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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6775

OMER L. URBAN, Chief Counsel and Legal Director  
GAIL L. DAVID, Administrative Counsel and Staff Director

July 31, 2014

The Honorable Leon Rodriguez  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue N.W.  
Washington, D.C. 20528

Dear Director Rodriguez:

As Chairman of the Senate Judiciary Committee with jurisdiction over the EB-5 Regional Center Program, I am writing to request that you clarify the average processing time for an initial Immigrant Petition for Alien Entrepreneur, or Form I-526 petition. I understand that the average processing time for all I-526 petitions is 13.2 months as of May 31, 2014. However, significant confusion exists regarding the processing time for a project's initial I-526 petition.

Regional centers assert that this first petition takes longer than the reported 13.2 months. It is generally subject to a more extensive review of the project's business plan, including de novo review of whether the project will promote economic growth, improve regional productivity, job creation, and increase domestic capital investment. The initial I-526 petition for one important project in Vermont has been with USCIS for over 15 months and has yet to be assigned to an adjudicator. Investors, who have come to expect a significant wait, nonetheless grow increasingly uneasy after 13 months, presuming the project has not been approved due to some unknown deficiency. As a result, investors in some EB-5 projects in Vermont have requested their funds be returned, unaware that a mere delay is not uncommon and in no way reflects poorly upon the project.

We have previously discussed my concerns that inefficiency and unpredictability in processing times harms the EB-5 program, impeding its growth and ultimately reducing job creation. I hope that you are able to provide this information promptly.

Although I continue to hold these concerns, I do applaud USCIS for taking strong steps to improve this program administratively. I am pleased that you anticipate making significant progress towards lowering processing times for I-526 petitions, and intend to near the stated goal of five months by early 2015. I am confident that USCIS can administer the EB-5 program both securely and efficiently. I also appreciate your commitment to working with me to continue strengthening this job creating program and making it permanent.

July 31, 2014

Page 2 of 2

Thank you for your attention to this matter. I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style.

PATRICK LEAHY

Chairman

cc: Nicolas Colucci, Chief, Immigrant Investor Program Office, USCIS

(b)(6)

From: [redacted]  
 Sent: Thursday, October 03, 2013 1:01 PM  
 To: Virkstis, Matthew (Judiciary)  
 Cc: [redacted]  
 Subject: FW: status check  
 Attachments: I-526 Receipt Notice [redacted] I-526 Receipt Notice [redacted] I-526  
 Receipt Notice [redacted] I-526 Receipt Notice [redacted]  
 I-526 Receipt Notice [redacted] I-526 Receipt Notice [redacted]  
 [redacted] I-526 Receipt Notice [redacted] I-526 Receipt  
 Notice [redacted] I-526 Receipt Notice [redacted] I-526  
 Receipt Notice [redacted]

Hey, Matt:

Please see the responses below that I just got regarding the attached I-526 applications. I'll keep you posted as/if I get any further info.

[redacted] within processing time  
 [redacted] within processing time  
 [redacted] within processing time  
 [redacted] within processing time  
 [redacted] within processing time  
 [redacted] within processing time  
 [redacted] with officer being reviewed  
 [redacted] with officer being reviewed  
 [redacted] with officer being reviewed  
 [redacted] with officer being reviewed

Hope this helps.

[redacted]

Office of Legislative Affairs  
 USCIS-HQ  
 Tel. [redacted]  
 BB/Cell [redacted]  
 Fax - 202-272-1955

[redacted]

(b)(6)

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**From:** Virkstis, Matthew (Judiciary) [mailto:Matthew\_Virkstis@Judiciary-dem.senate.gov]

**Sent:** Friday, September 20, 2013 10:29 AM

**To:** [REDACTED] (b)(6)

**Subject:** status check

Hi [REDACTED] (b)(6)

I send this request with the understanding that you guys are working hard to get the I-526 backlogs down, and that the averages for processing are higher than you'd like. These receipts are for petitioners in the ANC Bio project in VT. They range from Oct. 2012 to March 2013, so I understand that several of them are within USCIS' current processing time for I-526s. That said, I'd be grateful for a simple status check, even if just on the oldest ones. Please let me know what more you all need from us to check status on these and thanks as always. Hope all is well. Matt

# United States Senate

WASHINGTON, DC 20510-4502

May 25, 2016

The Honorable León Rodríguez  
Director  
United States Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529

Dear Director Rodríguez:

I write today about the EB-5 Immigrant Investor Program and recent fraud allegations involving certain Vermont projects. Over the past few years the Department of Homeland Security and USCIS have raised concerns about the potential for abuse within the EB-5 program. USCIS took important steps to improve the program's integrity as a result, but in a letter to the Senate and House Judiciary Committees last year Secretary Johnson made it clear that certain improvements required congressional action. Congress has worked in a bipartisan fashion to reform the program, including increasing fraud detection capabilities and protections for investors, but unfortunately these reforms have not yet been enacted into law.

On April 13, the Securities and Exchange Commission (SEC) filed a civil fraud complaint in federal district court in Miami against a Vermont-based ski resort, its principals, and related businesses for allegedly misusing millions of dollars raised through the EB-5 program. At the request of the SEC, the federal district court judge placed the properties and other assets under the control of a receiver. As a result of the alleged fraud, hundreds of Vermonters employed at these businesses are concerned their jobs are at risk, and hundreds more foreign investors are concerned that their I-829 petitions will now be denied and they will be subject to removal. The receiver, Michael Goldberg of Akerman LLP, has committed to operating these properties in a manner that will keep Vermonters employed while also attempting to meet the job creation requirements that are necessary for EB-5 investors to have their I-829 petitions favorably adjudicated.

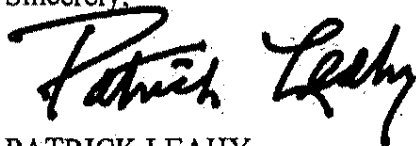
I understand from the SEC allegations that investor funds may have been comingled among the several EB-5 projects. Many individuals who intended to invest in one EB-5 project had their funds used to support—and actually created jobs at—other EB-5 projects. This raises questions as to how USCIS might consider their investments, particularly as they relate to the required job creation.

As Mr. Goldberg continues his work, I would ask that you make staff at USCIS available to discuss the potential impact the unique fraud in this case may have on investor petitions. My priority is to ensure that the Vermonters working at these properties and impacted by this fraud stay employed. In order to keep the doors of these businesses open, the receiver must be able to manage and structure these assets without lengthy delays.

Yet the receiver's decisions will have a significant impact on investors' immigration status and there is no clear precedent for this situation. Some of the investors in these projects are nearing the two year time frame on their provisional visas and understandably have questions as to whether their investments will now be viewed as meeting program objectives and requirements.

At your earliest convenience, please let me know an appropriate point of contact at USCIS for this conversation with the court-appointed receiver.

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style with a large initial "P" and "L".

PATRICK LEAHY  
United States Senator

(b)(6)

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, October 08, 2015 10:05 AM  
**To:** 'Sussman, Susan (Leahy)'; usciscongressionalinquiries  
**Subject:** RE: Pending I-526 [REDACTED]

Hi Susan:

Hope all is well in VT. Our records show that the standalone I-526 Immigrant Petition by Alien Entrepreneur filed by [REDACTED] [REDACTED] related to Sathorn Corporation D.B.A Whitehall Manufacturing new commercial enterprise, was received on August 28, 2014 and is pending with the USCIS Immigrant Investor Program Office (USCIS IPO) where it will be adjudicated in the order in which it was received. While our processing times for standalone I-526 applications are currently beyond what we would like, USCIS IPO has taken steps to increase capacity and is striving to ensure our commitment to our customers is being met.

For background, all EB-5 petitions, like all of the other (b)(6) applications/petitions that are filed with USCIS for an immigration benefit, are processed in a first in-first out method, as this is the fairest way to treat all of the 7,000,000+ applications that we receive per year. Of course, applicants/petitioners may always request expedited process if they feel their case merits expedited processing and can provide evidence/documentation to prove that their request merits that expedited process.

All expedite requests for EB-5 cases must be sent by the prospective applicants/investors directly to the USCIS EB-5 Unit at the email at this link - [USCIS.ImmigrantInvestorProgram@uscis.dhs.gov](mailto:USCIS.ImmigrantInvestorProgram@uscis.dhs.gov) or mailed to the immigrant investor program office. All expedite requests must be sent together with supporting documentation to prove that the request meets the below USCIS Expedite Criteria, which can be found on the USCIS website at: <http://www.uscis.gov/forms/expedite-criteria>

## USCIS Expedite Criteria

All expedite requests are reviewed on a case-by-case basis, and are granted at the discretion of the Director. The burden is on the applicant or petitioner to demonstrate that one or more of the expedite criteria have been met. The criteria are as follows:

- Severe financial loss to company or individual
- Extreme emergent situation
- Humanitarian situation
- Nonprofit status of requesting organization in furtherance of the cultural and social interests of the United States
- Department of Defense or National Interest Situation (Note: Request must come from official United States Government entity and state that delay will be detrimental to our Government)
- USCIS error
- Compelling interest of USCIS

Each expedite request is reviewed on its own merits and a determination is made, in the discretion of USCIS, as to whether the case warrants expedited processing under one of the expedite criteria. While the determination by USCIS is not appealable, an applicant or petitioner may submit a new request (e.g. a subsequent request with additional evidence) if their initial expedite request is denied.

When an application or petition is expedited, USCIS IPO will move the case to the front of the processing queue, but the adjudicative process and level of review otherwise remains the same. If an expedite request is not granted, the case will be processed in the order in which it was received and the applicant/petitioner will be notified once action has been taken on their case.

We hope this is helpful. If you have any questions, please feel free to call me.

[REDACTED]

(b)(6)

Office of Legislative Affairs

USCIS-HQ

Tel. [REDACTED]

BB/Cell [REDACTED]

Fax - 202-272-1955

[REDACTED]

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---

**From:** Sussman, Susan (Leahy) [mailto:[Susan\\_Sussman@leahy.senate.gov](mailto:Susan_Sussman@leahy.senate.gov)]

**Sent:** Thursday, October 08, 2015 10:57 AM

**To:** [usciscongressionalinquiries](mailto:usciscongressionalinquiries)

**Cc:** [REDACTED]

**Subject:** RE: Pending I-526 [REDACTED]

Dear OLA Team,

I am just following up on my inquiry from September 24<sup>th</sup> (please see below).

Thanks

Susan

---

**From:** Sussman, Susan (Leahy)

**Sent:** Thursday, September 24, 2015 4:30 PM

**To:** '[usciscongressionalinquiries@uscis.dhs.gov](mailto:usciscongressionalinquiries@uscis.dhs.gov)' <[usciscongressionalinquiries@uscis.dhs.gov](mailto:usciscongressionalinquiries@uscis.dhs.gov)>

**Subject:** Pending I-526 [REDACTED]

Dear OLA Team,

Senator Leahy's constituent, [REDACTED] of South Burlington, Vermont, has a pending I-526 that was initially filed on July 25, 2014. It is just past processing time.

Any update would be greatly appreciated.

Sincerely,

(b)(6)



Susan

**Susan M. Sussman**

Caseworker, Office of Senator Patrick Leahy

199 Main St. - 4<sup>th</sup> floor, Burlington, Vermont 05401

(802) 863-2525; (800) 642-3193 (toll free within VT); (802) 658-1009 (fax)

*For a timely response to letters and written requests, email or fax messages are preferred.*

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(b)(6)

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Wednesday, January 20, 2016 10:33 AM  
**To:** 'Sussman, Susan (Leahy)'  
**Cc:** Pendle, David (Judiciary-Dem)  
**Subject:** RE: RCW1431051959 & RCW1431051960, Mount Snow

Hi Susan:

Happy New Year!!! Hope all is well in beautiful VT. I just checked on this again and our records show that as you correctly mentioned in your email, an RFE was sent to them on 10/22/2015 and their response was received on 12/14/15. Once the review of the response/evidence has been completed, the petitioner and/or their attorney will be notified by the IPO.

I will check again on the questions, but though I'm sure that your email was added to the record of the application/s, I am also pretty sure that they cannot agree to preadjudicate any application, so your constituents may wish to send the questions as part of an expedite request, as that is what this essentially is and should be sent via the proper channels and not through you and me.

Hope that helps. Feel free to call me if you want to chat. I am stepping out but should be back in the office around 1:00.

[REDACTED]

Office of Legislative Affairs  
USCIS-HO  
Tel. [REDACTED]  
BB/Cell [REDACTED]  
Fax - 202-272-1955

[REDACTED]

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**From:** Sussman, Susan (Leahy) [mailto:[Susan\\_Sussman@leahy.senate.gov](mailto:Susan_Sussman@leahy.senate.gov)]  
**Sent:** Thursday, January 14, 2016 5:31 PM  
**To:** [REDACTED]  
**Cc:** Pendle, David (Judiciary-Dem); [usciscongressionalinquiries](mailto:usciscongressionalinquiries)  
**Subject:** RE: RCW1431051959 & RCW1431051960, Mount Snow

Hi [REDACTED]

(b)(6)

I am writing to follow-up again on these applications regarding Mount Snow. It's been about a month since they submitted their response, so they are wondering if any decision (or another RFE) will be forthcoming. They were asking three related questions (see below).

Thanks again!

Best,  
Susan

**Susan M. Sussman**

Caseworker, Office of Senator Patrick Leahy  
199 Main St. - 4<sup>th</sup> floor, Burlington, Vermont 05401  
(802) 863-2525; (800) 642-3193 (toll free within VT); (802) 658-1009 (fax)  
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[Website](#) | [Leahy Letter](#) | [Facebook](#) | [Twitter](#) | [YouTube](#)

(b)(6)

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**From:** [REDACTED]  
**Sent:** Thursday, December 17, 2015 7:31 AM  
**To:** Sussman, Susan (Leahy) <[Susan\\_Sussman@leahy.senate.gov](mailto:Susan_Sussman@leahy.senate.gov)>; [usciscongressionalinquiries@uscis.dhs.gov](mailto:usciscongressionalinquiries@uscis.dhs.gov)  
**Cc:** Pendle, David (Judiciary-Dem) <[David\\_Pendle@judiciary-dem.senate.gov](mailto:David_Pendle@judiciary-dem.senate.gov)>  
**Subject:** RE: RCW1431051959 & RCW1431051960, Mount Snow

Hi Susan,

I will share this with my IPO colleagues and will try my best to get back to you on this before the holidays, but today is my last day before I begin 2 weeks away from the office on annual leave. Plus, if they only submitted their response, it will be a few weeks for our folks to review it and issue a decision or another RFE.

If I hear anything back today, I'll make sure to let you know. If not, I will definitely let you know when I get back the week of 1/4/16.

Happy holidays and Merry Christmas!!

[REDACTED]  
USCIS-HQ OLA

(Off) [REDACTED]

(Cell) [REDACTED]  
[REDACTED]

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**From:** Sussman, Susan (Leahy)  
**Sent:** Wednesday, December 16, 2015 5:31:51 PM  
**To:** [usciscongressionalinquiries@uscis.dhs.gov](mailto:usciscongressionalinquiries@uscis.dhs.gov)  
**Cc:** [REDACTED] Pendle, David (Judiciary-Dem)  
**Subject:** RCW1431051959 & RCW1431051960, Mount Snow

Hello Congressional Liaisons,

(b)(6)

Senator Leahy's constituents at Mount Snow in Ludlow, Vermont, are requesting that we inquire about the following:

1. They just submitted their response to an RFE for one of their exemplar applications (RCW1431051959). They also submitted the same set of materials, asking that they be added to an identical exemplar application for a second limited partnership contained within the project (RCW1431051960). Will those be able to be added to the second exemplar?
  - a. Also, can these two exemplars be joined for adjudication?
2. They also submitted the same set of materials and asked that they be joined to a long-pending I-526 for one of Mount Snow's EB-5 investors, Mr. Mario Khan (WAC1490315022). Is this acceptable?
3. Final question: Should Mount Snow submit to USCIS all case numbers related to its EB-5 project in order to help streamline the adjudications process?

Thank you very much.

Sincerely,  
Susan

**Susan M. Sussman**

Caseworker, Office of Senator Patrick Leahy

199 Main St. - 4<sup>th</sup> floor, Burlington, Vermont 05401

(802) 863-2525; (800) 642-3193 (toll free within VT); (802) 658-1009 (fax)

*For a timely response to letters and written requests, email or fax messages are preferred.*

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U.S. Citizenship  
and Immigration  
Services

AUG 27 2014

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy:

Thank you for your July 31, 2014 letter requesting clarification regarding the average processing time for a project's initial Form I-526, *Immigrant Petition by Alien Entrepreneur*, under the fifth employment-based (EB-5) preference category.

U.S. Citizenship and Immigration Services (USCIS) continues to implement measures to improve processing efficiencies within the Immigrant Investor Program while maintaining the quality and integrity of our adjudicative review.

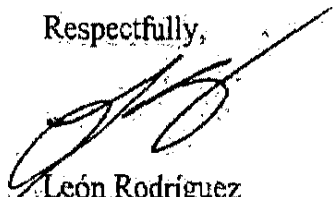
USCIS is in the process of increasing staffing levels within the Immigrant Investor Program Office to keep up with the significant increase in the number of EB-5 filings. In addition to hiring a singularly focused Senior Executive Service chief to administer the program, USCIS has hired many experienced adjudications officers and economists, a majority of whom possess advanced degrees. USCIS continues to hire additional personnel to adjudicate EB-5 applications and petitions and to improve processing times. USCIS anticipates a team of 100 employees working on EB-5 by the end of this fiscal year, an increase of nearly 40 percent since March 31, 2014.

USCIS posts average processing times on its website at [www.uscis.gov/tools](http://www.uscis.gov/tools). Posted processing times do not guarantee that petitions and applications will be processed within the estimated timeframe. The current posted processing time for I-526 petitions is 13.4 months as of June 30, 2014. Please note that USCIS does not track the processing times of exemplar or initial I-526 petitions separately from other I-526 petitions. The processing times page on our website for the Immigrant Investor Program Office provides options for petitioners who wish to check case status if their Form I-526 is beyond the estimated processing timeframe.

We appreciate you taking the time to express your concerns about I-526 processing times. USCIS will continue to identify how we can improve the EB-5 program and its processes.

Thank you again for your letter and your interest in this important matter. Should you require any additional assistance, please contact the Office of Legislative Affairs at (202) 272-1940.

Respectfully,



León Rodríguez  
Director



U.S. Citizenship  
and Immigration  
Services

JUL 19 2016

The Honorable Patrick Leahy  
United States Senate  
Washington, DC 20510

Dear Senator Leahy:

Thank you for your May 25, 2016 letter regarding the EB-5 Investor Program and recent fraud allegations involving certain Vermont projects.

In your letter, you indicated that due to an investigation of a Vermont-based ski resort and related businesses for possible abuse of the EB-5 program by the U.S. Securities and Exchange Commission (SEC), Vermonters are afraid of losing their jobs and foreign investors are concerned that their Form I-829 Petition by Entrepreneur to Remove Conditions will be denied and they will be subject to removal.

U.S. Citizenship and Immigration Services (USCIS) is reviewing all applications and reports filed in connection to the Vermont-based ski resort and related businesses, including all supporting documents. The USCIS Immigrant Investor Program Office offers several avenues for regional center principals and petitioners to make inquiries about their cases. Most recently, USCIS implemented a process to elevate inquiries that EB-5 petitioners believe need additional attention. Individuals can find information online about escalating an inquiry by visiting <https://www.uscis.gov/eb-5> and selecting the Customer Support link. Customers may also check the status of their cases online at <https://www.uscis.gov/>.

Regarding the Form I-829 in particular, USCIS adjudicates these petitions on the basis of the evidence that the petitioner submits to show compliance with the requirements for removing the conditions. Conditional permanent residents remain in lawful status while a Form I-829 is pending, if filed in a timely manner. If the Form I-829 petition is approved, the EB-5 investor and derivative family members will have their conditions removed. If petitioners do not establish that they meet the requirements for removing the conditions, USCIS will deny the Form I-829 petition and issue a Form I-862, Notice to Appear, before an immigration judge. USCIS assesses each petition on its own merits based on the evidence submitted. We will notify the petitioner in writing of any action on the petition.

Please know that USCIS is working diligently to develop policy guidance, within the bounds of existing statutory and regulatory authority, which we believe will address matters of utmost importance to investors. Among the topics we hope to further expand upon are the requirements for job creation and investment sustainment issues that apply to EB-5 investors,

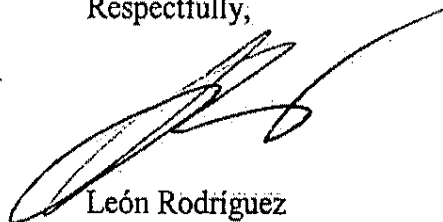
and the impact of misappropriation of funds on those requirements. As always, we seek to maintain and enhance program integrity while implementing policy that is mindful of the goals of investors acting in good faith and otherwise complying with all requirements. As soon as guidance is finalized, it will be shared with the stakeholder community for public comment.

You requested that USCIS provide a point of contact for stakeholders affected by the SEC legal action, including the receiver representing the foreign national investors. Consistent with the May 2015 EB-5 Protocols that regulate the manner in which DHS and USCIS employees and contractors may communicate with those outside the Department, stakeholders may contact the Immigrant Investor Program Office at USCIS.ImmigrantInvestorProgram@uscis.dhs.gov. Submitting inquiries to this address ensures that the proper channels are followed and that responses are carefully and appropriately vetted for accuracy and completeness to the maximum extent possible.

You will be pleased to know that the receiver and others related to the case at issue appropriately contacted USCIS via the recommended government email address, and USCIS is in receipt of such correspondence. The guidance in current development will help to inform stakeholders, including receivers, investors, and possibly other affected parties, as to how to proceed with EB-5-related matters.

Thank you again for your letter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,



León Rodríguez  
Director

# United States Senate

WASHINGTON, DC 20510-4502

May 25, 2016

The Honorable León Rodríguez  
Director  
United States Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529

Dear Director Rodríguez:

I write today about the EB-5 Immigrant Investor Program and recent fraud allegations involving certain Vermont projects. Over the past few years the Department of Homeland Security and USCIS have raised concerns about the potential for abuse within the EB-5 program. USCIS took important steps to improve the program's integrity as a result, but in a letter to the Senate and House Judiciary Committees last year Secretary Johnson made it clear that certain improvements required congressional action. Congress has worked in a bipartisan fashion to reform the program, including increasing fraud detection capabilities and protections for investors, but unfortunately these reforms have not yet been enacted into law.

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Yet the receiver's decisions will have a significant impact on investors' immigration status and there is no clear precedent for this situation. Some of the investors in these projects are nearing the two year time frame on their provisional visas and understandably have questions as to whether their investments will now be viewed as meeting program objectives and requirements.

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Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style with a large initial "P".

PATRICK LEAHY  
United States Senator

The Honorable Patrick Leahy  
United States Senate  
Washington, DC 20510

Dear Senator Leahy:

Thank you for your May 25, 2016 letter regarding the EB-5 Investor Program and recent fraud allegations involving certain Vermont projects.

Thank you again for your letter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

León Rodríguez  
Director