

United States Senate

WASHINGTON, DC 20510

October 14, 2010

Via Electronic Transmission

The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, DC 20528

Dear Secretary Napolitano:

As you know, I have expressed concern over the manner in which visa applications are processed by the U.S. Citizenship and Immigration Services (USCIS). In the vital interest of national security, several members of Congress and I expressed our concern to you after we became aware of an internal USCIS draft memorandum that outlined methods of administrative alternatives to comprehensive immigration reform.

My office also received allegations that senior USCIS officials are putting political pressure on career employees to approve more visa applications, even if the applications might be fraudulent or the applicant is ineligible. When the career employees at the California Service Center (CSC) resisted the pressure to bend the rules, they were allegedly retaliated against through involuntary transfers and frivolous internal investigations. The Office of Inspector General is currently examining these allegations.

In September, I wrote to USCIS Director Alejandro Mayorkas about my concerns. Director Mayorkas responded at the end of September, and I appreciate his attention to these issues. However, his response was inadequate. For example, I sought information regarding the number of involuntary transfers of USCIS employees in order to fully assess the alleged retaliatory transfers. Director Mayorkas failed to answer the question.

In order to further investigate these allegations, my staff has interviewed seven USCIS employees and obtained hundreds of pages of supporting documents. Unfortunately, the evidence suggests that Director Mayorkas is fostering an environment that pressures employees to approve as many applications as possible and condones retaliation against those who dissent.

According to the USCIS employees:

- During a recent visit to the CSC, Director Mayorkas became “visibly agitated” when advised that the employees were interested in learning more about fraud detection efforts. Mayorkas asked, “Why would you be focusing on that instead of approvals.” One witness stated that “his message was offensive to a lot of officers who are trained to detect fraud.”

- Mayorkas admonished officers to “look at petitions from the perspective of the customer.”
- USCIS leadership expressed a goal of “zero complaints” from “customers,” implying that approvals were the means to such an end.
- DHS conducted a human capital survey where USCIS scored low because employees felt pressured by upper management to approve applications.
- Following a presentation by Director Mayorkas at a management conference in February, Deputy Chief Counsel Doug Craig said that Mayorkas had directed him to “get to yes.” At the same event, Chief Counsel Roxana Bacon said that Mayorkas says that all the time and that he had said it recently at a town hall meeting.
- At a conference in Landsdowne, Virginia, Director Mayorkas said that there are some “managers with black spots on their hearts” who can't see their way to grant benefits. He said, “I am dealing with some of these managers.”
- His comments came just after two senior CSC officials who resisted the “get to yes” culture were involuntarily transferred to other assignments.
- One high-level official told CSC employees that these managers “were not transferred for approving too many applications.”
- Other USCIS personnel who were seen as too close to these CSC officials were also transferred or detailed to other assignments, in some cases on less than one day’s notice.
- New CSC leadership was “shocked” upon learning that denials were given extra weight in employee performance evaluations because a denial takes longer to process. The senior official said that policy would “have to change.”
- New CSC leadership has “cultivated a culture of fear and disrespect.”
- An employee advised that the CSC recently abandoned an important anti-fraud procedure. Previously, adjudicators would check applications against a list of petitioners with a history of fraud and abuse. The adjudicators would then forward any matching applications to fraud specialists within the division. Now, however, the applications receive no special handling and there are no longer fraud specialists focusing only on such high-risk applications.

Accordingly, in order to address my concerns and assure the American people that the USCIS is not compromising national security through policy, counter to established law, and management pressure, I request that the Department of Homeland Security respond to the following questions in writing, providing all related documents:

- 1) Director Mayorkas indicated that 25 senior executive service grade USCIS employees were transferred from August 1, 2007 to August 31, 2010. How many of these transfers were involuntary? Please provide detailed information for each SES employee transfer, both voluntary and **involuntary**.
- 2) Please review records with the Administrative Appeals Office (AAO) to determine whether the application denials from the California Service Center (CSC) over the previous three years held to the applicable statutory and regulatory requirements. If CSC management decisions were meeting the legal ruling of the appellate body, why were the CSC managers removed and transferred? Why was there pressure on the CSC to approve applications that AAO confirmed were ineligible?
- 3) How many visa applications have the service centers in California, Vermont, Texas, and Nebraska received in each of the previous five (5) years?
- 4) It's my understanding that internal fraud audits have been conducted by USCIS. Given that, what is the best estimate of the number of fraudulent visa applications received by service centers in California, Vermont, Texas, and Nebraska in each of the previous five years? Please provide **monthly** statistics.
- 5) What are the visa approval rates at each service center in California, Vermont, Texas, and Nebraska for each of the previous five years? Please provide **monthly** statistics.
- 6) In a December 15, 2009, OIG Memorandum Report to USCIS Chief Mary Thomas, the DHS OIG listed four previous recommendations for USCIS that had not been adequately addressed by USCIS. Has USCIS provided a status update to DHS OIG for these recommendations? If so, please provide details. If not, why not? The four outstanding recommendations were:
 - a) Establish performance measures for fraud detection in the USCIS immigration benefit caseload.
 - b) Require adjudicators to identify petitions with articulable fraud in an electronic system accessible to FDNS, to begin establishing fraud trends.
 - c) Establish a quarterly reporting requirement from USCIS Adjudications to the USCIS Director on adjudicator participation in identifying articulable fraud.
 - d) Restructure FDNS-DS to improve case tracking and management reports. Case tracking should be streamlined, and FDNS program measures should be developed to be incorporated into the database structure, along with an interface to extract management reports at both the headquarters and field level.
- 7) How do the performance evaluations of adjudicators account for the fact that a denial takes longer to process than an approval? Has the CSC policy of giving denials greater weight in assessing productivity been changed? What is the policy in other service centers? Please provide copies of the USCIS performance evaluation policies.

- 8) How does USCIS root out conflicts of interest with regard to applications for benefits? How do you ensure that existing employees do not inappropriately pressure adjudicators to approve applications despite ineligibility or indications of fraud? Has the policy with regard to conflicts of interest for employees been altered in the last three years? Please provide copies of previous and current policies.
- 9) How can you assure me, the Congress, the American people, and the adjudicators in the field that the law will be followed without a bias in favor of high approval rates, and that national security, and efforts to detect fraud and abuse will not be undermined in attempt, as one senior USCIS official put it, to “instruct generosity” for the immigrant population?

Please remind all USCIS officials that they are not to impede Congressional inquiries, conceal information from Congress, or threaten employees who might speak out. Interfering with Congressional oversight hurts not only the agency, but also the American public. It is important that senior officials assure their employees that it is both acceptable and within their rights to speak to Congress.

USCIS employees have a right to talk to Congress without direct or indirect interference or threats from the agency and its senior officials. Furthermore, they have a right to talk to Congress confidentially. Interfering with a Congressional inquiry is against the law. Below, I have included an excerpt of 18 U.S.C. § 1505 to this letter for your reference. That law states in pertinent part that:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Additionally, denying or interfering with employees’ rights to furnish information to Congress is also against the law. Below, I have included an excerpt of 5 U.S.C. § 7211 to this letter for your reference. That law states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Finally, federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars. The Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, § 714, 123 Stat. 3034, 3208. SEC. 717 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance or efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

I look forward to receiving your response to the above questions by no later than October 28, 2010. If you have any questions on this matter, or if you or a member of your staff would like to speak with a member of my staff regarding this matter please call Jason Foster or Kathy Nuebel Kovarik_of my staff at (202) 224-4515. All written responses should be sent in electronic format to my attention at Brian_Downey@finance-rep.senate.gov.

Sincerely,



Charles E. Grassley
United States Senator

Attachment

United States Senate

WASHINGTON, DC 20510

October 14, 2010

Via Electronic Transmission

The Honorable Richard L. Skinner
Inspector General
Office of the Inspector General
U.S. Department of Homeland Security
245 Murray Drive, SW
Washington, DC 20528

Dear Inspector General Skinner:

The purpose of this letter is to request that you conduct an independent examination of a number of matters relating to the activities and operation of one or more offices of the US Citizenship and Immigration Services (USCIS). More specifically, I am requesting that you evaluate, among other things, the visa approval policies and procedures used by the USCIS.

My staff has engaged with several field officers within USCIS who have provided me with evidence suggesting that USCIS leadership is pressuring USCIS employees to approve immigration benefits despite ineligibility or indication of fraud. According to these USCIS employees, approval rates for receiving immigration benefits are extremely high (around 98 percent) despite estimates that fraudulent applications stand at about 25 percent.

In the course of your review, please gather and analyze information sufficient to address the following specific questions and concerns:

Status of Previous Recommendations

1. In a December 15, 2009 OIG Memorandum Report to USCIS Chief Mary Thomas, the DHS OIG listed four previous recommendations for USCIS that had yet to be adequately addressed by USCIS. Has USCIS provided a status update to these requests? If so, please provide details. If not, why not? The four outstanding recommendations were:
 - a) Establish performance measures for fraud detection in the USCIS immigration benefit caseload.
 - b) Require adjudicators to identify petitions with articulable fraud in an electronic system accessible to FDNS, to begin establishing fraud trends.
 - c) Establish a quarterly reporting requirement from USCIS Adjudications to the USCIS Director on adjudicator participation in identifying articulable fraud.

- d) Restructure FDNS-DS to improve case tracking and management reports. Case tracking should be streamlined, and FDNS program measures should be developed to be incorporated into the database structure, along with an interface to extract management reports at both the headquarters and field level.

Employee Performance Evaluation Criteria

2. To what extent do performance evaluation criteria for USCIS employees encourage and reward appropriately denying ineligible or potentially fraudulent applications?
3. To what extent are performance evaluation criteria appropriately applied to ensure that employees have the proper incentives to deny ineligible or potentially fraudulent applications?
4. What are employee perceptions about the value that management places on denying ineligible or potentially fraudulent applications?
5. What policies and practices are in place which might discourage appropriate denials? For example, USCIS employees have reported that 100% of denials or requests for evidence must be reviewed by senior officials while approvals need not be reviewed. Employees have also reported that senior officials set a goal of zero “customer” complaints.

Fraud Estimates versus Approval Rates

6. What are the best available estimates of the level of fraud or ineligibility among the applications for immigration benefits, and what do those estimates suggest that an appropriate approval rate ought to be?
7. Over the previous five years, what have **monthly** approval rates been in various USCIS service centers, and how have those rates changed over time?
8. When USCIS denies applications, what reasons are cited with what frequency? Please provide data for each reason for denial for the previous five years.
9. Please review records with the Administrative Appeals Office (AAO) to determine whether the application denials from the California Service Center (CSC) over the previous three (3) years held to the applicable statutory and regulatory requirements. If CSC management decisions were meeting the legal ruling of the appellate body, why were the CSC managers removed and transferred? Was there pressure on the CSC to approve ineligible applications despite the results of AAO review?

10. An employee advised my staff that adjudication officers have been pressured to approve applications and ignore established policy for processing. In some cases, the officers complied with the demands of their supervisors and approved visa applications containing suspect information. Reportedly, the pressured officers wrote “per supervisor” on the approved application. Please evaluate these claims along with the policy and procedure.

Alleged Adverse Personnel Actions/Retaliation by USCIS Upper Management

Given the issues raised by field staff about involuntary transfers, I am concerned that retaliatory efforts by high level USCIS management may have occurred or are occurring, and request that DHS OIG evaluate the following questions, providing all related documentation:

11. What is the informal Relocation Policy, in contrast to the formal policy, for Senior Executive Service (SES) Level employees in USCIS?
12. How many SES employees have been transferred involuntarily within the past three years? How many SES employees have been forced to transfer to locations in which they did not request? Do SES grade employees commonly experience involuntary transfers in USCIS? If so, for what reasons are the SES employees transferred? Please provide details of each transfer.
13. The California Service Center (CSC) and Vermont Service Center (VSC) have come to the forefront of my attention due to information surrounding the offices’ processing of large volumes of visa applications and alleged fraud levels. Please evaluate the CSC and VSC to determine whether there was pressure to approve ineligible and/or fraudulent visa applications. Please specifically review whether the leadership changes and internal managerial rotations made at the California Service Center in July/August 2010 led to pressure to approve more cases. Please review communication between Service Center Operations leadership and California Service Center leadership to determine if there was support, or lack of support, for addressing fraud and what, if anything, changed in July/August 2010. In the interest of national security and in light of the fraudulent application rates in relation to the levels of approval in the CSC and VSC, is there any cause for my concern?

Please take whatever action you deem appropriate in these matters and thank you in advance for your attention to this subject impacting national security. Should you have any questions regarding this letter, please contact Jason Foster at (202) 224-4515. All formal correspondence should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
United States Senator