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September 12, 2016

The Honorable Jeh Johnson
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

As you and I have discussed, the EB-5 regional center program has significant problems that not only pose a threat to our national security, but also threaten the integrity of our financial and legal immigration systems. I appreciate your stated commitment to reform the program administratively, especially if Congress fails to implement much needed reforms. Today, I write to encourage you to investigate and report to Congress on the extent to which foreign governments, foreign corporations and foreign investors are colluding to use the EB-5 program at the expense of U.S. business interests and taxpayers.

When the program was created, foreign investors were generally required to invest \$1 million to benefit the U.S. economy and create at least 10 full time jobs, but investors investing in a Targeted Employment Area (TEA) could satisfy the requirements by investing only \$500,000. Over the years, EB-5 regional centers have gerrymandered the boundaries of TEAs in which investment projects were located to qualify for the discount of \$500,000. Adding to that, in recent years, and in particular since 2009, when USCIS imprudently decided to allow temporary construction jobs to count toward the 10-job requirement, commercial real estate firms have greatly benefited by using the program as a source of low-interest funding for major real estate development projects.

It has come to my attention that USCIS has approved several large-scale EB-5 projects in affluent, gateway markets that involve Chinese companies (and/or their domestic subsidiaries) with substantial financial interests in the underlying real estate assets.

For many years, China has been the major source country for immigrant investors. To attract these investors, U.S.-based EB-5 regional centers often contract with Chinese EB-5 capital placement firms to recruit investors for their respective projects. These Chinese firms are not subject to U.S. securities regulations; and are able to collect monetary payments from U.S.

regional centers and in some instances even obtain equity interests in the EB-5 project. Regional centers typically pay top placement agents an up-front fee of \$75,000 or more per \$500,000 investment they obtain, plus a 3 to 8 percent share of the interest over the term of the loan.¹ According to a leading New York real estate industry trade publication, the Chinese firms are vulnerable to corruption and the Chinese government may also unfairly benefit from payments made to state-owned placement firms.²

At least one USCIS approved, foreign owned and managed regional center is profiting from EB-5 projects.³ Modern Land, a Chinese real estate developer, established and manages the Crown Point Regional Center in Texas.⁴ According to the South China Morning Post, Modern Land established U.S. offices and the U.S. subsidiary (Crown Point) to build houses in Houston, Texas for Chinese immigrants who want to immigrate.⁵ After investors obtain the green card, Modern Land plans to offer them the option to apply their \$500,000 initial investment towards the purchase a home.⁶

Permitting foreign ownership of a regional center improperly allows foreign corporations to acquire interests in U.S. real estate projects, market U.S. green cards to foreign investors, and in some cases gain significant profits from selling EB-5 developed products, i.e. new homes, to foreign investors. Moreover, EB-5 investment projects that create a tangible output, such as a real estate development, that is principally if not exclusively available for the enjoyment only of the foreign investors themselves, have a snake-eating-its-own-tail quality about them that Congress absolutely did not intend; they subordinate any benefit to the American people actually living in the Targeted Employment Area to the benefit of wealthy foreign investors.

Despite these conflicts of interests, USCIS has approved several other EB-5 projects that are owned or influenced by foreign corporations and foreign governments to develop major real estate projects in Illinois, New York, and California. For example, the Chinese firm, Wanda Commercial Properties, partnered with Chicago-based Magellan to build a 93-story residential and hotel complex, known as Vista Tower.⁷ According to Chicago Business Real Estate Daily and Chen Xu, chairman of the China General Chamber of Commerce USA, Vista Tower will be the biggest real estate investment by a Chinese company in the United States.⁸

In New York, a newly constructed luxury condominium is on track to become the first major New York development almost entirely funded by Chinese investors.⁹ According to The Real Deal, the developers have secured a \$320 million loan from Bank of China and a \$135 million

¹ Katherine Clarke, "EB-5's gatekeepers," The Real Deal (April 1, 2016), available at http://therealdeal.com/issues_articles/eb-5s-gatekeepers/

² *Id.*

³ Crown Point Regional Center, <http://crownpointus.com/index.php>.

⁴ Crown Point Regional Center, <http://crownpointus.com/about-us.php>.

⁵ Summer Zhen, "Beijing developer targets immigrants with U.S. homes that come with 'green cards'," South China Morning Post (June 14, 2016), available at <http://www.scmp.com/property/hong-kong-china/article/1974543/beijing-developer-targets-chinese-immigrants-us-homes-come>

⁶ *Id.*

⁷ *Id.*

⁸ Dennis Rodkin, "Vista Tower 'a \$1 billion vote of confidence in the future of Chicago,'" Chicago Real Estate Daily (Sep. 7, 2016), available at <http://www.chicagobusiness.com/realestate/20160907/CRED0701/160909904>.

⁹ Konrad Puzier, "100 Varick could become the first NYC development funded almost entirely from China," The Real Deal (April 5, 2016), available at <http://therealdeal.com/2016/04/05/100-varick-could-become-first-nyc-development-funded-almost-entirely-from-china/>

equity investment from Cindat, the U.S. subsidiary of Chinese investment firm Cinda Asset Management.¹⁰

According to Bloomberg, Chinese financial real estate firm, Zarison Holdings, has partnered with a U.S. corporation to develop its first investment outside China in Oakland, California, known as the Brooklyn Basin development.¹¹ Zarison plans to use the \$1.5 billion development to target Chinese nationals to buy homes in the United States. I understand that USCIS approved this project in August 2016.

The EB-5 program has derailed from the original intent of revitalizing distressed and urban communities who desperately need the additional investment capital. Instead, the program is increasingly becoming dominated by mega-projects in the most affluent areas, and foreign corporations are mostly likely to reap the economic benefits. According to the Wall Street Journal, the financing package for Hudson Yards, “one of the largest capital raises for a U.S. real-estate project since the 2008 downturn,” includes \$2.19 billion in debt from lenders including Bank of China and Commercial Bank of China.¹² Pacific Park, also in New York, is seventy percent owned by Chinese-owned Greenland.

As noted by The Real Deal, “it’s no secret that New York City developers have over the past few years been tapping the EB-5 spigot. Giant builders...have all helped themselves to the relatively cheap capital they can access through the program.” Michael Gibson of USAadvisors.org said, “The Chinese are going to go with the Chinese, not because they trust them but because at least they know how to get a hold of them. It’s Chinese capital going directly to the Chinese.”¹³

In addition, Shanghai Municipal Investment (SMI) is said to be partnering with Extell Development in New York on a \$2.98 billion project in Central Park, Manhattan, according to Mingtiandi, “China’s intendent source of China real estate intelligence.”¹⁴ Allegedly, this project, which could be the second tallest building in New York, may be renamed the SMI Central Park Tower.

It is obvious that foreign corporations and foreign governments are increasingly taking advantage of the EB-5 regional center program to establish ownership in U.S. based real estate projects. I am concerned that this may allow foreign corporations and foreign governments to profit from marketing U.S. green cards to their citizens in return for investments and ownership in EB-5 real estate projects.

¹⁰ “Wailian Overseas Consulting Group Holds 6th Annual Invest in America Summit,” PR Newswire (Mar. 31, 2016), available at <http://www.prnewswire.com/news-releases/wailian-overseas-consulting-group-holds-6th-annual-invest-in-america-summit-300244578.html>

¹¹ Dan Levy, “China Developer Joins Signature in \$1.5 Billion U.S. Project,” Bloomberg (Apr. 11, 2013), available at <http://www.bloomberg.com/news/articles/2013-04-11/china-firm-joins-signature-in-1-5-billion-california-project>.

¹² Peter Grant, “Developers Cut \$5 Billion Deal with Lenders, Tenants to Finance Hudson Yards,” The Wall Street Journal, (December 11, 2015) available at <http://www.wsj.com/articles/developers-cut-5-billion-deal-with-lenders-tenants-to-finance-hudson-yards-1449852863>

¹³ Katherine Clark, “How much longer will the love affair last?,” The Real Deal (April 1, 2016), available at http://therealdeal.com/issues_articles/how-much-longer-will-the-love-affair-last/

¹⁴ Michael Cole, “Shanghai Tower Developer Said to Invest in \$2.98B NYC Project,” Mingtiandi (August 7, 2016), available at <http://www.mingtiandi.com/real-estate/outbound-investment/shanghai-tower-developer-said-to-invest-in-2-98b-nyc-project/>.

In light of these issues, I am requesting a briefing on the policies and guidance that permit foreign ownership of an EB-5 regional center and allow foreign corporations to invest in and profit from EB-5 projects. I would like your Department to do a top to bottom review of this matter, and would like to know what the Department, and USCIS in particular, is doing to ensure that U.S. interests are protected in the EB-5 program.

Thank you in advance for your prompt response. If you have any questions, please contact Kathy Nuebel of my Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman