

**Written Testimony of**  
**Peter D. Joseph**  
**Executive Director**  
**Invest In the USA (IIUSA)**



**Hearing on**  
***The Distortion of EB-5 Targeted Employment Areas: Time to End the Abuse***

**Before the**  
**Committee on the Judiciary**  
**U.S. Senate**  
**Washington, D.C.**

**April 13, 2016**

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**As Prepared for Delivery**

Chairman Grassley, Ranking Member Leahy, and Distinguished Members of the Committee:

Thank you for inviting me to testify today. My name is Peter D. Joseph. I am the Executive Director of Invest In the USA (“IIUSA”), the national non-profit trade association for the EB-5 Regional Center industry based in Washington, DC. I have been involved in the EB-5 Regional Center Program (the “Program”) for almost ten years, working first in the legal and private sectors of the industry before beginning at my current position over six years ago. I consider it an honor and a privilege to be here today to share my perspective with you. Leading IIUSA in the years following Great Recession allowed me to see the growing number of communities, industries, and people benefitting from EB-5 firsthand at a time our country needed it most.

IIUSA appreciate the bipartisan, bicameral support and leadership of many in Congress and on this committee. I have had the honor of working closely with many of your offices on this issue in the last several years and believe we have a shared goal of making EB-5 a more efficient and effective program. Our shared commitment to the Program has turned a once underutilized immigration program into a vital source of U.S. job creating investment capital today. Since 2008, the Program’s annual contribution to foreign direct investment (“FDI”) inbound into the U.S. grew over 1,200% to total almost \$5 billion in fiscal year 2015 alone (see Appendix I). This investment capital is creating tens of thousands of jobs for U.S. workers in diverse communities by funding projects in a wide variety of industry sectors across the country - all at no cost to the taxpayer. In fact, the Program generates much needed tax revenue to the tune of over half a billion dollars in state and local tax revenue and over one billion in federal tax revenue from 2010-2013 alone.

Today’s hearing on “Targeted Employment Areas” (or “TEAs”) is an important opportunity to discuss one of the core interrelated issues that should be considered in the context of a long-term reauthorization of the EB-5 Regional Center Program to be possible. My testimony will start with background information on EB-5 and IIUSA. Next, I will discuss how EB-5 fits into the U.S. immigration system, domestic capital markets and global capital flows, and the competition for immigrant investor programs throughout the world today. I will then review TEA policy as it exists today before highlighting current practices and reform proposals from Congress, federal agencies, state/municipal governments, and other stakeholders. Finally I will conclude with observations on how TEA policy is interrelated with other important EB-5 policy issues that need to be addressed in order for the Program to reach its full potential as a 21st century economic development tool.

## **I. Background Information**

### ***EB-5 Regional Center Program***

Congress created the EB-5 program in 1990 to benefit the U.S. economy by attracting investments from qualified foreign investors. Under the Program, each investor must prove that at least ten new jobs were created or saved as a result of the EB-5 investment, which must be a minimum of \$1 million, or \$500,000 if the funds are invested in certain high-unemployment or rural areas.

Other countries including Australia, Portugal, Spain, and the United Kingdom, use similar programs to attract foreign investments. The American program is more stringent than others,

requiring substantial risk for investors in terms of their financial investment, job creation requirements, and immigration status. Specifically:

- Investments made through the U.S. EB-5 Program must be “at risk.” There is no guaranteed financial return or return of principal capital. If their petition for eligibility for visa status is approved by U.S. Citizenship & Immigration Services (“USCIS”) EB-5 investors receive a conditional immigrant visa (*i.e.*, “green card”) that is valid for two years. To receive a permanent green card, these investors must demonstrate that the legally required economic benefits flowing from their investments have been achieved.
- Annually, the EB-5 Program accounts for less than one percent of the total number of visas issued by the U.S. Throughout the process, EB-5 investors are subject to the same background checks and national security screenings as applicants in any other immigrant visa category, and their ability to eventually apply for citizenship is subject to the same criteria as other green card holders - including the payment of U.S. taxes based on worldwide income.

In 1992, Congress enhanced the economic impact of the EB-5 Program by creating the EB-5 Regional Center Program and allowing the designation of Regional Centers to pool EB-5 capital from multiple foreign investors for investment in economic development projects within a defined geographic region. Today, well over 90 percent of all EB-5 capital is raised and invested in affiliation with Regional Centers. Regional Centers maximize the program’s job creation benefits by facilitating large scale capital formation and investment in projects that require multiple sources of financing to come to fruition. These projects are often undertaken in coordination with regional economic development agencies that use the EB-5 funds to incentivize additional domestic capital.

### ***Invest In the USA (IIUSA)***

Founded in 2005, IIUSA is the national non-profit trade association for the EB-5 Regional Center industry with a mission to make the Program a permanent and successful part of 21st century U.S. economic development policy. We are a diverse organization with more than 280 Regional Center members and 200 associate members, collectively representing big and small projects, urban and rural economic development, and industry sectors ranging from real estate, manufacturing and energy to infrastructure, economic development and more. Our Regional Center members are engines for economic growth in the United States, responsible for a vast majority of the billions of the dollars of EB-5 capital investment occurring nationwide.

IIUSA operations cover advocacy, education, industry development, and research on an international scale. We have over ten standing committees, an advisory board, and Board of Directors. Each of these deliberative bodies has a unique role within the association and are as diverse as our membership. IIUSA staff works diligently to keep this process informed through our emphasis on comprehensive industry data analytics and reporting in all of our communications to members, stakeholders, and the public. The story of EB-5 emerging as a multi-billion dollar source of investment capital creating tens of thousands of jobs annually makes for some astounding infographics that show EB-5’s: rapid growth, contribution to the U.S. economy, project characteristics, investor origin, and demand. I also have had the privilege of visiting EB-5 project sites across the country, met people who got jobs thanks to the Program,

toured businesses accessing capital in tight credit markets, and saw revitalized communities - all thanks to this innovative program.

It is the mix of the astounding numbers we are seeing and the positive impact EB-5 is having on individuals, companies, and regions that lead us at IIUSA to come up with our mantra; EB-5 is Working. We advocate for policies that will maximize the economic impact of the Program and for ethical standards in EB-5 business practices. IIUSA develops and adopts policy positions only after careful and full consideration of key factors, including: global and national industry data, existing internal and external records of relevant deliberations, membership polling, committee recommendations, advisory board comments, and Board approval. We continue to take pride in being a resource to Congress and other stakeholders for facts, data, and legal/policy analysis on the EB-5 Regional Center industry.

IIUSA's education offerings and industry development efforts have grown over time. We host online education, conferences, and trade missions; maintain a members-only database featuring the largest collection of EB-5 digital resources; speak at private and public sector events; and publish an industry-leading quarterly magazine publication, e-newsletters, annual reports, and much more. We also educate the public on industry practices by raising the bar of professional conduct in the marketplace through regularly publishing best practices and promoting compliance and self-regulatory policies.<sup>1</sup>

We also educate existing and emerging investor markets internationally, and the business community domestically, by building partnerships and collaborative relationships with U.S. business and government interests here in the U.S. and abroad, such as American chambers of commerce and U.S. Foreign Commercial Service. IIUSA has also developed partnerships with a variety of organizations around the world that serve constituencies benefitting from EB-5. Conference of Mayors, National Association of Counties, Council of Development Finance Agencies, and American Chambers of Commerce overseas are but a few examples.

Lastly, IIUSA's industry data collection and analysis regularly produce written reports and interactive online tools represent a more comprehensive way of understanding of numerous EB-5 related activities. For example, our website (IIUSA.org) features three interactive maps of economic impact, investor origin, and Regional Center office location. There is also a page full of statistics and data visualization on a digital dashboard tracking investment, economic impact, processing times, petition/application filing volume, and much more. All of this is only possible thanks to the Freedom of Information Act (FOIA), which we support adamantly like so many of you currently leading bipartisan efforts to reform the FOIA process. We support you there as well, having been frustrating of late in the efficiency and resulting data from the process. IIUSA uses the most relevant industry data and developments for analysis in its education offerings, policy considerations, and advocacy efforts.

## **II. EB-5 is Vital to Job-Creating Projects Happening Right Now in the U.S.**

After years of underutilization, post-2008 the Program has become an essential financing tool for economic development in diverse communities across the country. It has financed projects big and

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<sup>1</sup> See <https://iiusa.org/us/bestpractices/>.

small, rural and urban, and private and public (and public-private-partnerships), by providing financing in post-recession capital markets. EB-5 capital has accelerated the fulfillment of community and economic development goals in industries ranging from construction, infrastructure, manufacturing, film, arts and entertainment, hospitality, mining, power generation, oil and gas extraction, transportation and warehousing, healthcare, retail, financial and management services, education, infrastructure, agriculture, and more. In supporting the success of our Regional Center members, an integral part of IIUSA’s mission is to support this kind of economic development and job creation.

According to a New York University study, what was once around an 80% loan on property/land value by banks pre-recession is more like 40-50% post-recession. A variety of factors contributed to the lack of available capital since 2008: (1) the economic contraction of 2008-2009 made banks more risk-averse; (2) new requirements of the banking sector that resulted from the Dodd/Frank Act put further uncertainty and regulation on lending and derivative markets; and (3) guidance from the Office of the Comptroller of Currency (OCC) against over-exposure in the commercial real estate market.

As a result, the sources of capital for a project (a “capital stack”) have to be diversified earlier in the development process for an economic development project to move forward. EB-5 has become an essential development finance tool and a critical source of capital for regional economic development. Analysis of IIUSA’s proprietary database of almost 600 EB-5 projects provides further insight into the various ways EB-5 is being integrated into development finance to deliver on its promise of capital formation and job creation for the U.S. at no cost to the U.S. taxpayer.<sup>2</sup>

### **III. Targeted Employment Areas (“TEAs”)**

A TEA is an area which, at the time of the EB-5 investment, is either a rural area, or an area with an unemployment rate of at least 150 percent of the national average. In designated TEAs, the minimum investment for an EB-5 investor is \$500,000 instead of \$1,000,000.

There are three ways that an area can qualify as a TEA for EB-5 investment purposes:

- An area qualifies as a **rural area TEA** if it is not within either (1) a designated metropolitan statistical area (MSA) as determined by the Office of Management and Budget (OMB), or (2) the boundary of a city or town with population over 20,000.
- An area qualifies as a **high unemployment TEA** if it is an area, MSA, county or city with an unemployment rate of at least 150 percent of the national average as measured by the U.S Department of Labor’s Bureau of Labor Statistics through its Local Area Unemployment Statistics program.

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<sup>2</sup> The last time the U.S. Congressional Budget Office (CBO) officially “scored” a five year reauthorization of the Program in 2008, it was given a “neutral” score – meaning that user fees cover the costs of administering the Program. See: <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/92xx/doc9244/hr5569.pdf>.

- A **smaller geographic area within an MSA, county or city** can qualify as a TEA if it meets the unemployment rate requirement through a designation letter issued by the appropriate state authority based on the latest federal data.

Each state appoints an agency, board or other appropriate governmental body – typically, a state’s labor department or workforce agency but sometime even municipal governments – to review and designate TEAs using federal sources of unemployment data. For areas where the Bureau of Labor Statistics does not produce employment estimates, states are required to use the U.S. Department of Labor’s Local Unemployment Statistics Program methodology to calculate unemployment rates.<sup>3</sup> Federal regulations give states discretion in how TEA boundaries are drawn and the size of a TEAs geographic area similar to the discretion given to states for other federal programs that use unemployment data.

EB-5 regulations give states discretion to configure TEAs as long as the areas are contiguous. The purpose of qualifying TEAs through state designation is to permit a state to identify areas not encompassed by typical political subdivisions as high unemployment TEAs. As the agency with primary oversight of the EB-5 Program, USCIS reviews all proposed state TEA designations to ensure use of the most recent federal statistics and compliance with high unemployment requirements under the EB-5 Program. USCIS regularly issues requests for evidence for state TEA designation letters to assess the data and methodologies used by the state agencies, and USCIS retains the authority to approve or deny a state’s determination of a TEA if it finds the data or methodology to be flawed. The U.S. Department of Labor provides the states with guidance, including technical instructions on proper methodology for determining EB-5 TEAs.

The TEA designation applies to a geographic area that, as a whole, is either a rural area or meets the high unemployment threshold. An EB-5 project may be located anywhere within the designated TEA. In cases where the project site itself is not in a high unemployment census tract, the TEA includes adjoining tracts with high unemployment. This takes into account the flow of labor and economic impact in regional economies and is consistent with how the federal Bureau of Labor Statistics calculates unemployment and how economists study economic impacts. The U.S. Department of Labor’s Bureau of Labor Statistics measures unemployment based on a worker’s place of residence, not place of employment.

Typically, workers do not reside in the census tract of the business or job site where they work. Rather, the labor pool for any business is drawn from a commuter area that comprises surrounding communities. Economists also look at surrounding communities when they calculate the economic impact of a business or economic development project. For example, although a construction worker is employed on a project in one area, they likely live in a different census tract that they are employed. This recognizes that when they leave the work site, workers go home and spend wages at local businesses – buying groceries, clothes and other goods and services.

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<sup>3</sup> See <http://www.bls.gov/lau/lauov.htm>

#### **IV. Various Approaches to TEA Reform**

Over the years, the number of TEA policies has steadily grown. Some are state policies being implemented under current law. Other ideas originate from legislative proposals in Congress, regulatory reform from the relevant federal agencies, or recommendations from outside experts. It is important that the variety of views on this topic are considered to build consensus among diverse constituents towards a compromise that can lead to a long term reauthorization. Another source of ideas is policy tools used in other federal economic development programs administered by agencies throughout the government.

This hearing is an good example of public discussion of how both the legislative and regulatory reform processes can be used to carefully consider the policy ideas already on the table, ranging from the suggestion by the Secretary of Homeland Security last year to limit the number of census tracts that can be aggregated into a TEA (like some states do) to legislative proposals to create new categories of TEAs in areas that are: distressed urban, rural, cities of a certain size or less, closed military bases, accounting commuting patterns of workers to projects, and industry sectors such as infrastructure and manufacturing. Other incentives were also recently introduced that would seek to use visa availability to further incentivize investment in TEAs. This is why TEAs are so interrelated to other core issues.

Last year, after the introduction of several pieces of EB-5 legislation on various aspects of the EB-5 Program, IIUSA sought to catalyze a long term reauthorization and reform package last year by offering a compromise proposal to Congress on how to approach the four major issues perceived to be impeding progress towards a deal at the time: effective dates, TEAs, minimum investment amount, and job creation methodologies. The compromise was recommended and supported unanimously by the IIUSA Board of Directors, and also received unanimous support from IIUSA's Public Policy Committee and the vast majority of our membership in a poll (83%). The TEA part of the compromise proposal offered the current California TEA policy limiting special high unemployment areas to 12 census tract aggregation.<sup>4</sup> This concept remained a key aspect of the reform and long term reauthorization package that was close to being included in last year's omnibus appropriations legislation effort lead by Judiciary Committee leadership last year that IIUSA was proud to support at the end of the year.

#### **V. Conclusion**

Since offering this feedback to Congress, IIUSA's internal process to set our agenda and consider policy priorities has progressed. This process will culminate at our upcoming membership meeting as initial results of a poll of our members are reported. The poll is based on a set of initial policy priorities unanimously adopted by IIUSA's Board of Directors in February as an initial set of consensus priorities for members to consider as priorities for the industry have shifted as new data has become available. The initial list of priorities currently under consideration by our members is as follows:

- Extend the EB-5 Regional Center program for at least 5 years.

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<sup>4</sup> See <http://business.ca.gov/International/EB5Program.aspx>.

- Increase visa capacity to enhance economic impact of EB-5 and address the backlog of investors currently waiting for visas to be available.
- Staff commercially viable processing system at USCIS that addresses existing backlogs and prioritizes predictability and length of processing times for EB-5 related petitions and applications.
- Avoid retroactive application of new law and reform to protect the existing EB-5 investors and their families and the billions of dollars in financial commitments and contractual obligations.
- Ensure all EB-5 investors with petitions currently filed, or at a later stage in the EB-5 process, are guaranteed adjudication (not approval) and eligibility for immigration benefits throughout the entire EB-5 process (I-526 petition, EB-5 visa issuance, and I-829 petition) regardless of future reforms, lapses, or expiration of the program.
- Continue to allow economic impact models including indirect/induced job creation to count for EB-5 purposes (using the same econometric models that are generally accepted as economic policymaking tools by government, academia, and business).
- Improve program integrity, including through enhanced oversight and reporting requirements of Regional Centers that are not unduly burdensome, such as site visits funded by user fees.
- Clarify geographic (including targeted employment areas (TEAs)), structural, and industry project characteristics that enable consistent adjudication of EB-5 petitions and applications.

IIUSA has long supported and advocated for reform via legislation or regulation via the formal rulemaking process. We are encouraged by recent public statement by USCIS to initiate the regulatory reform process soon and has scheduled a stakeholder meeting for this Monday to discuss next steps in that process. Regardless of regulatory action, there are several issues - especially strains on visa capacity limiting the economic contribution of the EB-5 Program to the U.S. and certain anti-fraud and national security enhancements - that need Congress to act no matter what. IIUSA, the EB-5 Regional Center industry, and our stakeholder partners stand ready to work with Congress and relevant federal agencies to reform the EB-5 Regional Center Program and bring it up to date with 21st standards of anti-fraud, anti-money laundering, and regional economic development policy.

Short term reauthorizations of the Program that do not find the right balance of reform on the core interrelated issues (including TEAs) threaten to undermine the EB-5 Program. Whether it is Congress through the legislative process or USCIS through the regulatory process, TEA reform should not be a zero sum game that results in existing capacity being redirected. Instead, we should seek a solution that expands visa - and thereby economic impact - capacity as part of a long term reauthorization package. The annual visa capacity of 10,000 people - which means

about 3,500 investors and the rest dependents - is accounted for several years by those already deemed eligible for a visa once it becomes available to them based on the U.S.

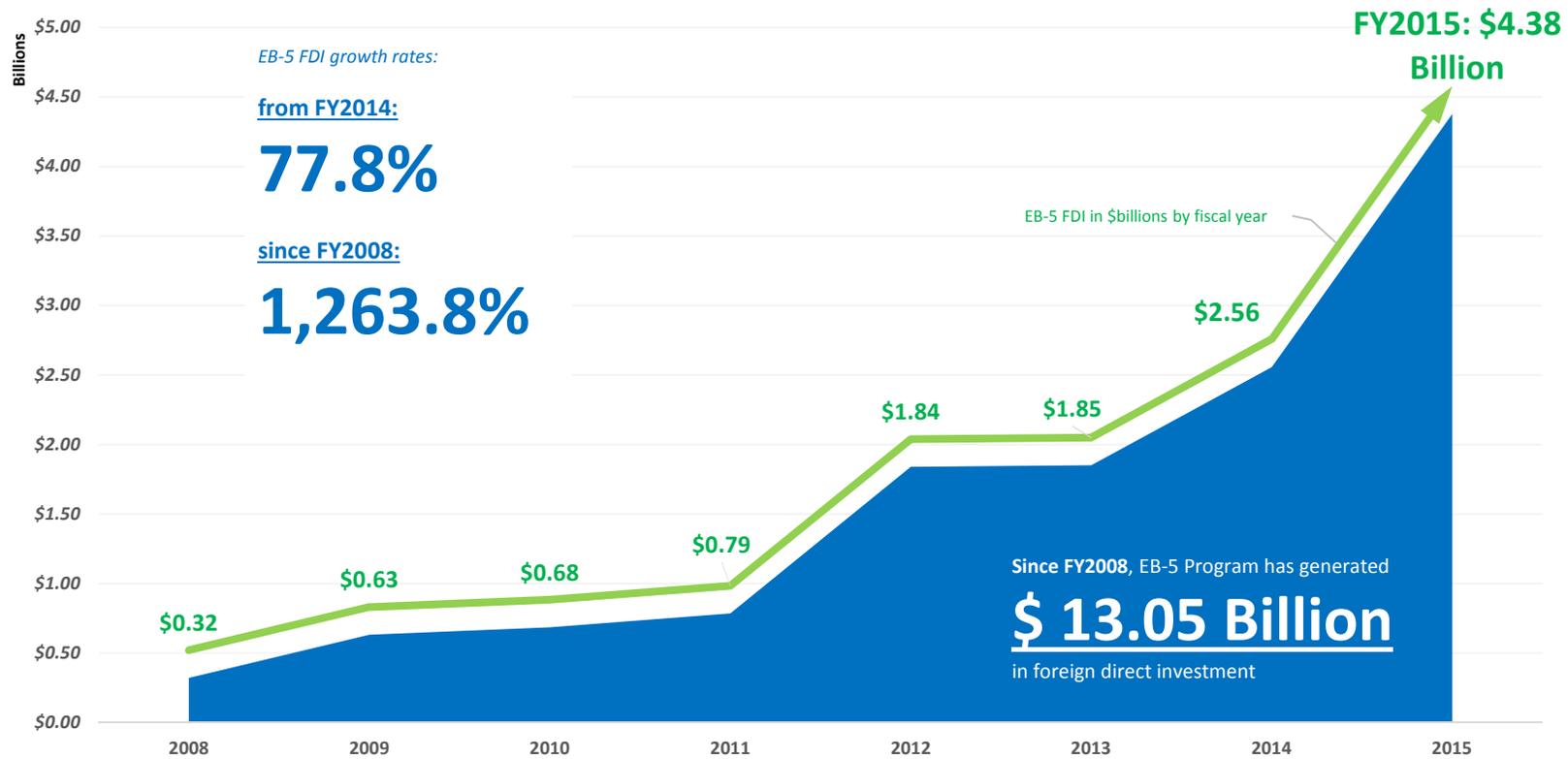
In addition, according to most recent data, as of January 1, 2016 there were approximately 22,000 investors with petitions waiting on government adjudication that will - once processed (see Appendix II) - eventually account for several more years of EB-5's visa allocation. This line represents over \$11 billion of investment capital that will be investing into job creating projects while attracting successful from abroad to join us in writing the next chapter of growth for the American economy. With this explosive growth comes a need for reform. USCIS has made significant improvements in how it administers the program - increasing staffing, enhancing expertise and improving interagency cooperation particularly in the areas of fraud and national security protections. However, the backlog of applications and petitions continues to grow as processing times slowdown even more (see Appendix III).

Reform of the Program needs to find a way to provide USCIS with the necessary resources so that people who want to invest and create jobs in America are not averaging a wait of over a year for their application to be processed. In the meantime, IIUSA is ready to put its policy consideration process to work to review any new EB-5 reform ideas and continue our important work together making the Program a more potent economic development tool for our country by finding a reform and long term reauthorization deal that reforms TEAs alongside the other core issues presenting unprecedented challenges to the EB-5 industry today. The EB-5 industry can adapt to new statutory and regulatory requirements with the right guidance - and as that occurs, the EB-5 industry will continue putting investment capital to work and creating jobs in communities across the country at no cost to the taxpayer.

On behalf of all IIUSA members, thank you for your leadership on EB-5 and thank you for the opportunity to provide today's testimony. I look forward to answering any questions.

# Appendix I

## EB-5 Foreign Direct Investment (FDI) in \$Billions by Fiscal Year since FY2008

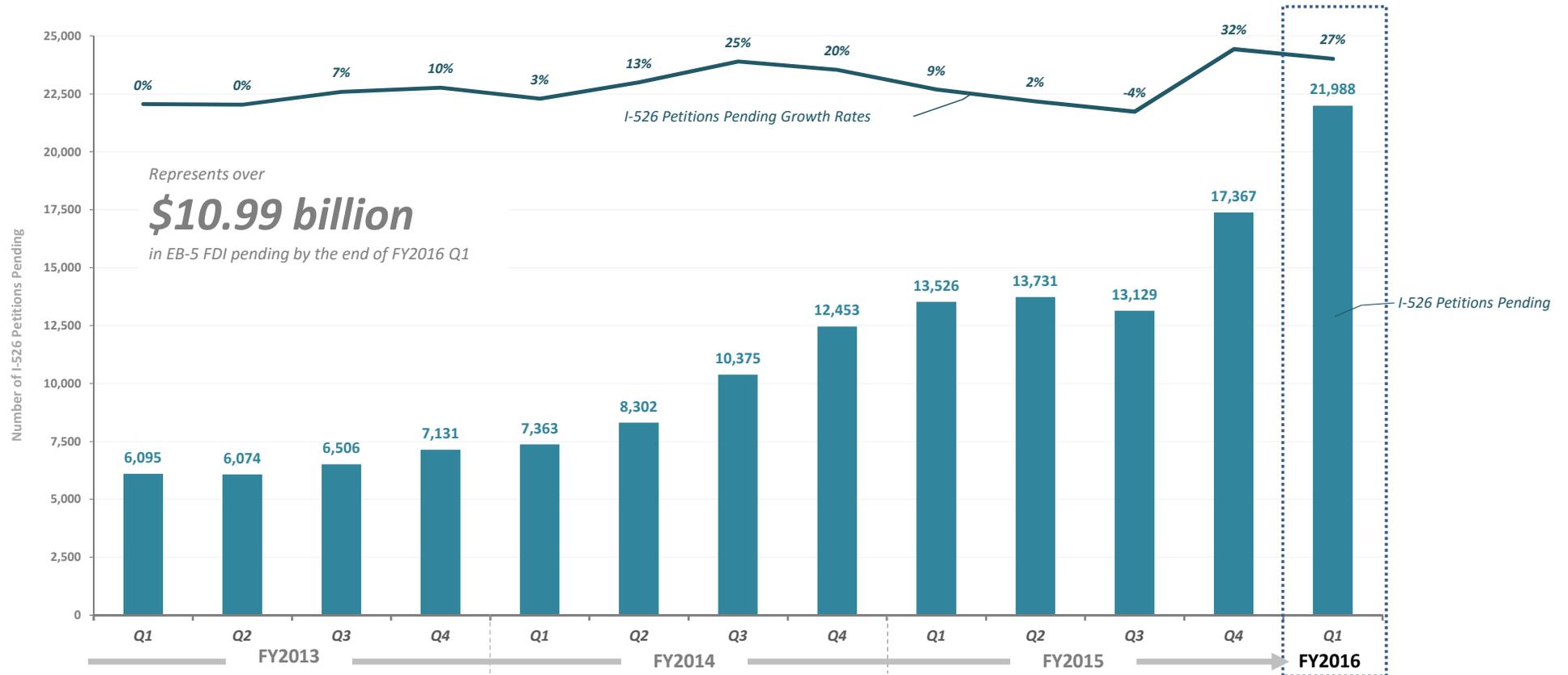


IIUSA Data Report

Source: U.S. Citizenship and Immigration Services (USCIS)

## Appendix II

### I-526 Petition Quarterly Statistics -Petitions Pending v. Growth (FY2013 -FY2016, Q1)

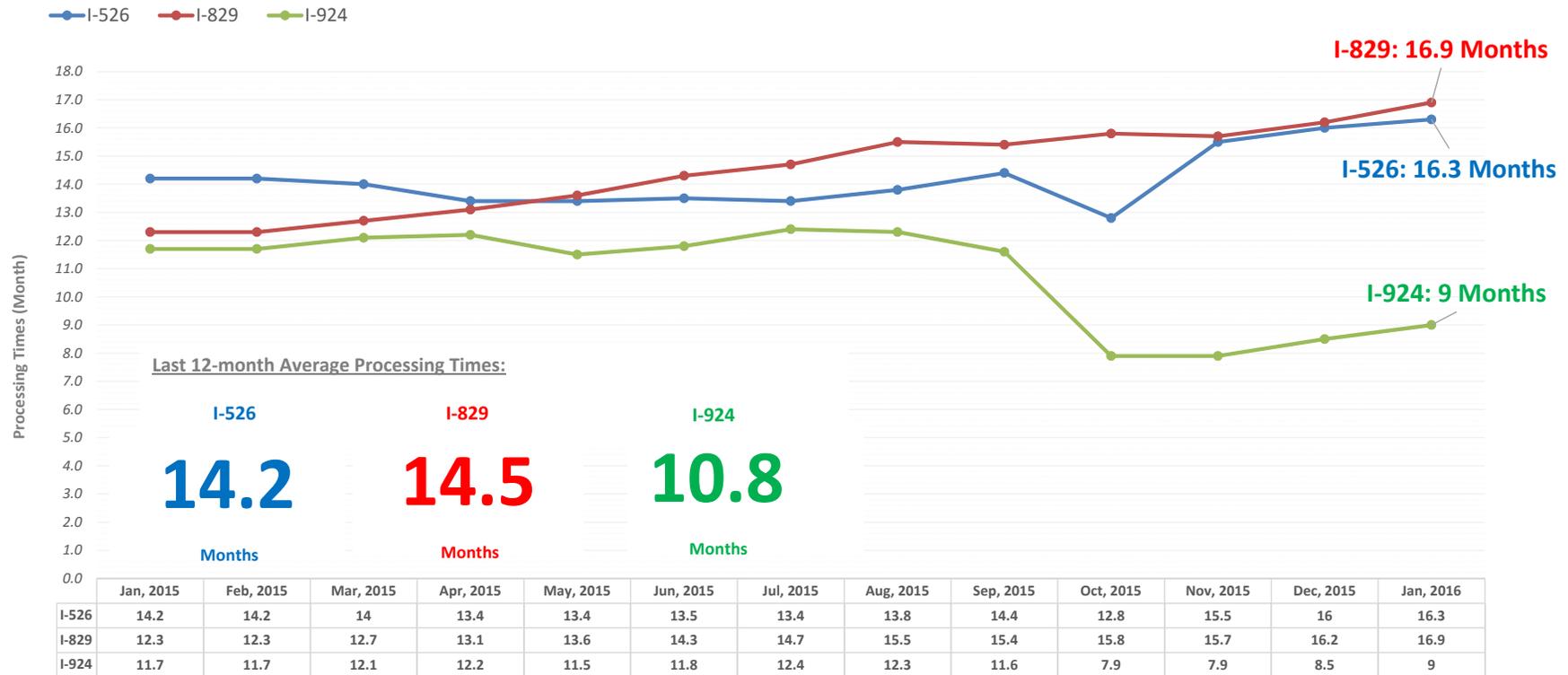


IIUSA Quarterly Data Report

Data Source: U.S. Citizenship and Immigration Services (USCIS) Data Set

# Appendix III

## USCIS EB-5 Petition Processing Times (Months) - January 2015 to January 2016



Prepared by: Invest In the USA (IIUSA)  
 Data source: USCIS Processing Time Information