

November 10, 2014  
Via email to [tim.flannery@state.sd.us](mailto:tim.flannery@state.sd.us)

Senator Larry Tidemann, Chair  
Government Operations and Audit Committee  
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Dear GOAC Members:

Since GOAC initially asked me to answer questions, a lot of information has been made available to which you have access. For instance, the State was successful in the California arbitration matter in a decision dated September 29, 2014 and issued October 6, 2014. Then the final decision was issued October 31, 2014. After that time, the Board of Regents website published not only the California decision, but also James Parks' deposition and exhibits, my deposition and exhibits, as well as transcripts from the hearing. Much of the information you requested can be found in those documents.

As Attorney General Marty Jackley has previously indicated, the U.S. Attorney and the Department of Justice have primary authority over the EB-5 program. I fully cooperated with 2 FBI requests for interviews in 2013. During those interviews, I was told that Richard Benda was the target of the investigation. I was very open with the FBI about the relationships among the South Dakota EB-5 entities. I provided requested documents to the FBI as well. An FBI spokesman recently indicated that a federal probe into the EB-5 program and SDRC, Inc. is active. Knowing that they are the subject of an active FBI investigation limits what I can say, but I wanted this Committee to be aware of my previous cooperation with the FBI.

Before I answer your questions and set forth the general background of the EB-5 program, I want to make note of the political and media shark-like feeding frenzy that has taken place. There seems to be a complete lack of interest for the truth unless it benefits one's own political agenda and aspiration, or their version of the story. The only "scandal" is that a fabulous economic development tool, which raised over \$350 million of cash investments for South Dakota projects, and based on US Department of Commerce numbers created well over 7000 jobs, has been decimated as a result of the political and media insanity that has prevailed in South Dakota over the last many months. I simply cannot imagine how the Regional Center can recuperate from the slew of negative press that has been published. This is especially true when so much of what has been published is inaccurate and misleading, such as Ms. Ross's articles in the Mitchell newspaper and Mr. Mercer's articles in the Aberdeen American News. Many facts are either ignored or made up by these reporters.

In addition to the misleading and inaccurate information carrying over into the political ads leading up to the November election, it has also carried over into the questions you pose to me. Many of them contain false assumptions of facts which are clearly politically driven. As I understand it, many of the questions were put together by Senator Lucas. I believe he derived most of his information/questions from bias allegations made by the plaintiff in the California matter, a plaintiff who ultimately was found to have no viable claims.

Despite these false assumptions of fact, I have endeavored to lay forth a clear background of the EB-5 program in South Dakota and how it came to be managed by SDRC, Inc. I have also answered all questions that are not already known from reading the documents on the Board of Regents website and to which I believe this committee has a right to inquire.

### EB-5 BACKGROUND INFORMATION

United States Citizenship and Immigration Services (USCIS) administer EB-5, which was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The relevant statute is 8 U.S.C. § 1153(b)(5). Under a pilot immigration program first enacted in 1992 and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.

Under the program, if an individual invests in an approved U.S. business and creates or preserves at least 10 jobs, directly or indirectly, that investor, along with his or her immediate family receives permanent resident alien status/green cards. The minimum qualifying investment is \$500,000.

According to the USCIS website, as of October 1, 2014, USCIS had approved approximately 588 Regional Centers. To my knowledge, before the State canceled its contract with SDRC, Inc. in 2013 to manage the Regional Center, there was only one center managed by a public or state entity, Vermont. All others were managed by private organizations.

### TIMELINE/FACTUAL BACKGROUND

January 1994 – I was hired by NSU to set up an international outreach program to assist GOED in enhancing exports from SD.

May 1994 – I worked with NSU to propose a charter for SDIBI, which was approved by the Board of Regents.

1995 – The export services developed & implemented by SDIBI were successful and led Governor Janklow to subcontract out all State export promotion services to SDIBI on an annual renewable contract.

June 1995 – Northern Plains International Incorporated (NPPI) was formed as a domestic non-profit. NPPI was controlled by Northern. The formation of NPPI allowed there to be an entity to sign contracts with speakers and other entities. It also created a fund of monies for Northern to use to enhance its international academic business program. NPPI was used for the export promotion side of international business. Later, SDRC Inc. was created to mirror NPPI for the foreign direct investment side of SDIBI.

2000 – NSU's President Hilpert requested SDIBI develop a closer relationship with GOED. SDIBI submitted a proposal to assume foreign direct investment (FDI) activities for the State. SDIBI submitted the proposal and the annually renewable contract was expanded to include an FDI component. Prior to this time, my work with SDIBI was essentially limited to export promotion.

2003 – SDIBI had been successful in recruiting several Dutch/UK/Canadian dairy farmers who all came in on non-immigrant E-2 visas which had many negative aspects associated with it. SDIBI searched for an alternative and discovered the Regional Center Pilot program for which it applied in 2004. South Dakota was one of the first three to be created in the US under the new program. The designation provided more security for farmers relocated to SD on E-2 visas, and provided a unique comparative advantage for SD over other states such as Iowa, Ohio, and Michigan which also courted dairy farmers but could not offer immigrant status without regional center designation. I was surprised by the inquiries from Asia where people wanted to invest in a dairy farm in order to obtain an immigrant visa. SDIBI capitalized on this opportunity by coupling SD general partners with EB-5 limited partners to build state-of-the-art large dairy farms along the I-29 corridor. Approximately \$30 million cash from EB-5 investors was combined with bank financing and local equity to build more than \$90 million of new dairies.

March 2005 – One of the ongoing renewable letters of agreement is signed between South Dakota Department of Tourism and State Development (TSD) and NSU in regard to export promotion activities and foreign direct investment activities. The agreement is signed between Patrick Schloss, President of NSU and Jim Hagen, Secretary of TSD.

2006 – Our Regional Center success was duplicated by others. Many new Regional Centers applied for and received Regional Center status. The result was that SD was no longer the only player and that SD dairy investments became uncompetitive due to Regional Centers located in states like New York and Hawaii which offered larger, more appealing projects. SDIBI searched for a larger project and was persuaded by Richard Benda to have EB-5 investors inject equity into NBP.

July 1, 2006 – The letter of agreement between NSU and TSD indicates SDIBI would nurture its relationship with Hanul. Both TSD and Northern knew about Hanul's extensive involvement with the EB-5 program. Hanul was a foreign law firm that worked with SDIBI to recruit investors and to assist those investors with the immigration process, mainly in Korea.

January 2007 – The letters of agreement between TSD and SDIBI regarding export promotion and FDI activities always directed my duties with SDIBI. This particular letter of agreement for January 2007 mandated that SDIBI continue to nurture its relationship with Hanul Law Firm and that SDIBI attempt to expand EB-5 recruiting efforts into China and Taiwan. The agreement

further indicated that SDIBI was currently identifying potential partners for this venture in China. This agreement was later amended and indicated that SDIBI would identify additional relationships in other provinces to recruit Chinese investors for meat processing and that this work would be done with Hanul. The agreement between TSD and NSU also indicated that SDIBI, with Hanul, would develop a website to recruit investors for EB-5 projects.

July 1, 2007 – This letter of agreement between TSD and NSU provides that SDIBI will work “exclusively” with Hanul for submission of the I-526 petitions and again states that SDIBI, with Hanul, will develop a website to recruit investors worldwide for EB-5 projects.

2007 – Up to this time all EB-5 investments had to be made as equity investments into the Job Creating Entity (JCE). USCIS changed the program so that a foreign investor could inject money into a separate entity/partnership, which would then make a loan to the JCE. This was a major change in the program, which made the investments more attractive to foreign investors. Morrie Berez, head of the EB-5 program with USCIS, strongly suggested we follow the new loan model.

A project to create tilapia fish farms was intended to be the first project under the new model. Because it was projected to create so many jobs, there was room for investors to finance the entire cost of the project. Thus, no additional bank financing was needed as had been true in previous cases. This created a vacuum of anyone fully vetting the project since banks were no longer involved to fully vet the project, which is obviously a bank’s practice before it loans its own money.

October 2007 – Hanul signs a contract with Darley, to which SDIBI was not a party, regarding overseas recruiting efforts in China for EB-5 projects in South Dakota. The first project for which investors were sought was the tilapia fish project. It became apparent that the project had not been vetted properly and would endanger the reputation of the South Dakota EB-5 program. By the end of 2007, it was clear that the Regional Center was going to miss out on investment opportunities due to Darley and Hanul not being able to work together. Additionally, this contract dispute froze the progress of investor recruitment, bringing it to a standstill.

November 2, 2007 – There is nothing secret about South Dakota’s EB-5 program. On this date, the Wall Street Journal ran an article regarding the EB-5 program and the article specifically mentioned that “The program, administered by USCIS, essentially encourages wealthy foreigners to buy their way into the U.S. Put in place in the early 1990s, it is widely regarded as a response to efforts by Canada and Australia in the late 1980s to attract investors keen to immigrate. But the U.S. program is considered the most stringent because it requires proof that the investment has produced new jobs before permanent residency is granted.” SDIBI is specifically discussed in the article. Everyone at TSD and NSU were pleased with the media attention on the program.

December 31, 2007 – My monthly report to GOED indicates that SDIBI was working on a separate legal entity that would do a credit analysis on each of the proposed EB-5 projects. This is in reference to the formation of SDRC, Inc., a duplication attempt of NPII and a direct result

of the need to fix the problems that surfaced in tilapia project as well as a direct result of the new loan model available under the USCIS rules for EB-5 projects.

January 2008 – This agreement entered into between TSD and SDIBI regarding export promotion and FDI indicates that SDIBI would develop and implement a better structure to select and monitor EB-5 projects. This is clearly referring to the formation and use of SDRC, Inc. The agreement also indicates that SDIBI would identify additional relationships in South America and China for better foreign investor recruitment and that this work would be done with Hanul. It specifically indicates that SDIBI would continue to work exclusively with Hanul for submission of the I-526 petitions and management of the Regional Center.

SDRC Inc. was created with the intention to mirror NPII on the export promotion side. Like NPII, SDRC Inc. would be available to sign contracts with outside parties such as overseas recruiting agents. Also like NPII, SDRC Inc. would create a fund of monies for NSU to use. Further, due to the new loan model of investing, there needed to be a separate entity that could work with the partnerships made up of foreign investors that would be loaning money to various EB-5 projects. SDRC Inc. was also then available to vet the projects. SDRC Inc. was not intended for my benefit.

SDRC Inc. was essentially a shell until April 2009 when investor monies began to arrive for the turkey plant project in Huron. During my time at SDIBI, I never took any money out of the SDRC Inc. account with the exception of paying typical bills.

January 7/8, 2008 – TSD and Benda were well aware of the Darley contract between Darley and Hanul and the problems stemming from the same. Darley communicates directly with me *and* Mr. Benda from TSD regarding their concerns/problems in regard to the Hanul/Darley contract, marketing in China and the tilapia project. I reply and copy Mr. Benda.

January 15, 2008 – MOU signed between SDIBI and SDRC, Inc. The sole purpose of this document was to comply with USCIS requirements that we inform them that there was a new entity involved with the Regional Center. As set forth above, SDRC Inc. was not intended to be my company. Thus, this MOU, which I never viewed as a contract, but something detailing the relationship between the 2 entities, is not a “no-bid contract with my own company” that has been repeatedly discussed in the media and political ads. Further as TSD later asserted ownership over the Regional Center, as opposed to being owned by the Board of Regents, NSU or SDIBI, SDRC Inc. could not have enforced this MOU absent consent from the Regional Center.

July 1, 2008 – This letter of agreement signed between TSD and SDIBI regarding export promotion and FDI indicates that SDIBI would continue to conduct investor recruitment events with Hanul in China and South Korea. This agreement no longer indicates that SDIBI should explore a better structure for the EB-5 program since that structure was now in place under SDRC, Inc. This letter of agreement covered July 1, 2008 to June 30, 2009.

August 2008 – Currently, I am aware that in August 2008 there was a federal lawsuit in California to try and compel arbitration with SDIBI. At that time, I was not aware it was a

lawsuit or that SDIBI was party to the suit. I was told by Hanul that they would handle the matter and there was nothing to be concerned about. I thought I would only be involved as a possible witness in arbitration. My later declaration supports these statements.

August 22, 2008 – A brief was filed with my name on it in federal court opposing the petition to compel SDIBI to arbitrate. I was not aware it was a lawsuit at the time. I did work with Hanul to create a Statement of Facts but was unaware that I was somehow representing SDIBI in federal court *pro se*. This lawsuit was ultimately dismissed as the federal court did not have jurisdiction. When the State later became aware of the lawsuit and asserted this lack of jurisdiction issue, Darley voluntarily dismissed the case and then refiled in California state court in July 2009. The State was fully and properly defended by legal counsel at that time.

January 2009 – It was finally revealed to me that SDIBI could have some liability in the California matter. This was in clear contrast to what I had been told before by Hanul. I then informed John Meyer, NSU attorney.

February 6, 2009 – Board of Regents General Counsel Jim Shekleton requested and Dr. Perry agreed to have Shelly Anderson perform an internal audit of the records of SDIBI. He believed the results would be useful in connection with the California arbitration involving SDIBI.

February 10, 2009 – Shelly Anderson contacts me indicating she had been requested by Jim Shekleton and Dr. Perry to perform a review over SDIBI as soon as possible and that her review would consist of obtaining an understanding of SDIBI and SDRC, Inc.

March 10, 2009 – Conference call regarding internal audit. Jim Smith, the new president for NSU was on the conference call.

March 10, 2009 – As a result of the audit and at the direction of NSU, I disassociate myself completely from SDRC, Inc.

March 17, 2009 – I was communicating with John Meyer at NSU. Prior to this time, the Regional Center had worked with Hanul to recruit foreign investors for the turkey plant in Huron, SD. The investments for the turkey plant project were going to be arriving very soon. It was communicated to me by Mr. Meyer that GOED didn't want to get involved in facilitating the investment flows into the turkey plant project. It was still uncertain at that time whether SDRC, Inc. would be used as a conduit or not.

March 30, 2009 – An Ithaca, NY attorney, Stephen Yale-Loehr contacts me, copying Richard Benda and Tim Engel. He had been hired to provide GOED an opinion of the structure and operation of the Regional Center. This was a result of wanting to switch to a loan model (vs. equity).

April 2, 2009 – I am informed by John Meyer that he has not heard from Pierre about the Dakota Provisions (turkey plant) structure since my withdrawal from SDRC, Inc. Meyer suggested I alert Benda that something needs to get going promptly if the money is going to start coming in. Meyer also informed me that attorney Tim Engel was looking at the situation.

April 3, 2009 – Meyer suggested that I suggest to Benda that NPII assert ownership of SDRC, Inc. NSU would have control as we did with NPII and that it could possibly be reorganized as a nonprofit. Meyer indicated he would do his best to convince the Board of Regents if I could convince Benda. Neither one of us wanted the project to run into trouble. Meyer thought that would be the simplest immediate solution. Ultimately, both TSD and NSU declined to keep SDRC Inc.

April 2009 – Attorney Stephen Yale-Loehr's with Miller Mayer, LLP in Ithaca, NY provides legal opinions regarding the EB-5 program to GOED. First, it affirms that a loan model for EB-5 and immigrant investor offerings is acceptable. Second, he states his questions concerning the "somewhat confusing" relationship among the South Dakota Board of Regents, NSU, SDIBI, the Regional Center and SDRC, Inc. He indicated it would be helpful to clarify the relationships among the entities and perhaps set up a "new outside entity to run the Regional Center if the state government decides it does not want to be formally involved with the Regional Center." The letter goes on to indicate that there were a variety of ways that an EB-5 Regional Center can be structured and administered and that he would be happy to work with Benda and me to set up a structure that works both for South Dakota and me. This letter is copied to Tim Engel and me.

June 2009 – SDRC, Inc. Articles are amended.

June 1, 2009 – At this time I first consider myself an owner of SDRC, Inc. as negotiations have gone far enough with the state that it is apparent that neither the State/GOED/TSD nor NSU are going to run the Regional Center and that it will have to be privatized if the program is going to continue. However, even at this time the State could have chosen to keep SDRC, Inc. in house.

June 11, 2009 – There is a proposal for SDRC, Inc. and SDIBI cooperation and housing in Graham Hall since according to information received from Pierre by SDIBI, because of liability concerns, the Board of Regents no longer has an appetite for SDRC's activities and therefore desires to move SDIBI to TSD. The proposal was being reviewed by TSD's attorneys. I proposed for NSU to house SDRC, Inc., the private corporation, and that NSU would continue its international business outreach service which would continue SDIBI's current activities except for EB-5 activities which would be handled by SDRC, Inc. SDRC, Inc. would contract with TSD regarding the Regional Center and that I would resign from NSU and resume EB-5 activity with SDRC, Inc. This draft was shared with Don Erlenbusch on June 11, 2009.

June 22, 2009 – Don Erlenbusch indicates that he and John Meyer met with Dr. Smith and they wanted to meet with me and Benda on June 30. At this meeting everyone decides that SDRC Inc. will be a private entity that contracts with the State to run the Regional Center.

July 2009 – I believe that Richard Benda was checking my contacts to determine if the State could run the Regional Center as a state entity. At the same time, my attorney and Tim Engel, attorney for TSD, are also working on a contract for privatization. Benda ultimately determined the State would be unable to run the regional center and remain competitive.

July 21, 2009 – I contacted John Meyer. I indicated that in regard to SDRC, Inc., I would now be the one owning and running that entity if there was no disagreement between TSD, the Board of Regents and NSU. I reminded Mr. Meyer that my initial intention for SDRC, Inc. was to create an income stream for SDIBI but based on the information I received from Pierre, it appeared that the Board of Regents had no appetite for this. I was thus under the assumption that taking SDRC, Inc. private and entering into an agreement with TSD to manage the Regional Center was the only viable solution. I asked if my assumption was correct. I requested clear direction and action from NSU to ensure that the EB-5 program does not derail. I asked for updates on NSU's position in regard to SDIBI, whether it belonged to TSD or if NSU still wanted to own SDRC, Inc. through NPII and did NSU object to my latest proposal for me to resign and manage the Regional Center. I asked how NSU wanted to proceed and asked to be advised since I needed to make a decision on how best to proceed.

July 22, 2009 – Mr. Meyer responded to my question indicating all of the options and considerations had been “kicked upstairs.” He asked me not to take any actions or make any assumptions without informing and checking with all concerned parties and he would inform me when a decision had been reached regarding these matters. His email was not only to me but copied to Jim Shekelton and attorney Jeff Hallem.

July 28, 2009 – I emailed John Meyer and reminded him that SDRC, Inc. was created only because of the tilapia fiasco caused by inadequate due diligence by Hanul and Darley and after it was clear that both parties were preventing SDIBI from taking advantage of the opportunities that existed in China while the two parties continued their bickering. SDIBI had notified both Hanul and Darley that SDRC, Inc. would be created if they did not clear up their disagreements. SDRC, Inc. was set up to move forward in a more constructive manner. SDRC, Inc. was created to strengthen the EB-5 program.

July 29, 2009 – Email from attorney Tim Engel to my attorney with copies to me and Richard Benda indicating “This document does contain the broad outline of what we’d like to see – SDRC, Inc., as a separate, private entity administering the Regional Center for DTSD.”

July 31, 2009 – I email John Meyer at NSU that SDRC, Inc. was set up as a shell on January 10, 2008. The email also notes the first agreement signed with Chinese agents was March 4, 2008. I inform Mr. Meyer that the intent of SDRC, Inc. was for us to manage our own agency relationships as Hanul did a poor job with the Darley relationship and to allow us to hire professional services such as banks, industry consultants, attorneys, and accountants to make sure the tilapia fiasco would not happen again.

August 3, 2009 – I met with Richard Benda and my attorney and the attorney for the State to discuss the Regional Center going forward.

August 24, 2009 – Tim Engel emails my attorney indicating he’s sending a draft agreement between TSD and SDRC, Inc., that Richard Benda had reviewed it and approved the terms. The email indicates that the draft had been reviewed and approved by Richard Benda but would be subject to final review and approval by Neil before Richard would sign it.



August 25, 2009 – I email Benda and copy my attorney and Tim Engel on what to do in regard to several issues. I specifically asked what to do with the files in the current office including the equity projects and files for each investor. I indicate I could transfer the entire cabinet to TSD or keep them all with SDRC, Inc. This clearly contradicts the defamatory statements of NSU's Dr. Smith that have been repeated time and time again that I took/stole files from NSU without permission. Smith never had a right to make the statement since NSU never owned the files.

August 25, 2009 – I reiterated to John Meyer that I did not know there was a lawsuit and was distressed that in the California matter SDIBI attorneys asserted that I did know about the lawsuit and concealed that fact. Meyer responded that he has told everyone that I trusted Hanul and was misled by my faith in Hanul from the outset. Meyer believed that I did what was best for South Dakota. I indicated that taking SDRC, Inc. private was never my intention but rather it was supposed to create an income stream from FDI activities for SDIBI just like NPPI did in regard to export promotion. I indicated that it appeared that NSU and the state system didn't seem to have the stomach to accept the liabilities that were associated with the entrepreneurial activities they asked for and encouraged me to establish and for which I was hired. I indicated that at this point, taking SDRC, Inc. private appeared to be the only way to save the EB-5 program. I also addressed the issue of whether NSU was accepting TSD's claim that it was the owner of the Regional Center. I asked NSU if SDRC, Inc. could sign an agreement with TSD to manage the Regional Center. I wanted to make sure NSU was fine with the new arrangements so that future misunderstandings could be avoided.

December 22, 2009 – The agreement is signed between the State and SDRC, Inc. to run the Regional Center. The only reason SDRC, Inc. became private and was given the contract to manage the Regional Center is because the State could not run the center and remain competitive for the benefit of economic development in South Dakota. The State was well within their rights up until that time to use SDRC, Inc. in any way they wanted to administer the EB-5 program.

I believe this decision to privatize the EB-5 program was made in order to better compete with the other Regional Centers across the country. At that time, there were only two state government-managed Regional Centers, Vermont and South Dakota. Privatization helped South Dakota compete at the national level. The State was not able to set up partnerships in which the foreign investors could participate, but a private entity could set up those partnerships and compete with the other regional centers in the country.

During my tenure at SDIBI, all my annual reviews with NSU indicate that I meet, exceed, or substantially exceed all expectations of my position.

December 2010 – I was in the process of looking for a loan monitor for NBP, which was required under the loan agreement. I had explored alternatives that were quite expensive. Upon hearing that Benda will not be retained by Governor Daugaard, I approached him regarding being the loan monitor for NBP beginning in January 2011. He agreed to the proposal. He was the best qualified and least expensive alternative.

February 2013 - Benda's job as loan monitor ends because the construction was coming to an end, the plant was operational, and the foreign investors voted to end his duties as loan monitor.

In addition, White Oak was now involved in NBP and would be handling any type of loan monitoring. Benda continuing as loan monitor would have been a duplication of efforts.

March 2013 – Again, the EB-5 program is not “secret.” The Washington Post publishes an article regarding the EB-5 program indicating it is booming in popularity driven by a struggling U.S. economy in which developers are searching for new sources of capital. The article notes that the program has broad bipartisan support in Congress.

March 18, 2013 – As I have read in the press, GOED receives federal subpoena.

April 8, 2013 – The Governor’s office sends a letter to Attorney General Jackley requesting an investigation regarding travel vouchers.

October 11, 2013 – Potential grand jurors receive notice of a grand jury proceeding to begin the 28<sup>th</sup>. The subject of the grand jury was going to be potential theft charges against Richard Benda.

October 22, 2013 – Law enforcement officers respond to Richard Benda’s death.

November 20, 2013 – Benda’s death is ruled a suicide.

November 21, 2013 – As I have read in the press, the Attorney General’s Office sends a letter to the Governor regarding its investigation into travel vouchers which revealed double billing and payment for travel expenses totaling a little more than \$5,500. The investigation also addresses the concern regarding \$550,000 of loan monitoring fees being paid out of a \$1 million future fund grant paid to Northern Beef.

In regard to the loan monitoring fees, Attorney Rory King, who was the attorney for Northern Beef, has repeatedly indicated he did not believe there was any theft in regard to the loan monitoring fees. His recorded interviews can be found at [dakotareporter.com](http://dakotareporter.com). He also wrote a letter to the editor published in October 2014 indicating the same. Mr. King has indicated that Richard Benda put in the time and did the work for which he was compensated under the loan monitoring contract. NPB viewed the hiring of Richard Benda as legitimate and viewed the payment as legitimate. They did not feel threatened or defrauded. They understood the concerns regarding NPB solvency and the reason for the upfront payment of the loan monitoring fees. Mr. King maintains that media reports are not accurate that Benda stole approximately \$500,000 from Northern Beef. I completely agree with Mr. King’s assessment.

While the press may question whether Benda engaged in the unauthorized increase of grants to NBP, it is clear that the payment from NBP for loan monitoring fees was legitimate.

February 2014 – Legislature issues a resolution requesting GOAC to conduct hearings relating to the operations of GOED.

September 2014 – Once again, the Washington Post publishes an article regarding the EB-5 program. It notes it is being maxed out by Chinese applicants with commentators noting that the program deserves to be expanded because it’s a four-way win. A win for the U.S. taxpayers

because it brings in foreign money at no cost to the taxpayer, a win for U.S. workers because it creates jobs, a win for U.S. project developers because it allows them to get money for projects they may not otherwise get and usually at very low interest rates, and a win for the foreign investors because they get a green card.

The article also notes that the EB-5 program enjoys bipartisan support. Unfortunately, due to the political and media frenzy in South Dakota, our state will likely not be able to continue to benefit from this program.

As I already noted, a lot of information has come to light since the Committee first posed the following questions. As a result, much of the information is now available to the public. Many of the answers are also set forth above. Numerous questions contain false assumptions of fact or ask for confidential business information to which this Committee is not entitled. All of this combined with the active FBI investigation and the potential for an appeal in the California Darley matter, make it difficult to answer all of the questions. Again, however, I have endeavored to provide this Committee with all the information it needs to prepare its report.

1. Did the initial contract and any renewals of the State's contract with SDRC comply with the State's third-party contracting requirements (bid, supervisor sign-off)?

ANSWER: I assume you are referring to the agreement between SDRC, Inc. and the State to manage the EB-5 program starting December 22, 2009. I am unaware of the State's third party contracting requirements and suggest that you ask attorney Tim Engel who was working with my attorney to negotiate the contract in question.

2. How many times, if any, has SDRC or its affiliates been a party to a civil lawsuit?

ANSWER: See answer to #3.

3. Briefly describe the parties, the court of jurisdiction and the alleged subject matter in the civil litigation?

ANSWER: Federal lawsuit 4:11-CV-04148 brought by Zhang Zhen et al vs. SDRC, Inc., SD Investment Fund, LLC 6 and me. Henry Tongzhao USA Consulting, Inc. appeared as an interested party. Numerous plaintiffs voluntarily dismissed their claims before I was even able to answer the lawsuit. SDRC, Inc., Joop Bollen and SDIF LLC 6 counterclaimed against some of them and then also brought a third-party complaint against Henry Zou and Henry Global Consulting Group. The case was ultimately voluntarily dismissed in March 2012.

The Darley arbitration in California. The California arbitrator found no liability against the Board of Regents or SDIBI, and found them to be prevailing parties. My understanding is Darley has 100 days to appeal. Until any appeal is finalized, the matter would still be pending.

Federal petition 14-MC-125 brought by Jeff Barth against me is pending. There are corresponding cases found at 14-MC-118 and 14-MC-130 involving other parties.

4. Describe the nature of the commercial relationship between SDRC and its investors? I.E. Investor invests \$500,000 and is charged a one-time fee of xxx and an annual fee of yyy? What was the range of potential financial return marketed to the investors? What, if anything, did they receive as collateral?

ANSWER: SDRC Inc. does not have investors. The EB-5 projects have investors who pool their money in loans to the projects. There are several private companies set up to operate under the directives of the EB-5 program. As a result, they are under the authority of the U.S. Attorney and the Department of Justice. They are not under the supervision or control of GOAC. However, we did open our books, to the extent required, to the state auditor who, like you, was operating under the authority of House Concurrent Resolution No. 1010 in regard to GOED. We also shared requested documents with the FBI. Without waiving any objections that I have to answering this question, I would note that each project receives a full \$500,000. Each investor pays additional one time fees of \$30,000 to \$60,000. These one time fees go almost exclusively to foreign attorneys and recruiters.

5. Describe the nature of the commercial relationship between SDRC and the projects in which it invested? I.E. Project receives xxx and is charged a one-time fee of yyy and an annual fee of zzz?

ANSWER: See Answer 4. SDRC Inc. does not invest in projects. Again, each project receives \$500,000 from each foreign investor in a pooled loan. The project then pays interest to the partnerships made up of foreign investors.

6. List the projects SDRC raised EB-5 money for, year raised, amount of money raised, jobs created and current status of the project?

ANSWER: All this information has been provided to GOED and/or USCIS.

7. How many investors obtained immigrant visas through SDRC EB-5 program? How many invested and did not receive visas through EB-5 program?

ANSWER: The Regional Center is no longer managed by SDRC, Inc. GOED has all of this information available.

8. How much, when and in what capacity did SDRC compensate Mr. Benda either as an employee or as a contractor or consultant?

ANSWER: See Answer 4. Mr. Benda was paid pursuant to the terms of a contract for loan monitoring the NBP project, which was required under the loan with NBP. The terms of the contract contain private business information.

9. What amounts, if any, did SDRC provide as compensation to any state employee at any time?

ANSWER: None that I am aware of.

10. Provide a chronology of the EB-5 program from the start of the program to the present time, including your role in this timeline.

ANSWER: See factual background and timeline set forth above.

11. When did the contract, signed in January 2008, become fully functional?

ANSWER: The reason for the MOU was to comply with USCIS requirements to inform the USCIS of any entities that were involved in the program. As the committee should be aware from other documents that it reviewed, such as the June 2008 letter from USCIS to me as Director of SDIBI, specifically page 8 of that letter and paragraph #12, "It is incumbent on each USCIS approved and designated regional center, in order to remain in good standing, to notify the USCIS within 15 days of any change of address or occurrence of any material change in the name and contact information of the responsible official, the management and administration of the regional center, the regional center structure, contact information for the regional center, the scope of the regional center operations in focus, the regional center business plan, any new, reduced, or expanded delegation of authority, MOU, agreement, contract with another party, the economic focus of the regional center or any material change relating to the regional center's basis." See Answer 69 for further information.

12. Who participated in the EB-5 program and has now become a South Dakota resident?

ANSWER: I assume you are referring to investors. I am not aware of any foreign investors who became South Dakota residents.

13. Initially the EB-5 program focused on expanding the dairy numbers in South Dakota. When did the focus change and why?

ANSWER: See Timeline and Factual Background above.

14. How did these new ventures of EB-5 fit into the regulations of the Federal program?

ANSWER: All EB-5 projects complied with the regulations of the program.

15. How did Richard Benda come to be employed by SDRC, Inc.?

ANSWER: After the 2010 election when it became clear that Richard Benda would not be retained as Department Secretary under Daugaard's administration, I asked if he would consider being the loan monitor on the beef project because of his experience and knowledge of the project and his abilities. Further, he was the least expensive of the loan monitor alternatives.

16. What were the terms of his employment, including salary and start and end dates?

ANSWER: Benda acted as a loan monitor, reviewing all work done at the plant and all invoices and payments to be made. Benda had an office at the plant and was there on a daily basis. Benda worked from January 2011 to February 2013. See also Answer 8.

17. What was the nature of the services provided to Northern Beef Packers by Benda? What were his duties? Did he perform those duties? Did he provide any written or verbal report as he carried out those duties?

ANSWER: His duties were as a loan monitor. He did perform those duties. Based on Rory King's recorded interview, I believe Mr. King, attorney for Northern Beef Packers, feels Benda did a good job. Benda regularly prepared written and verbal reports.

18. Who paid Benda's salary? Where did those funds come from?

ANSWER: The funds came from Northern Beef Packers as was required under the loan and were put into an escrow account and he was paid on a monthly basis.

19. Why did Northern Beef Packers have to have a loan monitor and pay loan monitoring fees?

ANSWER: It was required by the loan agreement.

20. How and why was Benda involved in collecting the loan monitoring fee?

ANSWER: I have no specific knowledge of that, but I know that NBP and I did feel then, and continue to feel today, that the payment was appropriate.

21. What did you know about the \$1 million Future Fund grant and the \$1.2 million South Dakota Development Corporation loan to Northern Beef? How did you learn that information?

ANSWER: I didn't know any details about monies that Northern Beef was getting as far as other grants or loans. Most of the information I learned came from the media.

22. Was there a loan monitor on any other EB-5 projects? If so, which loans were subject to monitoring? Who were the monitors on each, their salaries, and how were they paid?

ANSWER: Yes, but this is confidential business information.

23. See Exhibit 2. Who else besides you has an ownership interest in SDRC, Inc. before the articles of incorporation were amended on June 1, 2009?

ANSWER: I didn't have an ownership interest before June 2009. See factual background above.

24. See Exhibit 3. Who drafted the memorandum of understanding between South Dakota International Business Institute and South Dakota Regional Center, Inc.?

ANSWER: James Park, based on documents he reviewed that had been used by other regional centers employing the loan model.

25. See Exhibit 3. Provide the names of any attorneys who reviewed this contract.

ANSWER: See Answer 24.

26. See Exhibit 3. Why does the signature line on page 5 of 5 list "South Dakota Regional Center, Inc." instead of SDRC, Inc.?"

ANSWER: This is a typographical error. There is no entity called South Dakota Regional Center, Inc. The correct name of the entity is SDRC, Inc.

27. See Exhibit 3. The agreement makes numerous references to "SDRC, Inc.". Do you own SDRC, Inc.?

ANSWER: At the time I did not own SDRC, Inc. See Answer 24.

28. See Exhibit 3. Is there an entity named South Dakota Regional Center, Inc.?

ANSWER: See Answer 26.

29. See Exhibit 3. Was this an agreement between the State/SDIBI and your own company, SDRC, Inc.?

ANSWER: No. At the time SDRC, Inc. was not meant to be my company. See Answer 24.

30. See Exhibit 3. Did you sign this MOU on behalf of the State/SDIBI with your own company SDRC, Inc.?

ANSWER: See Answer 29.

31. See Exhibit 3. Was any State official aware of your ownership interest in SCRC, Inc. at the time of signing?

ANSWER: See Answer 29.

32. See Exhibit 3. Did you ever inform any State official of your ownership interest in SDRC, Inc.?

ANSWER: Yes. As set forth in timeline above, it was not until June 2009 that I felt SDRC, Inc. would ultimately be my company. And as set forth above, I did inform state officials at that time that I believed SDRC Inc. to be my company. However, until the agreement between the State and SDRC, Inc. was signed in December 2009, the State could have kept SDRC, Inc. See Factual Background above.

33. See Exhibit 3. Why did James J. Park sign on behalf of South Dakota Regional Center, Inc.?

ANSWER: This topic was discussed in my deposition, which is available on the Board of Regents website.

34. See Exhibit 3. Did James Park have an ownership interest in SDRC, Inc.?

ANSWER: Until June 2009, I am unaware of who would be considered to have ownership. No ownership shares had been issued. This may be a question that requires a legal opinion.

35. See Exhibit 3. Was any State official aware of James Park signing this MOU at the time of execution?

ANSWER: Not that I am aware of.

36. See Exhibit 3. Did you ever inform any State official of James Park having an ownership interest in SDRC, Inc.?

ANSWER: See Answer 34.

37. See Exhibit 3. Was James J. Park a partner at the Hanul Law Corporation for both the Los Angeles and South Korean offices at the same time he signed this agreement?

ANSWER: This would be a question better directed to James J. Park. As I understand it, his deposition is on the Board of Regents website.

38. Will you provide the transcript for the deposition you gave under oath in the Darley International LLC via Hanul Law Corporation/SDIBI arbitration?

ANSWER: A copy of the transcript is available on the Board of Regents website.

39. Have you reviewed your deposition transcript in the Darley International LLC via Hanul Law Corporation/SDIBI arbitration and signed same?

ANSWER: No, I never reviewed my deposition transcript.

40. See Exhibit 3. Did you sign this agreement on behalf of the State with SDRC, Inc. – your own company – five days after you formed SDRC, Inc.?

ANSWER: See Answers 27, 29 and 32.



41. See Exhibit 4 paragraph 2. You stated in your declaration that SDIBI is part of Northern State University and the South Dakota Board of Regents system and has no independent status. Is that true?

ANSWER: My understanding is those statements are true. This is a question better directed toward SDIBI, or towards current State officials or the attorney currently representing SDIBI in the Darley matter.

42. See Exhibit 5. Did you sign and file a brief on behalf of the State in federal court case 2:08-cv-05034-DDP-PLA on August 22, 2008?

ANSWER: I was unaware that there was an actual lawsuit pending in California. My impression was that Darley was attempting to get us to participate in arbitration and that I, on behalf of SDIBI, could be called as a witness. My understanding was never anything more than that until Austin Kim indicated there could be some liability on behalf of SDIBI. I immediately informed State officials at that point. This subject is discussed in my deposition which is posted on the Board of Regents website.

43. See Exhibit 5. Did any attorney from Siegel, Barnett & Schutz LLP help you write this brief?

ANSWER: No.

44. See Exhibit 5. Did any attorney review this brief?

ANSWER: I assume the attorney who wrote the brief reviewed it.

45. See Exhibit 5. Did you have the permission of SD Attorney General Lawrence Long to file the brief on August 22, 2008?

ANSWER: No.

46. See Exhibit 5. Did you have permission from any State official to file the brief on August 22, 2008?

ANSWER: No.

47. See Exhibit 9 paragraph 5. Is it true that that you did not tell any State official or State attorneys about the pending federal lawsuit until after the federal court compelled the SDIBI to participate in the Darley arbitration?

ANSWER: See Answer 42.

48. See Exhibit 9. Why did you wait so long to inform a State official about the Darley International LLC arbitration naming the State as a party?

ANSWER: See Answer 42.

49. See Exhibit 10. Were you an employee of the State getting state paychecks until December 21, 2009?

ANSWER: Yes.

50. See Exhibit 10. Why did you take “virtually all records in [your] office relating to [your] EB-5 activities” without permission from NSU?

ANSWER: I didn’t. I was directed to take the records by the rightful owner of the records and they were returned to the rightful owner upon their request. See Answer 74.

51. See Exhibit 10. Provide an index of all EB-5 records you removed from NSU.

ANSWER: See Answer 74.

52. See Exhibit 10. Did any State official give you permission to remove records from NSU?

ANSWER: Yes. See Answer 74.

53. See Exhibit 10. Has any state official asked you to return or provide copies of these records?

ANSWER: See Answer 74.

54. See Exhibit 11. Is it true that your company – SDRC, Inc. – created its own website which asserted that it was the overarching management company that operated and managed South Dakota’s EB-5 program while you were a State employee?

ANSWER: As set forth in the factual background above, I was directed to set up a website and SDRC Inc. was not my own company at the time. The State was aware of a separate legal entity’s involvement with the Regional Center. When it was first formed it was never intended to be my company. Later, the State, represented by its own separate counsel, and SDRC, Inc., represented by its own separate counsel, entered into a contract to manage the EB-5 program.

55. See Exhibit 11. What was Austin Kim’s involvement in the negotiations between Darley International, LLC and Hanul Professional Law Corporation?

ANSWER: I don’t know. The California Darley Arbitration has been concluded with the exception of a potential appeal. My deposition along with James Parks’ deposition and hearing transcripts are available on the Board of Regents website.

56. During the time that you were both the Director for SDIBI and owner of SDRC, Inc. between 1/15/2008 and 12/21/2009, what other third parties did SDRC, Inc. have recruitment contracts with?

ANSWER: I was not the owner until June 2009. SDRC Inc. entered into recruitment agreements with various Chinese recruiters.

57. See Exhibit 12. What State official authorized you to submit the MOU with your own company – SDRC, Inc. – to USCIS?

ANSWER: See Answer 69.

58. See Exhibit 12. Did you inform any State official or USCIS that you owned SDRC, Inc. at the time of submission?

ANSWER: I did not own SDRC, Inc. at the time of submission to USCIS.

59. See Exhibit 12. Did you inform any State official that your company – SDRC, Inc. – would receive a 1% ownership interest in each project for acting as general partner at the time of submission?

ANSWER: Nobody gets an ownership interest in any EB-5 project. SDRC, Inc. was not my company nor did I own it at the time of the Exhibit 12 submission.

60. See Exhibit 13. How many corporations did you establish to administer EB-5 funds before December 21, 2009 when you were a State employee? Identify each of these corporations.

ANSWER: It appears based on the exhibits you attached to the questions provided to me that you are aware of all such corporations. Further these records are available from the Secretary of State's office.

61. See Exhibit 13. How many corporations did you establish to administer EB-5 funds after December 21, 2009? Identify each of these corporations.

ANSWER: See Answer 60.

62. See Exhibit 13. Provide an accounting of fees collected by each corporation where you have an ownership interest that managed EB-5 funds from 2008 to present.

ANSWER: See Answer 4.

63. See Exhibit 13. Provide a listing of any other owners for each corporation where you have an ownership interest that managed EB-5 funds from 2008-present.

ANSWER: See Answer 4. This is private and confidential business information. However, I am willing to state there are no other owners who have ever been or currently are residents of South Dakota.

64. Who performed SDRC, Inc. bookkeeping from 2008-present?

ANSWER: See Answer 69.

71. See Exhibit 3. Did any State official(s) grant you the authority to sign this contract? Please name the State official(s).

ANSWER: See Answer 69.

72. See Exhibit 3. Did Governor Mike Rounds grant you the authority to sign this contract?

ANSWER: See Answer 69.

73. See Exhibit 3. What attorney wrote this contract?

ANSWER: James Park.

74. See Exhibit 10. Will you return the records you removed without permission from NSU?

ANSWER: No records were removed without permission from NSU. All of the records taken from the NSU location were the property of GOED or TSD, not NSU. I had a contract with GOED/TSD to run the Regional Center. All of the records that were removed were returned to GOED/TSD after the contract to run the Regional Center was canceled in 2013. As set forth in the timeline above, prior to transferring the files to the SDRC Inc office, I emailed others about how to handle the records.

75. See Exhibit 5. What attorney wrote this brief?

ANSWER: I assume it was an attorney with the Hanul Law Firm.

In summary, the State was well aware of the existence of SDRC Inc. long before any significant activity took place with that entity. As a state employee, I did not enter into a secret no-bid contract with my own company. Further, I took no records without permission. In regard to the Darley dispute in California, TSD was well aware of Darley's complaints in January 2008. I have fully explained that I did not understand Darley filed a federal lawsuit until January 2009. At that time, I informed state officials. This lawsuit was dismissed without any adverse effects to the State. Once suit was properly filed in State court against SDIBI, it was fully represented by counsel under the authority of the Attorney General's office.

Respectfully submitted,

Joop Bollen