

## PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The majority whip is recognized.

## SCHEDULE

Mr. DURBIN. Mr. President, Senator REID, the majority leader, is absent today. I will be acting in his place. Senator REID called me this morning. He sounded good. We look forward to his speedy recovery.

Following my remarks and those of the Republican leader, the Senate will resume executive session to consider the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security postcloture.

The next hour will be equally divided and controlled between Senators CARPER and COBURN. There will be six roll-call votes at approximately 10:15 a.m.

## RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## EXECUTIVE SESSION

## NOMINATION OF ALEJANDRO NICHOLAS MAYORKAS TO BE DEPUTY SECRETARY OF HOMELAND SECURITY

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The bill clerk read the nomination of Alejandro Nicholas Mayorkas, of the District of Columbia, to be Deputy Secretary of Homeland Security.

The PRESIDENT pro tempore. Under the previous order, there will be 1 hour of debate on the nomination equally divided and controlled between the Senator from Delaware Mr. CARPER and the Senator from Oklahoma, Mr. COBURN or their designees.

Who seeks recognition? The Senator from Delaware.

Mr. CARPER. Mr. President, I will speak very briefly. Then I would like to yield to Senator LEAHY for some comments he would like to make on the President's nominee to be our next Deputy Secretary of Homeland Security. The Senator has known Mr. Mayorkas for a number of years, worked very closely with him through his committee's oversight of the EB-5 program.

I am delighted he is going to take the floor and move from presiding to

speaking. I am happy to yield to the Senator from Vermont.

The PRESIDING OFFICER (Ms. HIRONO.) The Senator from Vermont.

Mr. LEAHY. I thank my friend from Delaware. You know, the Department of Homeland Security is the leading agency for many of the pressing issues facing our Nation, from providing disaster relief to protecting our borders. The agency needs a full complement of leaders. That is why I am glad the Senate is considering the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security.

I want to thank the chairman of the Homeland Security and Governmental Affairs Committee, Senator CARPER, for pushing forward with this nomination. Alejandro Mayorkas currently serves as the Director of USCIS, the U.S. Citizenship and Immigration Services, the agency that makes the immigration system work.

Director Mayorkas has made it, by every analysis, a stronger and better functioning agency. It is unfortunate that in these partisan times Director Mayorkas' nomination has been the subject of unfair and partisan attacks. It is wrong that some have tried to create controversy about him even before his confirmation hearing occurred in the Homeland Security and Governmental Affairs Committee.

The attacks were made even less credible by the conduct of the former DHS deputy inspector general who was forced to resign in the face of allegations of serious misconduct, a person who frankly has no credibility in my mind because of the egregious and inexcusable things he did while serving in this role.

This former deputy inspector general, Charles Edwards, on the eve of Director Mayorkas' confirmation hearing authorized the transmittal of an email to a Republican Senate office that contained sensitive information about an ongoing investigation involving Director Mayorkas.

One thing that both Republicans and Democrats should agree upon is that this conduct is wrong. I believe it is a clear violation of the law. It is something that should be condemned no matter who did it. Of course, the timing of the transmittal raised serious questions about the motivation for its disclosure.

Inspectors general are supposed to be way above politics. Well, guess what happened? The email authorized by this former and now disgraced deputy inspector general was published shortly after its transmittal on the Web site of a Republican candidate for Governor. Come on. This is wrong. Why would a Virginia gubernatorial candidate care about an investigation being conducted by the Office of Inspector General for the Department of Homeland Security? Well, because some of the anonymous allegations repeated in that email by the Office of Inspector General involved claims that Director Mayorkas intervened in an immigration matter

for Terry McAuliffe, the governor-elect of Virginia. It was obvious this was done for political motives, not to make Homeland Security a better department.

Director Mayorkas, to his credit, has always put the interests of USCIS ahead of his own. He has made tough decisions to make that agency better. Sometimes tough decisions are not popular but needed. He made the decisions that were best for the country. He has brought significant resources to bear in the EB-5 Regional Center program.

Incidentally, the recommendations that he made to improve the EB-5 program were in a bill before the Senate Judiciary Committee on comprehensive immigration reform, a bill that passed the Senate in June. Every single Republican, and every single Democrat, voted for those recommendations in the committee. Now, we have been waiting for the House to pass this important legislation. But in the meantime, Director Mayorkas has worked to ensure the program's integrity. He has acted to make sure the agency's decisions are correct under the controlling law and regulations. The suggestion that Director Mayorkas would risk his reputation and his credibility by improperly intervening in a single immigration case, out of thousands his agency handles every year, is absurd.

I remember during the consideration of comprehensive immigration reform in the Judiciary Committee—the former ranking member, Senator SESSIONS, praised my amendment to improve the EB-5 program following the recommendations of Director Mayorkas. These reforms contained a host of improvements to provide USCIS with strong oversight tools, security enhancements, and anti-fraud provisions. In fact, 68 Senators, Republicans and Democrats, voted for the comprehensive reform bill which had the EB-5 program improvements in it. Now, some have said here on the floor yesterday that we could make reforms to the EB-5 program this very day.

I would respond that the Senate voted for it earlier this year. I appreciate those Senators who want these EB-5 reforms for having voted for them back in June. I have seen no evidence that those Senators, who put such faith in the former Deputy Inspector General's flawed investigation, have asked the tough questions necessary to test the integrity of that investigation.

Instead of considering the circumstances of the disgraced former Deputy Inspector General's disclosure, and taking the opportunity to ask tough questions of Director Mayorkas at his confirmation hearing, Republican Senators on the Homeland Security and Governmental Affairs Committee instead decided to boycott that hearing. And when Chairman CARPER scheduled a Committee business meeting to vote on Director Mayorkas' nomination, all Republican senators but two failed to attend that meeting.

This is unfortunate and in my view, an abdication of our responsibility to evaluate the President's nominees.

As senators, we are obligated to ask the tough questions of all nominees, but it is also important that we carefully consider the source and motivations behind any allegations against those nominees. Regarding the immigration case about which Director Mayorkas is accused of acting improperly, it is clear in emails that he wrote, which have been publicly disclosed, that he asserts his inability to become involved in any specific case. The emails that have been disclosed paint a picture of an agency director who took great pains to avoid any appearance of favoritism or impropriety.

I would urge my colleagues to review carefully, and in context, that which has been disclosed. Furthermore, the Senate should consider the reliability of those who refused to meet with Democratic staff on the Homeland Security and Governmental Affairs Committee to discuss their allegations.

Come on. Let's stop playing political games with this. We have a good person, a person we should be thankful is willing to serve this country, a person who has been the subject of lies and smears. Director Mayorkas will serve the Department of Homeland Security, and the American people, honorably. Let's vindicate this person. Let's put him to work for the good of the country.

I thank the distinguished chairman from Delaware for his work on this.

Mr. CARPER. I thank the Senator as chairman of the Judiciary Committee for the many years working on the EB-5 program to make sure it fulfills its potential.

How much time do I have remaining? The PRESIDING OFFICER. Twenty-three minutes.

Mr. CARPER. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, the unfortunate thing is we have a disagreement on the precedents of the Senate. We just had the President pro tempore of the Senate say that there were lies and smears. Not one member of the minority voted against Mr. Mayorkas in his confirmation hearing.

They all voted "present." The reason they did that was for a very important reason. The President pro tempore of the Senate did not mention the fact that there still—regardless of all of those things, there is still an ongoing investigation.

Never before in the history of the Senate has a position at this level been approved with an ongoing investigation. Facts are stubborn. I would like for him to tell me what the lies and smears are, that he claims, politically we have made. We have made no such claims.

What we have said is the ICE review of this program said it should be eliminated. It happened to have been au-

thored by the President pro tempore. We had the majority whip on Wednesday night saying the following:

My colleague, Senator Tom Carper, chairman of this committee has gone to extraordinary lengths to investigate every allegation—

Is that right? Every allegation? They do not even know what the allegations are because we are not privy to them.

—to answer every question, and to be there to work with the other side of the aisle to try to resolve any problems that they have with this nomination. Sadly, it has not been successful because we do not know what the claims are. We think we know. We also have the chairman of the committee, before he ever heard the specifics of any complaint by whistleblowers demeaning those very whistleblowers and describing their words as "rumors and innuendo"—people who put their jobs on the line to report.

Then he claims they will not meet with him, even though he has asked them to meet twice. I cannot blame them, because he has already dismissed any credibility that they have.

We should wait for this investigation to be completed. I know we are not going to; we are going to roll this right through here. It is a disservice to Mr. Mayorkas. It is a disservice to the American people. It is a disservice to this body. All that I have heard from people who know Mr. Mayorkas are positive things. It is positive, but a legitimate investigation is ongoing.

I would make this other point: The administration knew that there was an ongoing IG investigation, and it failed to inform the chairman and failed to inform the ranking member when they sent his nomination over. Why is that? Why would they not tell us that? Was it just an oversight, or did they intend for us not to know?

The worst thing that comes about because of this nomination moving forward is the relationship and the trust that has gone from our committee. The difficulties going forward will be major because things have been implied that I, personally, am doing things for a political purpose rather than from a principled basis. There is no nominee who is under an investigation that I will ever meet with before that investigation is cleared.

The other claim that has been made is we wouldn't meet with Mr. Mayorkas because we didn't want to know the truth. The fact is we didn't want to prejudice our position without the knowledge of the facts, but that has not kept some in this body from claiming we had a motive other than what we have stated. Therefore, all our motives, rather than finding out the truth, our motives are that it has to be political.

I reject that. I take great offense at that.

I have no doubt that Mr. Mayorkas will be confirmed today.

The question I have is if, in fact, the IG investigation finds credible findings of wrongdoing or undue influence or impropriety, what then? How effective is this going to be?

I am not saying they will find it; I don't know. But we certainly know. The extent of the chairman's investigation is meeting with the nominee—and I am sure he is an honorable man. But my duty as a Senator is to know the facts, not to know my feelings, and we can't do that at this time. We are precluded from doing that.

Therefore, we are going to approve someone without full knowledge. We will not be able to ably give our advice and consent because we know there are unanswered questions. If those unanswered questions fall to the side that says Mr. Mayorkas has done nothing wrong, then he will be there, but he will be there in less full power and less confidence than he would have had otherwise.

There have been 20 nominees that have come through our committee. I have voted against only one—only one. I have been a good partner for the administration in moving their nominees. But to ask us to ignore what might be potential critical information is to ask us to abandon our duty of advice and consent.

I reserve the remainder of my time. The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I yield 5 minutes to the Senator from Louisiana, Ms. LANDRIEU.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. It is unfortunate that this situation has occurred. What is most unfortunate is it casts a poor light on a very extraordinary individual, someone who I have had the privilege to know very well for the last several years. It pains me and many Members of this body who know Ali Mayorkas personally and know of his extraordinary service to the United States of America to date that his name would be dragged through the mud like this.

I know the Senator from Oklahoma has been sincere in many of his efforts to streamline our government, to make it more efficient. While there have been individuals on the other side who have used the seats they have been privileged to gain in not the most admirable way, he is not one of them. I do not have any poor feelings or disappointment in him personally.

I think what has happened is a complete breakdown of trust on all sides, which has caused very extraordinary measures to be taken, because from our perspective, from my perspective, if a candidate such as this who has already been confirmed twice by the Senate, who served our country already as a U.S. attorney with the highest credentials prosecuting criminal cases and criminal activity that Senator COBURN and Senator CARPER have spent a career themselves pushing back so our government can be better, more transparent, and more honest, then I don't know where we go from here. I truly don't.

I do know this gentleman was willing to meet with anyone to try to clear up

any misinformation. In fact, several Republicans, at my request—my specific personal request—met with him and came away with amazing opinions, high opinions of him when they asked him questions and he answered.

There is a lot of evidence to suggest the “investigation” against him is bogus, is being conducted for inappropriate reasons. Sometimes these things happen in government, and it is our job to sort through.

Senator CARPER as chairman—I know because I serve on the committee as well—tried for months and months to get meetings to try to clear this up. We couldn’t move forward in any way.

Should this man’s name be ruined because there is not cooperation in the Senate for the first time in many decades? I have been here almost 20 years. I have never seen it like this and it is not this gentleman’s fault.

I know his wife. I know his two girls. They have been to my office. I know his family. I have met his brothers. This is very painful to his family, and it is just not responsible.

It is not only about Director Mayorkas—Ali Mayorkas and his family, the Mayorkas family—it is about thousands of good people out there who would love to serve in this government despite the fact that many people on the other side think it is the worst thing ever created in the history of man. That is their view. It happens to be one of the greatest creations of man, with divine help, but we cannot convince them of that.

There are thousands of people who would want to serve in our government. But after listening to speeches that Mr. COBURN just gave or Mr. GRASSLEY, the Senator from Iowa, or the Senator from Oklahoma or others, who would want to put their families through this? No one.

Just because there is a group of people over there who despise the government—for whatever reason, I don’t know—they shouldn’t take their anger out on the individuals trying to make it better and fix what is broken. The EB-5 Program was broken way before Director Mayorkas had the responsibility to try to fix it, and he is only one human being. We all have the responsibility to fix this program.

To blame him and to drag his family through this after an extraordinary career prosecuting crime, I understand—and Senator CARPER will speak more to this—but when the people he worked with in the past needed someone to head something such as the integrity committee, they would choose him quite often. He has run the integrity committees in places where he has worked. That is a great honor.

In conclusion, now he comes up in one of the most important departments of the whole government, Homeland Security—which TOM CARPER authorizes as chair, and I fund to the best of my ability, with all sorts of attacks to our budget, to try to provide resources to this agency—and this gentleman

whom we should be thanking every day for wanting to step up and take this job has to be dragged through this.

I make no apologies for the rules changes that made this possible. I am sorry we were unable to convince people on the other side of his outstanding integrity and that the investigation against him is bogus, personal, and should be dismissed. The IG who was in charge of it has resigned under a cloud. That doesn’t seem to make any difference to them.

I am proud to put my name and my vote behind this nominee who I know will do an exceedingly fabulous job for this country in a very important role we need.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I wish to thank the Senator from Louisiana for that heartfelt, passionate endorsement of Ali Mayorkas’ nomination.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16 minutes remaining.

Mr. CARPER. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I appreciate the comments of my colleague from Louisiana. It goes right to the point. She may be 100 percent right, but we do not know the facts. What we have is testimony from a lot of people that he is a fine man, but we don’t know the facts. We say we do, but we don’t. Therefore, we are asking this body to make a judgment without the knowledge. It goes against the very charge we have for advice and consent.

We besmirch all of the 650 people who work for this IG—who has not been associated with this case in over a month, in terms of personally directing it. We besmirch all those other people.

Were there credible accusations made? There must have been. There must have been. Maybe they are not accurate. They are allegations, but they should be cleared up and they should be cleared up for Mr. Mayorkas’ sake so that when he takes this position, it is not under a cloud and he is totally exonerated. But we are going to go ahead anyway. Regardless of our experience, facts still count.

I have raised three daughters. They are in their forties and late thirties, and I love them dearly. They have great integrity, but they have made mistakes in their lives. They have made poor judgments. It does not mean they are not great individuals, but they have made mistakes.

What the Senator is saying is cover your ears and cover your eyes and don’t see mistakes that were made. Make the judgment without that knowledge. I have no doubt the words my colleague from Louisiana spoke were true in terms of her experience, but the Senator wasn’t there. The Senator didn’t know.

There are six individuals who have put their jobs on the line to make alle-

gations that have to be disproved by nonbiased people who work at the inspector general’s office.

What we are saying today is, You are not capable. You don’t have the quality or the integrity to make a fair decision on this issue and so we are going to vote with that. It is amazing how good we are at looking into the crystal ball to know the truth without knowing the facts.

The vote is going to be based on the faith that we think Mr. Mayorkas has done nothing wrong. I hope that is true. I would have loved to be able to have voted for him knowing the facts, fulfilling my constitutional duty, but the Senator precludes that. I have no choice but to oppose the nomination, not because I don’t know Mr. Mayorkas but because I don’t have the facts.

I yield back the remainder of my time.

Mr. CARPER. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 15½ minutes remaining.

The Senator from Delaware.

Mr. CARPER. Our leadership is the most important element of any organization, be it a public or private organization, a business, school, a military unit, an athletic team. Leadership is key in everything.

The Department of Homeland Security, which protects us from all kinds of attacks—foreign and domestic, man-made and natural—needs leadership. They need confirmed Senate leadership. They haven’t had it for months.

I am going to thank my colleagues who voted this week to confirm Jeh Johnson’s nomination as the Secretary of this Department. He will be sworn in next week, thank God. He needs a team. On top of that team he needs Ali Mayorkas to be the Deputy Secretary.

Those are not only my words or the words of Senator LANDRIEU or Senator LEAHY or Senator FEINSTEIN. We received dozens of letters from people who know him. We know these names. We know their faces. We know their reputation. Some are Democrat and some are Republican. A number of them have helped lead the Department of Homeland Security—lead it.

This is a vacancy we are trying to fill. Jane Holl Lute is the last Deputy who stepped down 6 or 8 months ago. She literally oversaw his work and she was his boss, if you will. She thinks the world of him, not only in a role he served but as a guy who can step in and fill the shoes she used to fill.

I want to talk about this investigation. There are two tracks we are going down here. One is an investigation that was launched in September of 2012 by the IG—the OIG for the Department of Homeland Security—in 2012, 15 months ago. How did we find out about it? We found out about it through a leak, information leaked by the office to our friends on the other side 3 days before the hearing was supposed to occur.

We asked to talk to folks who came forward as whistleblowers. We asked

for them to talk to the minority. We have asked and asked and asked and have never been given the chance to talk to them to find out what are their allegations, what is their story. Let's hear it. By the same token, they have refused to turn to the one person who knows the most about what is going on in this agency for the last 4 years—Ali Mayorkas—to say: You have been accused of this. Under our system of justice in this country the accused actually has a chance to defend himself, and when he did—we had a hearing—they didn't show up. They won't meet with him either.

So here is the situation. We have people who may be very good people. We don't know them, we don't know their names, and we don't know what they are saying. We just know we haven't had a chance to meet with them, and we know the one guy who is being accused here hasn't had a chance to give his story to those who are accusing him. Is that fair? I don't think so. I don't think so.

So we had that hearing at the end of July and no Republicans came. We put every tough question we could to Mr. Mayorkas, under oath, and he came through. He said about this case involving Terry McAuliffe that Mr. McAuliffe and his company wanted something; they didn't get it. The guy who really made the decision, who works for Ali Mayorkas, basically said—Mr. Rhew—that he made the decision. He made the decision. He was not pressured to make the decision. He ruled against Terry McAuliffe's company. End of case.

Here we are at the end of July. We have the hearing and the Republicans don't come. Dr. COBURN joined me in a letter to the Inspector General and said: Please, provide the resources to expedite and make a priority of this investigation. They were 9 months into that investigation at that time. That was the end of July. In August, we reached out and said, through staff: What kind of assets, what kind of priority are you giving this case? They had three people working on it. They have 650 employees in this office—650—and they had 3 full-time people working on it, an investigator and two research assistants. So we go into August, and they say we need a couple more months. A couple more months was October. Dr. COBURN and I sent another letter to the IG and said: How are we doing? Let's provide some priority to this, and let's get to the bottom of this.

That was in October. Two weeks ago, minority staff and majority staff from the committee had a phone conversation with the OIG's office and said: How are we doing? They said: There is no evidence of any criminal wrongdoing by anybody—not by Mr. Mayorkas, not by anybody at DHS—but we are not done yet. We need several more months. Maybe come back in February or March.

In the meantime, the Department of Homeland Security doesn't have the

leadership it needs—at least confirmed by us. How long are we going to wait? The terrorists aren't going to wait. The ones in foreign countries aren't going to wait. The ones in this country aren't going to wait. We need leadership. It is the key for everything—everything.

There is another audit that has been going on as well by the IG—the same IG—of the EB-5 program. I'm an old Governor—here we have an old State treasurer. We used to get audits all the time in State government. Auditors came in to do audits. It drove me crazy when the auditor would come in, make an audit for sometime in the past, and refuse to acknowledge that the department or the agency being audited had actually fixed those problems and submitted an audit that pretends like nothing is different. You have seen this. Senator DURBIN has seen this. I have seen this. It drove me crazy.

We have an audit that is going to be released, I think publicly in a day or 2, that has been shared with us in the Senate this week, and there are really four recommendations. As it turns out, of those four recommendations one of them needs the Congress to do something. We need to pass a law. Ali Mayorkas, 18 months ago said to the Judiciary Committee—to Senator LEAHY, Senator GRASSLEY: In order for us to make sure there is not fraud in the EB-5 program, to make sure there are not national security concerns, we need you—Congress—to do something about it.

When they reauthorized the EB-5 program in 2012, guess what. They didn't take his recommendations—none of them. This year we were doing immigration reform in committee—Senator DURBIN was one of the key players there—and when we did it, PAT LEAHY, chairman of the committee, made sure those recommendations were actually included in the immigration reform law—the recommendations from Ali Mayorkas—and they are in the immigration reform bill. We voted for them. It is over in the House now. It is sitting there gathering dust, unfortunately.

If Senator LEAHY doesn't introduce as a stand-alone bill those provisions allowing the EB-5 program to have the kind of governance it needs through the USCIS agency, if he doesn't do it, I said to him, I will introduce the legislation myself. I hope we will have a lot of cosponsors.

There are four recommendations. One of them needs us to do something in order for it to occur. The other two are either acknowledged, completed or done. On the other one, we just are in disagreement. It is outside the scope of the law. That is the audit. That is the audit.

So, my friends, I just want to say this: This is not a criminal investigation. The things Terry McAuliffe and his company sought were denied. The one person within the agency who has actually worked on these investigations and worked on these EB-5 programs has come forward and said:

Look, Mayorkas did nothing wrong. I decided. I decided against Mr. McAuliffe's company and Mr. Mayorkas stayed out of my way.

We have endorsements. We don't know who the detractors are of Mr. Mayorkas. I wish we did, and I wish we had a chance to talk to them. We are never going to have a chance. I wish my friends on the other side had taken the time to talk to Mr. Mayorkas to say: Listen, this is what you are accused of. The Democrats don't know what you are accused of, but this is what we have been told by these six people. What is your story? What is your story?

Whatever happened to the Golden Rule? What happened to the idea that justice delayed is justice denied? You know, Mr. Mayorkas, as Senator LANDRIEU said, has a wife, they have two kids. They have a life to live. We have put them through hell for months. What kind of message does this send to other people, other agency leaders who go in and take on an agency that is in trouble, that has problems and needs to be fixed, needs to be shaken up? That person goes in and does it and gets whistleblowers or complaints out of it as a result? What do we say to other leaders who go into agencies that are in trouble and need to be shaken up, to those who are willing to get people to do things differently? What do we say to them? Don't do it; don't rock the boat; just let things slide? Is that the message we want to send? I don't think so.

We will not have a chance on this side to hear from those six people, but I tell you the other people who work in that agency had a chance to say something about the way they feel about how their agency is going. As my colleagues know, every year we get a report from a nonprofit organization that looks at 300 Federal agencies and asks the questions: How is morale? How do you feel about the work you are doing? One of those 300 was this agency led by Ali Mayorkas, the U.S. Citizenship and Immigration Services. The Department of Homeland Security, again this year—we just got the results this week, and again this year, the worst morale in the Federal Government of any department—in our government, the worst morale. But guess what. There is one agency in this department that stood up, that stood out, because out of those 300 agencies, No. 76—the top 25 percent—No. 76 was this agency led by Mr. Mayorkas.

Another question asked of the employees: Do you feel better or worse about your senior leadership this year than last year? Since 2009, since he took over this organization in 2009, Madam President, guess what. Satisfaction with senior leadership increased by more than 20 percent. They feel better. They feel better about the senior leadership with Mr. Mayorkas than they did without his leadership.

Something is going on in that agency, folks. We are not getting the full

story, but that survey that we got this week says a lot.

Mr. DURBIN. Will the Senator yield for a question?

Mr. CARPER. Please.

Mr. DURBIN. Through the Chair, I want to ask a question of the Senator from Delaware because he has touched on an issue that is important to everyone, but especially to this Senator from Illinois.

It was 12 years ago when I introduced the DREAM Act, and it was a little over a year ago the President issued an executive order which said they would defer the deportation of those eligible under the DREAM Act, but there was also a little wrinkle to it. They said the fees we were going to collect under this DACA, they called it—this executive order—had to pay for the administration of this executive order. This is extraordinary. We were basically saying this was a pay-as-you-go effort that has drawn more than 600,000 applications and over 450,000 approvals. This went right through Mr. Mayorkas's responsibility and jurisdiction.

So I would say to the Senator from Delaware, not only is the morale good in his agency, but the job they have done is extraordinary. They were given an extraordinary responsibility, and they rose to the challenge and handled it professionally. I can tell you, with firsthand knowledge, having met with him, watched him, this man is a capable administrator, and the people who work for him—clearly, as a result of this survey—are very happy with his performance.

I would just say to the Senator from Delaware, what absolutely confuses, mystifies, and infuriates me, is the notion that unidentified people will make nonspecific charges against this man, and he is supposed to wait for month after weary month? If we talk about the basic standard of justice in America, when the government makes a charge against someone, there is a complaint—a bill of particulars. You know what the charge is, and fairness and justice requires that you can confront your accusers and hear from them the information and evidence against you.

In this situation, as best I can understand—and what my colleague has said repeatedly on the floor, I say to the chairman—is that this never took place. You have waited month after weary month for these accusers to come forward and at least tell Mr. Mayorkas what they think he has done wrong. Their silence, their refusal to do so, speaks volumes to me.

I am sorry they didn't make their report more fully, but I think, as I said the other night on the floor, you are an honorable person. I know you, and I have worked with you for over 30 years both in the House and in the Senate. When I hear you say on the floor you do your best to be fair and bipartisan in everything, and when I hear you stand on the floor and say this man has been treated unfairly, he deserves his chance, that is what I need to hear.

I would just ask the Senator from Delaware: Has he had a chance to confront his accusers? Has your committee had a chance to even know the allegations against him at this point?

Mr. CARPER. The answer, Madam President, sadly, is no, we have not. No, we have not.

Mrs. FEINSTEIN. Madam President, I wish to speak in support of President Obama's nominee for Deputy Secretary of the Department of Homeland Security, DHS, Alejandro Mayorkas. I have known Ali for many years and am proud to have recommended him to President Clinton for the position of U.S. attorney for the Central District of California, as well as to President Obama for his current position as Director of U.S. Citizenship and Immigration Services, USCIS.

The role of Deputy Secretary within the Department of Homeland Security is an important one. The Deputy Secretary is charged with overseeing the agency's efforts to counter terrorism and enhance the security and management of our borders, while facilitating trade and travel and enforcing our immigration laws. Additionally, the Deputy Secretary assists in the safeguarding and security of cyber space and provides support for national and economic security in times of disaster, in coordination with Federal, State, local, international, and private sector partners.

Mr. Mayorkas is extremely well qualified for this position and brings to this office a diverse background and set of experiences in both the private and public sectors. I am confident he will do an outstanding job as Deputy Secretary for the Department of Homeland Security, and he has my enthusiastic and unwavering support.

Born in Havana, Cuba, Mr. Mayorkas earned his B.A. with distinction from the University of California, Berkeley, in 1981. He earned his law degree from Loyola Law School in 1985. Those who have enjoyed the opportunity to work with him regard him as being highly intelligent, thoughtful, kind and compassionate, and dedicated to doing the right thing.

From 1989 to 1998, Mr. Mayorkas served as an assistant U.S. attorney for the Central District of California, where he prosecuted a wide array of Federal crimes, specializing in the prosecution of white collar-crime. Federal law enforcement agencies recognized his success with multiple awards. For example, he received commendations from FBI Director Louis Freeh for his successful prosecution of Operation PolarCap, the largest money laundering case in the Nation at the time.

He continued to distinguish himself by becoming the first U.S. attorney in the Central District of California to be appointed from within the office. Mr. Mayorkas created the Civil Rights Section in the office to prosecute hate crimes and other acts of intolerance and discrimination more effectively.

He developed an innovative program to address violent crime by targeting criminals' possession of firearms, prosecuting street gangs, and at the same time developing afterschool programs to help at-risk youth discover and realize their potential. He uniquely demonstrated the ability to simultaneously be firm with criminals, protective of the innocent, and supportive and empowering to our future leaders.

As supported by the many law enforcement and community awards he received during his tenure as U.S. attorney, Mr. Mayorkas' accomplishments extended beyond his district. He successfully expanded his office's community outreach programs and cooperation with international players in the fight against crime. He directly resolved cases while also overseeing hundreds of attorneys addressing immigration matters, which included complex and sensitive prosecution of individuals and rings producing false immigration documents, illegal reentry cases, and alien smuggling conspiracies.

The Administrator for the Drug Enforcement Administration, Michele Leonhart, noted that "he was instrumental in broadening collaboration between law enforcement agencies to address violent crime and expanded cooperation with other nations to address the growing threat of transnational crime." Combined with his prosecuting white collar crime, public corruption, computer-related crime, and international money laundering, she wrote that such a "broad base of experience . . . provides him with a unique perspective on threats to national security."

Mr. Mayorkas further developed his sharp legal skills and management experience as a Partner at O'Melveny & Myers, from 2001 to 2009, where he represented companies in high-profile and sensitive government enforcement cases. He was recognized by his worldwide firm with an annual award for "leadership, excellence and citizenship," and was named by the National Law Journal as one of the "50 Most Influential Minority Lawyers in America" in 2008.

Since his confirmation as Director of USCIS 4 years ago in 2009, he has continued to exert his positive influence through leadership, excellence, and citizenship in accomplishing the agency's mission. He has improved the immigration services and policies of USCIS by realigning its priorities for a modern-day America that seeks to preserve its legacy as a nation of immigrants while ensuring national security and public safety—no easy task.

Throughout his current role as Director of USCIS, he has successfully preserved and increased the integrity of our immigration laws by decreasing fraud and bringing accountability to our immigration system. For example, Mr. Mayorkas has worked to secure our Nation's criminal and immigration laws in the face of increasing gang and border violence.

As technology advances, so too have our needs to prevent fraud and to safeguard immigration documents from tampering; Mr. Mayorkas has confronted that challenge by enhancing the scope and frequency of national security vetting of applicants for immigration benefits and by redesigning immigration documentation with enhanced security features.

Simultaneously, Mr. Mayorkas has led USCIS in the other half of its mission—to preserve the role of America as a just nation that treats immigrants at our shores humanely and with an eye towards the potential they bring to our nation.

He ensured the prompt review of applications of victims of trafficking and domestic violence so that they may begin to pick up the pieces and move forward in their lives. Mr. Mayorkas has also improved the immigration program for victims of crime who cooperate with law enforcement in investigation and prosecutions.

To combat notario fraud and other unscrupulous practices that undermine the integrity of the immigration system, Mr. Mayorkas launched the unauthorized practice of immigration law initiative. It is a nationwide collaborative effort with Federal, State, and municipal agencies and enforcement authorities that works to raise awareness among immigrant communities and to investigate and prosecute wrongdoers.

After the 2010 earthquake in Haiti, he developed and implemented a humanitarian parole program on an emergency basis to save orphans and unite children with their adoptive families here.

Significantly, upon President Obama's directive to grant deferred action to immigrants who were brought to this country as children and who seek to legally remain in the United States, Mr. Mayorkas swiftly implemented the deferred action for childhood arrivals initiative in 60 days. In less than 1 year, over half a million people have applied to remain in the United States, the only home they have known.

He also boldly realigned the agency's organizational structure, including 246 offices and facilities worldwide, to more accurately serve key priorities and achieve efficiency. For example, his stringent budget reviews resulted in cost-saving measures of \$160 million in budget cuts for the fiscal year 2010.

I recognize that my colleagues have raised concerns about the EB-5 program in connection with Mr. Mayorkas' nomination.

I actually believe that Mr. Mayorkas' actions to improve the integrity of the EB-5 program are a reason to support his nomination. They show that, when Mr. Mayorkas sees a systemic issue requiring action, he will figure out what to do and then do everything possible within the confines of the law to fix it.

As my colleagues know, the EB-5 program essentially allows a foreign investor to obtain a conditional green

card by investing \$500,000 or \$1 million in a U.S. business. The conditions can be removed if, after 2 years, the individual shows 10 jobs have been created by the investment.

Because of the various economic issues involved in adjudicating EB-5 applications—which can run for thousands of pages—the EB-5 program has been called the most complex program USCIS administers.

I will say up front: I have my own serious concerns about this program. I am concerned about the potential for fraud, against both foreign and domestic investors. I am concerned that a business created with this money may not turn out to be legitimate, and as chairman of the Intelligence Committee, I know that certain immigration programs may be ripe for exploitation.

I look forward to the opportunity, before the EB-5 program requires our reauthorization in 2015, to bolstering the security of this program.

But none of that has anything to do with this nomination. Mr. Mayorkas was required by law, as Director of USCIS, to administer the EB-5 program.

As Director, Mr. Mayorkas saw flaws in the program—flaws in the agency's ability to vet participants in the program, and flaws in the agency's ability to do the economic analysis necessary. So, Mr. Mayorkas set about fixing them. For example:

Routine security checks of foreign investor applicants and principals of regional centers are now done.

Regional centers now annually must show they meet the eligibility requirements and update USCIS on new lines of business. More vetting is conducted with these annual filings.

Mr. Mayorkas brought on financial experts and business lawyers, who help review business documents associated with applications.

The program has been moved entirely to DC with specialized adjudicatory officers and antifraud staff. The program is now close to the investigative, intelligence, and financial communities that help detect suspicious financial activity.

I agree with many on the Democratic and Republican sides of the aisle that the EB-5 program must be reformed. I supported Chairman LEAHY's amendment to the immigration bill to do that, and I believe further legislative action will be needed to make sure that, if this program is reauthorized, it is secure.

But I also believe that Mr. Mayorkas has performed his job as Director of USCIS admirably, including by making the EB-5 program more secure. That is a reason to support his nomination.

Let me conclude by saying that this nominee has my strong support. He is a fine individual whom I have known for a very long time. He impressed me as U.S. attorney, and he has continued to do so as Director of USCIS.

He understands the immigration system and the many other issues, like

transnational drug trafficking and national security, that the leaders of the Department of Homeland Security must face. And I believe he will make an outstanding Deputy Secretary.

I recognize there is an investigation by the inspector general's office at DHS, but the OIG confirmed that "there is no indication of criminal activity" on Mr. Mayorkas' part. There has been a significant delay in this investigation, and it now appears from press reports that the inspector general, who himself was being investigated, has resigned.

DHS needs its leaders confirmed. It cannot wait for months and months, which it has done already. I do not believe that in this case—which involves a distinguished nominee who has my confidence—that confirmation should be delayed. Rather, we need to confirm a leader who understands our complicated immigration laws and policies and who can knowledgeably help us navigate and ultimately implement comprehensive immigration reform. He has this needed knowledge and ability.

I urge my colleagues to support Mr. Mayorkas.

Mr. LEAHY. Madam President, the Department of Homeland Security is the leading agency for some of the most pressing issues facing our Nation, from providing disaster relief to protecting our borders. To serve the American people, this agency needs a full complement of leaders, and that is why I am glad the Senate is considering the nomination of Alejandro Mayorkas to be Deputy Secretary of Homeland Security. I commend Senator CARPER, chairman of the Homeland Security and Governmental Affairs Committee, for making his nomination to this important position a priority for the committee and getting his nomination to the Senate.

Alejandro Mayorkas currently serves as Director of U.S. Citizenship and Immigration Services, USCIS. This is the agency that makes our immigration system work, and Director Mayorkas has made it a stronger, better functioning agency. His expertise on immigration issues will help him in his new role, where he is sure to improve coordination within the Department. Those Senators who claim to care about protecting our borders and improving our broken immigration system should support this nomination, just as they should call on the House to pass comprehensive immigration reform as we did here in the Senate earlier this year.

It is unfortunate that Director Mayorkas' nomination has been the subject of unfair and partisan attacks, and it is wrong that some tried to create controversy about Director Mayorkas even before his confirmation hearing occurred in the Senate Homeland Security and Governmental Affairs Committee. The attacks mounted against Director Mayorkas are made even less credible by the conduct of the former DHS deputy inspector general,

who was forced to resign in the face of allegations of serious misconduct.

On the eve of Director Mayorkas' confirmation hearing, this former deputy inspector general, Charles Edwards, authorized the transmittal of an email to a Republican Senate office that contained sensitive information about an ongoing investigation involving Director Mayorkas. The timing of its transmittal raised serious questions about the motivation for its disclosure. Then, the email authorized by the former deputy inspector general was published shortly after its transmittal on the web site of a Republican candidate for Governor of Virginia. Why would a Virginia gubernatorial candidate care about an investigation being conducted by the Office of Inspector General for the Department of Homeland Security? Because some of the anonymous allegations repeated in that email by the Office of Inspector General involved claims that Director Mayorkas intervened in an immigration matter for Terry McAuliffe, the Governor-elect of Virginia. What is worse, the former inspector general had received these anonymous allegations in September of 2012, yet only disclosed them publicly just days before Director Mayorkas was scheduled to appear before the Homeland Security and Governmental Affairs Committee.

Director Mayorkas' professional integrity further undermines these bogus allegations. Alejandro Mayorkas served as an assistant U.S. attorney and as the U.S. attorney for Southern California, posts he held during the course of a decade. Where he has made mistakes, he has taken responsibility. In my experiences with him while he has served as Director of USCIS, Director Mayorkas has put the interests of USCIS and those it serves at the forefront. He has made tough decisions to make that agency better—decisions that are sometimes not popular with agency employees but decisions that put the institution first. He has brought significant resources to bear on the EB-5 regional center program, a program that a bipartisan majority of this Senate supported when we passed comprehensive immigration reform in June. While the House has failed to pass this important legislation that includes meaningful improvements to the EB-5 program, Director Mayorkas did not let up on his efforts to ensure the program's integrity. He has acted to make sure the agency's decisions are correct under the controlling law and regulations. The suggestion that Director Mayorkas would risk his reputation and his credibility by improperly intervening in a single immigration case, out of thousands his agency handles every year, is absurd.

Those who have concerns about the integrity of the EB-5 regional center should remember that in May of this year, the Senate Judiciary Committee unanimously approved broad reforms to the EB-5 program during the com-

mittee's consideration of comprehensive immigration reform. These reforms, which received praise from the Judiciary Committee's former ranking member, Senator SESSIONS, contained a host of improvements recommended by Director Mayorkas and other administration officials to provide strong oversight tools, security enhancements, and antifraud provisions. In June, 68 Senators voted in favor of the comprehensive reform bill, of which my EB-5 reforms were a part. Senators on both sides of the aisle who have supported this program know it creates jobs in American communities and is an important and viable source of capital investment for many American entrepreneurs. Senator GRASSLEY said on the Senate floor earlier this week that we could make reforms to this program "this very day." I would respond that the Senate has voted to make them already this year, and I was glad to have his support for my strong reforms in the Senate Judiciary Committee.

Those who say that the Senate should not approve Director Mayorkas' nomination because a scandal-plagued and now-resigned deputy inspector general sat on allegations made against Director Mayorkas for 10 months before disclosing them in a highly improper way days before Director Mayorkas' confirmation hearing should carefully consider whether these circumstances merit our faith that the investigation is truly impartial or legitimate. I have seen no evidence that those Senators who put such faith in the former deputy inspector general's flawed investigation have asked the tough questions necessary to test the integrity of that investigation. Instead of considering the circumstances of the former deputy inspector general's disclosure, and taking the opportunity to ask tough questions of Director Mayorkas at his confirmation hearing, Republican Senators on the Homeland Security and Governmental Affairs Committee decided to boycott that hearing. And when Chairman CARPER scheduled a committee business meeting to vote on Director Mayorkas' nomination, all Republican Senators but two failed to attend that meeting. This is unfortunate and, in my view, an abdication of our responsibility to evaluate the President's nominees independently.

As Senators, we are obligated to ask the tough questions of all nominees, but it is also important that we carefully consider the source and motivations behind any allegations against those nominees.

Regarding the immigration case about which Director Mayorkas is accused of acting improperly, it is clear in emails that he wrote which have been publicly disclosed, that he asserts his inability to become involved in any specific case. The emails that have been disclosed paint a picture of an agency director who took great pains to avoid any appearance of favoritism or impropriety. I would urge my col-

leagues to review carefully, and in context, that which has been disclosed. Finally, it is troubling that the individuals who have brought allegations to Republican Senators against this nominee would not even agree to meet with Chairman CARPER or his staff. The Senate should consider the reliability of those who have made allegations but are unwilling to let those allegations be fully considered.

I have every reason to believe that Director Mayorkas will serve the Department of Homeland Security and the American people honorably. I have no doubt about the quality of his character or his integrity as a public official. And I regret that his nomination has been so needlessly politicized. Alejandro Mayorkas deserves an up-or-down vote and the support of the Senate.

Mr. CARPER. Madam President, how much time remains?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. CARPER. Madam President, my friend Senator DURBIN, from Springfield, IL, Land of Lincoln, reminds me as I close here this morning of something Lincoln once said. He was meeting with his Cabinet during the heart of the Civil War. Things had started to turn for the better for the Union. The Union leader on the military side was a guy named Grant. He allegedly liked to drink, a lot. Some of the folks on the President's cabinet didn't like him. They said: Mr. President, we need to get rid of Grant. He is not the kind of guy we want to have leading our forces.

Grant had led a reversal of fortune, so that the Union having been on the losing side ended up on the winning side again and again. Lincoln looked at his Cabinet, and he said these words, and I paraphrase them: Find out what Grant is drinking, and give it to the rest of my generals.

Rather than criticize or hang out to dry a leader of an agency who has turned it around, who enjoys the broad support of the folks within his agency; rather than criticize him and finding fault and leaving him out there unable to defend himself against unknown accusations, we should find out—in the words of Lincoln—what Grant is drinking. In this case we should find out what Mayorkas is doing, what has he done to turn around an agency and make sure the other people who come into positions of authority are taking of the same beverage.

With that, I yield back the remainder of my time, and I yield the floor.

Mr. DURBIN. Madam President, the unanimous consent agreement is that we would move to this vote on the Mayorkas nomination following the debate. This debate has ended a little earlier than we anticipated. This first roll-call, we are going to accommodate Members and leave it open so they have a chance. But because most are anxious, we are hoping Members come to the floor early, vote, and we can start the series of votes agreed to.

Mr. COBURN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Alejandro Nicholas Mayorkas, of the District of Columbia, to be Deputy Secretary of Homeland Security?

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Nevada (Mr. REID) is necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. REID) would vote “aye.”

Mr. CORNYN. The following Senators are necessarily absent; the Senator from Tennessee (Mr. ALEXANDER), the Senator from Arizona (Mr. FLAKE), the Senator from Georgia (Mr. ISAKSON), and the Senator from Nebraska (Mr. JOHANNIS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted “nay.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 41, as follows:

[Rollcall Vote No. 286 Ex.]

YEAS—54

|            |              |             |
|------------|--------------|-------------|
| Baldwin    | Hagan        | Murphy      |
| Baucus     | Harkin       | Murray      |
| Begich     | Heinrich     | Nelson      |
| Bennet     | Heitkamp     | Pryor       |
| Blumenthal | Hirono       | Reed        |
| Booker     | Johnson (SD) | Rockefeller |
| Boxer      | Kaine        | Sanders     |
| Brown      | King         | Schatz      |
| Cantwell   | Klobuchar    | Schumer     |
| Cardin     | Landrieu     | Shaheen     |
| Carper     | Leahy        | Stabenow    |
| Casey      | Levin        | Tester      |
| Coons      | Manchin      | Udall (CO)  |
| Donnelly   | Markey       | Udall (NM)  |
| Durbin     | McCaskill    | Warner      |
| Feinstein  | Menendez     | Warren      |
| Franken    | Merkley      | Whitehouse  |
| Gillibrand | Mikulski     | Wyden       |

NAYS—41

|           |              |           |
|-----------|--------------|-----------|
| Ayotte    | Enzi         | Murkowski |
| Barrasso  | Fischer      | Paul      |
| Blunt     | Graham       | Portman   |
| Boozman   | Grassley     | Risch     |
| Burr      | Hatch        | Roberts   |
| Chambliss | Heller       | Rubio     |
| Coats     | Hoeven       | Scott     |
| Coburn    | Inhofe       | Sessions  |
| Cochran   | Johnson (WI) | Shelby    |
| Collins   | Kirk         | Thune     |
| Corker    | Lee          | Toomey    |
| Cornyn    | McCain       | Vitter    |
| Crapo     | McConnell    | Wicker    |
| Cruz      | Moran        |           |

NOT VOTING—5

|           |          |      |
|-----------|----------|------|
| Alexander | Isakson  | Reid |
| Flake     | Johannis |      |

The nomination was confirmed.

Mr. DURBIN. Madam President, I ask unanimous consent that the remaining mandatory quorums with respect to these nominations required under rule XXII be waived; further, that all remaining votes be 10-minute votes.

I urge my colleagues to stay on the floor so we can hold to the 10-minute deadlines. People have planes to catch.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

NOMINATION OF BRIAN J. DAVIS

Mr. GRASSLEY. Madam President, today we consider the nomination of Brian Davis to be a District Court Judge for the Middle District of Florida. I will vote for him today (although there has been some controversy surrounding his nomination). I wish to take a minute to discuss the nomination.

Judge Davis made a number of controversial remarks a few years ago. During his hearing last Congress, Judge Davis was asked to provide some clarification regarding those comments. After carefully reviewing his answers from the hearing, many of us concluded that they didn't provide the clarity that we had hoped he would provide. For that reason, following his hearing, I asked Judge Davis some follow-up questions for the RECORD, hoping to get the clarity, in writing, that I didn't hear him provide during his hearing.

Unfortunately, after reviewing his written answers, I concluded that Judge Davis didn't fully appreciate why many found his comments so troubling. For instance, when I asked him about these statements he wrote that a “number of my statements could be misunderstood”, but he neither apologized for them nor said anything to demonstrate that he fully appreciated why his comments were so problematic.

As a result, in the last Congress I reluctantly opposed his nomination.

Judge Davis, of course, was renominated this Congress. On September 12th, he submitted a letter to the Florida Senators.

In that letter, Judge Davis apologized for his comments—without qualification.

He wrote, “I believe that several of the statements I made in the past were inappropriate and improper.” He went on to write, “I apologize for any inappropriate statements and deeply recognize the harm that they could cause if they gave the misimpression that I am anything other than impartial or that I maintain any bias or prejudice.”

As I wrote to Judge Davis in a follow-up letter on September 25th, unlike the last Congress, I believe the apology Judge Davis transmitted on September 12 for those comments was without qualification. Therefore, in my view, it demonstrated both courage and humility.

In my letter to Judge Davis, I asked him simply to confirm that he was apologizing for his comments regarding Dr. Henry Foster, Dr. Joycelyn Elders, and Justice Thomas.

In a follow-up letter he wrote to me on September 26, he confirmed those were the “inappropriate comments” he referenced in his letter to the Florida Senators.

I ask consent that both my letter to Judge Davis, and his response, be made part of the RECORD.

I have given this nomination a great deal of consideration. I believe Judge

Davis has taken steps this Congress that, in my view, he didn't appear willing to take last Congress. Taking this into consideration, together with the fact that he enjoys the support of his home State Senators, I am willing to give Judge Davis the benefit of the doubt and will support his nomination today.

I yield the floor.

Washington, DC, September 25, 2013.

Judge BRIAN J. DAVIS,  
Nassau County Courthouse,  
Fernandina Beach, FL.

DEAR JUDGE DAVIS: I write to follow up on your September 12th letter to Senators Nelson and Rubio, copying me and Chairman Leahy, regarding concerns with your record Members of the Senate Judiciary Committee, including me, raised last Congress.

As you alluded in your letter, during your hearing last Congress, Senator Lee asked you a number of questions regarding various remarks and speeches you made throughout your career. After carefully reviewing the answers you gave during the hearing, I concluded your responses lacked the breadth and clarity I had hoped you would provide when afforded the opportunity. For instance, you conceded that some comments were “inappropriate,” but then stated “they were inappropriate for the reason that an impression could be gotten from them that somehow the court maintained a racial prejudice.” That response troubled me because it did not appear to fully recognize the reason some find those comments concerning. Specifically, the comments appeared quite plainly to assign a racial motivation to those who opposed particular nominees on purely policy grounds.

Consequently, following your hearing I sent you a number of follow up questions for the record. Again, I was hopeful to receive some clarity regarding those comments. But after carefully reviewing your responses, I reluctantly reached the conclusion that you still did not fully appreciate why some viewed your comments as inappropriate. For instance, I asked about your comments regarding President Clinton's nomination of Dr. Henry Foster's nomination to be surgeon general. But rather than concede what appears to be apparent by the words you used, you answered instead that the comments were inappropriate because they “could be interpreted” in a particular way, and therefore that you lacked impartiality. In my view, your answers to several other questions lacked clarity in a similar fashion. For these reasons, among several others, reluctantly I opposed your nomination last Congress.

With this background, I received your letter of September 12th, 2013. In your letter you wrote, without qualification, “I believe that several of the statements I made in the past were inappropriate and improper.” You went on to write, “I apologize for any inappropriate statements and deeply recognize the harm that they could cause if they gave the misimpression that I am anything other than impartial or that I maintain any bias or prejudice.” I note that these two statements represent a step that you did not appear willing to take last Congress. In my view, this demonstrates both courage and humility. Thank you for that letter.

As your nomination is now again pending before the Committee, I write to seek one further clarification. As I noted, you wrote in your recent letter that you apologize for “any inappropriate statements,” but you did not specify the statements to which you referred. I want to confirm that you are referring to your comments regarding Dr. Henry

Foster, Dr. Joycelyn Elders, and Justice Thomas.

Thank you in advance for your prompt reply.

Sincerely,

CHARLES E. GRASSLEY,  
Ranking Member,  
U.S. Senate Committee on the Judiciary.

CIRCUIT COURT,  
FOURTH JUDICIAL  
CIRCUIT OF FLORIDA,

Fernandina Beach, FL, September 26, 2013.

Senator Charles E. Grassley,  
Ranking Member, U.S. Senate Committee on the  
Judiciary, Washington, DC.

DEAR SENATOR GRASSLEY: Thank you for your letter of September 25, 2013, and the opportunity to further clarify my views.

I understand your concerns, and please know that my appreciation of the inappropriateness of statements I have made in speeches include those referenced in your letter regarding Dr. Foster, Dr. Elders and Justice Thomas.

Thank you for your continued consideration of my nomination.

Sincerely,

BRIAN J. DAVIS.

NOMINATION OF JOHN KOSKINEN

Mr. HATCH. Madam President, I wish to speak on the nomination of John Koskinen to be the next Commissioner of the Internal Revenue Service.

I want to say upfront that I support Mr. Koskinen's nomination as I believe he is a qualified candidate for this position and he deserves to be confirmed.

However, I do have to say that I am disappointed in the process by which his nomination has been moved through the Senate, both in the Finance Committee and here on the floor. There is simply no reason for the Senate to rush to confirm Mr. Koskinen, and there is ample reason for us to take our time.

It goes without saying that the IRS is one of the most powerful agencies in our government. It is both feared and loathed by people throughout the country. That being the case, it is absolutely essential that all the actions of the IRS and its leadership are above board.

That is the only way for the agency to maintain its credibility.

That is the only way an agency this powerful can maintain the trust of the American people.

The American people should be able to trust that the IRS will enforce our Nation's tax laws without bias or prejudice. If that trust is broken, it damages the credibility of our entire government.

Needless to say, over the last few years, the IRS hasn't done a good job of maintaining that trust and, as a result, it has eroded its own credibility.

I am talking, of course, about the IRS political targeting scandal currently under investigation in the Finance Committee.

If there is one thing that everyone should agree on, it is that the IRS should enforce the tax laws as they are written by Congress without consideration of political views. Sadly, it appears that, for a time, not everyone at the IRS shared that view.

When this scandal first came to light, there was condemnation on all sides and everyone—regardless of party affiliation—wanted to get to the bottom of it.

President Obama, for example, said “I have got no patience with it, I will not tolerate it, and we will make sure that we find out exactly what happened on this.”

Majority Leader REID expressed similar views here on the floor, stating: “I have full confidence in the ability of Senator BAUCUS and the Finance Committee to get to the bottom of this matter and recommend appropriate action.”

I hope that hasn't changed.

I hope that the effort to rush Mr. Koskinen's nomination through the Senate is not part of an effort to sweep the Finance Committee's investigation under a rug and hope it disappears.

As I said, there is no reason for us to move so quickly on this nomination.

By waiting until our investigation has concluded, we can ensure that the next commissioner—presumably Mr. Koskinen—will begin their time with the benefit of the findings of the investigation. This would put him in a better position to fix the problems we have uncovered and to move the agency forward. In addition, it would ensure that he has the confidence of Members of both parties, which is vital with an agency of this size and stature.

I am encouraged by Mr. Koskinen's commitment to continue the cooperation the Finance Committee has enjoyed so far in its investigation, as well as his commitment to working with Congress to fix the IRS's many problems.

I plan on holding him to his promise. The confirmation of a new IRS Commissioner should not be a partisan issue.

My fear is that, by including Mr. Koskinen in the current partisan fight over executive branch nominees, the Senate Democratic leadership is injecting partisanship where none should exist. This further undermines the IRS as an agency, not to mention Mr. Koskinen's future leadership of the agency.

This is not a time that we should be undermining the IRS. In addition to restoring the agency's damaged credibility—which I believe should be the next commissioner's top priority—there are a number of other challenges facing this agency.

For example, there is the IRS's significant role in the implementation of ObamaCare. As we have seen thus far, this presents a number of difficulties, both in terms of operation and enforcement.

Both the IRS's inspector general and insurers throughout the country have questioned whether the agency is capable of administering the Affordable Care Act's premium subsidy program without massive amounts of fraud or improper payments.

On top of that, there are the proposed IRS and Treasury regulations address-

ing the political activities of tax-exempt organizations. Given the IRS's recent problems in dealing with these types of organizations, many of us have reason to be skeptical that the agency can promulgate such rules without further bias or prejudice.

On all these issues, Mr. Koskinen has committed to working with Congress, and with Members of both parties.

I hope that he lives up to this commitment.

It is essential that he does so, because, as I said, the IRS is an agency rife with problems, most of which are self-inflicted. These problems are not simply going to go away when a new Commissioner is confirmed, and they aren't going to be solved if the agency ignores the input and inquiries from Members of Congress.

Once again, I support Mr. Koskinen's confirmation. I just wish we had gone a different route with regard to his nomination in the Senate.

NOMINATION OF JANET YELLEN

Mrs. FEINSTEIN. Madam President, today I wish to express my support for Vice Chairman Janet Yellen, nominee for Chairman of the Federal Reserve.

Dr. Yellen has dedicated her life to understanding the complex and evolving field of economics, and her background makes her an ideal candidate to replace Chairman Ben Bernanke and continue the Fed's efforts to boost economic growth, increase the pace of job creation, and ultimately reduce the crushing unemployment that has been a drag on our recovery.

Dr. Yellen's academic credentials and experience in economics are first rate.

She graduated *summa cum laude* from Brown University in 1967 and later earned a doctorate in economics from Yale University in 1971.

She began her teaching career as an assistant professor at Harvard University, where she taught from 1971 to 1976.

In 1977 and 1978 she began her public service as an economist at the Federal Reserve Board of Governors.

In 1980, Dr. Yellen headed west to my home State of California to become an assistant professor at the University of California, Berkeley. She rose to professor emeritus of business and economics and was twice awarded teacher of the year at Berkeley's distinguished Haas School of Business.

During her time at Berkeley and elsewhere, Dr. Yellen published numerous research works, including the well-regarded “Waiting for Work,” a comprehensive study of unemployment she completed with her husband, the economist George Akerlof.

Dr. Yellen's research has been published in the *Journal of Economics*, *Business Economics*, and the *Brookings Papers on Economic Policy*, amongst others.

Her research has primarily focused on unemployment, monetary policy, and international trade—a perspective that will be vitally important as the Fed works to solve the complex issues facing the global economy.