

Congress of the United States

Washington, DC 20515

September 19, 2016

The Honorable Leon Rodriguez
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, D.C. 20008

Dear Director Rodriguez:

In 2010, certain Department of Homeland Security (DHS) components participated in an interagency working group that reviewed fraud and other national security vulnerabilities in the Employment-Based Fifth Preference Immigrant Investor (EB-5) visa program. That year, the components were tasked with responding to then-Secretary Janet Napolitano's questions about several cases of fraud within the EB-5 program, and making suggestions for improvement. Members of the working group made recommendations to reform EB-5, including the recommendation to sunset the Regional Center Model due to crippling fraud and national security vulnerabilities. Not all of these recommendations were communicated to Congress.

Since spring of 2016, our Committees have been conducting transcribed interviews of Department employees with knowledge of the working group and the recommendations made as a result. According to one special agent interviewed, the recommendation to sunset the regional center model had remained the consensus until he left his post in 2013. The witness testified:

I think it's well-known, I think, in the anti-immigration fraud enterprise that, you know, INS, and then later ICE, and since then [HSI], **held grave concerns about the program's integrity and our ability to secure it** through law enforcement efforts and even what kind of regulatory fixes there were.¹

* * *

This wasn't a loose cannon analysis by, you know, a couple of program managers, you know, just going off on a whim or someone tilting against windmills to knock down a program that's been in existence for 20 years.

I mean, it was a careful and long analysis that we had of reviewing, you know, the program history, our investigative efforts, regulatory fixes that had been proposed, and we submitted it through our chain of command.²

¹ H. Comm. on Oversight & Gov't Reform, Transcribed Interview of [REDACTED], Tr. at 142 (Jul. 19, 2016) (emphasis added).

² *Id.* at 142-43.

* * *

My personal professional opinion, based on all that I've experienced as both an agent, an actual program manager, a section chief, and now a supervisory agent in the field, yes, **my recommendation would be to sunset the program still.**³

* * *

I do not think that we were naive at all. I believe our perspectives were informed over many, many years of exposure to the program.

And, also, I don't think people should be mistaken. It's not that the investigators who review this program don't see its value or its potential value, **but we see the rampant exploitation.**⁴

Congress must make decisions by September 30, 2016, regarding the reauthorization of EB-5 regional center model. The need to ensure the EB-5 program is sufficiently secure from fraud and other national security vulnerabilities is particularly acute given the program's history of being subject to political influence.⁵

In order to assist us, as we deliberate how to reform EB-5, please provide the following as soon as possible, but no later than 12:00 p.m. on September 30, 2016:

1. All documents and communications referring or relating to USCIS's participation in the interagency EB-5 working group, including documents sufficient to identify the individuals who participated in the working group on USCIS's behalf;
2. All documents and communications referring or relating to ideas or proposals both internally at USCIS and from other agencies for possible reforms or modifications to any aspect of the EB-5 program, including but not limited to the regional center model;
3. All relevant security assessments.

The time period covered by these requests is January 1, 2010, to the present. Please produce all documents in electronic format and deliver your responses to the Senate Committee on the Judiciary Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building, and to the House Committee

³ *Id.* at 202 (emphasis added).

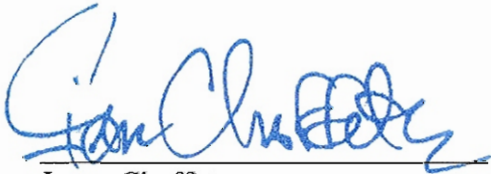
⁴ *Id.* at 204 (emphasis added).

⁵ See, e.g., Dep't of Homeland Sec., Office of Inspector Gen., *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program* (Mar. 24, 2015), available at https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf; Dep't of Homeland Sec., Office of Inspector Gen., *United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program* (Dec. 12, 2013), available at https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-19_Dec13.pdf.

on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

The Senate Committee on the Judiciary has oversight and legislative jurisdiction over the EB-5 program. The House Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Should you have any questions regarding this request, please contact Tristan Leavitt of the House Oversight and Government Reform Committee staff at (202) 225-5074, or Katherine Nikas of the Senate Judiciary Committee staff at (202) 224-5225. Thank you for your prompt attention to this matter.



Jason Chaffetz
Chairman
House Committee on Oversight and
Government Reform

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
House Committee on Oversight and Government Reform

The Honorable Patrick J. Leahy, Ranking Member
Senate Committee on the Judiciary

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.