfect world, I would have preferred to have the OIG complete its report on the allegations raised 15 months ago today against Director Mayorkas before voting on his nomination.

But we are not living in a perfect world. The reality is the OIG remains months away from completing its work but has found no evidence of criminal misconduct on the part of anyone at DHS. The reality is that the Department of Homeland Security is in dire need of Senate-confirmed leadership. And, the reality is the American people want us to stop arguing among

ourselves, figure out how to work better together and kick this economic recovery into high gear. My friends, it's time to move forward.

We can't continue to give greater credence to anonymous complaints than we do to the dozens of distinguished people from both parties who have gone on record with their support for Director Mayorkas, nor should we ignore the OIG's conclusion that there is no criminal wrongdoing in this case or the fact that the citizens of this country need a fully functioning DHS.

We also need to treat this nominee fairly. He is a man who, by most accounts, would be an asset to the Department. He and his family deserve better treatment than they has received so far.

In his confirmation hearing, Director Mayorkas said that his goal in life has always been to bring honor to his parents. His parents brought him to this country as a refugee from Cuba. They worked hard every day to give him the opportunity to go to school and make a better life for himself. Like them, he has worked hard all of his life.

I believe that he has brought great honor to his parents and to this country. And, I believe if we do our part today, we can give him a new opportunity to continue honoring them and us by treating him the way we would want to be treated if we were in his place.

It is time for this Committee to vote on the nomination of Alejandro Mayorkas and send his nomination to the floor for consideration by the full Senate.

I urge all of my colleagues to support Alejandro Mayorkas.

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