

Opening Statement
Senator Tom Coburn, M.D.
Ranking Member, U.S. Senate Homeland Security and Governmental Affairs
Committee

Wednesday, December 11, 2013

Mr. Mayorkas, if you're listening, this hearing really isn't about you. It's about process. And that's where the problems are. It doesn't have anything to do with the governor-elect of Virginia. It has nothing to do with that. We are here to vote on the nomination of Alejandro Mayorkas for the position of Deputy Secretary of the Department of Homeland Security. This vote is both historic and unprecedented. Holding this vote in light of an active investigation into serious, relevant allegations of professional misconduct by the nominee, and over objections of the Ranking Member and others, appears to be virtually without precedent. To be fair to Mr. Mayorkas, to date these are only allegations.

My staff searched extensively for a precedent for the chairman's decision, and sought assistance from the Senate Historian, the Senate Library and the Congressional Research Service. They found no precedent for this committee voting on a nominee under investigation. In fact, they discovered the opposite: committees have established and followed a precedent which should lead us to postpone consideration on any nominee under investigation.

Here are some examples they found:

In January 2005, President George W. Bush nominated Kenneth Tomlinson to be chairman of the Broadcasting Board of Governors.¹ An inspector general's investigation into allegations of unethical behavior by Mr. Tomlinson led the panel to delay action on the nomination for over 18 months.² He was never confirmed.

In July 2005, President Bush nominated Roland Arnall to the post of U.S. Ambassador to the Netherlands.³ At the time, Mr. Arnall's firm Ameriquest was being investigated by regulators in 30 states for predatory lending.⁴ The Foreign Relations Committee Chairman, Republican Sen. Richard Lugar, consented to a request by Democrats that October to delay voting on the nominee because of the investigations.⁵ Senator Joseph Biden spoke out in favor of the delay, as did Senator Paul Sarbanes, who cited quote "longstanding precedent" for delaying a

¹ Monaghan, Elaine, "Senate Panel Passes on Tomlinson Nomination," Congressional Quarterly News, August 31, 2006, <http://cq.com/doc/news-2363789?wr=U2ZyOGV0Ymg1TTJwVkhpOHB6OFczQQ>, accessed Dec. 10, 2013.

² Id.

³ Downey, Kirstin, "Bush Picks Ameriquest Owner as Ambassador," Washington Post, July 29, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/28/AR2005072801842.html>, accessed Dec. 10, 2013.

⁴ Id.

⁵ Speck, Mary, "Corporate Probes Delay Senate Panel Vote on Netherlands Ambassador Nominee," CQ Today, October 25, 2005, <http://cq.com/doc/news-1929816?wr=U2ZyOGV0Ymg1TTNzdFBGRmtrLWtZQQ>, accessed Dec. 10, 2013.

vote until the nominee was quote “clear.”⁶ Mr. Arnall was voted out of committee after Republicans concluded the investigations did not target the nominee personally.⁷ But Mr. Arnall was not confirmed by the full Senate until the following February, seven months after he was nominated,⁸ when his company agreed to end the investigations by settling the cases against it.⁹

My friend President Obama, who nominated Mr. Mayorkas, was a member of the Foreign Relations Committee at the time. Then, he appeared to agree that nominees facing investigations should not receive a vote. A 2006 Los Angeles Times story on Mr. Arnall’s confirmation quoted then-Senator Obama’s spokesman saying, “Because a settlement was reached, Sen. Obama will not seek to block Mr. Arnall’s nomination.”¹⁰

A vote on another Bush nominee, Lester Crawford, was held up for two months in 2005 while the Inspector General of the Food and Drug Administration probed claims Mr. Crawford had an affair with a co-worker and gave her preferential

⁶ Id.

⁷ Barrett, Kate, “Senate Committee Tucks in a Tie Vote on Arnall Investigation,” CQ Today, November 1, 2005, <http://cq.com/doc/news-1943633?wr=U2ZyOGV0Ymg1TTFcBmwqSE5JdVJnUQ>, accessed Dec. 10, 2013.

⁸ Congressional Record, Feb. 8, 2006, p. S873.

⁹ Peterson, Jonathan, “Confirmation of Arnall is Seen in Wake of Deal,” Los Angeles Times, January 24, 2006, <http://articles.latimes.com/2006/jan/24/business/fi-arnall24>, accessed Dec. 10, 2013.

¹⁰ Id.

treatment.¹¹ Once the OIG review was complete and the OIG concluded the allegations could not be substantiated, the Health, Education, Labor and Pensions Committee voted to confirm him.¹²

And in 2004, the Senate Banking, Housing and Urban Affairs Committee did not schedule a vote on Alphonso Jackson to serve as chairman of the Department of Housing and Urban Development until the HUD Inspector General determined Mr. Jackson had not violated the Department's workplace violence policy, as subordinates had alleged.¹³

All of this advises us strongly to delay a vote on Mr. Mayorkas until the OIG investigation into his alleged actions is concluded. Let me be clear: History is telling us clearly not to move forward. If it was true for the Senate then – if it was true for Senator Biden, if it was true for Senator Obama, if it was true for their colleagues, and the many Senators who maintained this precedent until today – it is true for us now.

¹¹ Schuler, Kate, "FDA Nominee Did Not Have Inappropriate Contact with Employee, Report Says," CQ Today, June 8, 2005, <http://cq.com/doc/news-1713810?wr=U2ZyOGV0Ymg1TTJSRk4wUUIxMzgwZw>, accessed Dec. 10, 2013.

¹² Harris, Gardiner, "Senate Panel Approves Nominee to Lead F.D.A.," New York Times, June 16, 2005, <http://www.nytimes.com/2005/06/16/politics/16fda.html>, accessed Dec. 10, 2013.

¹³ Retter, Daphne, "HUD's Jackson Is Cleared by Inspector General Ahead of Hearing on His Nomination," CQ Today, February 25, 2004, <http://cq.com/doc/news-1026431?wr=U2ZyOGV0Ymg1TTIxQjd3QVNWtnZndw>, accessed Dec. 10, 2013.

Of course, the Senate has changed recently from how it was before. The Majority Leader exercised the so-called nuclear option, granting Senate Democrats new power to push through administration's nominees through the confirmation process.

And they can choose to use it to push through dozens of nominees in the last few days of this session. I am eager to see many of them go through – including the new Secretary of Homeland Security. But scrutiny and judgement should not be dismissed in a partisan rush to get one's way. That is also a lesson of history, one that is frequently forgotten in this town. With this nominee before us, Mr. Mayorkas, we would all do well, Democrat and Republican alike, to wait for all of the facts.

The decision to move ahead despite serious concerns from members of this Committee, and in particular the Ranking Member, is without precedent for this Chairman, and I expect that underscores his commitment to confirming Mr. Mayorkas. For the past year he and I have worked together closely on a host of issues. In doing so, this Committee has passed important legislation reforming the way our government does business, and even released a major investigative report documenting potential criminal abuses of important government programs. Our

record of bipartisan cooperation is even greater when it comes to confirming nominees: In this year alone, our Committee has passed 20 of President Obama's nominees on for consideration by the full Senate, including Jeh Johnson, President Obama's nominee for Secretary of the Department of Homeland Security.

I publicly supported all but one of those nominees. And I encouraged my Republican colleagues to support those nominees. I took these actions because it is important to me that this Committee and its Chairman are successful. This country needs better, more honest, and more effective government.

And so we have worked together – Republicans and Democrats, Chairman and Ranking Member, majority staff with minority staff -- sharing concerns and ideas to forge a common path. I have been proud to be able to say that in an era when many have believed Congress was broken by partisan politics, our Committee has worked.

That is one of several reasons I believe it is wrong to move ahead with this vote. I believe it is the wrong thing to do to the nominee, Mr. Mayorkas. It is the wrong thing to do to the Members of this Committee. It is the wrong thing for the Senate, for the Department of Homeland Security, and for the American people.

This vote is unfair to Mr. Mayorkas, because it denies him a chance to win the same strong bipartisan support that almost every other nominee has received from this Committee. Under the new Senate rules, it is possible for Senate Democrats to confirm Mr. Mayorkas without a single Republican vote. But they would be delivering to the Department a divisive Deputy Secretary who arrives with only his party's support, and he would be trailed by a cloud of doubt and discontent.

This vote is unfair to the members of this Committee. It is not possible for us to responsibly perform our Constitutional duties to give advice and consent on Presidential nominees without being fully informed of the qualifications of any nominee. As most of you are aware, Mr. Mayorkas is currently under investigation by the DHS Office of Inspector General. Absent the conclusion and findings of any investigation, I believe we cannot consider ourselves ably informed.

The allegations against Mr. Mayorkas relate mainly to his management of the EB-5 immigrant investor visa program in his role as Director of the U.S. Citizenship and Immigration Services ("USCIS"). As I understand it, the investigation into Mr. Mayorkas began in an unconventional way by one person speaking out after their

heavily documented concerns were dismissed. To me, this only adds validity to the allegations.

In the course of its investigation, the OIG discovered other allegations of impropriety including conflicts of interest, misuse of position, mismanagement, and the appearance of impropriety. I believe these issues may speak to the candidate's fitness for public service, if he is not fully cleared, particularly to help lead the Department of Homeland Security. It is not reasonable to ask Senators to endorse the nominee's fitness for service until those questions are answered.

The Chairman has said this investigation "has no end in sight." But we know that is not the case. The Office of Inspector General has confirmed that is not the case. Last week, the Inspector General's office told his staff and mine that it expected to wrap the matter up in several weeks, and could have findings by February.

The chairman has also said he is concerned that whistleblowers have not approached his office to share their allegations. He does not reflect on the choices he has made -- his decision to hold a hearing on the nominee, to endorse him, to state that he finds Mr. Mayorkas's own explanations relating to the allegations "persuasive," to schedule this vote today -- these are actions which suggest the

Chairman has made up his mind. They are not the actions of a man who still seeks facts. They are the actions of a man who has all of the facts he needs. It does not suggest to potential witnesses of wrongdoing that their information will be received with willingness, interest and discretion.

In an attempt to discredit the investigation, Sen. Carper makes much about the problems plaguing leadership in the DHS Office of the Inspector General. In fact, the Financial and Contracting Oversight Subcommittee is currently conducting a bipartisan investigation into a number of allegations. While I agree those allegations surrounding OIG leadership are troubling, the problems of one person do not invalidate the work done by an office of over 650 people. And, in my opinion, the work product of the DHS OIG is strong and should be taken seriously by both Congress and the agency. In January of this year, Sen. Carper joined me and the members of this committee in sending a letter to President Obama urging him to fill vacant Inspector General positions at a number of key agencies, including DHS. In that letter, we said “Inspectors General are an essential component of government oversight.” We do a disservice to that statement when we preclude the opportunity to, at a minimum, review the work done by the DHS OIG, draw our own conclusions, and vote accordingly with all of the facts before us.

Even more concerning, by denigrating the open DHS OIG investigation, this Committee is sending the message to OIGs that their investigations do not matter. Obviously, that is incredibly significant given this Committee's primary jurisdiction over all Offices of Inspector General in the government. This Committee must respect and support the work done by these government watchdogs. In my opinion, the damage being done to the DHS OIG and the respect of IGs throughout government by holding this vote is *far* worse than any damage done by the office's current leadership.

This Committee must be seen as a strong voice of support of the good work done by the IG Community.

But the results of this investigation are not the only unknown regarding Mr. Mayorkas's service as Director of U.S. Citizenship and Immigration Services. Despite a number of concerns regarding national security and criminal vulnerabilities in the EB-5 program, we know the program expanded drastically under Mr. Mayorkas, and we have not yet seen evidence he pursued significant regulatory changes to address these weaknesses. Two months ago, I personally

asked DHS and other agencies for answers to how the administration is dealing with the concerns and have received no response. These include:

- On October 18, I requested information from Acting Secretary Rand Beers on EB-5 national security concerns identified by the agency itself in a draft report. I received no response.
- The same day I also asked Acting ICE Director John Sandweg for the same information; I received no response.
- I also requested information from National Security Advisor Susan Rice regarding known national security concerns created by the EB-5 program. To date, I have received no response.
- Just last month, on November 1, Sen. Grassley and I requested information from Acting Secretary Beers on how the agency is addressing known national security concerns with EB-5. Again, I have received no response.

Given that we are considering promoting Director Mayorkas to be second-in-command at DHS, it is appropriate we consider how he managed this program, and whether he addressed criminal and national security concerns – including possible exploitation of the EB-5 Regional Center program by terrorists, spies, and other threatening actors. These weaknesses were apparently the subject of repeated examinations by the Administration. I have repeatedly pressed the Administration

for more information regarding weaknesses in the EB-5 program under Director Mayorkas, and what actions it has taken to remedy those weaknesses. The Chairman has declined to join this inquiry. I have not received documents and information I have requested.

At the same time, there is no public record of steps Director Mayorkas has taken to address EB-5 concerns. For example, to date, USCIS has failed to promulgate any regulations shutting down Regional Centers being exploited by criminals or terrorists. This raises strong questions and concerns about his fitness for this office.

To put these allegations and concerns about Director Mayorkas's management of this program in context, I would like to give a little background on the EB-5 program.

Background on the EB-5 Program. When Congress created EB-5 in 1990, the goal was “to stimulate the U.S. economy through job creation and capital investment by foreign investors.”¹⁴ To that end, the original program – called the “Basic Immigrant Investor Program” – required immigrant investors to invest \$1

¹⁴ Department of Homeland Security, U.S. Citizenship and Immigration Services, EB-5 Immigrant Investor, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor>.

million in a commercial enterprise that would create or preserve at least 10 jobs.

The investor is initially granted conditional permanent resident status, but after two years and proving the creation of 10 jobs, they are eligible to become permanent residents.

In 1992, Congress authorized a second EB-5 pilot program allowing immigrants to pool investments through DHS-approved “Regional Centers.” In seeking approval from DHS, the Regional Center submits a proposal to DHS detailing how it plans to promote economic growth in that region. By investing in a Regional Center, immigrant investors can take advantage of relaxed job standards to measure both “direct” and “indirect” job creation. While direct jobs are “actual identifiable jobs for qualified employees,” indirect jobs are considered those “created collaterally” by the investment.

While the Regional Center program was set to expire at the end of 2012, last September it was reauthorized for three more years. Despite known national security concerns, no changes were made to the program.

The program’s authorizing legislation allocates approximately 10,000 EB-5 visas to be issued each year. According to the agency, from 1990 to June 2013, USCIS

has approved approximately 15,000 EB-5 immigrant visas to investors and their family members. In addition, the agency has granted conditional permanent resident status to 10,191 investors and their family members.

In total, over 25,000 people are currently in the United States through the EB-5 program.¹⁵ The majority of these individuals are from Asia.¹⁶

Since its inception, the EB-5 program has been plagued with wide-ranging problems. Since 2009, there has been a notable expansion of the program, which now sees \$3.3 billion pass from foreign investors in exchange for visas. Yet the serious security weaknesses have persisted, as well as alarm among senior officials. These problems include the agency failing to determine if the program is meeting its basic goal of creating 10 jobs per investment to Regional Centers defrauding would-be immigrants to breaches of national security with suspected terrorists using the program to enter the U.S.

Many of these problems have been specifically documented by both the agency and outside entities.

¹⁵ Information provided in August 23, 2013 Letter from Brian de Vallance, Acting Assistant Secretary for Legislative Affairs to Senator Tom A. Coburn.

¹⁶ In the August 23 Letter, the agency reported EB-5 investors “Country of Filing,” which included 11,240 from the United States and 7,238 categorized as “Not Reported.” As explained below, GAO estimated in 2005 that “83 percent of applicants approved for the EB-5 category are from Asia, including Taiwan, South Korea, and China.”

Department of Justice OIG Report (1999). As early as 1999, the Department of Justice (“DOJ”) OIG found problems with certain individuals skimming money off the top of an EB-5 applicant’s investment.

The program was also being gamed from the inside. In the same report, the Department of Justice OIG found the General Counsel for Immigration and Naturalization Services (“INS”), which was then managing the program before USCIS, was “repeatedly assisted...questionable investment partnership” on behalf of these promoters knowing the applications were “severely flawed and unqualified.” During this time, few jobs were created. Even before the investigation was complete, the INS General Counsel resigned.

INS Memorandum (2002). Corruption in the EB-5 program continued. In March 2002, INS found strong evidence “that a handful of EB-5 promoters sought and obtained the approval of *over two thousand* fraudulent EB-5 petitions,” resulting in promoters pocketing hundreds of millions of dollars. And the promoters continued to file EB-5 applications making the EB-5 program vulnerable and compromising its integrity.¹⁷

¹⁷ March 19, 2002 Memorandum titled “Comprehensive Investigation of EB-5 Promoters Required.”

Government Accountability Office Audit (2005). While the main goal of the program is to spur economic growth, in 2005 the Government Accountability Office (“GAO”) reviewed the program and “could not determine a reliable estimate of the number of jobs created by immigrant investors.”¹⁸ As such, there was no reliable metric GAO could find proving the program was achieving its goal, even after 15 years of operation. It is also unclear how the agency determined each investment produced the required 10 jobs to grant permanent resident status to investors.¹⁹

While GAO estimated around \$1 billion had been invested through the program to date, the review noted the program was underutilized with only just over 6,000 visas issued to immigrant investors by 2005.²⁰

Overall, GAO’s main concern was that few people were using the EB-5 program to enter the United States. The report noted in the first 15 years of the program only around 6,000 EB-5 visas were issued amounting to \$1 billion invested.

¹⁸ Government Accountability Office, Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors, GAO-05-256, April 2005, <http://www.gao.gov/assets/250/245920.pdf>.

¹⁹ Government Accountability Office, Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors, GAO-05-256, April 2005, <http://www.gao.gov/assets/250/245920.pdf>.

²⁰ Government Accountability Office, Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors, GAO-05-256, April 2005, <http://www.gao.gov/assets/250/245920.pdf>.

Growth in the EB-5 Program. In the past few years, the number of immigrants entering the United States through EB-5 has grown exponentially. In 2008, before Mr. Mayorkas took over USCIS, just 1,360 applications were approved; last year (2012) 6,628 EB-5 applicants were approved resulting in \$3.3 to \$6.6 billion in investment funds.²¹ During the time Mr. Mayorkas has been at USCIS, over 16,000 immigrants have entered the country through the EB-5 program.²²

Between 2009 and 2013, the number of Regional Centers approved to participate in the program has also grown. As of November 1, USCIS had approved approximately 400 Regional Centers. More than one-quarter of the current DHS-approved regional centers were authorized during the last four years.

As the program grew, the problems concerning potential national security and criminal vulnerabilities became more serious.

Concerns with the EB-5 program led the White House to direct an interagency review of potential vulnerabilities with the program and for the Department of Homeland Security to conduct its own internal review. The results of these

²¹ Analysis based on Information provided by the Department of Homeland Security. These numbers are based on the statutory EB-5 investment amounts of \$500,000 or \$1 million based on the geographic area in which the funds are being invested.

²² Information provided by the Department of Homeland Security.

reviews raise major concerns about whether this program is facilitating crime and creating threats to national security.

Draft Review by the National Security Staff (2012). In FY2012, the National Security Staff (“NSS”) coordinated a review of the EB-5 Regional Center program by five agencies focused on “vulnerabilities relating to the financial flows and securities offerings that routinely accompany the investment component of the EB-5 program.”²³ That draft report, which the Chairman’s staff has received, raised major concerns with the investments being made by EB-5 investors. For example, the investigation found one Regional Center filed false documentation in an attempt to support the creation of jobs. The same report also noted investments being made in a business that never existed and could never exist headed by an individual using a pseudonym due to a criminal record of importing counterfeit products.

The draft review noted the high “risk that EB-5 program participants may attempt to use the program as a tool or channel for money laundering, tax evasion, or other illicit financial activity.” This type of activity was aided by the fact the known

²³ Draft “Forensic Assessment of Financial Flows Relating to EB-5 Regional Centers.”

criminals are not statutorily prohibited from “owning, managing, or recruiting regional centers.”

This National Security Staff draft review also references another inter-agency review looking at national security threats associated with the EB-5 program, stating that “vulnerabilities relating to possible infiltration by terrorist groups or foreign operatives are also before the NSS and being addressed by the inter-agency.”

Understanding that we have only seen a draft of the National Security Staff’s forensic audit, and have not seen information about the inter-agency review of possible infiltration by terrorist groups or foreign operatives, I wrote to National Security Advisor Susan Rice on October 18 requesting information about these reviews and what actions were taken to address these vulnerabilities.

She has not addressed any concerns nor have we heard from her.

Draft Review by Immigration and Customs Enforcement (“ICE”). The Department of Homeland Security also conducted its own internal assessment of the EB-5 Regional Center program, examining criminal and national security

vulnerabilities. In response to an apparent tasking from the DHS Secretary, ICE prepared a review of the program.

Here are the vulnerabilities they identified:

1. Export of Sensitive Technology / Economic Espionage
2. Use by Foreign Government Agents / Espionage
3. Use by Terrorists
4. Investment Fraud by Regional Centers
5. Investment Fraud by Investors
6. Fraud Conspiracies by Investors and Regional Centers
7. Illicit Finance / Money Laundering

Here, the agency's own draft analysis makes clear the EB-5 Regional Center program could be exploited by terrorists and criminals. Further, it identified Regional Centers as a means for facilitating espionage by foreign governments. To that end, the review by ICE proposed the Regional Center program be sunset, since there were "no safeguards that can be put in place that will ensure the integrity of the [Regional Center] model."

As I previously stated, I sought more information about DHS and ICE's internal review of the EB-5 Regional Center program. I wrote to Acting Secretary Beers on October 18 requesting information about the findings of this review and what actions were taken in response.

I have not yet received any answers to my questions.

DHS OIG EB-5 Regional Center Audit (2013). In 2013 this audit was to be completed. It is my understanding we are days away from the DHS OIG releasing findings from its audit of the EB-5 Regional Center program. The findings of that report will further inform this Committee's decision regarding the ability of Mr. Mayorkas to manage the EB-5 program.

Pending DHS OIG Investigation of Mr. Mayorkas (2013). When this investigation by the OIG started, it started in a very unusual way, by someone risking and losing their position. As we all know, the DHS OIG is also currently investigating Mr. Mayorkas and his involvement in the approval in the Gulf Coast Funds Management Regional Center. During the course of that investigation, the allegations expanded to also include conflicts of interest, misuse of position, mismanagement of the EB-5 program, and an appearance of impropriety by Mr.

Mayorkas. All are serious concerns. I doubt that they are all true, but we don't have the facts.

While I understand the OIG is not currently aware of any criminal activity, since the investigation is still open, with 8 interviews left, that could change. As I understand it, however, OIG is planning to complete its investigation and release its findings in just a few months. I doubt many of the allegations are true, but we don't have the facts.

Whistleblower Allegations. My staff has spoken with a number of whistleblowers from within DHS concerned about Mr. Mayorkas taking over the Deputy Secretary position. These individuals have made serious allegations about the way Mr. Mayorkas has overseen and influenced the EB-5 program. These allegations raise questions – they're allegations only, but they raise questions about Mr. Mayorkas's allegiance to DHS's core mission to prevent terrorism and enhance security.

A number of the allegations extend well beyond just the EB-5 program and raise concerns about fitness for the number two position at DHS. These allegations include:

- attempts by Mr. Mayorkas to obstruct investigations by Congress;
- allegations of preventing program integrity measures requested by the FBI;
- intimidation of employees who questioned agency policies;
- susceptibility to political influence; and
- failing to properly enforce program integrity mechanisms resulting in potential threats to national security.

Whistleblowers who spoke to the Wall Street Journal said that Mr. Mayorkas fast-tracked approvals of certain EB-5 applications over objections regarding the suspicious source of funds to rebuild a casino in Las Vegas.²⁴ Which in fact was noted in an article today.

Given the wealth of information on both Mr. Mayorkas's administration of the EB-5 program and other allegations, I think it is prudent for the committee to allow the OIG investigation to come forward prior to his receiving a vote in this committee. My hope is he gets a totally clean bill of health.

The only argument against that is that it's taking too long. It's taking too long because the Administration won't answer questions from the Ranking Member.

²⁴ Angus Loten and James V. Grimaldi, Favoritism Charges Slow DHS Nominee, Wall Street Journal, August 8, 2013, <http://online.wsj.com/news/articles/SB10001424127887323997004578639882228028100>.

Moving forward with this nomination is not fair to the Department of Homeland Security, which needs strong, effective leadership more than ever. Chairman Carper argues the agency needs leadership, and I agree. It is this Committee's job to vet those leaders and ensure they are beyond reproach. I think it is risky – maybe not inappropriate but risky -- to consider the effect of installing an unfit individual in the number two position at DHS under a cloud. DHS has some of the lowest morale in the federal government. By voting on Mr. Mayorkas, this Committee is sending the wrong message to all DHS employees. Right now, we cannot determine if Mr. Mayorkas is fit for this important position.

For a number of reasons, today's vote is unfair to the entire Senate. We're going to make a less-than-informed vote on Mr. Mayorkas, and so will the rest of our colleagues be forced to make an ill-informed vote on the Senate floor. It will be an incomplete record to review in deciding how to vote. Reporting Mr. Mayorkas to the full Senate when he is subject to an open investigation is extremely concerning, given the inability for Senators in the minority to exercise any right to ensure proper examination and scrutiny of the nominee. In fact, this is exactly what I was afraid of when Leader Reid facilitated the change in the Senate Rules.

Finally, and most concerning, is this Committee's disservice to the American people in reporting a nominee for such an important position who has not been properly vetted. The American public depends on us to fulfill our constitutional mandate to properly advise the President on certain Executive Branch nominees. Here, we have not done that. In fact, we are voting to install a nominee that could be seen as unfit to serve in the number two position at DHS, an agency tasked with protecting our country from terrorists. It is our responsibility to guarantee to the American public the leaders at DHS are beyond reproach. And that is my hope, that that is what we will come up with, if we wait on this nomination.

In doing so the Chairman is ignoring not only the rights of the minority but the longstanding precedent of the Senate. He is ignoring history, and he is inviting us all to do the same. But history has difficult ways of teaching its lessons. It was long the purpose of the Senate's procedures to remember these lessons, so the country does not have to suffer such lessons again and again.

Once again, I respectfully request Chairman Carper postpone this Committee taking the unprecedented action of voting on Mr. Mayorkas until the DHS Office

of Inspector General has completed its report and issued its findings. Why would we handicap this deputy secretary?

It has been my recommendation to the members of my side we will vote present. I will vote “present” and wait for the DHS OIG to finish the important work it is doing and make an informed judgment about Mr. Mayorkas’s fitness for this important position.