

1 THE DISTORTION OF EB-5 TARGETED EMPLOYMENT AREAS:

2 TIME TO END THE ABUSE

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4 WEDNESDAY, APRIL 13, 2016

5 United States Senate,
6 Committee on the Judiciary,
7 Washington, D.C.

8 The Committee met, pursuant to notice, at 10:01 a.m.,
9 in room SD-226, Dirksen Senate Office Building, Hon. Chuck
10 Grassley, Chairman of the Committee, presiding.

11 Present: Senators Grassley, Cornyn, Flake, Tillis,
12 Leahy, Schumer, Klobuchar, and Blumenthal.

13 Chairman Grassley. I would ask the Congressmen to sit
14 at the table. I will introduce you. I know that the House
15 is on a different schedule than the Senate, so what we are
16 going to do is give the courtesy to the Congressmen to
17 testify, and then I and Senator Leahy will give our opening
18 statements afterwards. It is my privilege to introduce you.
19 I will introduce all three of you at one time.

20 Congressman Bob Goodlatte serves as Chairman of the
21 House Judiciary Committee. He has served the 6th District
22 of Virginia for 23 years. As my counterpart on the House
23 side, Congressman Goodlatte has been an indispensable
24 partner in the fight to reform the EB-5 Immigrant Investor
25 Program. He has been an advocate for putting integrity back

1 into the program, fixing the fraud and abuse, and making
2 sure that there is a level playing field across the country.
3 Congressman Goodlatte was an important part of negotiating
4 the bipartisan, bicameral deal that we had hoped to include
5 in the omnibus package last year. I look forward to
6 continuing that fight with you, Chairman Goodlatte.

7 I have a friend of mine serving in the House of
8 Representatives. He was there 10 years before I got there,
9 so he has been a Member of the House of Representatives for
10 a long time. Congressman John Conyers serves as Ranking
11 Member of the House Committee on the Judiciary. He
12 represents Michigan's 3rd District, and as I indicated, 10
13 years before I got to the Congress, he started in 1964. As
14 Ranking Member of the Committee, Congressman Conyers has
15 been an important player in reforming the EB-5 program. He
16 was critical in gaining bipartisan support for EB-5 reform
17 in the House, and we appreciate his advocacy to ensure this
18 program helps build communities through economic development
19 and supports job creation.

20 Then we have Congressman Mark Amodei. I hope that is
21 right. If it is not, correct me. Congressman Amodei has
22 served the people of Nevada's 2nd District since 2011. He
23 was also a member of the House Judiciary Committee during
24 the 112th Congress and is currently on the House
25 Appropriations Committee. In 2014 and 2015, he and

1 Congressman Jared Polis sponsored the American
2 Entrepreneurship and Investment Act. That bill sought to
3 make EB-5 a permanent Federal program.

4 Congressman Goodlatte, would you please proceed?

1 STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE
2 IN CONGRESS FROM THE STATE OF VIRGINIA, AND
3 CHAIRMAN, COMMITTEE ON THE JUDICIARY, U.S. HOUSE
4 OF REPRESENTATIVES

5 Representative Goodlatte. Well, thank you, Mr.
6 Chairman. Chairman Grassley--

7 Chairman Grassley. Is your microphone on?

8 Representative Goodlatte. It is now.

9 Well, thank you, Chairman Grassley and Ranking Member
10 Leahy and members of the Committee. I thank you for the
11 opportunity to appear before you. It is my pleasure to be
12 here with my colleague and Ranking Member, Mr. Conyers, as
13 well as my good friend Mark Amodei, who is a former member
14 of the Judiciary Committee. We have not forgiven him for
15 leaving us, but we welcome his input on this issue as well.
16 And I want to thank Senators Grassley and Leahy as well as
17 Congressman Conyers for being my partners in seeking
18 fundamental reform of the Investor Visa Program.

19 Congress' goal in creating the Investor Visa Program
20 was to create new employment for the U.S. workers and to
21 infuse new capital into the country and to target
22 investments to rural America and areas with particularly
23 high unemployment--areas that can use the job creation the
24 most. Finally, Congress was clear that the goal was "not to
25 provide immigrant visas to wealthy individuals." That is a

1 direct quote.

2 I am a supporter of the Investor Visa Program and
3 believe that it has contributed in real ways to economic
4 development. Unfortunately, over the years, the program has
5 strayed further and further away from what Congress
6 envisioned. It is, thus, not performing at the high level
7 that we deserve.

8 The Immigration Act of 1990 provided that alien
9 investors must invest \$1 million. However, DHS may in the
10 case of investments made in a Targeted Employment Area,
11 rural or with high unemployment, specify a lower amount.
12 Since 1990, this has been \$500,000.

13 Finally, the Department of Homeland Security has the
14 authority to increase the minimum investment amounts. Over
15 the last quarter century, the minimum investment amounts
16 have never been adjusted for inflation. As a result, the
17 real value of each investment has fallen by almost 50
18 percent, depriving the U.S. economy of billions of dollars a
19 year.

20 Congress wanted to incentivize investments through a
21 lower invested amount in areas with a scarcity of jobs that
22 find it hard to attract capital. Congress' expectation was
23 that the vast majority of EB-5 investors would invest \$1
24 million. Yet last year, almost all investor visas went for
25 \$500,000. Why? Well, as one EB-5 attorney has put it, most

1 investors are interested in realizing permanent residency
2 for a lower price tag, the logic being: Why pay \$1 million
3 for a green card when I can get it for \$500,000?

4 Not surprisingly, this has led to rampant
5 gerrymandering. As DHS Deputy Secretary Alejandro Mayorkas
6 has stated, this involves the deliberate drawing of TEAs to
7 include prosperous areas that should not be subject to the
8 reduced capital requirements.

9 Let me give one example. Here is the 926-foot Four
10 Seasons Hotel and Private Residences at 30 Park Place in
11 Tribeca, which describes itself as "perfectly pitched
12 luxury" that will "introduce a new caliber of luxury
13 living." Beverly Hills Magazine says it is poised to be one
14 of Manhattan's most prestigious addresses and a new paradigm
15 in sophisticated living. Prices vary from \$2.6 to over \$60
16 million per residence. 30 Park Place wanted to market EB-5
17 visas for \$500,000. However, since the unemployment rate
18 there was only 3.8 percent, New York State developed a
19 project map that went upstream along the East River in order
20 to lasso enough high-unemployment areas to qualify.

21 Unfortunately, DHS has facilitated such abusive
22 gerrymandering. The USCIS accepts as binding maps approved
23 by State agencies, even though, as the Wall Street Journal
24 points out, they are eager for economic development and have
25 little stake in Federal immigration policy.

1 Projects in affluent areas will always get the lion's
2 share of EB-5 investments. Even if immigrants have to
3 invest more, they prefer the high degree of safety and the
4 prestige. However, we want to ensure that a healthy
5 percentage of projects locate in rural and depressed areas.
6 Even if we could determine that a project's workers commute
7 from high-unemployment areas, which generally cannot be
8 done, that is not enough. We want to revitalize distressed
9 areas, and to do that, projects actually have to be located
10 in those areas. As the Leadership Conference on Civil and
11 Human Rights has concluded, projects built in neighboring
12 affluent areas will leave communities of concentrated
13 poverty no better off in terms of development and
14 infrastructure.

15 Let me mention two other issues.

16 First, in instances where a project is financed by EB-5
17 and conventional capital, DHS allows foreign investors to
18 receive credit for all the jobs to be created, even those
19 paid for by other people's money. The DHS' Inspector
20 General has concluded that DHS regulations allow foreign
21 investors to take credit from jobs created with U.S. funds.
22 In one case, even though EB-5 funds accounted for only 18
23 percent of a project's capital, foreign investors got to
24 claim credit for all the jobs the project was projected to
25 create. This practice makes a mockery of the job creation

1 goal of the EB-5 program.

2 Finally, as I stated, visas for the wealthy was not a
3 goal of the EB-5 program. It was to attract investors with
4 entrepreneurial talent. As Phil Gramm stated during Senate
5 consideration, if people have been successful in business,
6 they can bring that talent and the fruits of that talent, a
7 million dollars, to this country. If the EB-5 program is
8 reformed, it can become a turbo-charged engine for economic
9 growth.

10 I look forward to our two Judiciary Committees working
11 together to achieve this goal, and, again, I thank you for
12 the opportunity to testify.

13 Chairman Grassley. Thank you, Chairman Goodlatte.

14 Now, Ranking Member Conyers. Is the red light on?

1 STATEMENT OF HON. JOHN CONYERS, JR., A
2 REPRESENTATIVE IN CONGRESS FROM THE STATE OF
3 MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE
4 JUDICIARY, U.S. HOUSE OF REPRESENTATIVES

5 Representative Conyers. The red light is on.

6 Thank you very much, Chairman Grassley, Ranking Member
7 Leahy, and my former colleague Senator Schumer. I am very
8 pleased and honored to be here with Chairman Goodlatte and
9 Mr. Amodei.

10 Over the past several months, I have been honored to
11 work with you and Chairman Goodlatte in a bipartisan effort
12 to reform the EB-5 Investor Visa Program. I remain
13 confident that we can accomplish these important legislative
14 reforms this Congress, and I look forward to continuing to
15 work with all of you.

16 I have taken a particular interest in the EB-5 Investor
17 Visa Program because I believe it has drifted from the
18 program initially envisioned by Congress. As a result, the
19 communities that need investment the most, specifically
20 rural and poor urban zones, struggle to attract investors
21 and are unfairly placed in direct competition with developed
22 affluent areas.

23 When the Congress established the program in 1990, the
24 intention was to create jobs for American citizens and to
25 bring new investment capital to the United States. To help

1 encourage investment and job creation in rural or high-
2 unemployment areas, the EB-5 program offered a reduced
3 investment level of \$500,000 for projects in designated
4 Targeted Employment Areas, commonly referred to as "TEAs."

5 However, as reported by the GAO, academics, the Wall
6 Street Journal, and many other news sources, the vast
7 majority of EB-5 investment funds are going to projects in
8 some of America's most wealthy corridors. They qualify as
9 TEAs only by stringing together census tracts across many
10 miles, sometimes across State lines, and often across
11 natural boundaries such as rivers--gerrymandering, as
12 Chairman Goodlatte referred to it.

13 This practice has been criticized by the Leadership
14 Conference on Civil Rights, noting that the EB-5 regional
15 center program has dramatically deviated from its original
16 purpose--to spur job creation and development in rural and
17 high-unemployment areas. Steering investments to projects
18 in our cities' well-to-do neighborhoods comes at the expense
19 of EB-5 funds for urban and rural communities. Surely this
20 is not what a Targeted Employment Area was supposed to mean.

21 The congressional district that I represent, for
22 instance, suffers from an employment rate of more than 300
23 percent the national average. I am pleased to say that
24 today we are starting to come back, and it is slow, and we
25 have a long way to go. But for those Americans living in

1 urban poverty in my city of Detroit and in many other cities
2 across the country, manipulation of Targeted Employment
3 Areas has diverted a potential source of jobs and
4 neighborhood improvement away from those it was originally
5 intended to help.

6 In closing, I want to dispel any notion that reforms to
7 the EB-5 regional center program are somehow targeted at
8 disadvantaging more affluent urban areas. We cannot forget
9 that there are no restrictions on where an investment may be
10 located outside of the TEAs. If a project in downtown D.C.
11 wants to use the EB-5 program, they can do so without
12 proving a connection to a high-unemployment area. They
13 would be simply required to recruit investors at a slightly
14 higher dollar amount under our reform proposal.

15 The much-needed bipartisan and bicameral reforms that
16 my colleagues and I worked on last year preserve the option
17 for investment to take place in any location, regardless of
18 unemployment or poverty levels. However, if we are going to
19 continue to provide an incentive for investment at a lower
20 dollar amount for Targeted Employment Areas, TEAs, then we
21 must make sure that incentive works. This can be done
22 through a set-aside of a small but meaningful percentage of
23 EB-5 visas that would be specifically reserved for the areas
24 that need it most.

25 I thank the Chairman, Ranking Member, and other members

1 of this Committee for the opportunity to testify at today's
2 hearing.

3 Chairman Grassley. Thank you, Congressman Conyers.

4 Now, Congressman Amodei.

1 STATEMENT OF HON. MARK AMODEI, A REPRESENTATIVE IN
2 CONGRESS FROM THE STATE OF NEVADA

3 Representative Amodei. Thank you, Mr. Chairman, Mr.
4 Ranking Member. It is a pleasure to be sitting here with
5 the two distinguished gentlemen to my right. My tenure on
6 the Judiciary Committee in the House was cut short when they
7 decided to give an entrance exam for membership and I could
8 not make the grade for that; so, hence, I ended up on
9 Appropriations. But now with full disclosure, thank you for
10 the opportunity to talk about this issue, and it is my hope
11 in the few minutes that I have to provide some food for
12 thought in terms of the program.

13 The EB-5 program is a car in need of a new set of
14 tires. It is a car whose engine still runs pretty well, and
15 it is a car whose paint job may need a little wax job. But
16 let us face it. It has created a lot of jobs. It has done
17 so at almost no cost to the taxpayer. It has done so at a
18 time when we have struggled economically in the last few
19 years, and, therefore, I would submit on a basic value
20 judgment basis, this is a good thing.

21 And so when we talk about what to do with
22 reauthorization--and it is my hope that we can get there--
23 that you talk about, all right, what are the lessons learned
24 in the last quarter of a century of this program and what do
25 we need to do? If you want to incentivize urban

1 redevelopment, then fine, let us do that. I am not sure
2 this is the program to do that. Or if we are concerned
3 about gerrymandering areas for economic activity that we
4 want to target, that is fine. Maybe you raise the rates or
5 something like that. It is my concern that the perfect is
6 becoming the enemy of the good. And so I want to just throw
7 out for thought a couple of things.

8 One is economic activity goes where there is
9 opportunity. So while nobody is opposed to urban
10 redevelopment or getting investment into rural areas--and,
11 by the way, I come here representing an area that is most
12 described as rural if not, in fact, frontier. They say,
13 well, Nevada, you must be a Vegas guy. With all due respect
14 to my colleagues from the southern part of the State, no.
15 We say if you have just been to Las Vegas, you have not been
16 to Nevada.

17 So with that in mind, no district would benefit more
18 than mine if you said we want some no-kidding rural stuff.
19 The challenge is: How do you fashion a policy that requires
20 investment where economic activity, quite frankly, does not
21 compete with, for instance, the folks in the Empire State?
22 I am certainly not here to be the defender of New York
23 State, but you know what? There is a little bit of economic
24 activity going on there. And if they did create the jobs
25 and it did do what it wanted to do for the economy, then I

1 would think we would be able to find some value judgment
2 middle ground where we can keep going forward with that.

3 And in that regard, that is why we took the lead from
4 some of your members--the Senator from Texas, the Senator
5 from New York--on the EB-5 Integrity Act of 2016, which is
6 like--nobody, I think, comes before you and says it is fine,
7 do not touch it, it is not broken. I do not think it is
8 broken, but I think it needs maybe a tune-up and a new set
9 of tires or something like that.

10 The problem is, as we sit here and talk about this,
11 this has been going on for a while. And when we talk about
12 economic activity, which is an important part of our tax
13 base, among other things, it is like, hey, the uncertainty
14 and unpredictability of continuing piecemeal extensions so
15 that people do not know what the rules are is insidious in
16 terms of using this as a tool. It is not the answer to all
17 of our economic problems, but it is a tool that works pretty
18 well at no cost to the Government.

19 And so on that basis, my purpose in appearing here
20 today--thank you for your indulgence--is to say there are
21 issues that need to be dealt with. I think there is, for
22 the most part, consensus amongst your organization and
23 Chairman Goodlatte's organization on the north side of--the
24 south side of the building, and it is--the view from the
25 bottom, Mr. Chairman, is, okay, well, let us figure out what

1 those things are and go forward. And if the vehicle for
2 urban redevelopment or urban economic incentives or rural
3 economic incentives exists elsewhere in law, then let us
4 concentrate on that.

5 And, by the way, one of the things that I will say--and
6 then I will conclude--is if we need to raise the limits,
7 then, I mean, things have changed, and so when you look at
8 that, it is like, fine, raise the limits. But let us not
9 kid ourselves. There is not a lot of mom-and-pop EB-5-
10 eligible investors floating around. So when I hear cliches
11 about the rich people's visa program, it is like, well, if
12 we wanted it for mom and pop, it would be if you create one
13 job if you invest \$100 million. I mean, I think the track
14 record, as pointed out by the Chairman, is especially
15 illustrative of, is, listen, if you want to come invest and
16 you want to create jobs in downtown Manhattan, that is
17 great. Guess what? The price of poker there is \$2 million,
18 or whatever makes sense under the circumstances. But my
19 request of this Committee and also of our side, Mr.
20 Chairman, is let us take what works and give it a new lease
21 on life. Let us fix what is obviously broken. If it is in
22 this mechanism, then fine. If it is another mechanism,
23 fine. But let us move forward, because while it is not the
24 whole answer to our problems, it is an important piece that
25 I think, on balance, when you look back over history, has

1 been successful.

2 Thank you for your indulgence, and if you have any
3 questions, I would be happy to hang around.

4 Chairman Grassley. To my members, they have a meeting
5 that has to go at 10:30, so I hope you do not--you wanted to
6 say something?

7 Senator Leahy. No. I just wanted to--

8 Chairman Grassley. Go ahead.

9 Senator Leahy. I chuckled at Congressman Amodei's
10 comment. Most of us are grandfathered in, so we did not
11 have to take the test. That is how I got to be the senior
12 member on Appropriations as well as on Judiciary.

13 As the Chairman has heard me say, I did not like the
14 seniority system when I came here, but I understand it a lot
15 better now.

16 [Laughter.]

17 Senator Leahy. Thank you.

18 Thank you, Mr. Chairman.

19 Chairman Grassley. Okay. Thank you very much for your
20 testimony, and there are not any questions. I do not think
21 that will upset you. And I look forward to continuing to
22 work on this, and hopefully between now and sunset of this,
23 we have got something that can get to the President of the
24 United States. That is our goal. Thank you all.

1 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
2 FROM THE STATE OF IOWA

3 Chairman Grassley. While Senator Leahy and I are
4 giving our opening statements, would the second panel please
5 come? And then I will introduce you after we are done here.

6 When Congress passed the omnibus appropriations bill 4
7 months ago, we reauthorized the EB-5 Immigrant Investor
8 Program for the remainder of the fiscal year.
9 Unfortunately, we reauthorized a program that remains deeply
10 flawed because the omnibus bill failed to include much-
11 needed reforms. At the time, I gave a speech on the Senate
12 floor explaining that the next few months would be spent
13 conducting oversight of the program and exposing the truths
14 about how it is being used. This hearing is part of that
15 quest.

16 We held a hearing in February related to fraud, abuse,
17 and national security vulnerabilities in the program. We
18 heard from U.S. Citizenship and Immigration Services and the
19 Securities and Exchange Commission. At that hearing, I
20 encouraged the agencies to do more to exercise oversight and
21 to tighten up the program using the authorities already in
22 the law.

23 Citizenship and Immigration Services has responded to
24 that call and is working on regulations that will, I hope,
25 improve the program. I have given them several suggestions

1 and personally expressed to Secretary Johnson my desire to
2 work with him in that effort.

3 Today the Committee will learn about the "Targeted
4 Employment Areas," a term used in the Immigration and
5 Nationality Act to describe rural areas and areas with high
6 unemployment in which EB-5 investments are made. The law
7 authorizes a lower investment threshold for such areas in
8 order to incentivize foreign nationals to invest there.

9 Targeted Employment Areas have been part of the EB-5
10 program since the beginning. Senator Phil Gramm offered
11 this concept as an amendment in 1989 to the Immigration Act
12 of 1990.

13 Supporting him, Senator Boschwitz said this: "I see no
14 reason to shut out willing investors while our small towns
15 and inner cities across America are facing hard times." He
16 said the Gramm amendment authorizing Targeted Employment
17 Areas would benefit rural areas that have difficulty
18 attracting capital for economic growth.

19 Senator Paul Simon of Illinois, who served on this
20 Committee, said on the Senate floor, "[W]e are mindful of
21 the need to target investments to rural America and areas
22 with particularly high unemployment--areas that can use the
23 job creation the most. For this group, we make available at
24 least 3,000 visas annually. America's urban core and rural
25 areas have special job creation needs and this visa program

1 is sensitive to that in this way. Investments in this area
2 must still create 10 jobs but require an investment less
3 than \$1 million. The Attorney General is authorized to set
4 the required investment at a lower amount but at least
5 \$500,000. Clearly, the closer the Attorney General sets
6 this to \$500,000, the more we can encourage investments in
7 these critical areas."

8 Though Congress intended for most EB-5 investments to
9 be made at the \$1 million level, nearly all EB-5 investments
10 today are made at the \$500,000 level in Targeted Employment
11 Areas. And, of course, that is just not right.

12 As a result, cities in Georgia, North Carolina, and
13 Minnesota compete with Beverly Hills, Miami, and New York
14 City. It is hard for smaller States and cities to compete
15 with the glitzy hotels and luxury condo projects. In Iowa,
16 we are trying to create jobs through value-added
17 agriculture, biofuels, and ag-based manufacturing. Wealthy
18 investors understand that the real estate market is booming
19 and see the dollar signs, big returns, and the green cards
20 that come along.

21 Gerrymandering the boundaries of Targeted Employment
22 Areas allows very affluent areas to benefit from the lower
23 investment threshold, resulting in little incentive to
24 invest EB-5 funds in distressed or rural areas, as was
25 envisioned by Senators Simon, Gramm, and Boschwitz. This is

1 done by drawing the Targeted Employment Area to include a
2 long chain of census tracts linking the affluent area at one
3 end with at least one census tract, perhaps many miles away,
4 which includes low-income residents or subsidized housing.
5 One TEA designation has an astonishing 190 census tracts
6 covering 200 miles in order to include far-away economically
7 distressed areas.

8 This problem could be fixed tomorrow if the Obama
9 administration had the willingness to challenge and question
10 States. You see, States control the designation of Targeted
11 Employment Areas. State officials will gerrymander the
12 boundaries of Targeted Employment Areas any way they can to
13 ensure the flow of investment money into their State.
14 Unfortunately, the administration refuses to challenge the
15 designations. This administration has a chance right now to
16 change this and bring the program back to the way Congress
17 envisioned.

18 Targeted Employment Areas are at the heart of the
19 controversy about EB-5 and the principal reason we were
20 unable to pass common-sense reforms last year.

21 Yet we proposed a lot of good reforms last year. For
22 example, the Grassley-Leahy-Conyers-Goodlatte proposal, for
23 the first time, incentivized EB-5 investment in
24 manufacturing and infrastructure. Manufacturing employers
25 create direct, long-term, quality jobs in communities. As

1 for infrastructure, we have a lot of needs in Iowa and the
2 Midwest, including rail and river transportation, wastewater
3 treatment plants, and bridges. More EB-5 capital in
4 infrastructure projects would reduce the burden on
5 taxpayers, especially when local governments are up against
6 Federal mandates. We also proposed reallocating the visas--
7 carving out enough for rural and high-unemployment areas,
8 but leaving more than half of the visas for projects that
9 come in at the higher investment level.

10 Yet the supporters of the status quo proposed ideas
11 that would continue to steer investments to luxurious real
12 estate developments in affluent areas. They proposed
13 allowing Targeted Employment Areas to continue to be
14 gerrymandered based on complicated commuter patterns from
15 remote census tracts, but without evidence that new jobs are
16 actually being created in the communities that people are
17 allegedly commuting from. They even proposed having just
18 one investment level, which does nothing to incentive
19 foreign investors to put money in areas that need it.

20 My hope is that today's hearing will shed light on the
21 problem and why the status quo only benefits a few areas of
22 the country.

23 I am proud that we have an Iowan here today to talk
24 about my home State. Iowa and surrounding States are at a
25 clear disadvantage.

1 We have a good mix of witnesses here today. I want to
2 thank everybody for coming today and the hard work you have
3 to put into this testimony.

4 Before Senator Leahy speaks, I want to thank him
5 because all last year he worked very closely with us on this
6 project, and that is very important to getting anything done
7 in the United States Senate. Thank you, Senator Leahy.

8 OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.

9 SENATOR FROM THE STATE OF VERMONT

10 Senator Leahy. Thank you. We actually do get some
11 things done. Senator Cornyn and I have, too, on a number of
12 issues.

13 In fact, I might note that we had all four leaders of
14 the Senate and House Judiciary Committees here in the same
15 room, on the same side of the issue, Democrats and
16 Republicans. Chairman Grassley, Chairman Goodlatte, Ranking
17 Member Conyers, and I are committed to bringing much-needed
18 reforms to the EB-5 Regional Center program.

19 We all know the program was designed to bring jobs to
20 underserved areas. Unfortunately, it has become an
21 unintended boon for some of the wealthiest business
22 districts in the country. The bicameral compromise that all
23 four of us supported last December would have ushered in
24 much-needed reforms to improve the program. It even
25 included improvements requested by the Department of

1 Homeland Security. We addressed vulnerabilities and
2 concerns raised by the Government Accountability Office, the
3 DHS Inspector General, and others. And, importantly, it
4 would have restored incentives Congress created to promote
5 investment in undercapitalized locations known as "Targeted
6 Employment Areas," or TEAs.

7 Now, newspapers across the country have exposed the
8 abuse of TEAs that has come about through gerrymandering.
9 This abuse occurs when wealthy neighborhoods qualify for
10 incentives intended for underserved areas.

11 The Wall Street Journal, a business-friendly paper,
12 reported just yesterday that one big-city developer referred
13 to EB-5 financing as "legalized crack cocaine." Developers
14 draw TEA maps in any shape necessary to connect an affluent
15 area with enough distressed areas to obtain discounted EB-5
16 financing.

17 Through manipulation of the EB-5 program, Beverly Hills
18 can be considered just as distressed as Detroit. If you
19 have visited those two cities, you know what a fiction that
20 is. And that practice has been sharply criticized by the
21 Leadership Conference on Civil and Human Rights.

22 It has been suggested that the TEA reforms in our
23 bicameral compromise would treat urban areas unfairly. That
24 could not be further from the truth. Our reforms would
25 reserve a relatively small number of visas for true urban

1 poor and rural projects. Investors are reluctant to invest
2 in those distressed areas, so we would allow true TEA
3 projects to compete at a slightly reduced investment level.
4 Up to 80 percent of EB-5 investment dollars would continue
5 to flow into urban areas, and we know that much of those
6 funds would be funneled into luxury areas.

7 But our reforms for the first time are going to provide
8 some meaningful incentives to invest in true urban poor and
9 rural areas. And these reforms have been supported by the
10 leading industry group, Invest in the USA (IIUSA), which is
11 here today. But even these modest reforms went too far for
12 those who want to continue driving cheap investment to
13 wealthy projects at the expense of rural and urban poor.
14 Despite broad recognition that the program needs reform,
15 congressional leaders blocked our efforts in December. As
16 Chairman Grassley said at the time--and I agree with him--
17 "our House and Senate leadership failed us."

18 If this regional center program is to continue, it has
19 to be reformed. I will not support mere window dressing. I
20 will not vote for a continuation of EB-5 if all it has is
21 window dressing reform. And I can assure you there are a
22 lot of Democrats and Republicans who feel the same way.
23 Proposals that do not require transparency and
24 accountability for every EB-5 project are just window
25 dressing. The program is need of a blood transfusion, not a

1 Band-Aid. We know what is needed to repair this program.
2 It is long past time that we need to fix it.

3 I think it is safe to say EB-5 faces an uphill battle
4 in the Congress in both parties unless it is reformed. So
5 thank you, Mr. Chairman, for holding this hearing.

6 Chairman Grassley. Our first witness, Mr. Healy, from
7 Dallas, Texas, suggested to us by our colleague Senator
8 Cornyn--and thank you for doing that, Senator Cornyn--is CEO
9 of Civitas Capital Group and its family of companies. Mr.
10 Healy brings experience in both real estate investment and
11 security compliance. Throughout his career he has helped
12 manage projects of all kinds. Previously, Mr. Healy was a
13 senior executive at Royalton Real Estate Capital and
14 Highland Capital Management.

15 Mr. Timothy Whipple joins us from Iowa. He is an
16 attorney from Drake University Law School, 2007. As general
17 counsel for the Iowa Economic Development Authority, he was
18 largely responsible for managing Iowa's EB-5 program. He
19 has also worked as legal counsel to the Iowa Legislature for
20 Economic Development and Tax Law. Mr. Whipple is currently
21 the general counsel for the Iowa Association of Municipal
22 Utilities. Today he brings firsthand knowledge of EB-5 and
23 particularly its role in the Iowa economy or the rural
24 economy, as I highlighted in my opening statement.

25 Then we have Mr. Peter Joseph, executive director to

1 the nonprofit trade association known as--I am going to
2 spell it out, IIUSA. Well, here it says association with
3 Invest In The USA. This association is a leading voice of
4 the EB-5 industry representing over 280 regional center
5 members of all different sizes and missions. Under Mr.
6 Joseph's leadership, the group has worked with Congress to
7 reauthorize the program and provide expertise on how best to
8 reform it.

9 Mr. Friedland is a scholar-in-residence at New York
10 University Stern School of Business in the Center for Real
11 Estate Finance Research. Mr. Friedland's extensive research
12 and writing on the EB-5 program are well known within the
13 industry. Previous to his work at Stern, Mr. Friedland was
14 involved with all aspects of real estate development,
15 financing, acquisition, and operations in corporate law, and
16 he has a J.D. degree from Georgetown University Law Center.

17 We will do it the way we introduced you, so, Mr. Healy,
18 then Mr. Whipple, Mr. Joseph, and Mr. Friedland. Proceed.

1 STATEMENT OF DANIEL J. HEALY, CHIEF EXECUTIVE
2 OFFICER, CIVITAS CAPITAL GROUP, DALLAS, TEXAS

3 Mr. Healy. Thank you, Mr. Chairman, and before I
4 begin, I just wanted to take a moment to also thank you for
5 your work on criminal justice reform this Congress. It is
6 an issue that is close to my heart.

7 Chairman Grassley. Thank you very much.

8 Mr. Healy. Chairman Grassley, Ranking Member Leahy,
9 and members of the Committee, Civitas Capital Group is a
10 leading manager of EB-5 investments throughout Texas and
11 around the United States, with more than \$500 million in
12 assets under management for more than 1,000 immigrant
13 investor families from more than 30 countries. I founded
14 Civitas in 2008 at the outset of the global financial
15 crisis. We helped create the City of Dallas Regional
16 Center, an innovative public-private partnership. Today we
17 manage more than \$350 million in EB-5 capital invested in
18 more than 20 job-creating projects in Dallas alone,
19 including several in historically underserved neighborhoods.

20 While not the topic today, I want to commend you, Mr.
21 Chairman, and the Ranking Member for incorporating important
22 integrity enhancements into EB-5 reform.

23 Mr. Chairman, I have two goals today:

24 First, my written statement offers three case studies
25 of how EB-5 works. Each project shows, A, the power of EB-5

1 to create jobs and, B, why TEA reform must balance the
2 program's broad job creation mandate with the desire to
3 drive capital to distressed communities, be they urban or
4 rural. I welcome the chance to talk about these projects in
5 the Q&A.

6 Second, I encourage you to radically reform TEA policy.

7 The title of this hearing makes plain your view, Mr.
8 Chairman, that TEA designations have been abused. We can
9 create a new TEA policy that meets your goals from ending
10 so-called gerrymandering to eliminating rubber-stamping by
11 State authorities to incentivizing investment in truly
12 distressed communities. My challenge to this Committee is
13 do not just tinker with TEA policy. Reimagine it.

14 Imagine a TEA policy that incentivizes investments in
15 Pecos, Texas, and Orogrande, New Mexico, without
16 disadvantaging Dallas and Houston and, for that matter, New
17 York City.

18 I suspect we agree that creating jobs in the large and
19 medium-sized urban markets where the vast majority of
20 Americans live is a good thing. Doing so should not
21 preclude driving EB-5 capital to distressed areas, be they
22 urban or rural. The solution is objective, narrow, place-
23 based criteria. TEA eligibility should be the exception,
24 not the rule, and would be reserved for areas that are truly
25 distressed.

1 Congress need not invent anything new to achieve this
2 goal; rather, you can craft a simple, straightforward TEA
3 policy by adopting a tighter version of the poverty, income,
4 and unemployment criteria used to determine census tract
5 eligibility for the New Markets Tax Credit program.
6 Specifically, a TEA could be defined as one of the
7 following:

8 First, a "Priority Urban Investment Area" would be a
9 census tract within a Metropolitan Statistical Area with any
10 two of the following: a poverty rate greater than 30
11 percent; or median family income that does not exceed 60
12 percent of the statewide median; or unemployment of at least
13 150 percent of the national average.

14 Second, a "Priority Rural Investment Area" would be a
15 census tract outside an MSA that has any one of the
16 following characteristics: a poverty rate at least 20
17 percent; and median family income that does not exceed 80
18 percent of the statewide median.

19 For urban TEAs, the Priority Urban Investment Area idea
20 is a more restrictive version of the "severely distressed"
21 concept from the New Markets program. Applying New Markets
22 criteria would also provide a meaningful boost for truly
23 distressed rural areas. Note that the proposed thresholds
24 for TEA qualification as a "Priority Rural Investment Area"
25 are lower than those for urban areas.

1 Finally, TEA qualification are inextricably linked to
2 the minimum investment threshold for each tier if we are to
3 have a meaningful two-tier regime. My written testimony
4 sets forth what I believe to be the appropriate investment
5 amounts.

6 Mr. Chairman, I urge you to serious consider this TEA
7 reform proposal. I think you will find that it meets your
8 goals from ending so-called gerrymandering to eliminating
9 rubber-stamping to incentivizing investment in truly
10 distressed communities.

11 Thank you for your interest in the EB-5 program and the
12 opportunity to testify today.

13 [The prepared statement of Mr. Healy follows:]

1 Chairman Grassley. Thank you.

2 Mr. Whipple.

1 STATEMENT OF TIMOTHY J. WHIPPLE, FORMER GENERAL
2 COUNSEL, IOWA ECONOMIC DEVELOPMENT AUTHORITY, DES
3 MOINES, IOWA

4 Mr. Whipple. Thank you. Thank you, Mr. Chairman,
5 distinguished members of the Committee. Thank you for the
6 opportunity to testify today on the topic of EB-5 Targeted
7 Employment Areas. My name is Timothy Whipple. I am a
8 native Iowan. I grew up in rural Franklin County and
9 graduated from Cedar Falls High School. From 2007 to 2011,
10 I was legal counsel to the Iowa Legislature for economic
11 development and tax law. From June 2011 to November 2015, I
12 was the general counsel for the Iowa Economic Development
13 Authority. In this capacity, one of my duties was to
14 coordinate the State's effort to leverage the Federal EB-5
15 Immigrant Investor Visa Program.

16 The State of Iowa, through its state Economic
17 Development agency, has operated an EB-5 regional center
18 since approximately 2004. The regional center was
19 originally set up to bring Dutch dairy farmers to Iowa, and
20 these early efforts met with modest success. But over time,
21 it became clear that we were underutilizing EB-5. Other
22 areas of the country were more successful at using the
23 program to attract foreign capital, and we decided to expand
24 our regional center in order to bring that capital to Iowa
25 for a number of reasons.

1 The first reason we moved forward with an expanded
2 regional center was that we felt the State government was
3 better positioned than local communities to deal with the
4 legal and financial complexities of EB-5.

5 The second reason was that the EB-5 program seems to
6 offer opportunities for rural areas. For example, Iowa has
7 99 counties and 77 of them would qualify for the \$500,000
8 investment tier by virtue of their rural status.

9 Third, as the State's lead economic development agency,
10 the Iowa Economic Development Authority has a steady stream
11 of industrial projects that we thought might attract EB-5
12 investment.

13 Fourth, we felt that as a State agency whose primary
14 mission is to benefit Iowans through economic development
15 rather than making a profit, we felt we had the right
16 incentive to operate a regional center.

17 Finally, we hoped that we could bring consistency and
18 predictability to the use of EB-5 within the State by
19 bringing most projects through the State's regional center.
20 However, the State's regional center has yet to attract the
21 kind of capital that other States have attracted.

22 One reason for this is that the gerrymandering of TEAs
23 means the lower investment tier can be achieved almost
24 anywhere. Urban areas generally have more and bigger
25 developments than rural areas, so the capital goes there.

1 Another reason is that because of the political
2 incentives of State and local officials, continuing to allow
3 State designation of TEAs will almost guarantee that the
4 gerrymandering continues.

5 A third reason is that rural and manufacturing
6 economies like Iowa's do not offer the kind of flashy
7 commercial development that affluent urban areas do.

8 A fourth reason is that the ability to leverage
9 indirect job creation favors affluent urban areas because of
10 the way economic multipliers are calculated. This makes it
11 less efficient from a business standpoint to invest in
12 smaller projects in rural areas.

13 Finally, a TEA designation should be an indicator of
14 economic distress. The current focus on unemployment as the
15 exclusive basis for TEA designation fails to recognize other
16 indicators of distress such as low wages and high poverty
17 rates.

18 Given all of these challenges, I hope this Committee
19 and this Congress will consider reforming the EB-5 program:
20 reserve a minimum of 20 percent of the annual available
21 visas for investors who make investments in rural areas;
22 stop the gerrymandering of TEAs; use additional economic
23 distress criteria for purposes of TEA designation; require
24 each individual census tract in a TEA to meet the criteria;
25 incentivize projects built in true distressed areas, rural

1 and urban, that represent underserved capital markets;
2 create and enforce a consistent set of national TEA
3 standards; create incentives for infrastructure and
4 manufacturing projects rather than commercial real estate
5 development.

6 With a few common-sense reforms like this, the EB-5
7 program will better fulfill its original intent of creating
8 jobs and improving distressed areas throughout the country.

9 Once again, I appreciate the opportunity to address the
10 Committee on this important topic. Thank you.

11 [The prepared statement of Mr. Whipple follows:]

1 Chairman Grassley. Thank you.

2 Mr. Joseph and Mr. Friedland, I am going to leave for 5

3 or 7 minutes, and I asked him to take over so I can go to

4 Budget and ask a question. Hopefully I can get in line.

5 Thank you.

6 Go ahead.

1 STATEMENT OF PETER D. JOSEPH, EXECUTIVE DIRECTOR,
2 INVEST IN THE USA, WASHINGTON, D.C.

3 Mr. Joseph. Mr. Chairman, Ranking Member, Whip Cornyn,
4 distinguished members of the Committee, thank you for
5 inviting me to testify today. My name is Peter Joseph, and
6 I am executive director of Invest In the USA, or IIUSA, and
7 we are the national trade association for the EB-5 regional
8 center program. Prior to this role, I worked in the legal
9 and private sectors of EB-5 before becoming executive
10 director of IIUSA over 6 years ago. I consider it an honor
11 and privilege to be here today to share my perspective with
12 you on this important economic development program that,
13 after years of underutilization, has become an essential
14 financing tool in post-2008 financial crisis capital
15 markets, providing economic development opportunities in
16 diverse communities and industry sectors around the country.

17 Since 2008, the program's contribution to foreign
18 direct investment has grown over 1,200 percent, from \$320
19 million in 2008 to almost \$5 billion in 2015. All of this
20 capital is being invested directly into the U.S. economy to
21 create American jobs, all at no cost to the taxpayer.

22 So a little background on the association. We were
23 founded in 2005. We are a national association for the EB-5
24 regional center industry with a mission to make the program
25 a permanent and successful part of 21st century economic

1 development policy. We are a diverse organization with more
2 than 280 regional center members and 200 associate members,
3 collectively representing big and small projects, urban and
4 rural development, and industry sectors ranging from real
5 estate, manufacturing, and energy to infrastructure and
6 more. Our regional center members are engines of economic
7 growth in the U.S., responsible for the vast majority of
8 investment capital flowing through the program. Our
9 operations cover advocacy, education, industry development,
10 and research. We are big fans of and rely on the FOIA
11 process, which I know several of you are big fans of as
12 well, and we very much appreciate all the work on that
13 issue.

14 We advocate for policies that will maximize the
15 economic impact of the program and for ethical standards in
16 EB-5 business practices. Our policy to adopt positions is
17 comprehensive and concludes only after careful consideration
18 of key factors, including national and global industry data,
19 existing internal and external records of relevant
20 deliberations, feedback from our membership, committee
21 recommendations, and our advisory board and board of
22 directors. We take pride in being a resource to Congress
23 and other stakeholders from across sectors for facts, data,
24 and legal/policy analysis on the regional center industry.
25 We have over ten standing committees that each have a unique

1 role to deliberate on aspects of the EB-5 regional center
2 industry.

3 We have had the honor of working closely with many of
4 your offices on EB-5 in the last several years and believe
5 we have a shared goal in making it a more efficient and
6 effective program. Today's hearing on Targeted Employment
7 Areas, or TEAs, is an important opportunity to discuss a
8 subject that is at the core with other interrelated issues
9 that need to be considered in the context of a long-term
10 reform and reauthorization package for this important
11 program.

12 EB-5 has grown exponentially, as I mentioned before,
13 and become an important part of capital markets in the post-
14 financial crisis national economy that has made financing
15 economic development in the U.S. more complex and requiring
16 a more diversified set of financing to make projects happen.
17 EB-5 has emerged as a potent tool in the development of a
18 finance toolbox that economic development professionals put
19 to use to create jobs in their communities across the
20 country.

21 Given the diversity of stakeholders involved in EB-5,
22 including in IIUSA membership, TEA policy has always been an
23 area with diversity of opinion, making it all the more
24 important that we get this right when it is reformed.

25 Currently, the program requires an investor create at

1 least ten jobs and invest \$500,000 in a TEA or \$1 million in
2 a TEA. The geographic area has to consist of an area that
3 is experiencing over 150 percent of the national
4 unemployment rate or a rural area. Federal regulations give
5 States the right to determine how TEA boundaries are drawn
6 similar to discretion given to States in other Federal
7 programs that use unemployment data.

8 USCIS, who administers the EB-5 program, reviews
9 proposed designations to ensure the use of most recent
10 Federal statistics. These methodologies take into account
11 flow of input such as labor and other economic activity in
12 regional economies consistent with how the Bureau of Labor
13 Statistics calculates employment and consistent with the
14 regional economic development mission of the regional center
15 program.

16 Over the years, many different proposals for TEAs have
17 been--we have seen many different proposals for TEAs. last
18 year, in supporting a process that sought a long-term
19 reauthorization and reform package, IIUSA offers a
20 compromise proposal to Congress on how to approach four
21 major issues in reform negotiations, including TEAs. The
22 compromise was supported by IIUSA's board of directors and
23 public policy committee and polled our membership with about
24 80 percent support. This suggestion was based on the
25 California TEA policy that limits census tract aggregation

1 to 12.

2 Since offering this feedback to Congress, though,
3 IIUSA's process for agenda setting and considering policy
4 continues. Next week, at our annual membership meeting, we
5 will continue our process of soliciting widespread member
6 feedback and committee input and board approval on various
7 ideas. TEA is one issue that we continue to take a close
8 look at as the priorities of our industry have changed.

9 The annual visa backlog for EB-5 threatens the
10 viability of this program. There are only 10,000 visas
11 allocated. It is a heavily backlogged line, and there are
12 now over 22,000 investors pending Government adjudication
13 that represent over \$11 billion in foreign direct
14 investment.

15 With this growth comes need for reform, whether through
16 legislation or regulation, and IIUSA is ready to put its
17 policy consideration process to work to consider any ideas
18 in either of these paths to reform. And I respectfully urge
19 Congress to support an open process, whether it be
20 legislative or regulatory, to achieve this comprehensive
21 reform that is necessary for this program to continue its
22 contribution to the United States.

23 Thank you for the opportunity to be here today.

24 [The prepared statement of Mr. Joseph follows:]

1 Senator Cornyn. [Presiding.] Thank you, Mr. Joseph.
2 Mr. Friedland.

1 STATEMENT OF GARY FRIEDLAND, SCHOLAR-IN-RESIDENCE,
2 NEW YORK UNIVERSITY STERN SCHOOL OF BUSINESS, NEW
3 YORK, NEW YORK

4 Mr. Friedland. Chairman Grassley, Ranking Member
5 Cornyn, and distinguished members of the Committee, thank
6 you for this opportunity. I am a scholar-in-residence at
7 NYU's Stern School of Business. Professor Jeanne Calderon
8 and I have co-authored numerous papers on EB-5 capital. She
9 testified at the House hearing.

10 EB-5 capital has become a mainstream capital source to
11 fund real estate development projects. EB-5 serves as a
12 Government subsidy to developers because the visa motivates
13 the investor to accept a minimal rate of return that results
14 in a below-market-rate interest rate loan, a major savings
15 to the developer.

16 All projects are eligible to receive EB-5 capital at
17 the subsidized rates, whether or not in a TEA. The minimum
18 investment amount is \$1 million; except if the project is
19 located in a TEA, the amount is reduced to \$500,000. A TEA
20 is defined as any rural location or, if in an urban area, it
21 meets a high-unemployment standard.

22 The legislative history illuminates congressional
23 intent. Senator Boschwitz cosponsored with Senator Phil
24 Gramm the amendment that added the TEA framework to the
25 Senate bill that became the 1990 law. He emphasized that

1 the reduced amount was primarily aimed to stimulate
2 immigrant investment in rural areas, but also intended for
3 depressed areas or inner cities. His aim was to
4 incentivized investment in areas that were unable to attract
5 capital.

6 Senator Paul Simon expected that most investors would
7 invest at the \$1 million level. Contrary to this original
8 intent, under the current system all projects qualify as a
9 TEA, including those in affluent areas, so all immigrants
10 invest at the discounted \$500,000 level.

11 Congress has the opportunity to take a fresh approach
12 as to which locations or project types should be
13 incentivized. Congress should be respectful of but not
14 constrained by the original intent.

15 In any event, we recommend that Congress test the
16 effectiveness of any new TEA definition by mapping key areas
17 such as Manhattan and reviewing TEA designation letters
18 issued to the largest real estate projects. This will
19 increase the likelihood that the law will work to
20 incentivized the desired locations.

21 The census tracts should be reviewed to determine
22 whether they would qualify or not based on these standards.
23 The TEA designation letters reveal the number of tracts that
24 were combined to create the TEA. We applied the alternative
25 TEA definitions contained in S. 1501 discussion drafts to

1 New York City because it is the epicenter of the debate.

2 We have compiled a database of 52 large-scale EB-5
3 real estate projects that would raise more than \$10 billion
4 of EB-5 capital, requiring more than 20,000 investors that
5 translates to more than 50,000 visa applicants. This might
6 be a good starting point for testing the number of tracts
7 that comprise the relevant TEA for each project.

8 The California 12-tract approach is hailed as the
9 model. This is certainly an improvement over the virtually
10 unlimited gerrymandering permitted by some States. However,
11 we do not know how many existing large projects would still
12 qualify under that approach. The Beverly Hills Waldorf
13 Astoria recently qualified under the California model and at
14 the least suggests that further scrutiny is required.

15 USCIS has fostered gerrymandering since 1991. When the
16 law was passed, its predecessor chose to delegate authority
17 to make all TEA designations to the individual States
18 without any rules or oversight. The States, motivated to
19 promote economic development, approved virtually every
20 project. USCIS has the power to correct this. It could
21 establish uniform, objective TEA rules. The individual
22 States could continue to administer the process, or it could
23 revoke the State's authority and transfer it to the CIS
24 national office as contemplated by S. 1501. As USCIS
25 formulates a TEA definition, we recommend that the

1 effectiveness be tested by following the same approach that
2 I outlined above for Congress to consider.

3 Visa reserves. The last discussion draft proposed to
4 reduce the spread to \$200,000 for the minimum investment
5 amount between TEA and non-TEA projects. Since the
6 immigrant's sole reason to invest is to secure the visa, a
7 visa reserve that moves the investor towards the front of
8 the visa line for investing in certain project types or
9 locations may become more important than investing \$200,000
10 less in a loan. This becomes especially important as the is
11 a waiting period exceeds 6 years for Chinese investors.

12 Finally, the visa reserves should be carefully
13 coordinated with the TEA rules to make sure that the
14 reserves do not undermine the TEA incentives and that they
15 work in tandem.

16 Thank you.

17 [The prepared statement of Mr. Friedland follows:]

1 Chairman Grassley. [Presiding.] Okay. We will have
2 5-minute rounds of questioning.

3 I am going to start with Mr. Whipple. I do not have to
4 tell you how diverse our State's economy is. Yet in large
5 part, it is built around an agricultural economy, bio-based
6 renewable fuels, value-added agriculture, and that is very
7 different from other States and how other regional centers
8 use EB-5. So a very general question would give you a
9 chance to tell about the problems for rural America. Could
10 you talk about the types of projects for which EB-5 funding
11 has been considered in Iowa, how the program could benefit
12 the State if there were changes, and what challenges you and
13 others in our State have faced when trying to make the case
14 to foreign investors or companies looking to locate in our
15 State?

16 Mr. Whipple. Thank you, Mr. Chairman. The challenges
17 in rural Iowa are obviously different than in urban areas,
18 and as you know, you have been around our State many times.
19 One thing that I would like to point out right out of the
20 gate is that unemployment levels, low unemployment, are not
21 always the best indicator of distress in some of our States
22 where we have had real populations declining for a century.
23 And I would like the Committee to consider how to measure
24 distress in rural areas in different parts of the State.

25 Another challenge that we have faced as a State is

1 related to this problem of depopulation. So as we try at
2 the State level to recruit employers to come to the State,
3 workforce is a limiting factor, not just capital but
4 workforce. And in an area where you have depopulation, it
5 becomes difficult for employers to make a go of it when they
6 do not have the workforce that is available.

7 So it is not just about the capital in some areas of
8 the State, and you have a chicken-and-egg problem when you
9 cannot bring jobs to a community because there are no
10 people, so more people leave.

11 But you are exactly right that we also do focus on as a
12 State building out those sectors of our State's economy that
13 make the most sense. And as the State has invested in
14 biofuels, ethanol and biodiesel, there are opportunities to
15 have cluster development around those sectors of the
16 economy, to move now from the investments in biofuels and
17 renewable fuels into renewable chemicals and second- and
18 third-tier investments built on those initial biofuels
19 investments. That type of growth in our economy presents
20 opportunities, and the State has been trying to recruit in
21 that area. We have considered EB-5 for projects like that,
22 for large industrial projects like fertilizer plants, a
23 couple large--the largest couple investments in the last 5
24 years in the State have been billion-dollar fertilizer plant
25 investments. And anytime you have industrial projects that

1 large, you want to take a look at the complicated financing
2 and the tools available.

3 But it does not always work out. Sometimes other types
4 of financing are more attractive--tax-exempt bonds.
5 Sometimes there is internal capital available. These
6 companies finance their own projects.

7 So even once you get all the way through taking a look
8 at EB-5 and the eligibility and would a project make sense,
9 sometimes it is not a good business deal, it is not a good
10 economic deal.

11 So for those reasons, the State--those reasons and
12 others, the State has not really gotten off the ground with
13 its regional center.

14 Chairman Grassley. Again, Mr. Whipple, in your
15 testimony you talked about how States are incentivized to
16 approve TEA designations. Doing so means economic growth
17 for the State; whereas, denying it brings blowback and
18 criticism. I would like to have you elaborate.

19 Question: If the Federal Government were to adjudicate
20 TEA designations, wouldn't that save States time and
21 resources and especially when the Federal agency can use the
22 fees that are charged to regional centers?

23 Mr. Whipple. I think that would be a good idea, for a
24 number of reasons. One reason that we tried to bring the
25 regional center at the State level in Iowa was just for that

1 consistency, that set of consistency. Consistency in
2 decisionmaking is good, and the other advantage you get from
3 a consistent set of Federal regulations is a level playing
4 field across the country.

5 When you have a diverse set of decisionmaking in local
6 communities about how to designate TEAs, you will have wide
7 swings. And it is well known how much pressure local
8 officials are under to make projects go ahead.

9 So for both the burden on a State agency and for a
10 consistent and level playing field across the country, I
11 think it would be a good idea to allow the USCIS to
12 designate the TEAs or police them.

13 Chairman Grassley. Mr. Friedland, we have heard a lot
14 about growing the boundaries of Targeted Employment Areas in
15 such a way to include at one end a census tract in a
16 luxurious real estate development being constructed and at
17 the other end, maybe miles away, one or more census tracts
18 from which workers are commuting to a tract containing real
19 estate projects.

20 Do you find credible claims that job creation in the
21 commuter origin census tracts can be linked to an EB-5
22 project miles away? And don't such commuter pattern
23 proposals just suffer from the same serious flaws that
24 affect Targeted Employment Areas gerrymandered under
25 existing rules? That will have to be my last question.

1 Mr. Friedland. Thank you. I assume the industry has
2 determined whether large projects would qualify under that
3 method, and if large projects would qualify, then I would
4 question whether that is an appropriate test because
5 essentially you will end up with the same result that we
6 have today, which is a single investment level, but just
7 changing the name. And I think what is happening with the
8 commuter traffic pattern as a test is some are confusing the
9 purpose of EB-5 and the job creation component with the TEA
10 standard, which is intended as an added incentive reserved
11 for a limited number of projects or locations that are most
12 deserving that are unable to attract capital.

13 So, for example, we conducted a database, which I
14 referred to in my testimony, and there are at least--we
15 found at least 19 projects which are aiming to raise at
16 least \$200 million. That translates to 400 investors, at
17 least 400 investors, which translates again to at least
18 1,000 visa applications. One project of that size would use
19 up or absorb 10 percent of the annual quota limitation.
20 This is at a time when there are record visa waiting lines
21 that everyone is complaining about, so I am not sure what
22 the justification would be to use this limited resource, the
23 TEA, and allocate it to large projects, which are the ones
24 that are most likely to utilize the commuter traffic pattern
25 approach.

1 On the other hand, keep in mind that these large
2 projects are still eligible for all EB-5 benefits. They get
3 the benefit of the low-interest-rate loan, the subsidy which
4 is the purpose of EB-5. They are able to utilize 100
5 percent of the jobs from the project and allocate that to
6 the EB-5, even though, as Chairman Goodlatte mentioned,
7 there was one instance where 18 percent of the capital was
8 EB-5 capital yet it received all the jobs. Our study showed
9 that virtually every large project uses EB-5 as a small
10 slice of the capital stack, roughly between 10 and 25
11 percent. Yet all of the jobs are allocated to the EB-5
12 capital. I am not advocating that that be changed, but I
13 think when they push for the TEA benefit in addition to the
14 other EB-5 benefits, it is a little bit difficult to
15 reconcile.

16 Chairman Grassley. Senator Leahy.

17 Senator Leahy. Thank you, Mr. Chairman. I think I
18 made clear my concern about EB-5 and what is happened. I
19 will ask consent that I be able to put some material in the
20 record.

21 Chairman Grassley. Oh, without objection.

22 Senator Leahy. Thank you, Mr. Chairman.

23 [The information follows:]

24 / COMMITTEE INSERT

1 Senator Leahy. Let me ask Mr. Joseph a question. I
2 know you are the executive director of IIUSA, invest in
3 America, and that is by far the largest trade industry
4 association for EB-5. I think your membership, I think it
5 is safe to say, involves the vast majority of EB-5 projects.
6 Is that correct?

7 Mr. Joseph. Yes, sir.

8 Senator Leahy. And your organization supported our
9 reform proposal last December, and I certainly appreciate
10 that. Why do you believe there would be investor interest
11 in affluent area projects if investment amount was \$200,000
12 higher than true TEAs?

13 Mr. Joseph. Well, I think that question is important
14 in that it illuminates the different interrelated policy
15 issues that we have here. Whether it is the amount that is
16 required of investors in particular projects or other
17 incentives that may include visa availability, balancing
18 those issues to find middle ground that would allow for this
19 balanced system of incentives is what is important. When
20 taking all those issues into consideration, we were
21 carefully working with your offices to find that balance
22 last year.

23 Senator Leahy. Well, I know that there are conflicting
24 ideas of what to go for. Everybody is trying to reach
25 agreement. I do not think we have such agreement yet. Some

1 of the reform bills I do not think go far enough, including
2 some fraud vulnerabilities.

3 I think if we are going to save the program--and I have
4 been a supporter in the past--it would not be without
5 reforms. But it is going to have to have some broad reform.

6 How do you feel? Should we try a piecemeal reform, if
7 you had your druthers, or go for real broad reform?

8 Mr. Joseph. We really see these issues being
9 interrelated and, therefore, really requiring a
10 comprehensive approach. Whether it is the backlog of visa
11 availability or just the backlog of investor petitions,
12 these things are interrelated with the other reforms on
13 whether it be TEA, whether it be issues to enhance program
14 integrity. They are interrelated and require a
15 comprehensive approach to make sure this program can keep
16 providing capital to communities around this country.

17 Senator Leahy. Thank you. Speaking of TEAs, Mr.
18 Friedland, you have talked about this. Historically, these
19 TEAs have consisted of high unemployment and rural areas.
20 Now, try as I might, I cannot think of a perfect way to
21 capture undercapitalized areas. But in our reform bill, we
22 have provided a new poverty qualifier based on New Market
23 Tax Credit criteria. I realize this is getting a little bit
24 into the weeds. But what is your best metric for getting
25 into these distressed or these undercapitalized areas?

1 Mr. Friedland. I agree with the broad concept that was
2 outlined by Mr. Healy that the New Market Tax Credit
3 approach, which takes into account poverty rate and median
4 income, may be a better approach or at least one that should
5 be overlaid with the high unemployment. We analyzed the
6 proposal that was made in the discussion drafts in December,
7 which is a variation on what Mr. Healy proposed, and we
8 found that 67 percent of the tracts in Brooklyn would
9 qualify under that approach, and 43 percent of the tracts in
10 Manhattan would.

11 However, that is on the one hand, and under the
12 approach that was suggested in the discussion drafts that
13 related to this, they also took into account the tracts that
14 were neighboring to those tracts. But as far as what tracts
15 are most unable to attract capital, the New Market Tax
16 Credit approach is one that takes that into account,
17 particularly in urban areas. In the case of rural areas, I
18 do not believe that is appropriate. Your rural areas do not
19 need an additional hurdle to overcome. They are unable to
20 attract capital, and in the New Market Tax Credit program,
21 they faced a problem where rural areas are unable to attract
22 much New Market Tax Credit capital. In fact, Treasury
23 commissioned a study in 2013, and the conclusion was that
24 the New Market Tax Credit approach is not attracting much
25 capital to the rural areas.

1 Senator Leahy. Mr. Chairman, if I might ask one more
2 question.

3 Chairman Grassley. Yes.

4 Senator Leahy. Following up on what Mr. Friedland
5 said, you know, harder times, they get capital in rural
6 areas. Mr. Healy, has Civitas completed any truly rural
7 projects? And how easy was it to get investors as compared
8 to projects in downtown urban areas?

9 Mr. Healy. Thank you for the question, Senator. The
10 answer is yes, we have completed or are in the process of
11 several projects in rural areas of Texas, markets like
12 Cotulla and Snyder and Cuero, towns with populations of
13 10,000 or less.

14 Senator Leahy. We have to ask Senator Cornyn where
15 those places are.

16 Senator Cornyn. You are going to have to explain where
17 those are, Mr. Healy.

18 [Laughter.]

19 Senator Leahy. Go ahead, Mr. Healy.

20 Chairman Grassley. They are all suburbs of Dallas.

21 Senator Cornyn. Hardly.

22 [Laughter.]

23 Mr. Healy. To the second part of your question, we did
24 not--to be candid, we did not find it particularly difficult
25 to attract capital to those projects. The reason for that

1 is that they are good projects. My experience in marketing-
2 -and, by the way, we have about \$500 million in assets under
3 management in about 30 projects. So our average investment
4 is in EB-5 terms relatively small. And what that has meant
5 for us is that we have to find ways to market those products
6 and make sure that investors overseas understand why they
7 should invest in a small hotel in Cotulla instead of a
8 gigantic one in Manhattan. And that is a matter of just
9 competing.

10 Senator Leahy. Thank you.

11 Thank you, Mr. Chairman.

12 Chairman Grassley. Senator Cornyn.

13 Senator Cornyn. Thank you, Mr. Chairman.

14 I appreciate the fact that this is the second hearing
15 we have had on the EB-5 program this year, and I think it
16 has shed a lot of important light on the benefits of the
17 program and also on the need for some reforms.

18 Since 2008, the program has generated \$13 billion in
19 foreign direct investment and created thousands of jobs, and
20 in Texas, as we have heard, the EB-5 investments account for
21 hundreds of millions of dollars of economic growth each year
22 and support thousands of jobs.

23 We have been able to effectively use, as Mr. Healy
24 said, EB-5 programs to finance projects in urban areas and
25 rural areas, and my State, Mr. Chairman, as you know, is

1 both urban and rural, so I am certainly sympathetic with
2 your interest in trying to make sure that money is invested
3 in urban and rural areas as well.

4 But I am particularly glad that it seems that there is
5 a growing consensus that the goal is to mend it but not end
6 it in terms of the program itself. And I think part of that
7 is the EB-5 Integrity Act legislation that Senator Flake and
8 I and Senator Schumer and Senator Tillis have joined in,
9 there seems to be broad consensus in those integrity
10 measures that would improve the program.

11 But the EB-5 program represent only about 7 percent of
12 employment-based visas granted each year. It is relatively
13 small compared to the 140,000 of employment-based visas
14 issued each year.

15 Mr. Healy, you might help me understand. There seems
16 to be a suggestion--and maybe I am overreading this--that
17 rural investments are inherently virtuous; whereas, urban
18 investments are not. And I would just--you know, it comes
19 to mind maybe you have a ski resort or a vineyard in Napa
20 Valley. Those would qualify perhaps as rural, but they are
21 not necessarily inherently virtuous as compared to an urban
22 investment, are they?

23 Mr. Healy. So my experience bears that out. I am in
24 the middle of an investment right now in Napa Valley that
25 will qualify as rural. It is one of the most successful

1 hotels in California. So the distinction in my mind and the
2 goal of the proposal that I have made in my written
3 testimony is to make the distinction between distressed and
4 not distressed as opposed to urban and rural.

5 Senator Cornyn. So I hope we do not get into this
6 dichotomy between rural and urban, and urban is bad and
7 rural is good. I hope we will be more nuanced in the
8 approach. And I have heard some of those suggestions here
9 today.

10 But as I was thinking about this testimony today, I was
11 thinking about Loving County, Texas. Loving County, Texas,
12 is east of Wink, north of Pecos, and south of Carlsbad, New
13 Mexico. It has 82 people in the county--82 people. More
14 cows than people. If the Federal Government were somehow to
15 write criteria that would only allow EB-5 investments as
16 long as that investment would go in Loving County, Texas,
17 would it attract any investment at all?

18 I mean, you made the point earlier it has got to be--
19 the project itself really needs to command the capital as
20 opposed to some mandate by Congress. Would you agree?

21 Mr. Healy. I would agree. We actually are working on
22 a project fairly nearby there, in Orogrande, New Mexico,
23 population 56. And I will tell you that--Chairman Grassley
24 asked me how difficult it was to raise the capital in rural
25 projects. This one was a little tough. You know, getting

1 people to understand a mining project in a very tiny
2 community like this was not easy. But we got that done. It
3 can be done. The reason is the same: it was a good
4 project, and we helped investors understand it.

5 Now, we were not trying to raise \$1 billion or \$100
6 million or even \$10 million. You know, we were trying to
7 raise a relatively modest amount of money for something that
8 is very important in Orogrande. But if the system is set up
9 such that investments are incentivized to be only in places
10 like Orogrande, then it is going to be counterproductive.
11 In my view, we should not pit job creation everywhere
12 against job creation in distressed areas. Both are
13 possible, and both should be encouraged.

14 Senator Cornyn. Well, just to conclude on this, the
15 EB-5 program has been around since 1990, but it has been
16 rarely used before the financial crisis of 2008, correct?

17 Mr. Healy. That is correct.

18 Senator Cornyn. And, in fact, of the 10,000
19 employment-based visas back in the early 1990s, only about
20 300 or so visas were actually used because people had access
21 to capital from other sources. But it has been as a result
22 of the financial crisis and the tightening of lending
23 criteria and other things which have made the EB-5 program
24 more attractive in terms of garnering investment capital.
25 Isn't that right?

1 Mr. Healy. That is correct. I founded my firm in the
2 wake of the financial crisis specifically because I learned
3 of EB-5 capital when my industry, commercial real estate
4 investment, experienced near total illiquidity and, you
5 know, it did not matter if you were Warren Buffett, you were
6 not getting any money for a real estate deal. And we
7 discovered this at the time little-known program and jumped
8 on it.

9 Senator Cornyn. Thank you, Mr. Chairman.

10 Chairman Grassley. Senator Schumer.

11 Senator Schumer. Thank you, Mr. Chairman. I want to
12 thank you and the Ranking Member for holding hearings on
13 your efforts to improve EB-5. As everyone knows, I have
14 been working on reforming the program for years, dating back
15 to comprehensive immigration reform. In that bill,
16 comprehensive immigration reform, we were very serious on
17 EB-5. We cracked down on bad actors and increased the
18 investment threshold.

19 This time around, from day one, I have been for reform
20 and, in fact, all of the reform measures that Senator
21 Grassley put in his bill, I think Senator Cornyn, Senator
22 Flake, myself, all of those who--I do not know if Senator
23 Tillis did, too, but he is shaking his head yes, so I
24 imagine yes. All of us want to do those reforms. That is
25 not the issue here, and it is a straw man to say, oh, some

1 people are against reform. Reform should happen. And, in
2 fact, we could pass the reform measures right now because
3 Senator Flake has introduced a bill, which I am on the bill,
4 so is Senator Cornyn, so is Senator Tillis--so, yes, my
5 notes say that--to get the reform part done right now. We
6 will be all for it. It will sail through the Senate like a
7 knife through butter, and, Mr. Chairman, if we cannot come
8 to an agreement on the other stuff, we should do that
9 anyway. We should not let reform be held hostage to a
10 dispute over where the money should go.

11 That is the issue: Targeted Employment Areas. Okay?
12 And we tried to come up with an agreement, and we could not.
13 But not for lack of training. I think Senator Cornyn and I,
14 who worked very hard on this as allies, are very aware that
15 rural areas need help, although remember, no poverty in the
16 rural areas, fancy ski resort not included in your changes,
17 fancy resort in some rural area not included in changes.

18 So if we are caring about poverty here, which I do,
19 what is good for the goose is good for the gander. And to
20 say, you know, I want to help rural areas, New York has the
21 third largest rural population. But we have got to do it in
22 a fair way.

23 The idea of the program is to help poor people, and
24 because of the anomaly of cities, poor people do not live
25 right next door to the project. The choice with them--and I

1 would disagree with one of the witnesses who said, oh, we
2 want to put the projects only in poor people's areas. It
3 will not happen. It is not how cities are structured. So
4 there will be no jobs for poor people in urban areas, or
5 making some changes that make sense.

6 In New York City--I wish we had the map that Goodlatte
7 had. Do we still have that? Okay. He showed a census
8 tract on the Lower East Side of Manhattan, and he said the
9 buildings here--there is the census tract, yeah. Who do you
10 think works in that building? The very people in the census
11 tract of poor people. Where do you think people in the
12 South Bronx, the poorest congressional district in the
13 country, work? They do not work in their district, in their
14 census tract. They get on the subway, and they go to an
15 office tower. And they either clean it or serve food or do
16 administrative work. Where do the middle-class people get
17 jobs? Same thing. Our office towers are our factories.
18 And just as we do not say that only the poorest parts of
19 Iowa should get EB-5, everyone in Iowa should get EB-5, as
20 long as poor people are helped, we should do the same for
21 our urban areas.

22 And it is not just New York City. We will not have
23 help in Buffalo or Rochester or Syracuse, hardly the most
24 booming areas. They are doing better, thank God.

25 So we have to have a compromise here, and I have to say

1 that some of my colleagues were not willing to compromise,
2 some were. We were even--Senator Cornyn and Senator Flake
3 and I offered a rural set-aside so your rural areas--this
4 argument rural areas cannot compete with the wealthier urban
5 areas, we were willing to set a set-aside so rural areas
6 would get some. We were willing to do the same for Mr.
7 Conyers' provision, things should be built in the areas. I
8 understand urban redevelopment. I worked very hard--CRA
9 does a great job in that.

10 But the idea that because you do not live in the same
11 census tract or the adjoining census tract, the project is
12 on good and it is not going to help the poor is bunk. It is
13 an argument, it is a self-serving argument to see all of the
14 money go to some parts of the country and not to others. I
15 will not stand for it. And we will be back where we were
16 last time.

17 So what I would say--my time is about to expire--I want
18 a compromise. We do not have to get everything, and we do
19 not even have to keep it as it is, and certainly we should
20 do reforms.

21 My last thing I would like to do and say to my dear
22 friend Senator Grassley is the Beatles: "We Can Work It
23 Out." So let us try to put together a compromise that can
24 make everyone happy. No one will get everything. But we
25 can get something done that we would all be proud of, and

1 that is the pitch I wanted to make here today.

2 Chairman Grassley. It seems to me that you would want
3 to improve the Bronx and Harlem, and you say no one will
4 build there, you want to make them commute. Wouldn't it be
5 better to use this project to help build up those areas that
6 you say nobody will build there? Don't you think it will
7 improve--

8 Senator Schumer. No, it is not how--in all due
9 respect, my dear friend Chuck, it is not how cities work.
10 It is like saying the only EB-5 money you could get is for
11 wheat, but you have to locate it in the corn fields of Iowa.
12 And you say, well, wheat does not grow there. Well, maybe
13 if we had a program, it would. No, it would not.

14 Chairman Grassley. Okay.

15 Senator Schumer. I know you do not grow much wheat
16 there, but I did not know the right analogy. Sorghum.

17 Chairman Grassley. Senator Tillis.

18 Senator Tillis. Well, Senator Schumer invoking the
19 Beatles and then that following exchange reminds me of that
20 song by War, "Why Can't We Be Friends?"

21 I come from an interesting State. As a result of the
22 last census, we have for the first time in North Carolina's
23 history been designated an urban State, 51 percent urban, 49
24 percent rural. We are the ninth largest State in the
25 Nation, one of the fastest growing. We also have the ninth

1 largest agriculture output. So I have a State that has a
2 lot of rural areas and growing urban areas, so I want to
3 make sure that we get this right.

4 It was the Congressman from Nevada who talked about
5 this is a car that needs a new set of tires. I think that
6 is a good analogy. We have used blood transfusions and
7 everything else.

8 But I want to thank Senator Flake for his bill. I am a
9 cosponsor of the bill because I think it at least provides
10 some foundational reforms that make a lot of sense.

11 I had a question, Mr. Joseph, for you first. You
12 mentioned a backlog of investor petitions. One thing that I
13 am curious about is what the nature of that backlog looks
14 like and to what extent does it demonstrate a backlog that
15 would begin to show more activity in some of the areas that
16 we are concerned with, and some of the rural areas. And
17 anyone else who would want to respond to the question.

18 Mr. Joseph. Thank you for the question. So the
19 backlog is getting very long, and it is very concerning for
20 how long it can continue to extend itself until it affects
21 the amount of demand that we are seeing from foreign
22 investors. The EB-5 program competes with several programs
23 around the world for the same class of investor, and it is
24 people who have been successful in their own countries and
25 want to bring those talents and their capital here to the

1 U.S. With 22,000 investors waiting for their initial
2 applications to be adjudicated--and that was as of January
3 of this calendar year, so that number is likely higher now--
4 in addition to the line that is already there for actual
5 visas, we have a line that is getting close to a decade long
6 for investors, and it is another symptom of a system that
7 needs to be addressed, and capacity needs to be addressed as
8 part of efforts to reform this program so it can have the
9 economic impact that we, I think, all share the goal that it
10 can have.

11 Senator Tillis. Mr. Friedland, the word is that the
12 vast majority of the EB-5 activity is located in roughly
13 three areas of the country: New York, California, and
14 southern Florida. Are you aware of any research that would
15 say but for EB-5 that economic activity would not have
16 occurred? Or, you know, give me some sense of how--first
17 off, what is the rational basis for being that way other
18 than the program has allowed it to be that way? What can we
19 learn from how these areas have clustered--and I guess to a
20 certain extent Texas, but mainly in those three geographic
21 areas?

22 Mr. Friedland. As far as the clustering of projects in
23 those areas attracting the capital, there are other areas as
24 well--San Francisco, Seattle. But as far as the cities
25 attracting the capital, that is where the largest projects

1 are located. The biggest developers are there. They are
2 able to afford and have the equity necessary to build the
3 largest projects, and there are a number of instances where
4 the projects have been fully funded without EB-5 capital,
5 and because USCIS rules permit those--the jobs to be
6 credited to the EB-5 capital, EB-5 capital could come in to
7 replace the capital, the other capital as well.

8 Senator Tillis. Which is what I was getting to. Mr.
9 Whipple, I served in the State legislature before I came
10 here, and I know that you served in Iowa--or you were in
11 Iowa. The States have a lot of attention, particularly
12 those States that have large rural populations with
13 unemployment and poverty problems. We have a series of
14 layers and layers of economic incentives that are biased to
15 the rural areas already.

16 To what extent should some of our attention be to
17 better engage the States in terms of collectively making it
18 more--or maybe if there is evidence that already supports
19 this, but making it more attractive for some people who may
20 be thinking about an urban center to move out into some of
21 the outer rings based on other things that they may be able
22 to pull together to make their projects work?

23 Mr. Whipple. I think it is important to engage the
24 States through State economic development agencies and
25 commerce departments to do an analysis of what is going to

1 work in any given State. The perspective that I have from
2 Iowa is that commercial real estate development is not the
3 sweet spot for us, luxury hotels not the sweet spot, tourist
4 destinations not the sweet spot. So we are focused on large
5 industrial projects, manufacturing, advanced manufacturing,
6 bioprocessing, and the investors in this program seem to
7 better understand commercial real estate development or seem
8 to prefer those projects than they do fertilizer plants or
9 bioprocessing.

10 So I think you need to understand the natural
11 advantages in any given State and where that State is trying
12 to grow and what its objectives are.

13 Senator Tillis. Thank you.

14 Thank you, Mr. Chair.

15 Chairman Grassley. Senator Klobuchar.

16 Senator Klobuchar. Thank you very much, Mr. Chairman.
17 Thank you all of you. We have had a lot of attendance here,
18 so that is good.

19 Before turning to EB-5, I just want to mention one
20 other program that is often mentioned in conjunction with
21 it, and that is the Conrad 30 program, which allows doctors
22 who are trained in the U.S. to remain in the country after
23 completing their training if they practice in underserved
24 areas, such as rural communities, and the program was set to
25 expire last year. With the help of Chairman Grassley and

1 Ranking Member Leahy, we were able to include an extension
2 through September 30th of this year. We have a bill to
3 improve it, and I hope we can reach some kind of compromise
4 to get that done. It is a completely different program, but
5 it is an example of something that has been very important
6 in the rural areas where we do not have enough doctors, and
7 these are doctors that have been trained in our country.

8 Mr. Whipple, the EB-5 program brings investment into
9 areas of the United States for the purpose of stimulating
10 job creation, and the Targeted Employment Area designation
11 is intended to encourage investment where it is often more
12 difficult to attract traditional financing. That is, of
13 course, rural and high unemployment, as we have been
14 discussing here.

15 Are we seeing TEA-designated investments going to areas
16 we would traditionally consider to be rural or high
17 unemployment? And currently what percentages of projects
18 are in rural TEAs and what percentage in high-employment
19 TEAs?

20 Mr. Whipple. So the perspective in Iowa--and I really
21 can only speak for the Iowa Regional Center. I do not track
22 the national trends on rural versus urban. Perhaps Mr.
23 Friedland would be able to speak to that. But we see some
24 interest in Iowa for very small projects, for retail
25 businesses, for strip malls even. They tend to be too small

1 for a program that is this complex in its overhead with
2 immigration and securities and a lot of compliance. So from
3 an economy-of-scale perspective, it really works better on
4 bigger projects, and as you know, from Minnesota, a lot of
5 projects in rural areas are not large.

6 But I would also say that even in Iowa we see projects
7 coming up from our commercial centers, and they are large
8 commercial centers like Dallas or New York. But in Ames and
9 Iowa City, we have interest from folks who have immigrated
10 to Iowa and would like to be able to use the program. But
11 even they are not going to rural areas of the State like
12 Fremont County to try to bring those projects there.

13 Senator Klobuchar. Thank you for that perspective.
14 Does anyone have the percentages?

15 Mr. Friedland. No data is available. The individual
16 States do not release that data, and it is impossible to
17 draw any conclusions about that.

18 Senator Klobuchar. So do you think that we could do a
19 better--oh, did you want to answer, Mr. Joseph?

20 Mr. Joseph. Well, there is diversity in the kinds of
21 projects that we see, whether it is location or industry
22 sector. But it does not preclude us being able to do better
23 here, and I think the point that--

24 Senator Klobuchar. So in--go ahead.

25 Mr. Joseph. Please, please.

1 Senator Klobuchar. Well, along that way, do you think
2 we could track job creation better as well in addition the
3 diversity of the location?

4 Mr. Joseph. We would welcome a more robust reporting
5 of economic impact from the Federal Government on this
6 program. But we have taken it upon ourselves to do the same
7 thing by using information that we glean from Freedom of
8 Information Act requests, collecting information about
9 projects around the country, getting feedback from our
10 members, and we have conducted peer-reviewed economic impact
11 studies and are in the process of doing the same thing for
12 some more recent data. But it really shows that this
13 program does have a diverse stakeholder community, and it is
14 reflected in our membership, and it is why compromise and a
15 comprehensive approach is so important to get this program
16 working in the years ahead.

17 Senator Klobuchar. Thank you. I agree.

18 Now, both legislation proposed by Chairman Grassley,
19 Senator Leahy, and also the legislation proposed by Senators
20 Flake, Schumer, Cornyn, and Tillis create some additional
21 screening and oversight to make sure that applicants are not
22 abusing the system or a threat to national security. How
23 prevalent are fraud and national security problems in the
24 program? Do you have any data on that as that has been
25 raised as--Mr. Joseph?

1 Mr. Joseph. While we do not have specific data on
2 that, we have seen far more robust interagency collaboration
3 among USCIS and other regulators and law enforcement
4 entities that have improved and made--deterred any
5 additional fraud causes from coming to bear. But we do not
6 have statistics, but it is important that we get the
7 legislative part of it correct as well as encouraging and
8 supporting the right regulatory and oversight
9 responsibilities among the right agencies. It is a complex
10 program that touches on a lot of different agency
11 jurisdictions.

12 Senator Klobuchar. So no one has objections to these
13 proposals and the two bills on this particular issue?

14 [No response.]

15 Senator Klobuchar. Okay. All right. Thank you very
16 much.

17 Chairman Grassley. Senator Flake.

18 Senator Flake. Thank you, Mr. Chairman. Thank you for
19 the testimony here. I share the view that has been
20 expressed here that we can find a compromise here and keep
21 this program going.

22 Mr. Healy, you touched on commuting patterns in your
23 testimony. How have they been relevant to your work?

24 Mr. Healy. They are very relevant, Senator. In
25 Dallas, you know, we have done--I will give you an example.

1 We have invested in an assisted living facility that is in a
2 pretty nice part of town, but I can tell you that the
3 workers who staff that facility do not live in the area.
4 They commute.

5 I think probably most of the staff members who are in
6 this room commuted through 30 or 40 census tracts to get
7 here from the suburbs if that is where they live.

8 Commuting patterns are a very, you know, legitimate,
9 reasonable thing to take into account with TEA policy. I
10 think there is a way to do that, but in the proposal that I
11 have made here, I have suggested something different. But I
12 think there is no reason why you could not.

13 Senator Flake. In your testimony, you mentioned a
14 couple of case studies. One of them was an EB-5 investment
15 in Dallas surrounding Paul Quinn College. Could that have
16 happened without EB-5?

17 Mr. Healy. The answer to that question is maybe. Paul
18 Quinn College is located in one of the toughest areas of
19 southern Dallas. It is a food desert. It is a
20 transportation desert. We have been working on this for
21 some time. This is a historically black college that was on
22 the brink of failure 9 years ago before their very dynamic
23 current president took over and turned it around in a very
24 remarkable manner. And now this project is the first phase
25 of his vision to make the college campus the anchor for the

1 revitalization of the entire Highland Hills area.

2 We have cobbled together seven sources of capital to
3 finance this, some traditional bank debt, most
4 nontraditional. We have a double bottom line investment
5 fund that I manage as well as other philanthropic capital
6 for the nonprofit components. The EB-5 capital, though, is
7 the most flexible. It is the grease that makes it happen.

8 Now, if it just went away, am I going to abandon this
9 project? No. We are going to find a way. The way is
10 probably going to either include philanthropy, which is
11 very, very scarce, or tax dollars, which, in contrast to EB-
12 5, you know, cost taxpayers nothing.

13 Senator Flake. Those taxpayer dollars are scarce, let
14 me tell you, right now.

15 Mr. Joseph, in your testimony, you mentioned that,
16 "Economists...look at surrounding communities when they
17 calculate the economic impact of a business or economic
18 development project. For example, although a construction
19 worker is employed on a project in one area, they likely
20 live in a different census tract that they are employed."

21 What are your feelings on this? Do you agree that this
22 should be taken into account, so-called commuter patterns,
23 when defining a TEA?

24 Mr. Joseph. Thank you for the question. So commuting
25 patterns are part of a discipline, academic discipline in

1 regional economic development, and in the current TEA
2 policy, the Bureau of Labor Statistics provides guidance on
3 how to aggregate certain census tracts or other geographic
4 subdivisions into regional economies, and commuting patterns
5 being one thing that connects those things. There are other
6 things that come into the equation, but it is essentially
7 inputs into the economic activity that is measured in how
8 you define what kind of--

9 Senator Flake. How important of an input is that?

10 Mr. Joseph. It is one of many, and it is an important
11 one, but it is part of, I think, a menu of important
12 considerations. And I think we have heard some other ones
13 here today that are an important part of the discussion in
14 how we get TEA policy right.

15 Senator Flake. Let me just ask, does IIUSA support an
16 increase in the EB-5 visa cap?

17 Mr. Joseph. Yes, sir, we do.

18 Senator Flake. Okay. Thank you, Mr. Chairman.

19 Chairman Grassley. Senator Blumenthal.

20 Senator Blumenthal. Thank you, Mr. Chairman. And
21 thank you all for being here today.

22 I believe, as I have stated before, that this program
23 is in need of constructive change, but should not be ended--
24 in fact, mend it but not end it. So I would like to know
25 from each of you what you think the most important, say, one

1 to three changes are to improve this program. Mr. Healy?

2 Mr. Healy. The most important changes that we need to
3 make are, I think, first addressing the topic of today's
4 hearing. We need to get TEA policy right. I think we need
5 objective criteria that are easily understood, that cannot
6 be gamed, so that we can move past that conversation,
7 because the really important thing here is making sure that
8 the program is maximized in its effectiveness of attracting
9 capital and creating jobs in this country. That means
10 getting the investment levels right, as I have discussed in
11 my written testimony, and it also means addressing the
12 capacity problem that we have.

13 The reason that there is a backlog is that this policy
14 is working. We are attracting billions of dollars of
15 capital that does not cost taxpayers a dime. Where that
16 money goes is very important, and we should have that
17 discussion.

18 Senator Blumenthal. And should those rules be
19 legislated or applied administratively, in your view?

20 Mr. Healy. I think some of them will need to be
21 legislated.

22 Senator Blumenthal. Thank you.

23 Mr. Whipple. Senator, if I had to choose three, I
24 would urge you to create a reservation in the number of
25 visas for investors who invest in real projects. For a

1 State that has vast tracts of rural areas, that is really
2 important to us.

3 I would also urge you to take a look at the way that
4 TEAs are designated and managed, either by moving the
5 designation up to the Federal level or by putting curbs on
6 it that place some rules for the road, if you will, at the
7 State level for your State commerce and economic development
8 agencies.

9 And then I would also like to encourage you to take a
10 look at putting an emphasis on real infrastructure and
11 industrial projects so that some of the capital goes to
12 improvements like that rather than just having EB-5 be a
13 commercial real estate development tool.

14 Senator Blumenthal. Mr. Joseph?

15 Mr. Joseph. So getting the incentive policies correct,
16 which is TEAs and its related policy issues, minimum
17 investment amount or otherwise right is extremely important.
18 The capacity issues so this program can continue to deliver
19 capital for job creation around the country is very
20 important. And then the rhythm and how these reforms are
21 implemented and to make sure that there is reasonable effort
22 to minimize any interruption of the ongoing economic
23 development and job creation activity while new reforms are
24 put in place. And all of this is to lead to a long-term
25 reauthorization, which is the certainty that is really

1 needed for this program to be able to have business planning
2 around it and the resulting economic impact that we are all
3 seeking.

4 Senator Blumenthal. Thank you.

5 Mr. Friedland?

6 Mr. Friedland. Thank you. I agree with the others.
7 What I want to clarify is with respect to the commuter
8 traffic patterns. I agree that that reflects where the jobs
9 are coming from. My issue is whether, when you have a
10 limited incentive, whether you would want to allocate it
11 based on that, because the result--the logical extension of
12 that is that you end up with a single investment level, so
13 there is no point in having a TEA.

14 As far as the minimum investment amount, I think the
15 key is the spread between the TEA amount and the non-TEA
16 amount. The spread currently is \$500,000, but in reality is
17 zero. If you applied simple inflation, it would increase
18 from \$500,000 to about \$900,000 and from \$1 million to \$1.8
19 million. I think that is clearly too wide a spread, and the
20 \$500,000 spread might be too wide, because it is--the
21 delicate balance is achieving a level that is going to
22 incentivize investment in the areas that you wish to
23 incentivize, and make sure that the program does not revert
24 to the state that it was prior to 2010 when it was
25 underutilized. So that is a challenge.

1 And, lastly, the visa reserve is obviously a critical
2 aspect to this, and when you determine which projects or
3 locations deserve that priority, you have to be--I would
4 suggest that you need to be careful to consider whether that
5 runs counter to the TEA or whether you have a consistent
6 position, because it would be a shame to create an incentive
7 to direct investment to certain areas, on the one hand, and
8 then, on the other hand, a visa priority which undermines
9 that.

10 Senator Blumenthal. My time has expired. This topic
11 is somewhat complicated, but the responses that you have
12 just given, the very helpful and insightful answers to my
13 questions suggest to me that reform is possible without
14 completely trashing this program, that we can sustain it but
15 improve it, and that the suggested improvements are, in
16 fact, eminently feasible and practical to achieve without a
17 lot of the political maelstrom that often characterizes
18 efforts to move forward in the United States Senate.

19 So I want to thank you for being here today. If we can
20 get this right, it will be a way to, in fact, produce
21 investment cost-free to American taxpayers, investment in
22 jobs and economic growth that particularly benefits my part
23 of the country--when I say "my," I mean Connecticut, the
24 Northeast, but many other parts as well. So thanks for your
25 constructive contribution today.

1 Thank you, Mr. Chairman.

2 Chairman Grassley. Thank you, Senator Blumenthal.

3 I am not going to keep you forever, but I would like to
4 ask a couple more questions. I will go back to Mr.
5 Friedland.

6 EB-5 investors are allowed to take credit for jobs
7 their investments did not create. In 2013, the Homeland
8 Security Inspector General concluded that agency regulations
9 allow investors "to take credit for jobs created with U.S.
10 funds, making it impossible for the agency to determine
11 whether foreign funds actually created U.S. jobs."

12 The Inspector General described how in one case it
13 reviewed the regional center was able to claim 100 percent
14 of the projected job growth from a project to apply towards
15 its foreign investors, even though the foreign investment
16 was limited to only 18 percent of the total investment in
17 the project.

18 In 2015, the Government Accountability Office agreed
19 that the agency's practice of allowing EB-5 investors to
20 claim all jobs created by the project funded by both EB-5
21 and non-EB-5 money "can inflate the job creation benefit of
22 immigrant investments."

23 Do you agree with me that we should terminate this
24 practice or at least put a cap on the percentage of jobs
25 estimated to be created by non-EB-5 funds in order to meet

1 the job creation requirement?

2 Mr. Friedland. I do not believe the statute addresses
3 how the jobs are to be counted. I believe that when the
4 program was underutilized, USCIS promulgated rules that
5 would stimulate and promote the program, and as a result,
6 they allowed 100 percent of the jobs to count even if EB-5
7 capital accounts for less than that. Back then, the program
8 was underutilized. Now that it is at a high capacity, that
9 might be examined. I think it is difficult to demonstrate
10 whether or not the EB-5 capital is the driving force. As
11 Mr. Healy said, as far as EB-5 capital being the grease to
12 move the wheels, mezzanine financing, which is providing for
13 a portion of the capital to be allocated by EB-5 is a common
14 technique in conventional real estate financing.

15 But as far as the jobs being counted, that is providing
16 a higher percentage than that provided by the EB-5 capital.
17 Nevertheless, that is what has caused the program to
18 prosper.

19 Chairman Grassley. Thank you.

20 Mr. Joseph, as you know, the bill that Senator Leahy
21 and I introduced last year--that was S. 1501--includes
22 extensive reforms designed to improve integrity. These
23 include expanded regional center reporting requirements,
24 background checks on regional center officials, and new
25 authority to deny petitions and regional center applications

1 for fraud, criminal activity, or threat to national
2 security. A lot of those provisions, with some
3 modifications, were just copied from our bill and introduced
4 last December by Senators Flake, Schumer, and Cornyn as S.
5 2415.

6 Is it enough to address just EB-5 program integrity
7 without addressing Targeted Employment Area reform, as the
8 Flake-Schumer-Cornyn bill does?

9 Mr. Joseph. Thank you, Mr. Chairman. First, we are
10 very appreciative of any and all efforts to improve program
11 integrity in EB-5, and our members put a lot of risk on the
12 line and expect the industry to operate at high ethical
13 standards, and that is something that we support. But there
14 are some other issues, whether it be TEAs and its related
15 policy matters, capacity, or otherwise, that really require
16 our collective energy to find a solution. And so we would
17 urge this Committee and Congress to take a comprehensive
18 approach to making this program work for the next 20 years
19 or so since it has been in existence.

20 Chairman Grassley. Mr. Healy, in my opening statement,
21 I criticized a regional center for gerrymandering and using
22 190 census tracts to steer EB-5 money to a hotel in an
23 affluent part of Laredo. Do you agree that the Laredo
24 project is in a gerrymandered TEA?

25 Mr. Healy. Mr. Chairman, thank you for the question.

1 I appreciate the opportunity to address what I think is a
2 very misunderstood effort here.

3 Laredo, Texas, is located in--

4 Chairman Grassley. In other words, you disagree with
5 me. You go ahead and answer, but you disagree with me.

6 Mr. Healy. No, actually, I do not.

7 Chairman Grassley. Okay.

8 Mr. Healy. I do not. But I think it is important
9 because it actually highlights a point that Mr. Whipple
10 made, which is that unemployment is not the only measure of
11 distress. Laredo, Texas, is located in Webb County, which
12 is among the poorest counties in the United States. Average
13 household income in Webb County is \$28,000--\$28,000.

14 Now, we work with the city of Laredo to try to attract
15 foreign direct investment through EB-5 to Laredo, and you
16 are not going to get me to apologize for doing whatever I
17 need to do within the rules to attract capital to a county
18 with a household income of \$28,000. So I think that that
19 reveals not a problem with Laredo but a problem with how
20 TEAs work.

21 Chairman Grassley. Thank you for that answer. That
22 will be my last question. We may have some questions to ask
23 in writing, not only from me but other people. But before
24 we adjourn the meeting, not for the panel, but I would like
25 to include a number of letters in support of reforms of

1 Targeted Employment Areas.

2 We have a letter in support from a New York investment
3 group which supports limiting TEAs to a single census tract.

4 We have a letter from a company that is a joint effort
5 between Texas oil and gas interests and Iowa agriculture.
6 This company is hoping to utilize EB-5 dollars for the
7 development of methanol. It encourages Congress to expand
8 the program to other sectors, such as manufacturing.

9 We have a letter from Bluegrass International Fund,
10 Kentucky, which supports the Grassley-Leahy proposal to
11 carve out 2,000 visas for rural areas.

12 We have a letter from a developer of a senior assisted
13 living facility supporting limiting census tracts to actual
14 project site census tracts and any tract contiguous thereto.
15 This Texas-based organization explains how rural areas face
16 marketing challenges in China.

17 We have a regional center in Washington State who says
18 that, without significant revisions by Congress, the program
19 will die. The operation suggests overhauling the visa
20 allocations so that they are equally distributed between
21 TEAs and non-TEAs.

22 We have a letter from a regional center in North Dakota
23 and Minnesota urging Congress to bring back the program to
24 its original intent. This Midwest regional center says
25 marketing agents prefer large coastal projects because they

1 are easier to sell abroad.

2 And, obviously, I now ask unanimous consent that the
3 letters from various stakeholders are submitted into the
4 record.

5 [The letters follow:]

6 / COMMITTEE INSERT

1 Chairman Grassley. I thank our witnesses, both the
2 Congressmen as well as our citizens, who have testified
3 today. I think this dialogue on this part of the program
4 must continue. I know that there will be disagreements
5 after today's hearing, but I hope we can find a way forward
6 on this issue as we look to reauthorize. If the program is
7 to continue, we need reforms in the areas we discussed
8 today, but also on broader management of it. We need to
9 make sure that every dollar can be sourced, that investors
10 are protected, that jobs are truly created, that national
11 security vulnerabilities are eliminated. There are serious
12 implications if we allow this program to go unchecked and
13 unchanged.

14 The hearing record will be open for 1 week for members'
15 statements and questions to witnesses, as I already
16 suggested to you. Thank you for coming, and the hearing is
17 adjourned. Thank you all very much.

18 [Whereupon, at 11:59 a.m., the Committee was
19 adjourned.]

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