

United States Senate

January 28, 2021

Dear Colleague:

On Wednesday afternoon, Senator Schumer filed cloture on Alejandro Mayorkas, President Biden’s nominee for Secretary of the Department of Homeland Security (DHS). Mr. Mayorkas’s history of scandal and his repeated disregard for the law prevented even a single Republican from supporting his nomination to be Deputy Secretary of DHS in 2013. I strongly urge each of you to *oppose* his confirmation to a position far more consequential than the position Republicans unanimously believed him unfit to fill during the Obama administration.

Mr. Mayorkas was the focus of an extensive and damning 2015 Inspector General report that brought to light his improper actions as the Director of USCIS. The IG’s report concluded that Mr. Mayorkas overrode normal process in order to provide political favors under the EB-5 visa program to well-connected Democrat stakeholders¹—including a company run by former Secretary of State Hillary Clinton’s brother that sought a **visa for a vice president of Huawei Technologies** and a company in which Senator Harry Reid’s son was involved.² Mr. Mayorkas’s improper intervention was the deciding factor in granting visas to politically favored companies and people, and led to “significant resentment” among not only career staff but “senior managers and attorneys responsible for USCIS mission and programs.”³ As the Inspector General bluntly put it, Mr. Mayorkas’s intervention was “corrosive and destabilizing.”⁴

This abuse of authority to benefit politically-connected Democrats was part of a pattern that started long before he joined the Obama administration. Mr. Mayorkas served as U.S. Attorney for the Central District of California during the Clinton administration. Despite his role as a law enforcement officer, he intervened with the White House to procure a commutation for a major and unrepentant cocaine trafficker whose father was a top Democrat donor. A 2002 report by the House Committee of Government Reform concluded that “Mayorkas acted inappropriately in supporting the commutation” and that he “should have realized he was *abusing his office* by providing a character reference in a clemency case in which his office had no involvement” and for someone whom he conceded he barely knew.⁵

Even apart from this pattern of unethical conduct, Mr. Mayorkas has shown a repeated disregard for the rule of law. Most notably, he ignored the laws passed by Congress when, as Deputy Secretary of DHS, he helped lead and implement President Obama’s brazenly unlawful DACA and DAPA programs. And rather than enforce the law as written while Director of USCIS, he directed his staff to “get to yes” on immigration applicants.⁶

¹ OFF. OF THE INSPECTOR GENERAL, U.S. DEP’T OF HOMELAND SECURITY, REPORT, INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ EB-5 PROGRAM 1 (March 24, 2015), https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf.

² REPORT, INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ EB-5 PROGRAM 6–7; Michael Isikoff, Obama Nominee Faces Investigation Involving Company Run by Brother of Hillary Clinton, NBC News, (July 23, 2013), <https://www.nbcnews.com/news/world/obama-nominee-faces-investigation-involving-company-run-brother-hillary-clinton-flna6C10721257>.

³ *Id.* at 2

⁴ *Id.* at 49.

⁵ H.R. Rep. No. 107-454 “Justice Undone: Clemency Decisions in the Clinton White House” (2002) (emphasis added), <https://www.govinfo.gov/content/pkg/CRPT-107hrpt454/html/CRPT-107hrpt454-vol2.htm>.

⁶ REPORT, INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ EB-5 PROGRAM 3.

Mr. Mayorkas's disregard for the law will only grow if he is handed the reins to DHS. He has made no indication that he will oppose any aspect of the Biden administration's radical, unilateral, and unlawful immigration policies. Indeed, Mr. Mayorkas, in recent testimony before the Senate Committee on Homeland Security and Governmental Affairs, refused to commit to securing the southern border with the construction of a border wall, asserting that he would explore his legal authority to discontinue the planned construction of the barrier despite funds having already been earmarked for the project.⁷

Moreover, it will be exceedingly difficult to conduct necessary oversight if Mr. Mayorkas is leading DHS because he has a history both of untruthfulness when testifying before Congress and of intimidating employees into silence. His written testimony to the House Homeland Security Committee is in significant tension with the Inspector General's report⁸; his testimony in 2013 to the Senate Homeland Security and Government Affairs Committee downplayed his involvement in the Clinton pardon scandal and conflicted with statements he previously gave in 2001⁹; and the 2015 Inspector General report took pains to emphasize the "significant percentage" of individuals who were so afraid of retaliation that they would not speak about Mr. Mayorkas's actions unless they were "assured that their identities would remain confidential."¹⁰

Republicans in 2013 understood the danger that Mr. Mayorkas posed to DHS and the rule of law when he was nominated to be Deputy Secretary of Homeland Security and *not a single* Republican voted for his confirmation. He was confirmed only after Senator Harry Reid exercised the nuclear option. Now we know even more about Mr. Mayorkas's ethical, legal, and policy failures and he is nominated for a higher office. As we did in 2013, we should stand firm and refuse to confirm Mr. Mayorkas.

Sincerely,



Ted Cruz
UNITED STATES SENATOR

⁷ *Hearing on Nomination of the Honorable Alejandro N. Mayorkas to be Secretary, U.S. Department of Homeland Security Before the S. Comm. on Homeland Sec. and Governmental Aff.* 117th Cong. (January 19, 2021), <https://www.hsgac.senate.gov/nomination-of-the-honorable-alejandro-n-mayorkas-to-be-secretary-us-department-of-homeland-security>.

⁸ *Compare* "Written testimony of DHS Deputy Secretary Alejandro Mayorkas for a House Committee on Homeland Security hearing titled 'Allegations of Special Access and Political Influence at the Department of Homeland Security,'" (Apr. 30, 2015), <https://www.dhs.gov/news/2015/04/30/written-testimony-dhs-deputy-secretary-alejandro-mayorkas-house-committee-homeland> with REPORT, INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES' EB-5 PROGRAM.

⁹ John R. Emshwiller, *DHS Official's Accounts of Drug Dealer's Release Differ*, *The Wall Street Journal*, (Apr. 3, 2015), <https://www.wsj.com/articles/dhs-officials-accounts-of-drug-dealers-release-differ-1428102332>.

¹⁰ REPORT, INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES' EB-5 PROGRAM 2–3.