Congress of the United States
Washington, DC 20515

April 11, 2017

Ms. Samantha Deshommes,
Acting Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W.
Washington, DC 20529

Re: DHS Docket No. USCIS-2016-0006

Dear Ms. Deshommes,

Please accept this submission of our comments on U.S. Citizenship and Immigration Services' (USCIS) proposed regulations published in the Federal Register on January 13, 2017, entitled "EB-5 Immigrant Investor Program Modernization."[1] You will receive many comments from parties with a direct financial stake in seeing that these proposed regulations are never finalized. Our comments are submitted pursuant to our roles as the Chairman of the United States House Judiciary Committee, the Ranking Member (and former Chairman) of the House Judiciary Committee, the Chairman of the United States Senate Judiciary Committee, and the former Ranking Member (and former Chairman) of the Senate Judiciary Committee, the committees with jurisdiction over the fifth preference employment-based immigrant visa program (the "employment creation" or "EB-5" program). Our comments are submitted with the sole intent of advancing the national interest and the integrity of our immigration system.

We have watched with growing concern as the EB-5 program has strayed further and further away from the program Congress envisioned when we created it as part of the Immigration Act of 1990.[2] While many of the distortions and abuses that have come to dominate the program require statutory change – which we have been intently pursuing for a number of years -- there is much that USCIS can do to restore the program to its original vision and ensure that it achieves the goals of "attract[ing] entrepreneurs and job-creators into the U.S. economy."[3] We therefore wrote to then-Secretary of Homeland Security Jeh Johnson last March, "urg[ing him] to swiftly take all necessary and appropriate steps within [his] authority towards this goal."[4] We also outlined in the letter what we believed those steps needed to be.

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[1] 82 Fed. Reg. 4,738 et seq. (2017) (proposed rule).
[2] Section 121(a) of part 2 of subtitle B of title 1 of Pub. L. No. 101-649 (1990).
[3] 136 Cong. Rec. S17106, 17,112 (1990) (statement of Senator Paul Simon).
[4] Letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS, at 1 (March 2, 2016).

We were extremely pleased when Secretary Johnson issued these proposed regulations. The regulations, if finalized, would dramatically reform the EB-5 program and largely return it to the program that Congress envisioned in 1990. The program would generate increased investment capital for the U.S. economy and ensure that a healthy proportion of that capital actually be invested in rural and economically distressed areas. There will be no dispute about "executive overreach" – the proposed regulations are firmly founded in the explicit statutory authority provided by Congress when we created the EB-5 program granted. While there are a number of important issues we raised in our letter to then Secretary Johnson that the proposed regulations do not address, and that we respectfully request that USCIS reconsider, we strongly urge you to finalize the provisions in the regulations dealing with the minimum investment amounts.

I. ISSUES ADDRESSED IN THE PROPOSED REGULATIONS

MINIMUM INVESTMENT AMOUNTS

Inflation Adjustment

The Immigration Act of 1990 provided that the required capital contribution generally be $1,000,000[5] except that:

- "the [Secretary of Homeland Security] may, in the case of investment made in a targeted employment area [a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate)], specify an amount of capital required . . . that is less than (but not less than ½ of)" this amount;[6]

- "[i]n the case of an investment made in a part of a metropolitan statistical area that at the time of the investment –

  (I) is not a targeted employment area, and

  (II) is an area with an unemployment rate significantly below the national average unemployment rate,

  the [Secretary of Homeland Security] may specify an amount of capital required . . . that is greater than (but not greater than 3 times)"[7] this amount, and

- "[the Secretary of Homeland Security], in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount."[8]

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[5] Section 203(b)(5)(C)(i) of the Immigration and Nationality Act.
[6] Section 203(b)(5)(B)(ii), (C)(ii) of the INA.
[7] Section 203(b)(5)(C)(iii) of the INA.
[8] Section 203(b)(5)(C)(i) of the INA.

In its regulations implementing the EB-5 program, the Immigration and Naturalization Service (INS) set the required investment amount in targeted employment areas (TEAs) at $500,000 and, as to a higher investment amount in high employment areas, stated that it did "not wish to pursue any increase at the outset of the program."[9]

One of Congress's two primary goals for the EB-5 program was to "infuse new capital into the country."[10] Yet, in the quarter century since the creation of the EB-5 program, the INS and subsequently USCIS never adjusted the required investment amounts for inflation or for any other factor. As a result, the real value of each investment has fallen by 50 percent — depriving the U.S. economy of billions of dollars each year in potential investment funds and requiring developers to attract more foreign investors than they would otherwise need to in order to raise the desired amount of capital. Yet, as far back as 1987, the INS recommended that the minimum investment amount in an investor visa program be "adjusted periodically based on some criteria such as the Consumer Price Index."[11]

Proponents of the program largely agree that the market can handle a long-overdue increase, which will not deter potential investors or detract from the international competitiveness of the EB-5 program.[12] Other leading investor visa programs generally require investments much higher than the U.S. currently does or would pursuant to the proposed regulations.[13] As USCIS itself notes in the proposed regulations, "most of the[] minimum investment amounts [in other countries' foreign investor visa programs] are considerably higher than the proposed increased investment amounts in the EB-5 program. . . ."[14] We therefore urged Secretary Johnson to use his statutory authority to significantly increase the minimum investment amounts and to prospectively index the investment amounts for future inflation on a periodic basis.

Homeland Security Investigations (HSI) within U.S. Immigration and Customs Enforcement (ICE) has recommended increasing the general minimum investment amount to $2 million,[15] as did the Senate Judiciary Committee in 1988.[16] The proposed regulations would in

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[9] 56 Fed. Reg. 60,897, 60,903 (1991) (final rule).

[10] S. Rept. No. 101-55 at 21 (1989).

[11] Legal Immigration Reforms: Hearings Before the Subcomm. on Immigration and Refugee Affairs of the Senate Comm. on the Judiciary, S. Hrg. 100-990 at 90 (INS responses to questions by Senator Paul Simon) (1987).

[12] See, e.g., blog of EB-5 immigration attorney Ron Klasko, available at http://blog.klaskolaw.com/2015/03/27/china-eb-5-market-2015-part-1-factors-affecting-the-market/ (March 27, 2015).

[13] Australia's investor visa program requires an investment of at least AU $1.5 million (approximately US $1.2 million) (investor stream), AU $5 million (approximately US $3.9 million) (significant investor stream), or AU $15 million (approximately US $11.6 million) (premium investor stream). Information provided by the Law Library of Congress, Global Legal Research Center (2015). Canada's investor visa program requires an investment of at least CAN $2 million (approximately US $1.5 million) and a personal net worth of CAN $10-50 million (approximately US $7.5-37.5 million). Id. The United Kingdom's investor visa program requires an investment of at least £2 million (approximately US $2.48 million), and it provides expedited citizenship for investors who have invested at least £5-10 million (approximately US $6.2-12.4 million) or have personal assets with a value of at least £10-20 million (approximately US $12.4-24.8 million) and at least £5-10 million under their control and disposable in the UK that has been loaned by a UK-regulated financial institution. Id.

[14] 82 Fed. Reg. at 4,757.

[15] Attachment at http://www.grassley.senate.gov/sites/default/files/issues/upload/EB-5-12-12-13-ICE-memo-security-vulnerabilities.pdf.

fact increase the minimum investment level from $1 million to $1.8 million and the TEA level from $500,000 to $1.35 million -- and prospectively index the minimums for inflation. We believe the non-TEA level increase, in particular, is important in order for the program to fully recapture the real 1990 investment value.

A significant minimum investment increase for both the TEA and non-TEA levels is long overdue. As explained in the proposed regulations:

> The increase would ensure that program requirements reflect the present-day dollar value of the investment amounts established by Congress in 1990. . . . represent[ing] an adjustment for inflation from 1990 to 2015 as measured by the unadjusted Consumer Price Index for All Urban Consumers . . . . DHS proposes to increase the [TEA] minimum investment amount from $500,000 to $1.35 million, which is 75 percent of the proposed standard minimum investment amount. In addition, DHS is proposing to make regular CPI-U-based adjustments in the standard minimum investment amount, and conforming adjustments to the TEA minimum investment amount, every 5 years, beginning 5 years from the effective date of these regulations.[17]

Targeted Employment Areas

The goal of using an investor visa program to incentivize investments in rural and high unemployment areas originated with an amendment that Senators Rudy Boschwitz and Phil Gramm successfully offered in 1989 to the Senate version of the Immigration Act of 1990.[18] The amendment called for a lower minimum required investment in such areas and reserved a share of investor visas for aliens making investments in such areas. Senator Boschwitz stated that "I see no reason to shut out willing investors while our small towns and inner cities across America are facing hard times"[19] and that the amendment would benefit rural "areas [that] have great difficulty attracting the investment capital so needed for economic growth."[20]

The Immigration Act of 1990 incorporated this goal of incentivizing investment in rural and high unemployment areas by allowing for a lower investment amount in targeted employment areas. As Senator Paul Simon stated:

> [W]e are mindful of the need to target investments to rural America and areas with particularly high unemployment — areas that can use the job creation the most. For this group, we make available at least 3,000 visas annually. America's urban core and rural areas have special job creation needs and this visa program is sensitive to that in this way. Investments in this area must still create 10 jobs but require an investment less than $1 million. The Attorney General is authorized to set the required investment at a lower amount but at least $500,000. Clearly, the

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[16] Sen. Rept. No. 100-290 at 39 (1988).
[17] 82 Fed. Reg. at 4,739.
[18] Amendment #264 to S. 358 (July 13, 1989).
[19] 135 Cong. Rec. S7,858-02 et seq. (1989).
[20] Id.

> closer the Attorney General sets this to $500,000, the more we can encourage investments in these critical areas.[21]

Congress's expectation when creating the EB-5 program was that most foreign investors would invest at the standard ($1,000,000) investment amount. Senator Simon stated that:

> One section of the [Immigration Act of 1990] that I am particularly pleased to have had included from my original bill is the employment generating investor visa provision. . . .
>
> The general rule – and the vast majority of investor immigrants will fit in this category – is that the investor must invest $1 million and create 10 U.S. jobs.[22]

Yet, confounding Congress's expectation, almost all investments are now made at the lower $500,000 amount in purported rural and high-unemployment TEAs. In fiscal year 2015, 8,740 of 8,773 investor visas issued by the Department of State (DOS) went to foreign investors who invested in TEAs.[23] The U.S. Government Accountability Office (GAO) has found that:

- 97 percent of investors petition to invest in projects in high-unemployment TEAs;
- 3 percent of investors petition to invest in projects in rural TEAs; and
- 1 percent of investors petition to invest in projects not located in TEAs.[24]

And USCIS itself noted in the proposed regulations that 97% of investments are made in TEAs (of which about 10 percent are made in rural areas).[25]

We believe that many foreign investors would willingly invest higher amounts in order to choose affluent areas -- "[f]oreign investors see glitzy projects in gateway cities as more secure investments, both for getting their money back and for getting their green cards."[26] At the same time, "most foreign nationals looking to obtain lawful permanent residency in the U.S. through the EB-5 program are interested in realizing this goal for a lower price tag -- the logic being why pay $1,000,000 for a green card when I can get it for $500,000?"[27] Unfortunately, this desire by aliens to procure investor visas for the lowest price possible (even though they would willingly invest more in affluent areas) has led to the abusive and widespread practice of gerrymandering in order to cater to them. As Professors Jeanne Calderon and Gary Friedland at New York University's Stern School of Business have found:

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[21] 136 Cong. Rec. S17,106, 17,111 (1990).
[22] Id. at 17,111 (emphasis added).
[23] Report of the Visa Office 2015 (part IV, table VI).
[24] GAO, Immigrant Investor Program at 6 (2016) (figure 1) (The study was based on a review of 200 randomly-selected investor visa petitions filed in the fourth quarter of fiscal year 2015).
[25] 82 Fed. Reg. at 4,759.
[26] Jeff Collins, Need a Fast Track to Citizenship? Invest in these Orange County Luxury Hotels, Orange County Register, Oct. 13, 2015 (according to Pat Hogan, president of CMB Regional Centers).
[27] Kate Kalmykov, Determining If Your EB-5 Project is Located in a Targeted Employment Area (TEA), eb5investors.com/blog (Feb. 4, 2014).

[P]rojects in even the most affluent parts of the country [are] able to routinely qualify for the discounted investment level by combining contiguous census tracts (starting with the project site and often extending in unnatural configurations to remote sites miles away) until the weighted average met or exceeded the high unemployment threshold required by the law. This census tract aggregation is referred to pejoratively as "gerrymandering." Thus, gerrymandering rendered the two level investment threshold meaningless and immigrants flocked to invest in luxury projects by major developers in urban areas.[28]

The New York Times has reported regarding gerrymandering in New York City that:

[D]evelopers are often relying on gerrymandering techniques to create development zones that are supposedly in areas of high unemployment . . . but actually are in prosperous ones. . . . One of the more prominent projects is a 34-story glass tower in Manhattan that is to cost $750 million, one-fifth of which is to come from foreign investors seeking green cards. Called the International Gem Tower, it is rising near Fifth Avenue in the diamond district of Manhattan, one of the wealthiest areas in the country. Yet through the selective use of census statistics, state officials have classified the area as one plagued by high unemployment. . . .[29]

The Wall Street Journal has similarly found that:

The cluster of luxury apartment buildings and office towers rising in a development west of midtown [Manhattan] called Hudson Yards seems a world apart from the low-income housing projects of upper Manhattan. But for purposes of [the EB-5] program that helps finance Hudson Yards, it and Harlem's Manhattanville public-housing towers are in the same district: a stringy one connected by three Census tracts that run along the Hudson River. Merging, on paper, the affluent midtown neighborhood and the struggling one uptown placed Hudson Yards in a community with an overall high unemployment rate, positioning developer Related Cos. to gain low-cost financing from foreigners seeking green cards.[30]

And *The Seattle Times* has reported that:

The developer of a 44-story downtown skyscraper boasts on its website that it's "a prestigious address in the center of Seattle's legal, financial, creative and technology workforces." To state and federal officials, however, the backers of

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[28] Jeanne Calderon and Gary Friedland, What TEA Projects Might Look Like Under EB-5 2.0: Alternatives Illustrated with Maps and Data, 2015 New York University Stern School of Business Center for Real Estate Finance Research at 5-6 (footnote omitted)(working draft).

[29] Patrick McGeehan & Kirk Semple, Rules Stretched as Green Cards Go to Investors, New York Times, Dec. 18, 2011.

[30] Eliot Brown, How Immigrants' Cash Funds Luxury Towers in the U.S: How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings; Program Meant to Spur Jobs in Poor Areas Largely Finances Developments in Affluent Neighborhoods, Wall Street Journal, Sept. 9, 2015.

> the $440 million Fifth & Columbia project present it as right in the middle of an area with double-digit unemployment. . . . [T]he [EB-5 program's TEA investment level] is being exploited by promotors seeking ready capital for prominent, speculative projects in economically prosperous districts.[31]

One industry insider estimated that at least 80 percent of EB-5 capital is going to projects that rely on gerrymandered high unemployment areas to qualify for the reduced investment amount.[32] GAO data indicates that the percentage of projects that are gerrymandered may well be even higher. The agency found that of those aliens petitioning to invest in high-unemployment TEAs, 90 percent were investing in projects that combined either census tracts or census block groups in order to meet the statutorily-required unemployment rate.[33] Of these projects:

- 63 percent utilized on 2-10 census tracts,
- 21 percent utilized 11-25,
- 4 percent utilized on 26-50,
- 1 percent utilized 51-100, and
- 12 percent utilized over 100 census tracts.[34]

And, of these projects:

- 7 percent had an unemployment rate of 0-2 percent (in the area where the project was physically located),
- 29 percent had an unemployment rate of 2-4 percent,
- 41 percent had an unemployment rate of 4-6 percent,
- 12 percent had an unemployment rate of 6-8 percent,
- 3 percent had an unemployment rate of 8-10 percent,
- 3 percent had an unemployment rate of 10-12 percent, and
- 6 percent had an unemployment rate of greater than 12 percent.[35]

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[31] Sanjay Bhatt, Money from Investor Visas Floods U.S., but Doesn't Reach Targeted Poor Areas, Seattle Times, March 9, 2015.
[32] How Immigrants' Cash Funds Luxury Towers in the U.S (according to Michael Gibson, managing director, USAdvisors.org).
[33] Immigrant Investor Program at 7 (figure 2).
[34] Id. at 8 (figure 3).
[35] Id. at 9 (table 1).

Thus, the GAO study found that only 12 percent of projects that qualified for the lower investment amount based on being in high-unemployment TEAs were actually physically located in areas with unemployment rates of greater than 8 percent (based on its review of randomly-selected petitions filed in the fourth quarter of fiscal year 2015). However, the national unemployment rate in the fourth quarter of 2015 averaged 5.15 percent.[36] So, to qualify as a high-unemployment TEA, these projects would have had to show an unemployment rate of in the neighborhood of 7.725 percent. If we look at the actual physical location of the projects, few would have qualified as being in high unemployment areas.

In addition, GAO found that of those aliens petitioning to invest in high-unemployment TEAs, 90 percent were investing in projects that met the high-unemployment test by combining either census tracts or census block groups. If the census tract or block group where a project was physically located had an unemployment rate of 150 percent of the national average, there would have been no reason to add on additional census tracts or census block groups to the "map." Thus, it appears that 90 percent of the investors invested in projects that had to resort to "gerrymandering" in order to qualify as high unemployment TEAs.

The prevalence of gerrymandering is actually facilitated by current USCIS EB-5 program regulations, which provide that:

> The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). . . . Before any such designation is made, an official of the state must notify the Associate Commissioner for Examinations of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.[37]

Yet, state governments are "motivated to retain economic development within [their] own borders"[38] and they are "eager for economic development and with little stake in federal immigration policy[, and thus] tend to side with developers who want their projects to qualify as easily as possible for financing."[39] Unfortunately, USCIS's interpretation of its regulation opened the door to gerrymandering, as it requires it to accept as binding a state's determination of a high unemployment area: "USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area."[40] USCIS explains that:

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[36] Bureau of Labor Statistics, U.S. Department of Labor, Labor Force Statistics from the Current Population Survey (2017) (seasonally adjusted).
[37] 8 C.F.R. sec. 204.6(i).
[38] What TEA Projects Might Look Like Under EB-5 2.0: Alternatives Illustrated with Maps and Data.
[39] How Immigrants' Cash Funds Luxury Towers in the U.S.
[40] Office of the Director, USCIS, DHS, Policy Memo: EB-5 Adjudications Policy at 8 (2013).

> Under the regulations, the relevant question is the rate of unemployment in the area designated by a State. As long as the area designated by the State meets the regulatory criteria of being a particular geographic or political subdivision within a metropolitan statistical area or town having a population of 20,000 or more, the regulations do not permit USCIS to further examine a State's subjective intentions in designating an area as a TEA, the shape of the area, the reason for designating this area as opposed to others, the pattern of unemployment rates within various parts of the area, or other considerations that might be viewed as coming under the term "gerrymandering." USCIS instead examines only whether the area meets the minimum unemployment rate that the statute expressly sets as a qualifier for TEA designation.[41]

This is the case even where there is clear evidence of abuse. In a 2010 decision, USCIS's Administrative Appeals Office found that:

> [I]t is clear that the petitioner's investment of only $500,000 wholly within a ward that is not itself suffering high unemployment completely undermines . . . congressional intent . . . that the reduced investment amount would encourage investment in areas that are truly suffering high unemployment. While we are bound by [the regulation], it would appear that this regulation has produced unintended consequences that are clearly contrary to congressional intent.[42]

The regulation was written as it was because the determination of whether an area qualifies as a high-unemployment area "should not be conducted exclusively at the Federal level without providing some opportunity for participation from state or local government."[43] However, there is a significant difference between USCIS providing states with an opportunity for input on economic development decisions and USCIS declaring itself unable to contest clearly abusive determinations involving this Federal program. While USCIS has claimed that its "personnel have no substantive authority to question or challenge such high unemployment designations [by states], and therefore must rely on the high unemployment designations . . . that are made by a U.S. state governor or his or her designee",[44] there are no such constraints on USCIS adjudicators. The Immigration and Nationality Act (INA) nowhere provides that states rather than USCIS are to make this determination, and the regulation itself does not provide that state determinations are uncontestable. In practice, these states generally are merely ratifying the unemployment rates of certain census tracts that were selected by project developers in order to meet the requisite unemployment threshold; these are not decisions intended to reflect, or even consider, the economic development priorities of a community.

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[41] E-mail from USCIS to House Judiciary Committee staff (June 10, 2013).
[42] Decision of Sept. 21, 2010, name withheld, at n.1.
[43] 56 Fed. Reg. 60,897, 60,903 (1991) (final rule).
[44] Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, DHS, Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38) to Field Leadership at 18-19 (2009).

We asked Secretary Johnson that USCIS no longer allow states to be able to conclusively declare what areas are considered to be experiencing high unemployment. We also recommended that rather than selecting an arbitrary number of contiguous census tracts that could be included in the "area", a development project should be required to be physically located in a census tract or tracts that has or have the requisite unemployment rate in order to qualify for the reduced investment amount on account of it being in an area of high unemployment.[45] It is not unreasonable to ask that for a development to be considered to be located in an area of high unemployment, it should actually be located in census tracts with high unemployment. Alternately, we are comfortable with including immediately-adjoining census tracts. We proposed during negotiations in 2015 that:

> The term "high unemployment area" means an area, consisting of a census tract or contiguous census tracts —
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> > (I) in which each census tract has an unemployment rate that is at least 150 percent of the national average unemployment rate using the most recent census data available; and
> >
> > (II) which may include any census tract or tracts contiguous to 1 or more of the tracts that have the requisite unemployment rate.[46]

TEA incentives will be meaningless unless projects are required to be closely located to the actual area of need, as Congress intended. Anything short of this standard will result in underserved and undercapitalized areas seeing little to no investment from the EB-5 program. That is not acceptable in our view.

It has been argued that gerrymandering is not objectionable if a TEA "encompass[es] the [high unemployment] area[s] within which the workers commute to the project site."[47] However, even if USCIS could determine that a project's actual and verified workers commute from high unemployment areas, which generally cannot be done,[48] that alone is not enough.

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[45] According to the U.S. Census Bureau:

> [Census tracts are] small, relatively permanent statistical subdivisions of a county or equivalent entity that are updated by local participants prior to each decennial census as part of the Census Bureau's Participant Statistical Areas Program. The Census Bureau delineates census tracts in situations where no local participant existed or where state, local, or tribal governments declined to participate. The primary purpose of census tracts is to provide a stable set of geographic units for the presentation of statistical data.
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> Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. A census tract usually covers a contiguous area; however, the spatial size of census tracts varies widely depending on the density of settlement. Census tract boundaries are delineated with the intention of being maintained over a long time so that statistical comparisons can be made from census to census. . . .

U.S. Census Bureau website (geographic terms and concepts).

[46] Sec. 104(c)(1)(D)(vi) of draft legislation (dated Oct. 14, 2015) (copy on file with the House Judiciary Committee).

[47] Is the Investor Visa Program an Underperforming Asset?: Hearing Before the H. Comm. on the Judiciary, 114th Cong. (2015) (description of argument at page 10 of statement of Jeanne Calderon, Clinical Associate Professor, Stern School of Business, New York University).

[48] "[T]he economic model upon which most job estimates are calculated does not indicate how many workers, if any, commute from residences in high unemployment areas." Id. at 10 n.40.

Congress's goal is to revitalize distressed areas, and to do that, projects actually have to be located in those areas. As the Leadership Conference on Civil and Human Rights has argued, "it is imperative that Investor Visa funds go directly into building infrastructure in communities in West Baltimore and the South Bronx and the like. Projects in neighboring areas will leave these communities of concentrated poverty no better off in terms of development and infrastructure after their conclusion."[49] And as Professor Calderon has concluded, "[i]f Congress seeks to incentivize development in areas which encounter difficulty in attracting the investment capital needed for economic growth, [the commuter pattern construct] would not be an appropriate [methodology to designate a TEA]."[50]

The proposed regulations provide that:

> [A high-unemployment TEA] may consist of a census tract or contiguous census tracts in which the new commercial enterprise is principally doing business[51] (the "project tract(s)") if the weighted average of the unemployment rate for the tract or tracts is at least 150 percent above the national average. . . . Moreover, if the project tract(s) do not independently qualify under this analysis, a TEA may also be designated if the project tract(s) and any or all additional tracts that are directly adjacent to the project tract(s) comprise an area in which the weighted average of the unemployment rate for all of the included tracts is at least 150 percent of the national average.[52]

The approach of the proposed regulations is precisely the approach we proposed in 2015 – USCIS would make the determination as to whether an area meets the high-unemployment test and it would use the standard of each census tract having an unemployment rate of at least 150 percent of the national average, with regional centers being allowed to include for purposes of this calculation any census tract or tracts contiguous to 1 or more of the tracts that have the requisite unemployment rate.[53] While we would have preferred that the regulations require all

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[49] Statement of Nancy Zirkin, Executive Vice President, the Leadership Conference on Civil and Human Rights (Feb. 11, 2016).

[50] Is the Investor Visa Program an Underperforming Asset? (statement of Jeanne Calderon at 10).

[51] USCIS states that:

> A new commercial enterprise is principally doing business in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be principally doing business in the location most significantly related to the job creation.
> Factors considered in determining where a new commercial enterprise is principally doing business include, but are not limited to, the location of:
> - Any jobs directly created by the new commercial enterprise;
> - Any expenditure of capital related to the creation of jobs;
> - The new commercial enterprise's day-to-day operation; and
> - The new commercial enterprise's assets used in the creation of jobs.

USCIS, DHS, USCIS Policy Manual, 6 USCIS-PM G (Nov. 30, 2016).

[52] 82 Fed. Reg. at 4,748.

[53] One industry representative has criticized the proposed regulations on the basis that:

> I was hopeful that DHS would apply economic development principles practiced elsewhere in the federal government like those used by HUD. I am not aware of anywhere in the field of economic development where a single variable is used to assess the distress of a geographic area. It is a widely-held best practice to use a basket of variables for measurement.

census tracts utilized in a TEA map have the requisite unemployment rate, we are comfortable with this sensible compromise approach adopted by USCIS that would work to eliminate the worst abuses of gerrymandering.

II. ISSUES NOT ADDRESSED IN THE PROPOSED REGULATIONS

There are areas of needed EB-5 reform that are ripe for regulatory resolution that USCIS decided not to address in the proposed regulations. We respectfully request that USCIS reconsider these issues and the appropriateness of addressing them through the final regulations:

VISA SET-ASIDE FOR TARGETED EMPLOYMENT AREAS[54]

The EB-5 program provides that "[n]ot less than 3,000 of the [EB-5] visas made available . . . in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise . . . which will create employment in a targeted employment area."[55]

Such a set-aside was widely supported. The U.S. Chamber of Commerce testified in 1989 before the House Judiciary Committee that it "supports the concept of reserving a certain portion of these 'employment creation' visas for investment in rural or high unemployment areas, in which case less capital . . . should be required for a qualifying investment."[56]

Regarding the predecessor amendment, Senator Boschwitz stated that "[t]he amendment we are offering adds an additional 2,000 visas exclusively for those who invest in rural or high unemployment areas."[57]

However, under current practice, the 3,000 set-aside visas are not in fact actually reserved exclusively for investments in TEAs. If visas reserved for investments in TEAs in a particular fiscal year are allowed to immediately roll-over to the general EB-5 visa pool at the end of the fiscal year, then they are not truly reserved exclusively for TEAs. Savvy investors may simply continue to invest in projects in affluent areas, content in the knowledge that few visas will be utilized for investments in riskier rural and depressed urban areas and that the 3,000 reserved visas will ultimately become available to all at the end of the fiscal year.

The Department of Homeland Security's Proposed Regulations Reforming the Investor Visa Program: Hearing Before the House Comm. on the Judiciary, 115th Congress (2017) (statement of Angelique Brunner, Founder and President, EB5 Capital). However, USCIS is required by statute to utilize only one variable – whether an area "has experienced high unemployment (of at least 150 percent of the national average rate)." Sec. 203(b)(5)(B)(ii) of the INA.

[54] See generally letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS, at 9.

[55] Section 203(b)(5)(B)(i) of the INA.

[56] Immigration Act of 1989 (Part 1): Hearings before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary, 101st Cong. at 454 (statement of Daryl Buffenstein "on behalf of the U.S. Chamber of Commerce").

[57] 135 Cong. Rec. S7,858 et seq. (1989) (emphasis added).

We urge that the final regulations provide that the 3,000 visas set-aside for investments in TEAs remain available only for such investments for a sufficiently long period of time to provide a true incentive for foreign investors to invest in rural and depressed urban areas.

JOB-CREATION REQUIREMENT[58]

The EB-5 program requires that an investor "create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters)."[59] This was one of the key goals of the EB-5 program – "to create new employment for U.S. workers."[60]

Jobs Created Through Non-EB-5 Capital

USCIS regulations provide that "[t]he total number of full-time positions created for qualifying employees [by a project] shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a[n EB-5] petition. . . ."[61] In instances where a development project is financed by a combination of EB-5 and conventional capital, as is common practice, this has been interpreted to allow foreign investors to receive credit for jobs actually created by other people's money. The INS decided to allow this practice without any rationale other than that several commentators to the proposed regulations for the investor visa program requested that it be allowed.[62]

DHS's Inspector General (IG) concluded that:

> 8 CFR 204.6(g) allows foreign investors to take credit for jobs created with U.S. funds, making it impossible for USCIS to determine whether the foreign funds actually created U.S. jobs. Consequently, the foreign investors are able to gain eligibility for permanent resident status without proof of U.S. job creation. In one case we reviewed, an EB-5 project received 82 percent of its funding from U.S. investors through a regional center. The regional center was able to claim 100 percent of the projected job growth from the project to apply toward its foreign investors even though the foreign investment was limited to 18 percent of the total investment in the project. Every foreign investor was able to fulfill the job creation requirement even though the project was primarily funded with U.S. capital. When we questioned USCIS about this practice, the officials explained that the EB-5 project would not exist if not for the foreign investment.[63]

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[58] See generally letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS, at 9-13.
[59] Section 203(b)(5)(A)(ii) of the INA.
[60] S. Rept. No. 101-55 at 21.
[61] 8 C.F.R. sec. 204.6(g)(2).
[62] 56 Fed. Reg. 60,897, 60,903 (1991) (final rule).
[63] DHS, Office of the IG, United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program at 8 (2013).

And GAO recently found that:

> Views differ on whether USCIS methodology, as defined in EB-5 Program regulations, should allow immigrant investors to claim all jobs created by projects with EB-5 and non-EB-5 investors. We and the DHS OIG have previously raised questions about this practice because immigrant investors are to create 10 jobs based on their investment in the new commercial enterprise, and therefore including non-EB-5 Program investments in the enterprise can inflate the job creation benefit of the immigrant investment. . . .
>
> Additionally, according to the IPO [Immigrant Investor Program Office] Economic Division Chief, his analysis showed that projects in many industries could not generate the required number of jobs based on the minimum EB-5 investment alone, and otherwise would not be able to use and benefit from the EB-5 Program. Specifically, his analysis showed that about 160 industries, including manufacturing, are unable to create the required 10 jobs per investor based solely on the EB-5 Program minimum investment of $500,000. According to IPO officials, without the practice of allowing immigrant investors to claim jobs generated by investments from other sources, a higher investment amount would be required for investors to meet the job creation requirements in these industries and qualify for removal of their permanent residency conditions.[64]

As noted, one of Congress's main goals in the creation of the EB-5 program was to create new employment for U.S. workers. Allowing EB-5 investors to receive full credit for job creation based on non-EB-5 investment undermines this goal by granting immigrant visas to foreign investors who are not themselves creating the 10 statutorily-mandated jobs. The GAO estimated that the median percentage of EB-5 investment contributions in a sample of fiscal year 2015 petitions was only 29 percent compared to the total estimated project cost.[65] Yet these investors would receive credit for creating jobs as if they contributed 100 percent of the total capital to the project.

And it is simply not the case that most EB-5 projects "would not exist if not for the foreign investment." In fact, "[m]any of such projects could easily have been financed on the private market, according to [New York University Stern School of Business scholar-in-residence] Gary Friedland. . . . 'It's a profit enhancement. . . .'"[66] As Michael Ashner, chief executive of Winthrop Realty Trust, notes, "It's lower-cost capital with favorable terms. That's why people do it."[67] And a leading immigration attorney website -- ILW.COM -- has concluded that 85 percent of EB-5 investments are in projects that have ample sources of alternate capital -- their developers are simply taking advantage of the lower interest rates that foreign investors are willing to accept in order to receive permanent residency.[68]

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[64] GAO, Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits at 41-42 (2015) (footnotes omitted).
[65] Id. at 9.
[66] How Immigrants' Cash Funds Luxury Towers in the U.S.
[67] Id.
[68] Four Flavors of EB-5 Jobs Programs.

We urge that the final regulations place meaningful limits on the amount of job creation due to non-EB-5 capital that can be attributed to EB-5 investors. One option would be to limit the amount of job creation due to non-EB-5 capital invested in a project that can be attributed to EB-5 investors to no more than 30 percent of the overall capital contribution to the project, even where such non-EB-5 capital investment exceeds 30 percent of the total capital contribution. This would incentivize a balance between securing traditional financing and EB-5 financing but not serve to call into question the integrity of EB-5 job creation estimates.

And, as to the concern that certain industries would be unable to create 10 jobs per investor based solely on an investment of $500,000, this merely illustrates that $500,000 is a woefully inadequate investment amount. A significant increase in the minimum investment levels, as contained in the proposed regulations, will be much more likely to actually create 10 jobs.

Indirect Jobs

Congress created a temporary pilot program in 1992 that sets aside 3,000 investor visas each year for aliens who invested in "regional centers."[69] "[T]he establishment of a regional center may be based on general predictions, contained in the proposal, concerning . . . the jobs that will be created directly or indirectly as a result of such capital investments. . . ."[70] Job creation may be demonstrated by indirect methods in regional centers through economic models:

> [Aliens shall be permitted] to establish reasonable methodologies for determining the number of jobs created . . . including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment. . . .[71]

However, the INA still requires that to qualify for permanent residence, an investor "create full-time employment."[72] Thus, reasonable methodologies for determining the number of jobs created must be able to demonstrate that the jobs will be full-time jobs. Yet, USCIS policy provides that:

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[69] Section 610 of Title VI of Pub. L. No. 102-395 (found at INA sec. 203 note). A regional center is "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment." 8 C.F.R. sec. 204.6(e). See also INA sec. 203 note.

[70] INA sec. 203 note (emphasis added).

[71] INA sec. 203 note. "For example, if a regional center project finances a new hotel, and the hotel requires the services of an outside linen company, the linen company may have to hire an additional employee because of the increased business the hotel brings. The additional hire is an example of indirect job creation. 'Induced jobs' refer to jobs created when direct and indirect employees spend their increased incomes on consumer goods and services. Areas merchants then must hire more employees to support the increased clientele. These are induced jobs. Indirect jobs, including induced jobs, are calculated using economic models . . . ." Charles Gordon, Stanley Mailman, Stephen Yale-Loehr & Ronald Wada, Immigration Law and Procedure, vol 3, sec. 39.07(2)(a) (2010) (footnote omitted).

[72] Section 203(b)(5)(A)(ii) of the INA.

> Due to the nature of accepted job creation modeling practices, which do not distinguish whether jobs are full- or part-time, USCIS relies upon the reasonable economic models to determine that it is more likely than not that the indirect jobs are created and will not request additional evidence to validate the job creation estimates in the economic models to prove by a greater level of certainty that the indirect jobs created, or to be created, are full-time or permanent.[73]

Current USCIS policy is directly at odds with the plain meaning of the INA. We urge that the final regulations conform to the INA by requiring that it be shown that jobs established through methodologies are full-time jobs. If this is not possible due to the limitations of existing economic models, then USCIS should take additional steps to ensure the statutory job creation requirements are satisfied.

Actual Creation of Jobs

While alien investors must "create full-time employment for not fewer than 10 United States citizens" under current regulations in order to have the conditional status of their permanent residence removed, investors must simply provide evidence that they "created or can be expected to create within a reasonable time ten full-time jobs."[74] Further, USCIS believes that to establish that jobs reasonably can be expected to be created, it only has to be determined that the jobs "are more likely than not going to be created within a reasonable time."[75] And USCIS has no mechanism in place to revoke the permanent residence of alien investors who are not ultimately able to create 10 jobs. We urge that the final regulations provide that before USCIS removes the conditional status of their permanent residence, aliens must show that they have actually created the requisite number of jobs. Otherwise, a main objective of the EB-5 program -- the creation of American jobs -- may be compromised.

"Tenant Occupancy" Jobs

We also urge that the proposed regulations eliminate projects that rely solely on "tenant occupancy" to fulfill the job creation requirements, in which regional center funding is used to construct or renovate office or retail space (e.g., office buildings or strip malls). Under the "tenant occupancy" model, businesses move into the new or refurbished office/retail space and the jobs of the workers moving in are counted as jobs "created" by the EB-5 investment even though these jobs usually already exist and are simply being relocated. In late 2011, USCIS economists concluded that the application of the tenant-occupancy methodology was not a reasonable methodology for estimating the total employment impact attributable to EB-5 capital utilized for commercial property acquisition and renovation when, subsequent to construction, the properties would be leased to unrelated businesses. Below is the standard "Request for Evidence" language issued by USCIS on tenant occupancy petitions that was developed at that time:

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[73] EB-5 Adjudications Policy at 17.
[74] 8 C.F.R. sec. 216.6(a)(4)(iv).
[75] Memo from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, DHS, to Service Center Directors, Regional Directors, District Directors, Field Office Directors & National Benefit Center Director, EB-5 Alien Entrepreneurs – Job Creation and Full-Time Positions (AFM Update AD 09-04) at 7 (2009).

> To allow for the existing methodology would require USCIS to credit the prospective EB-5 investors in the new commercial enterprise with the employment impacts created by the unrelated business ventures of future tenants. . . . After reviewing the tenant-occupancy methodology presented thus far, USCIS observes that the nexus between the investment and the job creation is either too attenuated or too incomplete to constitute a reasonable economic methodology.[76]

Despite this, a memo was eventually issued in December 2012 generally approving the tenant occupancy model.[77] Estimated job creation based on the tenant occupancy model is highly suspect and such positions should not qualify as new jobs under the EB-5 program without actual proof that the positions did not previously exist.

APPLICABILITY TO PENDING PETITIONS[78]

As of November 1, 2016, 24,629 aliens with approved investor visa petitions (including their spouses and minor children) were waiting for a visa to become available.[79] And, USCIS has on hand 19,386 pending investor visa petitions[80] (and, in 2014, each alien receiving an investor visa brought along an average of 1.83 spouses and minor children[81]). Thus, if the necessary and long-overdue clarifications the proposed regulations make to the EB-5 program only apply to petitions filed prospectively, they would not actually take effect for eight years. We therefore urge that USCIS explore ways to ensure that the important reforms in the final regulations do not take years and years before having an impact on this program.

It is true that the Supreme Court has ruled that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms."[82] However, as the District of Columbia Circuit ruled in National Petrochemical & Refiners Ass'n v. E.P.A., "[t]his court has recognized the distinction between a rule that imposes new sanctions on past conduct, which is retroactive and invalid unless specifically authorized, and one that merely 'upsets expectations,' which is secondarily retroactive and invalid only if arbitrary and capricious."[83] The court was citing its earlier decision in National Cable & Telecommunications Ass'n v. F.C.C.,[84] in which it found that:

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[76] http://blog.lucidtext.com/2012/02/27/tenant-occupancy-request-for-evidence/.
[77] USCIS, DHS, Guidance Memorandum on Operational Guidance for EB-5 Cases Involving Tenant Occupancy (2012).
[78] See generally letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS at 13-15.
[79] U.S. State Department, Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2016.
[80] E-mail from USCIS to House Judiciary Committee staff (June 21, 2016).
[81] DHS, Yearbook of Immigration Statistics: 2015 (2016) (table 7).
[82] Bowen v. Georgetown University Hospital, 488 U.S. 204, 208 (1988) (citation omitted).
[83] 630 F.3d 145, 159 (D.C. Cir. 2010) (citation omitted).
[84] 567 F.3d 659 (D.C. Cir. 2009).

> We have . . . repeatedly made clear that an agency order that only "upsets expectations based on prior law is not retroactive," Mobile Relay Assocs., 457 F.3d at 11 (internal quotation marks omitted). That describes precisely this case. Here the Commission has impaired the future value of past bargains but has not rendered past actions illegal or otherwise sanctionable. "It is often the case that a business will undertake a certain course of conduct based on the current law, and will then find its expectations frustrated when the law changes." Chem. Waste Mgmt. v. EPA, 869 F.2d 1526, 1536 (D.C.Cir.1989). Such expectations, however legitimate, cannot furnish a sufficient basis for identifying impermissibly retroactive rules.
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> Our case law does require that agencies balance the harmful "secondary retroactivity" of upsetting prior expectations or existing investments against the benefits of applying their rules to those preexisting interests. See, e.g., Bergerco Canada v. U.S. Treasury Dep't, 129 F.3d 189, 192–93 (D.C.Cir.1997). And by significantly altering the bargained-for benefits of now-unenforceable exclusivity agreements, the Commission has undoubtedly created the kinds of secondary retroactive effects that require agency attention and balancing. Petitioners' argument nonetheless fails for an obvious reason: the Commission did expressly consider the relative benefits and burdens of applying its rule to existing contracts and, after extensive analysis, concluded that banning enforcement of existing contracts was essential. . . . The Commission found it "strongly in the public interest" to prevent the harms from existing contracts "to continue for years," or to "continue indefinitely in the cases of exclusivity clauses that last perpetually."
> . . .
>
> Once again, we think this extensive discussion easily satisfies the Commission's obligation under our deferential standard of review. The Commission balanced benefits against harms and expressly determined that applying the rule to existing contracts was worth its costs.[85]

The reforms contained in the proposed regulations do not impose new sanctions on past conduct. They merely "upset expectations" – such as whether the investor's proposed high unemployment area is in a legitimate area of high unemployment. And it is certainly in the public interest to prevent the harms that will result if the abuses currently rampant in the EB-5 program and the dramatic departures from congressional intent are allowed to continue for eight more years. Therefore, under the analysis of the D.C. Circuit, there is no impediment to your applying the new regulations to a reasonable subset of pending EB-5 petitions (especially those filed with the goal of evading anticipated statutory or administrative reforms to the program).

[85] Id. at 670-71 (citations omitted).

In addition, this would not be a case where the aliens "face[] additional civil liability in the form of deportation for past conduct", rather it is a case where DHS "denies [the aliens a] prospective benefit" and thus, under the analysis of the District Court for the District of Columbia, it is "not a retroactive rule."[86]

Finally, the Supreme Court has ruled that a government "benefit is not a protected entitlement if government officials may grant or deny it in their discretion."[87] Many courts have ruled that "USCIS enjoys broad discretion in deciding whether to grant or deny visa petitions [such as those] based on preference classifications."[88] Indeed, the INA even provides that the Secretary of Homeland Security "may, at any time, for what [you] deem[] to be good and sufficient cause, revoke the approval of any petition approved by [you] under section [204, including EB-5 petitions (subsection (a)(1)(H))]."[89] Most courts have ruled that the Secretary's decision to revoke a petition is discretionary.[90] EB-5 visas are not protected entitlements.

FRAUD, NATIONAL SECURITY, COMPLIANCE MONITORING AND OVERSIGHT[91]

We urge that the final regulations take the following actions to address fraud and national security concerns:

Mandatory Interviews of Immigrant Investors

USCIS has the authority (which it can waive) to conduct interviews of immigrant investors within 90 days after such investors submit petitions to remove the conditional status of their permanent residency (Form I-829).[92] GAO noted in its 2015 report that the agency has never used this authority and does not conduct interviews at the I-829 stage. GAO stated:

> Conducting interviews at this stage to gather additional corroborating or contextual information could help establish whether an immigrant investor is a victim of or complicit in fraud -- a concern shared by both ICE HSI and SEC officials, who noted that gathering additional information and context about individual investors could help to inform investigative work.[93]

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[86] Ohio Head Start Association, Inc., v. U.S. Department of Health and Human Services, 873 F. Supp.2d 335, 348 (D.D.C. 2012) (emphasis in original).
[87] Town of Castle Rock, Colorado, v. Gonzales, 545 U.S. 748, 756 (2005).
[88] Khamisani v. Holder, 2011 WL 1232906 (S.D. Texas 2011) (citation omitted). See also Global Export/Import Link, Inc. v. U.S. Bureau of Citizenship and Immigration Services, 423 F. Supp.2d 703, 704-05 (E.D. Mich. 2006). But see Spencer Enterprises, Inc. v. U.S., 345 F.3d 683, 692 (9th Cir. 2003).
[89] Section 205 of the INA.
[90] Mehanna v. U.S. Citizenship and Immigration Services, 677 F.3d 312, 314-15 (6th Cir 2012). But see ANA International Inc. v. Way, 393 F.3d 886, 893-94 (9th Cir. 2004).
[91] See generally letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS, at 15-20.
[92] Section 216A(c)(1)(B), (d)(3) of the INA.
[93] Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits at 29.

We agree with the GAO that "opportunities remain to expand information collection through interviews with immigrant investors"[94] and urge that the final regulations require in-person interviews of investors.

"Sale" or "Rental" of Regional Centers

Currently, regional centers, and thereby their USCIS designation, may be bought and sold among equity and capital investment groups, some of which we understand may be foreign-owned. USCIS does not receive prior notification of these sales, and only requires these sales to be reported through an amendment after the fact. Regional centers are also rented.[95] We urge that the final regulations prohibit such transactions, or at the least only allow them to take effect after USCIS approval and after the managers and operators are properly vetted. Otherwise, these changes in regional center ownership greatly diminish the integrity of the program and make it difficult, if not impossible, to oversee regional center activity.

We also urge that the final regulations prohibit regional centers from engaging in service or licensing agreements with other regional centers without specific prior approval from USCIS. Such agreements increase organizational complexity and create chains of financing that are difficult to track and oversee. Engagement in service or license agreements by regional centers may make it very difficult to verify whether parties executed their duties and responsibilities.

In conclusion, we applaud USCIS for issuing the proposed regulations and strongly urge USCIS to issue them in final form. We also urge that the final regulations address – consistent with the statutory authority granted by Congress – the serious additional issues we have outlined. We look forward to working with USCIS once the final regulations are issued to ensure the renewed vitality and integrity of the EB-5 program.

Sincerely,

Bob Goodlatte
Chairman
House Judiciary Committee

Charles E. Grassley
Chairman
Senate Judiciary Committee

John Conyers, Jr.
Ranking Member and Former Chairman
House Judiciary Committee

Patrick Leahy
Vice Chairman
Senate Appropriations Committee
Former Chairman
Senate Judiciary Committee

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[94] Id. at 25.

[95] See, e.g., http://eb5affiliatenetwork.com/ and http://eb5info.com/questions/876-how-does-renting-an-eb-5-regional-center-work-i.