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REAUTHORIZING THE EB–5 REGIONAL CENTER PROGRAM: PROMOTING JOB CREATION AND ECONOMIC DEVELOPMENT IN AMERICAN COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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REAUTHORIZING THE EB–5 REGIONAL CENTER PROGRAM: PROMOTING JOB CREATION AND ECONOMIC DEVELOPMENT IN AMERICAN COMMUNITIES

WEDNESDAY, DECEMBER 7, 2011

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Grassley, Sessions, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. Thank you for being here on a rainy, sloppy morning. I am hoping that in Vermont the temperature is 10 or 15 degrees lower because that would mean about 10 inches of snow, which we describe as something between a dusting and a snowfall back there.

I thank our witnesses for joining us today to discuss the EB–5 Regional Center Program and its proven record of creating jobs in America. In 2011 alone, this program is on track to create an estimated 25,000 jobs and provide direct investments in American communities of $1.25 billion. And, of course, there is great potential to increase the program's annual benefits. If the full number of visas allocated to the program are utilized, based upon investment and job creation requirements, the program has the potential to create or preserve 100,000 jobs per year, with contributions of $5 billion in foreign capital investment. That is as much of a win-win program as one could think of. The benefits come at no cost to American taxpayers. The program is and should continue to be an important component of our overall immigration system.

Now, the current authorization for the program is set to expire at the end of September 2012, and I have talked with a number of Senators, both Republicans and Democrats, who believe along with me that it is critical that Congress support U.S. Citizenship and Immigration Services, which administers the program, along with the many men and women who are working hard to bring jobs to their communities, by enacting the permanent authorization legislation that I introduced in March of this year. I thank the Chairman of the Subcommittee on Immigration, Refugees, and Border Security, Senator Schumer, for joining me as a cosponsor of the leg-

islation. I know that like many parts of the United States, from Alabama to Vermont, entrepreneurs in New York City have turned to financing through the EB–5 Regional Center Program.

Like any program, there is always room for improvement, and I commend Director Mayorkas at USCIS and Homeland Security Secretary Janet Napolitano for making the program a central part of the Department's contribution to the President's broader job creation efforts. The history of our Nation has been written in part through the contributions of immigrants. My maternal grandparents came to Vermont from Italy and started a small stone-carving business in South Ryegate, Vermont, as Mr. Stenger knows. That is up near his part of the State. The place does not have many jobs. It had a lot more jobs once they started their business. That is replicated in so many other areas, not only in our State but all 49 other States. And the EB–5 visa and other employment-based visa categories within our immigration system can play a meaningful role in writing our future economic resurgence.

I have been working for many months with interested parties and USCIS to put together a legislative framework to make significant improvements to the overall program to provide them with additional authorities to ensure that the program maintains the highest level of integrity and efficiency. I have shared this framework with the Judiciary Committee's Ranking Member, Senator Grassley, and I hope we can work together to make the program an even more secure and effective job creator.

But I think we should move forward with a permanent authorization without further delay. I think Congress has to show potential investors from around the world that America welcomes immigrant investors and values their contributions. If not, then we are going to lose those potential investors to our neighboring country of Canada or to the United Kingdom or to Australia or other nations that recognize immigration through investment and seek it out. We are already hearing that the uncertainty about the program's future is a drag on investment and on our economic recovery.

We are going to hear from Bill Stenger of Jay Peak, Vermont. His work, financed in part through the EB–5 Regional Center Program, has revitalized a very rural part of Vermont. It has turned a beloved and iconic Vermont ski resort into a world-class, four-season resort. I know that when I go up there and I hear carpenters and plumbers and electricians from that area who live in that area tell me they are making more money than they have ever made before, and they have been able to do more for their kids, they can invest in the community, they are seeing the training they had as Vermonters pay off, and now they are actually making money in an area where there was not much money to be made, it really makes this Vermonter happy.

In Texas, the city of Dallas has recently entered a partnership with a capital management firm to create the City of Dallas Regional Center to create jobs for the people of Dallas. Companies like Marriott Hotels and Lennar Homes have turned to the EB–5 program to finance job-creating projects around the country. So this is happening all over, and, again, I think that is why we have support for this from both Republicans and Democrats. But I would

like to see—I will put my full statement in the record, but I would like to see this become permanent so that investors can plan.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Senator Grassley.

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

Senator GRASSLEY. Thank you, Mr. Chairman.

This program and its regional centers, now 21 years old, was created to benefit American communities through investment and job creation. Certainly at a time of economic uncertainty, high national unemployment, and stagnant growth, we must consider all tools at our disposal to increase economic activity.

While I supported the EB–5 Regional Center Program in the past, I hope to hear how this program can better serve our Nation's needs in the future. Today's hearing is a way for us to conduct our constitutional duty of oversight. It is important for us to review the EB–5 program to determine how many jobs are created and hear whether the program is increasing economic activity in the areas most needed.

I hope to work with the Chairman on reauthorizing a reformed and cost-effective program in addition to several other immigration programs that will expire at the same time. We need to enact reforms that will make the EB–5 Regional Center program worthy of its goals.

Some may argue that the EB–5 Regional Center Program is doing very little to stimulate the economy. I appreciate the administration's recent attempts to focus energy and attention on reforming the program and increase participation in regional centers. The changes they institute will help, but at the end of the day, one fact remains. The program is simply a way for wealthy investors to buy a green card, not only for themselves but for their families. No skills or management experience are needed. One only needs to write a check to gain entry into the United States. While taking a financial risk in projects or businesses in the United States is admirable, evidence suggests that it is not doing enough to spur job creation.

Since Congress kept the number of employment-based immigrants that are allowed to enter the United States each year, it is important that we utilize those visas to the best extent possible. We must have an immigration system that is based on merit. We should be taking the best and the brightest. We can afford to be choosy, so we must elect to provide immigrant visas to those with tremendous skills that will benefit our country in the long term.

So, in that vein, we must figure out where the EB–5 Regional Center Programs fit into this equation. I have the question of whether or not the EB–5 program attracts the individuals we need or are we simply selling visas to the highest bidders.

I want to take a moment to express serious concern about reports that the EB–5 Regional Center Program is creating jobs for people in this country illegally. The U.S. Citizenship and Immigration Services Administrative Appeal Office reviewed the applications for one investor in the South Dakota Regional Center. The AAO said

that the agency was correct in denying his request for green card status because the employees were in the country illegally. If we are going to allow wealthy foreigners to enter the United States to create jobs, I would sure hope that U.S. citizens are the benefactors. I would like to hear today about how the centers create jobs, how they report this information to the Federal Government, and whether the USCIS is doing substantial auditing of centers to verify the information received from the regional centers.

We must also do a better job of rooting out abuse in EB–5 promoters abroad. Reuters recently reported on how cash-hungry American businesses are working abroad to promote EB–5 Regional Center Programs. Many of these EB–5 promoters are mischaracterizing the program, luring investors here and robbing them of the American dream. In fact, China has reportedly put restrictions on these promoters. When asked by Reuters, both the USCIS and the Securities and Exchange Commission were unaware of any marketing abuses. Maybe it is time that these agencies figure out what is truly going on.

I would like to work with Chairman Leahy on ways to strengthen the oversight over the program. I think he may have some good ideas on doing that, including requiring more reporting by the centers and ending centers that are not producing as they promised.

In addition to restoring program integrity, I think it is important to consider whether the dollar amount should be raised. They have remained $500,000 and $1 million since the early 1990s.

Finally, we must close any loopholes that allow a foreign investor to bring capital to the table, receive a green card, and then withdraw his financial support and walk away from the regional center. I realize that we have testimony from every single regional center program citing the benefit foreign investment has provided their community. I appreciate Mr. Stenger appearing before us again today and sharing with us how the program has benefited Vermont.

Conversely, I look forward to hearing from Mr. North, a Fellow at the Center for Immigration Studies. Mr. North will provide a different perspective.

I also look forward to hearing from Mr. Divine, who had experience in overseeing the operation of the program when he worked as Chief Counsel and Acting Director of the U.S. Citizenship and Immigration Service.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you, and I can assure you I will work with you on what we can do to make this permanent. I know Senator Sessions and Senator Cornyn on this Committee and Senator Schumer and others have expressed an interest in going forward with the program, and I am happy to work with them. I just want to bring enough stability into it so that people can plan.

Now, William Stenger, our first witness, comes to us today from my home State of Vermont, as I have said. He is currently the president and chief executive officer and co-owner of the Jay Peak Resort in Jay, Vermont. He has served as the chairman of the Vermont Ski Areas Association and was chairman of the Vermont Travel Council from 1998 to 2007. The Vermont Chamber of Commerce in a statewide vote selected him as the 2011 Citizen of the

Year for his work in transforming Jay Peak into a four-season resort, and also not just for what he has done for Jay Peak, but the huge amount of economic development it has created in the Northeast Kingdom of Vermont. Mr. Stenger was instrumental in creating the Vermont Regional Center in 1997.

I would note also for the record that both he and his wife are personal friends of me and my wife. We value their friendship, and I especially value all the jobs you created up there.

Mr. Stenger, please go ahead.

STATEMENT OF WILLIAM J. STENGER, PRESIDENT, JAY PEAK RESORT, JAY, VERMONT

Mr. STENGER. Mr. Chairman and Senator Grassley, thank you for this opportunity to be before you today. My name is Bill Stenger, and I am president and co-owner of Jay Peak Resort located in Jay, Vermont.

I am very appreciative of this opportunity to meet with you today and share with you my perspective on the significant value the EB–5 foreign investor Regional Center Program represents to my employees, my community, and the State of Vermont and why I urge Congress to make this program permanent.

My company, Jay Peak Resort, was founded in 1955 as a winter ski resort. It is located in Orleans County, 3 miles from the Canadian Border. George Aiken, one of Vermont's most revered U.S. Senators, called the northern region of Vermont the "Northeast Kingdom" because of its beauty and authentic, hardworking people.

Orleans County is a place of great rural agricultural character, with beautiful mountains, streams, and lakes, but it also has the most significant unemployment and economic challenge of any region in Vermont.

However, despite these facts, I am very optimistic about the economic future of our community and its citizens. We are seeing at our facilities the significant creation of the biggest positive life changer a person needs—a job. A job that will sustain them and their families with benefits, and a future that inspires and rewards their economic and human spirit. We are seeing this employment creation at Jay Peak and our surrounding rural communities in this terribly troubled economic time solely because of the EB–5 foreign investor program.

In 1997, I had the opportunity to work with you, Mr. Chairman, and at the time Governor Howard Dean to create the Vermont Regional Center and its first EB–5 Pilot Project in Vermont. In 2004, because of improved CIS efforts and the renewed commitment of our State officials led by Governor Jim Douglas, the EB–5 program became truly functional from our perspective in Vermont.

Since 2005, Jay Peak has developed several EB–5 projects at the resort creating over 2,000 jobs in our region and over the next 2 years will create that number of jobs again in this northern rural community.

The EB–5 program has provided us the most important tool we need to build our business and create economic energy: affordable equity capital.

Affordable capital is almost non-existent in this marketplace. However, through the EB–5 Regional Center Pilot Program, Jay

Peak has raised over $250 million of equity capital by welcoming over 500 investors from 56 countries. This capital has helped us build year-round facilities that we desperately need in order to be competitive, but also helps us create full-time job opportunities for so many citizens throughout northern Vermont's highest unemployment communities.

The EB–5 program is a win-win-win program for all involved. Jay Peak is gaining access to equity capital to create facilities it needs, and by doing so scores of quality year-round jobs are created in a rural, high unemployment area where our Government wants to see job creation.

In exchange for the job-creating equity capital investment, the foreign investor benefits from a green card for themselves and immediate family members. I have met personally almost every investor participating in the Jay Peak program. They are a group of wonderful people, so appreciative of the opportunity to live in and contribute to our society. I can tell you that their equity investment is changing our region in a profound and positive way. Once in the United States, they have continued to contribute as every one of them are well-educated, successful people who have brought their family values and capital with them. They are now living throughout the United States and contributing to the communities they live in.

The success of Jay Peak's EB–5 program has now led to other important job-creating projects in our community. Ariel Quiros, my partner in Jay Peak, and I have created AnC Bio Vermont, a biotech research company that will employ 200 people in Newport, Vermont, and will open in 2012–13. EB–5 investment has made this possible. We are also working on additional Orleans County commercial facilities, affordable housing and infrastructure programs, all scheduled for 2012 and 2013, resulting in several thousand more job opportunities—all EB–5 funded, all with overwhelming community support and significant economic impact. However, unless this program is extended, none of these job expansions will take place.

I would like to close by mentioning a few things that will make the EB–5 program better for all concerned.

Congress must make this program permanent so regional centers can concentrate on developing quality programs and long-term job-creating programs. The short-term extensions that have taken place in the past cripple the effectiveness because the projects cannot plan correctly and potential investors will not have the confidence to stick with the program because of its uncertainty.

USCIS should make every effort to be as efficient as possible with swift EB–5 case processing so that predictability can become a program asset and not a program concern.

Mr. Chairman, Senator Grassley, thank you again for this opportunity. I look forward to answering questions you might have in a few minutes.

[The prepared statement of William J. Stenger appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Stenger.

Our next witness is David North, a Fellow at the Center for Immigration Studies, which is a Washington, DC, think tank. He

joined in 2008. In addition to posts in Federal and State government, he is a former Assistant Secretary of Labor, and he has conducted immigration policy research for several decades.

Mr. North, welcome. Please go ahead.

STATEMENT OF DAVID NORTH, FELLOW, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC

Mr. NORTH. Thank you, Mr. Chairman, Senator Grassley. We are gathered here to discuss what I think is, contrary to what my friend to the right just said, a dysfunctional portion of a silly program which should be allowed to wither and die.

As background, the INA and its employment-based section permits aliens to secure green cards by investing various sums in the Nation. This is the program for the fifth and lowest priority of aliens coming through the employment-based section, therefore it is called EB–5. The most troublesome part of the EB–5 program relates to the regional centers, largely private, for-profit entities—not true in Vermont—that identify investments that can provide green cards to aliens making half-million-dollar short-term investments. That sum allows the alien and his family after 2 years to secure a full set of green cards.

The other part of the program permits the issuance of green cards for a full-million-dollar investment without reference to the regional centers. It is the regional center part of the program which is up for reauthorization, not the larger program, which has some of its own problems. My conclusions about these programs come after examining the American program from the outside fairly carefully and after having been retained by the Government of Australia some years ago to evaluate its somewhat comparable program from the inside. There are seven reasons for my views.

First, the program is placed in a very odd and non-helpful bureaucratic location for the stimulation of international investment in the United States.

Second, its scale is all wrong. We are giving away too much for too small of an investment. Further, raising venture capital half a million dollars a tranche is, to say the least, inefficient. The big guys do not do it that way. The regional centers, with their half-million schemes, essentially undercut the more sensible million-dollar part of the EB–5 program.

Third, such programs, if we have them at all, as they do in Australia, should be about creating business entities, not passive investments. It should be about creating real jobs, not elaborate calculations about the indirect creation of jobs, which is now part of the legislation.

Fourth, the EB–5 program by its nature attracts sub-par investments and often scandals. Perhaps that is one of the reasons why it has failed year after year to reach the legislative goal of 10,000 investment visas.

Fifth, the Regional Center Program is inherently clumsy, and the program is too filled with middlemen, both public and private. The program has more than its share of scandals, which I will get into later if anybody is interested.

Sixth, it should not be streamlined, which is what USCIS is currently suggesting. This is an agency that loves to say yes to appli-

cants, but as the table in my testimony shows, USCIS officers have much more trouble with EB–5 applications than others. I think that is something that nobody has really talked about much. There are high rates of internal denials in this program and for good reason. Some of the paper they see must be pretty dreadful.

Seventh, in this program visas go to people who could not get them any other way and to people whose planned investment is actually less, according to the Federal Reserve, than the average mean net worth of all American families in 2007.

Let me expand on one of my observations. In 2009, total foreign investment in the United States increased by $1.9 trillion, according to the Department of Commerce. My estimate based on the investors' green card applications filed 2 years after the first investment—these are the solid ones that remain and are approved. This is 2009—was that they had about $191 million confirmed—that is my estimate. USCIS does not provide the kind of data that we could use on this. And that was a good year for the program. So for every $100 of increased foreign investment that year, the EB program contributed one penny.

Under a much more wobbly statistical base, the initial applications of would-be immigrant investors, USCIS is telling journalists that the level of investment in the just-concluded year was about $1.2 billion. Let us accept that. But even that number makes that ratio only 6 cents for every $100 of additional foreign investment in a typical year.

Thank you for listening to me. I look forward to your comments and questions.

[The prepared statement of David North appears as a submission for the record.]

Chairman LEAHY. Thank you.

Our next witness is Robert Divine. He is a shareholder of Baker, Donelson, Bearman, Caldwell, and Berkowitz. He is the head of the firm's immigration practice group. Mr. Divine served as Chief Counsel of the United States Citizenship and Immigration Services from July 2004 until November 2006, the year in which he was Acting Director, and then Acting Deputy Director. He has worked extensively with the EB–5 program in private practice. He was elected, as I understand, vice president of the Association to Invest in USA, the national industry association of regional centers.

Mr. Divine, we are delighted to have you here. Please go ahead, sir.

STATEMENT OF ROBERT C. DIVINE, ATTORNEY, BAKER, DONELSON, BEARMAN, CALDWELL, AND BERKOWITZ, P.C., CHATTANOOGA, TENNESSEE, AND VICE PRESIDENT, INVEST IN THE USA (IIUSA)

Mr. DIVINE. Thank you, Mr. Chairman, Senator Grassley, and others. Thank you for having me.

I have submitted written testimony, and I am not going to read from it. It is there and I hope it provides useful background.

Chairman LEAHY. It will be part of the record.

Mr. DIVINE. And it will be part of the record, so I thank you for that. I will try to just give a brief bit of information that might put

things in perspective and respond to a few questions that Senator Grassley embedded in his comments.

Yes, the investor visa, this EB–5 program, is one of many ways that we allow immigrants to come to the United States. At most, if all 10,000 slots were used, it would be 1 percent of the immigration annually to the United States. It is not near that yet, but it is growing and getting toward that.

Particularly as USCIS, the agency that oversees the program, has been making the rules clearer and the processes more rational and clear for the people who are organizing investments and for the investors who are investing, more people have been willing and able to put effort and money into the process to find good projects and develop them, and then more investors have been willing to invest their money and take the risk and use the money to create the jobs that is the point of the program.

If the agency can continue to speed their adjudication, which they are trying to do—they are staffing up—that will really help to improve the number of projects, the quality of projects, and help the program meet its potential, because people need to be able to get the approvals quickly in order to take advantage of the opportunity for whatever project is there. These projects do not wait around forever, and USCIS understands that and are trying to speed the program, speed the process.

That does not mean that they are relaxing their scrutiny, and, in fact, they are ready to deny applications that are not qualifying. And they do so, as was mentioned.

The EB–5 program or category is permanent in the code. The regional center part of the program is not. It is part of an appropriations bill that was enacted in 1992, and since then that program has been extended five times for 19 years. It is time for it to be permanent, and it needs to be done now and not nearer to the date of expiration in September. People need to plan. The process takes a good while to work up a project and then to get the investors approved. And they do not want their money flowing through until they have been approved. And the specter of the expiration of this Regional Center Program in September is already discouraging the development of projects. So it really matters to do it now and not later.

I would like to clarify that the Regional Center Program is not the same as the half-million-dollar thing. The idea of half a million or a million is a function of the regular EB–5 law that is part of the code. It just is a reality that most of the regional centers that are pooling investments have set those in places of high unemployment or in rural areas where half-million-dollar investments are allowed, and that makes sense. But it is not—those two are not necessarily tied together.

I think at this point I would emphasize in terms of the dollar number, half a million dollars versus a million, it is a good question. You know, is half a million dollars enough? The idea of that level that is set in the code was that that amount could be used if it is in a certain targeted area of high unemployment or in rural areas. I guess the program has worked in that almost all of the investment has been spurred in those kinds of areas.

But half a million dollars is a lot of money. It is a lot of money for one person to put in one risky project, and if you put together a bunch of half million dollars in a pool in a project, that can be a big project, and it can create a lot of jobs.

I think I will stop there and be happy to answer questions.

[The prepared statement of Robert C. Divine appears as a submission for the record.]

Chairman LEAHY. Well, I appreciate that very much, and let me ask a few questions.

Mr. Stenger, you have been involved with this program for many years. Obviously, in the kind of business you are in, you have to look for investment and financing opportunities wherever you can. Tell me about what opportunities you have been able to pursue because of financing through EB–5.

Mr. STENGER. Senator, we have been able to expand our resort that, as I said earlier, was founded in 1955, a very popular ski resort. Our goal from a business standpoint is to convert it to a year-round facility. We are currently employing—this coming winter we will employ over 1,200 people at the resort itself. A year from now, that will exceed 2,000.

Because of the success of our EB–5 program and the job creation that we are seeing at Jay Peak, we are also seeing opportunities to develop investment in our region in areas like technology, manufacturing, infrastructure development, and it has been because of the EB–5 funding that we have been able to develop that these other opportunities are taking place.

Now, you are very familiar with our region of Vermont. It is all small businesses. Mr. North was mentioning that the big guys do not raise money this way. Well, we are a small company in a rural part of Vermont, and raising capital this way has been effective for us. We are changing the lives of many hundreds of people in our region. The $500,000 investment is a marketable thing for us. We have worked hard at it, and we are changing the landscape of the economy in an otherwise incredible difficult time.

So I would tell you that the EB–5 program has helped us build our company, but we are also making an impact on other businesses and other opportunities in our region at a time when development is just not taking place elsewhere.

Chairman LEAHY. Well, you mentioned Mr. North. He has also said that this money is more likely to show up in decaying ski resorts in Vermont. I realize if you work at a think tank inside the Beltway the idea that somebody would actually believe in a ski resort—I mean, this is a town that will close down in 3 inches of snow. We stay open with 2 feet of snow overnight. But let me ask you this: You have traveled extensively. You have talked to many potential investors around the world. We have these current short-term authorizations. What kind of reaction do you get from these investors around the world when they see us going from short-term to short-term to short-term reauthorizations?

Mr. STENGER. Senator, in a word, it is uncertainty, and with uncertainty goes the question of whether or not an investor should participate in a program. Having a permanent authorization will give projects the opportunity to plan and develop good programs and good projects, but it also gives the investor the sense of con-

fidence that what they become involved in will have an opportunity to be developed to its completion.

Chairman LEAHY. Well, let me ask a little bit more about that. You talk about having, when this is finished, up to 2,000 people working there. I know this area very, very well, as you have mentioned, and an awful lot of the jobs there are minimum wage jobs when they are available at all. It had the highest unemployment rate before you started doing this in the State.

I get the impression, talking to carpenters and plumbers and electricians there, that they are doing a lot better than they did before. Is that correct?

Mr. STENGER. I would tell you that the workforce that is involved in our programs, there are two kinds of workers. There is the developmental group, and then there is the operational group. The developmental group are the construction workers. I happen to bring a photo with me—and I will share it with you afterwards—of just a fraction of the construction workers that were involved in this past winter, last winter. We had 550 construction workers on our project in northern rural Vermont. It was the largest construction project in the State. A profound economic impact. Now that the construction is nearing completion and we are going on to other construction programs, the operational aspect of the facility kicks in. And we are increasing our full-time employment this year by over 500 people alone just this year. So it is a remarkable transformation, and it is taking place in a rural community that, without this program, none of this would be going on.

So I have to just restate what an important win this is for our community, what an important win it is for the State of Vermont in terms of job creation. And, of course, it is a win for the investor because they get access to coming to this country. But I would restate again what—in our particular case, we have doctors, lawyers, engineers, accountants, entrepreneurial people, all part of our investment group bringing their skills, their education. They are living around the country. They are making contributions to their communities, and they have certainly made a contribution to the success of our community, and I am very grateful for that.

Chairman LEAHY. It is not what you would call a decaying ski resort.

Mr. STENGER. No. I would just share that we are about to really kick the ski seasons off in Vermont. We will welcome 4 million skiers to the State. We have 16 wonderful ski areas. It is 25 percent of our economy. We have 12,000 employees in our industry, and we are not decaying. We are thriving, and we are a wonderful place to visit, and I invite you all to come.

Chairman LEAHY. The number of millions you are talking about, I should just note for the record, Senator Grassley, we are a State of 650,000 people, so that has a multiplier effect.

But you have heard that these EB–5 programs that immigrants who come here have nothing to offer our Nation other than their initial investment. But you said in the past that you make it a point to get to know your investors. Would you agree they have nothing to offer us other than their money?

Mr. STENGER. No, I could not disagree more. One of the great benefits for me personally in this program has been the oppor-

tunity to meet and welcome almost every investor to our facility. We have 500 investors from 56 countries. I have met personally 95 percent of them, welcomed them to the area, shown them what we are doing. They have seen firsthand the impact that their investment is making. They have walked the property. They have seen the hundreds of construction workers. They take great pride in what we are doing. They take great pride in the fact that they are a partner in that effort. They see the job creation. They see the gleam in the eyes of the employees that know they have got a future. And they are proud of it.

They are skilled, educated people. As I said, they are living in various States around the country, professional people, well educated, many of them engineers, scientists. They are a wonderful group, and they are all family people. And I have been proud to meet them and proud to welcome them.

Chairman LEAHY. Also, as my last question, in some of the testimony this morning there has been a suggestion that, of course, just with all the hundreds of billions, trillions of dollars ready to invest, you should just go somewhere else. Have you found that in this current economic environment it is that easy to go somewhere just to raise money?

Mr. STENGER. I would tell you that in this climate the ability to raise capital for the things we are doing would have—it is impossible to do so in a manner that would allow us as effectively and as quickly create the things we have done. You can borrow money if you have got 50 percent down. And if we have—we are just opening a $25 million indoor water park facility. I could have borrowed half of that if I had the $12 million in cash to put up. Everyone knows that, yes, banks have money to loan as long as you have got half of it in your pocket before you ask for the other half. That is not how business works these days.

Chairman LEAHY. You are speaking from a real-world experience, not from a think tank experience. I will leave that simply as a gratuitous comment from the Chairman.

Senator Grassley.

Senator GRASSLEY. Thank you.

I want to be responsible in this issue of undocumented workers. I want to admit that we only have anecdotal information, but I would like to ask you to what extent you have to go or do go to make sure that the centers make sure that the investments do not create jobs for people here illegally. And I might also add to that whether or not it is the center's responsibility, it is the investor's responsibility, or the business that is involved.

Mr. STENGER. Senator, I am a hands-on owner of a business, and I am on-property every single day. We have hired—as I said, at the Peak we had 550 construction workers on our project. The marching orders that I gave to my team is that we are to hire local companies in almost every instance to do all of the construction. We know these companies. They are made up of 10, 15, 20, 30 employees. They are from our local counties. They are Vermonters. They are benefiting directly from the investment.

So we are a hands-on facility. I know the workers, I know their families, and we have been able to employ—through these last 3 years of terrible economic turmoil, we have been able to employ al-

most every construction worker in our county and the surrounding counties. They are U.S. residents. They live in the area. Their families are there. They are invested in the communities, and they are all U.S. workers.

Senator GRASSLEY. You do not have to use e-verify, but I would like to know whether or not you do.

Mr. STENGER. We do.

Senator GRASSLEY. You do. Okay. Thank you.

Mr. North, along the same lines of the question I asked him, has your research shown examples other—and I only gave one example, so I want to admit that and be responsible about it—of centers hiring undocumented individuals?

Mr. NORTH. That kind of data is very hard to obtain from USCIS, and I must say that what we do know about many of the internal things about that agency as far as this program is concerned relates to cases in which the staff has said no to an application of some kind and then the regional center or the individual entrepreneur has gone to the Administrative Appeals Office—which is part of the agency—and there we get documents, we get a hearing officer telling us what is going on in that particular case. There were 28 cases that were appealed in the year, I think, 2009, and in every single case the AAO hearing officers, administrative law judges, said, "Yes, the staff was right. This is a bad application."

So there is a quantity of bad applications out there, but only once that process gets before an administrative law judge do we see much in the way of detail.

Now, there was one case that you mentioned, and let me just elaborate on that a little bit. This is a bankrupt—and there is a lot of this going on—dairy farm in South Dakota that was funded by——

Senator GRASSLEY. Do not take too long because I want to ask another couple questions. But go ahead and quickly finish.

Mr. NORTH. The dairy farm had claimed 17 workers, and they got into it, and the judge found that 16 of them were illegals. Now, that is the one example I have, and it is a good example.

Senator GRASSLEY. Okay. I am going to ask separate questions of each of the three of you, but it deals with this one issue. As I said in my opening statement, I am concerned about the potential loophole that allows investors to withdraw their investment in regional centers after receiving their green card. So, Mr. Divine, are you aware of any instances in which an investor withdrew the investment and walked away immediately after receiving a green card? And if you are, or if you think it is a problem, do you think that it is a loophole that should be closed?

Mr. DIVINE. I would say that most of the investors, if you asked them what are their goals, they would say, "I want to get a green card, and I want to keep it. In order to keep it, I will need to see the jobs created in the time frame that they need to be created."

Two, "One of these days I want to get my principal money back. I do not want to lose my money."

And, three, "I would like to make some money if I can." Those are their priorities.

Sure, would they like to get their money out of a particular investment quicker after the conditions are removed from their per-

manent residence? I would say most people probably would say, "Yes, I would like to realize some gain from that investment and then diversify." Ask anybody who has made a bunch of money in any investment, they will tell you that. But, in reality, very few of these investors have been able to take their money out. If I put my money in a hotel development——

Senator GRASSLEY. Can I assume then that you are saying that there does not need to be any changes made in that regard?

Mr. DIVINE. I do not think so.

Senator GRASSLEY. Okay. Let me ask Mr. Stenger, is it common for an investor in your experience to withdraw his or her investment immediately after receiving a green card?

Mr. STENGER. Senator, no. Our programs require that the investor be invested for a minimum of 5 years and be paid back only if the business is in a position to do so at the end of that time. So we have the benefit of the capital to create the business, get it running, make it successful, assure that the jobs will be created and maintained, and then only if the business is successful will there be an exit strategy for the investor.

Senator GRASSLEY. And, Mr. North, do you have any comment in regard to my question or what the other two witnesses have suggested?

Mr. NORTH. Yes, I do. Very quickly, the law says you can take the money out after 2 years. In some cases you will find that that is maybe not a good idea. Or maybe the investee will not let you. But the law says you have got to invest for 2 years and that is all.

Second, at one of the stakeholders meetings put on by USCIS, I asked a question: Have you done any research on how much money stays beyond the 2 years? And the answer was no. There is sort of a lack of curiosity in that agency about some of these things.

Senator GRASSLEY. Thank you, Mr. Chairman. I would like to have a second round.

Chairman LEAHY. Certainly.

Let me just ask, Mr. Divine, you hear this criticism that the money only has to remain invested for 2 years. Has that been your experience?

Mr. DIVINE. If money gets put into a hotel, as I was beginning to explain earlier, the developer of that project would have to be able to find somebody to buy the hotel or would have to be able to find somebody to refinance it with other money. That is not easy. It is not any easier necessarily than when it was in the conditions that led to the foreign investors being the best option for financing the thing in the first place.

But, hey, if it is a successful project, it makes money, and it can be sold, I do not see any reason why the project should not be able to be sold and for the investor to be able to realize the return of his investment, maybe gain on his investment, just like every other investor.

Chairman LEAHY. If you have a project that is funded directly through the Immigrant Investor Program and it is believed to be employing undocumented workers, Immigration and Customs Enforcement could investigate the employer, could they not?

Mr. DIVINE. They could. I mean, I think what we need to realize also is that the case that is being cited as evidence that sometimes

these projects have hired an unauthorized worker is one in which USCIS did some kind of checking and determined that the worker was not authorized and stopped it. I mean, the process worked.

Chairman LEAHY. But that would be the same with any company.

Mr. DIVINE. Every one of these employers is required to complete the I–9 form, but USCIS goes a step further and does a check of some kind that led to the case that has been mentioned.

Chairman LEAHY. I am not a witness here, but I am so struck by Mr. North speaking of these decaying ski resorts in Vermont and the suggestion that this is not creating jobs. I mean, I recommend that all of you actually—Mr. North, in your case, get out from inside the Beltway and go up there and talk with some of these people. For one thing, you do not have too many illegal immigrants who quite have the Vermont accent you hear around there, especially when they talk about their grandparents who live there, and parents and so on. In fact, you almost need a simultaneous translation. They will say, "We have got about nine of us here, and we have been here since 5 o'clock this morning, Mister."

[Laughter.]

Chairman LEAHY. Not quite what an illegal immigrant might be saying. In fact, I think Mr. Stenger would say that one of his British investors was thinking, "Are we all speaking the same language here?"

Mr. Divine, let me ask one more serious question about the short-term authorizations we have had in the program. I asked Mr. Stenger this. Let me ask you what your experience is as a former agency official. What does it do if Congress keeps running up against a last-minute reauthorization? In this case it would be, I think, September of next year, September of 2012. What does that do to an agency trying to administer a program if Congress waits until the last few days to reauthorize it? What is the practical effect?

Mr. DIVINE. I mean, the agency in effect is—USCIS is a fee-funded agency, so it is essentially kind of running a business and has to cover its expenses with the income that is generated. To run this program correctly, USCIS needs to staff up in a big way, dealing with the volume that is already there and anticipating the increased volume of more investment as we get even close to half of the 10,000 visas that are available in this category.

But, you know, imagine running an agency where you are running up against the possible sudden end of the program, essentially, but you are trying to staff up in a big way to handle the volume that you hope will come. I mean, that has got to feel like a conflicting situation, and you would imagine that it is going to hold somebody back.

Now, I am not saying that they are holding back, and I know that they are trying to staff up because I am sure they believe and hope that the program will be reauthorized for the benefit of the Nation. But I think, you know, the concern is there. And is that really where they are going to be able to invest their time and resources in trying to clear up the rules of this program so that everybody knows whether they can qualify or not and which kinds of

projects are going to qualify and so forth? We need that continually.

Chairman LEAHY. And, Mr. Stenger, we in Vermont—again, a small State, but we have the State government involved with the Vermont Regional Center. Does that add benefits to Vermont's program?

Mr. STENGER. The fact that the State of Vermont is the regional center administrator, and actually I guess you would call it the owner of the regional center, has been a tremendous benefit. As you know, in Vermont we have local, regional, and State regulations both at the planning stage as well as permitting. We have worked hand in hand with the State. Our Governor has been very supportive. It is a win for us to be in partnership with the State of Vermont as the regional center. Our investors recognize the stability and the continuity of the State's involvement. They appreciate our continuity and our stability.

So for us, the Vermont Regional Center has been a wonderful partnership, and we look forward to that continuing.

Chairman LEAHY. And we are small enough that people could be reached easily. I think everybody finds that surprising when they find that certainly past governors, and I believe the current Governor, myself, and others have listed home phone numbers.

Mr. STENGER. We are a small State, a small community, and we know how to get things done.

Chairman LEAHY. Yes. Mr. North, I made a few comments about your comments. Is there anything you would like to add, out of fairness to you?

Mr. NORTH. Thank you, sir. I would like to make simply one point. We have apparently a tremendous success story. We have not heard about the profits that the investors received on this thing yet, but we apparently have a successful operation.

I do not think that the United States Senate should operate on anecdotes, and I think that looking at this thing from a greater distance, perhaps without knowledge of ski resorts—I am a little old to ski—I do not think that we should rely too much on one glorious anecdote, and I will leave it at that.

Chairman LEAHY. Well, I appreciate that, and I appreciate your implication of that, that we Senators only rely on anecdotes. We study a great deal more than that. I mean, I realize I may live on a dirt road in a small town, I am just a small-town lawyer, but I actually read other things and I actually have even traveled outside of Washington to other parts of the country, and I actually have the ability to learn. I do not work for a think tank, but I actually do have a fair amount of information that comes through to me every day.

Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I live on a dirt road, too.

[Laughter.]

Senator GRASSLEY. And I have traveled some with you.

I have just two questions, and if I could have the Chairman's attention on the first one, I think that this—this is going to go to Mr. Divine mostly, but I think that this is something that you see as maybe an issue that ought to be dealt with because I think you got

something on this in your draft legislation. You do not have to listen to everything. I just wanted to make——

Chairman LEAHY. I will listen to it.

Senator GRASSLEY. Okay. Reuters recently reported on how cash-hungry American businesses are working abroad to promote the EB–5 Regional Center Program. Many of these EB–5 promoters are mischaracterizing the program, luring investors here and robbing them of the American dream. And, admittedly, if you get something out of Reuters, I suppose it has got to be considered somewhat anecdotal, too. But China has reportedly put restrictions on these promoters. And when asked by Reuters, both the USCIS and the Securities and Exchange Commission were unaware of any marketing abuses. So, rhetorically, I want to ask but do not expect an answer from any of you on this point: Is it possible that everyone outside the Beltway is aware of these promoters and yet our Government sits idly by?

So, Mr. Divine, since you worked at USCIS, can you tell us if these promoters were on the radar screen at the agency?

Mr. DIVINE. Well, I will confess that when I was there, I was not really much aware of, you know, what was going on in promoting these projects in China or in any other place back in 2006, when I left. But since then, I have become very aware of how the whole thing works, and I want to make clear, first of all, that these projects for pooled investments where people are investing passively, they are an offering of a security, and they are covered by the U.S. securities laws. And the parties who put these offerings together take great pains to describe—and, you know, people like me help them articulate for the investor, hey, these are the risks associated with investing in this thing.

There is a whole section of the placement memorandum that is given to each one of these people that describes all the risks: You could lose all your money from this; you could lose all your money from that. And it goes on pages and pages. Those things are given to each investor. They have to sign off that they have seen all those things, and it is very carefully managed.

Now, what gets said on the ground in another country about what those documents are, is it possible that there are some promoters in China or elsewhere who are mischaracterizing in Chinese what these documents say? It is possible. If that did happen, then that would be a violation of the U.S. securities laws, and it also would be a violation of Chinese securities laws, by the way. And to my understanding, China has a fairly significant regulatory scheme for these immigration brokers. They are kind of a combination of immigration agent and securities broker. And they have to, in fact, each put up a million dollars to get a license from China for each city in which they are operating. This is my understanding.

They are heavily regulated, and the Chinese Government does not suffer misrepresentation to Chinese investors well, and my understanding is they actually implemented the death penalty for somebody in China who was promoting fraudulent investments to people. So it is pretty serious there.

Is it possible that there could be fraud in the offering of securities? Sure. This is human behavior, and it is the same as it always

ever has been. But there are securities laws and the SEC who are there to address these issues, and USCIS, as I understand it, is working more closely with the SEC and coordinating with them on these issues.

Senator GRASSLEY. I would just ask, following on in the same question, your experience on whether anything more needs to be done or if you even see it as a problem. Mr. Stenger first and then Mr. North, and then I will go on to my last question.

Mr. STENGER. Senator, there are different markets in the world that are involved in this program. As I mentioned, we have welcomed investors from 56 countries. China has an enormous population with an enormous interest in this program.

As a policy, with our particular program, we meet every investor that we can, and by doing so we get any middleman, if you call it, out of the way. I want them to see the project. I want them to come and see what we are doing, understand it themselves on the ground. And when we have done that, it has been incredibly successful for us and for them. And any regional center that is in the marketplace—and there are some 200 around the country. If they take that approach, they will avoid problems such as being mentioned.

Senator GRASSLEY. Okay. Mr. North, if you see it as a problem, give me your answer.

Mr. NORTH. I do see it as a problem, and it is aggravated by the fact that the agency, the USCIS, is currently trying to streamline its review of these proposals. They have set up a new command structure. They are bringing in new staff hopefully that will say yes a little more often than the staff that is there now.

There is a tremendous flow of questionable documentation. USCIS picks up some of it, as you see in the table in my report. And a lot of it does not get picked up until later, and it shows up in the Administrative Appeals Office decisions.

There have been difficulties—and I would just tick these off very quickly—with a plan to use Iranian funds to revive the old Watergate Hotel here in town; a scheme so lacking in integrity in the Mojave Desert that the EB–5 Center itself was terminated; similarly, one in El Monte, California, where it turns out that some of the developers had some pretty questionable backgrounds. There is an attempt——

Senator GRASSLEY. You can go on, but I want to——

Mr. NORTH. I will not.

Senator GRASSLEY. I think you are talking about my last question.

Mr. NORTH. All right.

Senator GRASSLEY. No, go ahead. I just kind of want you at that point, as long as you are using it to answer the other question. Mostly explain what went wrong at these centers, Mojave and the real estate development in El Monte.

Mr. NORTH. Generally, it turned out that not necessarily the regional center people but the developers—and these are two different sets of people. The developers in those two places were snake oil salesmen, and USCIS sort of found out in this case, but there are other snake oil salesmen out there that have not been de-

tected, and I just think there ought to be more, not fewer, checks and balances.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Fortunately, that is the only Government program where people come in like that. We certainly have nothing of that sort from anyone involved with our contractors in Iraq.

I notice that Senator Sessions and Senator Cornyn are here. Before I yield to you, I ask unanimous consent to place a statement from Senator Schumer in the record. Without objection, that will be done.

[The prepared statement of Senator Schumer appears as a submission for the record.]

Chairman LEAHY. I will also submit for the record a number of letters from the EB–5 Immigrant Investor Program, including letters from Marriott International and the Real Estate Roundtable.

[The letters appear as submissions for the record.]

Chairman LEAHY. I might just read a couple sentences from Thomas Berthel from Marion, Iowa, from Berthel Fisher and Company. He says, "Rarely do we find a program that does not rely on taxpayer funding or bank funding that is available at reasonable rates of return. It is our opinion it may be poor fiscal policy to cut off such a funding stream at this critical time." And that I will also place in the record.

Senator GRASSLEY. And I will say for those people, they are reputable people as far as I know.

Chairman LEAHY. Thank you very much.

[The letter appears as a submission for the record.]

Chairman LEAHY. And I will put letters from the regional centers from 17 States who have written to their Senators and Representatives and asked them to go forward.

[The letters appear as submissions for the record.]

Chairman LEAHY. We will go to Senator Sessions, who has worked with me on this subject for years, and then Senator Cornyn.

Senator SESSIONS. Thank you, Mr. Chairman. You and I talked about this before, and I think we share a common understanding that the EB–5 program can be good for America. It can strengthen our country and direct a number of immigrants to our country that have a real chance of creating jobs and growth in the economy. So I think it has potential.

My fundamental view of the immigration situation of our country is that more people want to come here than we can accept. In fact, we have billions of people in the world who, economically and health-wise, would be better if they could live in the United States.

Canada has gone through a series of debates over many years, and they concluded that a good immigration policy would serve the interest of the people of Canada. It is Canada's policy and it is Canada's interest that they are seeking to advance, and they have utilized investment from foreigners as part of their immigration policy. And, Mr. North, I think maybe Australia has, and I will ask you in a second about how they do it.

But I guess I just would say that this has got real potential, Mr. Chairman. Thank you for your personal leadership on it. I do think

we are at a point where we probably are ready to make it permanent, and if so, we ought to take the opportunity to review it very carefully because, if not properly drafted, it can be an abused program. I do not think there is any doubt of that. So that is just what I would say.

I am sincere in saying EB–5, I believe, should be a significant part of our immigration system. Of the hundreds of thousands that come to our country legally every year, this program should represent a part of that because in most instances, they will be investors with wealth to bring, will be job creators, will not drain the treasury but actually making money and increasing the U.S. treasury. And that is what a country with common sense should seek in its immigration policy.

Mr. North, would you share about Australia or Canada, if you would, and how they feel about it and how you evaluate its success or failure in those countries?

Mr. NORTH. I will comment on Australia because I know something about that, and less in Canada. Australia is interested in entrepreneurs and people who are going to put together businesses as opposed to passive investment. Our program is largely one of passive investment. Australia also is more demanding about age. They want you to be under 45 under one set of circumstances, under 55 in another. They have a strong preference for managers, and they also ask for more money than we do. This is American dollars, not Australian dollars. They want $778,000 for one class and $1.5 million for another class. So they are getting more money from their people, and since theirs is a smaller economy than ours, the same amount of money goes a lot further. And so they are getting a lot—they got more bang for their buck than we do, and I think that what Australia is doing is typical of a bunch of other countries, that they require more money than the United States does, and if we are going to be doing this, I think we should be doing it at least at the $1 million level.

Senator SESSIONS. I think that is something we should consider. And I believe the age factor is very real. Canada emphasizes age, that it is healthier for Canada, they have concluded—rightly, I believe—that younger people are able to contribute more to society normally than an elderly person would. As I reach my Federal health care Medicare age, that is something that has become personally real to me.

So, Mr. Chairman, thank you for your leadership. I will not take any more time. I do think that we ought to think it through, look toward the implementation of a permanent policy that serves the interests of the United States, and the age, the amount of money, the quality and nature of the investment, maybe we should look at it. We are in a situation where a lot of people would like to come, so we can try to make the legislation work in a way that it serves our interest.

Thank you.

Chairman LEAHY. I have worked with the Senator, as he knows, on a lot of different issues in the past, but when we join hands, we usually get things passed. So I will work with him on that.

Senator Cornyn, we were talking about Texas in here earlier—in a very positive way, I assure you. I am delighted to have you here. Go ahead.

Senator CORNYN. Well, Mr. Chairman, like so many of us, we have dueling obligations. I was over at the Senate Finance Committee, so I am glad I was able to come over here and say a few words.

The first thing I would like to do is to ask unanimous consent to have some letters made part of the record. I have letters from the cities of Houston, Dallas, and Amarillo and from business leaders around the State all urging the reauthorization of the EB–5 Regional Center Program.

Chairman LEAHY. They will be made part of the record.

[The letters appear as submissions for the record.]

Senator CORNYN. And we also have with us Dan Healy today from Civitas Capital Management of Dallas. He has offered some written remarks that I would like to be made part of the record. He has been working closely with the city of Dallas to develop their regional center.

Chairman LEAHY. Without objection, it will be part of the record.

[The information appears as a submission for the record.]

Senator CORNYN. I will not detain the witnesses much longer. I did see, Mr. Divine, after Mr. North commented, you apparently had something you wanted to add. I will give you a chance to do that.

Mr. DIVINE. Well, I wanted to add a perspective on the other countries' program. In particular, it is my understanding—and I do not claim to be an expert on the immigration law of every other country. But it is my understanding that Australia has two programs that are sort of relevant to this. One is an entrepreneur program that specifically requires the person to create two jobs over a period of a year, and then they can keep the visa longer if they keep the jobs in place. But they also have a raw investor visa which only requires, just as is the case in Canada and in the U.K., a money investment that is essentially equivalent to buying treasury bills, keeping the money in place for 3, 5 years. You get a green card. There is no risk of the money. There is no job creation component whatsoever. And the Canadian amount has been $800,000 and still is operative in Montreal in that regard. And they have filled their program with this. Canada has beaten the United States in attracting foreign investors with their program because of the lack of risk and job creation requirements.

But, okay, that is the program here that is requiring job creation. That is part of the deal. You cannot keep your green card if you cannot show that you created ten American jobs for your money. No other country does that.

Senator CORNYN. Well, thank you Mr. Divine.

Mr. Chairman, I would just say that I look forward to working with you on this, and I agree with Senator Sessions, we ought to—we naturalize 1 million people as new American citizens each year in America. We are a very welcoming country when it comes to legal immigration. That is not to say our system is perfect, because it is far from it. We need to do a lot to make it better. But I do agree with Senator Sessions' orientation that says that we ought

to look at what is in the best interests of our country and our economy, because we have seen countries like Japan, Russia, and others lose population because people are having fewer children and in some instances dying much younger—in Russia, for example—and it has a dramatically negative impact on the economy and one that immigration, sensible immigration, can help improve.

But the two areas that I really think we need to look at closely, too—and I realize this is a multifaceted issue, as the Chairman knows—is obviously making sure that we stop the problem when it comes to unauthorized entry into the country as much as we possibly can by providing more security at the borders. The combination of increased enforcement at the borders and our slower economic, and higher growth rate, for example, of the economy in Mexico have meant that we have had fewer people coming across our southern border. But we need to deal with that as a confidence-building measure for the American people because they frankly do not trust the Federal Government right now in this area. We need to show that we deserve their trust.

The other areas I mentioned were just on the e-verify program that I know Chairman Smith on the House Judiciary Committee is working on, working to try to get input from a broad array of stakeholders to make sure it is done the right way, but to make sure that we actually are able to permit employers to verify who can legally work here in the United States while permitting, in my view guest worker programs and others to provide for temporary needs or less than naturalization.

Finally, I would just say the one area that I am really most concerned about that we talk very little about is the US–VISIT program, people who come into the country on a visa and simply overstay, and they melt into the American landscape, and it is 40 percent, by some accounts, of our illegal immigration, much higher than the number of people who come across the southwestern border, and it is something we have to get a handle on.

But I applaud your concentration on this particular aspect of the program and look forward to working with you on this and other aspects of our broken immigration system.

Thank you.

Chairman LEAHY. I appreciate that. And as the Senator knows, I was one who supported former President George W. Bush's call for a comprehensive immigration bill, which would still be my preference. But if we are not going to get to a comprehensive one, there are a number of these areas. Chairman Smith and I have talked about e-verify and others. Certainly EB–5 is one that we ought to be able to work closely together on. While we will not rely just on anecdotes, I look at how well it has worked in my State. But I see letters from Dallas and other areas how well it has worked there.

If you have people who want to come into the country and create jobs, especially when most of the jobs go to Americans who are already here who could use the jobs, then we ought to be supportive.

I also think that we cannot lurch from a year-by-year reauthorization. We have got to fish or cut bait on this thing and say if we are going to do it, let us do it permanently. Let us find out if there are problems, let us correct the problems, and let us make a piece

of legislation that can have bipartisan support, bicameral support, and that will allow investments to continue.

Senator CORNYN. Mr. Chairman, if you will permit me, I would just say, just to make sure we keep at the top of our list, too, or toward the top the H–1B visa issue, highly skilled people who come to our colleges and universities and get degrees, subsidized in part by the American taxpayer, and who then we do not permit to stay here even though we need some of those skills.

Chairman LEAHY. I was speaking on that just the other day, and it just makes no sense, especially in these universities and colleges, whether private or public, we are subsidizing one way or the other. Even the private ones, they still get tax benefits elsewhere. And it makes no sense to say, "Come on over here, get these advanced degrees, and, oh, by the way, you cannot stay, go back to your own country and create jobs there and compete with us." I would kind of like to keep them here.

Thank you. We stand in recess.

[Whereupon, at 11:23 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities"

Wednesday, December 7, 2011
Dirksen Senate Office Building, Room 226
10:00 a.m.

Bill Stenger
President & CEO
Jay Peak Resort
Jay, VT

David North
Fellow
Center for Immigration Studies
Washington, DC

Robert C. Divine
Shareholder
Baker, Donelson, Bearman Caldwell & Berkowitz, P.C.
Chattanooga, TN

PREPARED STATEMENT OF WILLIAM J. STENGER

TESTIMONY OF

WILLIAM J. STENGER

President of Jay Peak Resort

Jay, Vermont

Hearing on:

Reauthorizing the EB-5 Regional Center Program:
Promoting Job Creation and Economic Development
in American Communities

Before the

Senate Committee on the Judiciary
United State Senate

Washington, D.C.

Wednesday
December 7, 2011

Mr. Chairman and Distinguished Members of the Judiciary Committee,

My name is Bill Stenger and I am President and co-owner of Jay Peak Resort located in Jay, Vermont.

I am very appreciative of this opportunity to meet with you today and share with you my perspective on the significant value the EB-5 foreign investor, Regional Center Program represents to my employees, my community, and the State of Vermont and why I urge Congress to make this program permanent.

My company, Jay Peak Resort, was founded in 1955 as a winter ski resort. It is located in Orleans County three miles from the Canadian Border. George Aiken, one of Vermont's most revered U.S. Senators, called the northern region of Vermont the "Northeast Kingdom," because of its beauty and authentic hardworking people.

Orleans County is a place of great rural agricultural character, with beautiful mountains, streams and lakes, but it also has the most significant unemployment and economic challenge of any region in Vermont.

However, despite these facts I am very optimistic about the economic future of our community and its citizens. We are seeing at our facilities the significant creation of the biggest positive life changer a person needs, a job. A job that will sustain them and their families with

benefits, and a future that inspires and rewards their economic and human spirit. We are seeing this employment creation at Jay Peak and our surrounding communities in this terribly troubled economy solely because of the EB-5 foreign investor program.

In 1997, I had the opportunity to work with you, Mr. Chairman and then Governor of Vermont Howard Dean to create the Vermont Regional Center and see Jay Peak become its first EB-5 Pilot Project. In 2004, because of improved C.I.S. efforts and the renewed commitment by our State officials led by Governor Jim Douglas, the EB-5 program became truly functional from our perspective in Vermont.

Since 2005 Jay Peak has developed several EB-5 projects at the resort creating over 2,000 jobs in our region and over the next two years will create that number of jobs again.

The EB-5 Program has provided us the most important tool we need to build our business and create economic energy, Affordable Equity Capital.

Affordable capital is almost non-existent in this marketplace. However, through the EB-5 Regional Center Pilot Program, Jay Peak has raised over $250 million of equity capital by welcoming over 500 investors from 56 countries. This capital has helped us build year-round facilities that we desperately need in order to be competitive, but

also helps us create full-time job opportunities for so many citizens throughout Northern Vermont's highest unemployment communities.

The EB-5 Program is a win-win-win program for all involved. Jay Peak is gaining access to equity capital to create facilities it needs and by doing so scores of quality year-round jobs are created in a rural, high unemployment area where our government wants to see job creation. In exchange for the job creating equity capital investment, the foreign investor benefits from a green card for themselves and immediate family members. I've met personally almost every investor participating in the Jay Peak Program and they are a group of wonderful people, so appreciative of the opportunity to live in, and contribute to, our society. I can tell you, that their equity investment is changing our region in a profound and positive way. Once in the United States, they have continued to contribute as everyone of them are well-educated, successful people, who have brought their family values and capital with them.

The success of Jay Peak's EB-5 Program has now led to other important job creating projects in our community. Ariel Quiros, my partner in Jay Peak, and I have created AnC Bio Vermont, a biotech research company that will employ 200 people and will be open in 2012-13. EB-5 investment has made this possible. We are also working on additional Orleans County commercial facilities, affordable housing and infrastructure programs, all scheduled for 2012 and 2013, resulting in several thousand more job opportunities. All EB-5 funded, all with overwhelming community support and significant economic

impact. However, unless this program is extended none will be possible.

I'd like to close by mentioning a few things that can make the EB-5 Program better for all concerned.

- Congress must make this program permanent so Regional Centers can concentrate on developing quality, long-term job creating programs. Short term extensions cripple the effectiveness because the projects can't plan correctly and potential investors won't have confidence to stick with a program because of its uncertainty.

- U.S.C.I.S. should make every effort to be as efficient as possible with swift EB-5 case processing so that predictability can become a program asset and not a program concern.

The current leadership at U.S.C.I.S. administering the EB-5 Program is interested and supportive of the EB-5 investor programs and see its economic benefit to the nation. Making this program permanent will send a clear message to all involved to embrace making the EB-5 Program even more impactful for all Regional Centers around the country so that the fullest positive economic benefits can be realized across the country.

Mr. Chairman and Distinguished Committee Members, the small business community in this country needs all the equity investment it can get right now. The EB-5 Program is a wonderful example of an

economic stimulus requiring no tax dollars, is not a burden to anyone and has nothing but good benefits for all involved.

Thank you for giving me the opportunity to speak with you today. I urge the Senate to make the EB-5 Regional Center Program permanent.

William J. Stenger
President & CEO
Jay Peak Resort

PREPARED STATEMENT OF DAVID NORTH

Testimony Before the U.S. Senate Committee on the Judiciary
Wednesday, December 7, 2011 – (release on delivery)

Statement by David North, Fellow,
Center for Immigration Studies, Washington, DC

on

"Re-authorizing the EB-5 Regional Center Program:
Promoting Job Creation and Economic Development in American Communities"

Mr. Chairman and Committee members, we are gathered here together to discuss what I think is a dysfunctional portion of a silly little program, which should be allowed to wither and die.

As background, the INA in its employment-based section, permits aliens to secure greencards by investing various sums in this nation.

The most troublesome part of this program relates to the regional centers (largely private-for-profit entities) that identify investments in the U.S. economy that can provide greencards to aliens providing half million dollar level, short-term investments. That sum allows the alien and his family, after two years, to secure a full set of greencards. The other part of the program permits the issuance of green cards for full million dollar investments, without reference to the regional centers. These can be made anywhere in the nation.

It is the regional center part of the program which is up for re-authorization.

My conclusions about the program come after examining the regional center part of the immigrant investment program, from the outside, fairly carefully, and after being retained by the government of Australia, some years ago, to evaluate its somewhat comparable program, from the inside. There are seven reasons for this view:

1. The program is placed in a very odd and non-helpful bureaucratic location for the stimulation of international investment in the U.S.

2. Its scale is all wrong, we are giving too much away for too small an investment. Raising venture capital at half a million dollars a tranche is, to say the least, inefficient. The regional centers, with their half-million schemes, essentially undercut the more sensible million dollar part of this overall program.

3. Such programs, if we have them at all, should be about creating business entities, not passive investments: it should about creating real jobs, not elaborate calculations about the indirect creation of jobs.

4. The program, by its nature, attracts sub-par investments, and often scandals. Perhaps that is one reason, it has failed, year after year, to reach its legislative goal of 10,000 investment visas.

5. The regional center program is inherently clumsy, and the program is too filled with middlemen, both private and public.

6. The program, which has had more than its share of scandals, should NOT be streamlined; if anything, it needs more checks and balances, not fewer of them as the US Immigration and Citizenship Services is currently suggesting.

7. Further, immigration visas to this struggling, over-populated nation should be regarded as precious, and given only for really significant reasons; to genuine spouses of genuine U.S. citizens, to really talented aliens (such as those in the first employment preference category), and to actual refugees fleeing from real dictators. In this program they go to people who have nothing to offer to the U.S. except a two-year investment of half a million dollars, to people who could not get a visa in <u>any other way</u>, and to people whose financial contribution to the U.S. *is actually less* – according to the Federal Reserve – than the average (mean) net worth of all American families in 2007.

Finally, half a million dollars, in 2011, is not as significant as it used to be, when this program was started twenty years ago.

Bear in mind that the basic deal, with the regional centers, is that all members of the immediate family get permanent green cards in exchange for a two-year investment of half a million dollars; with a family of five that's $100,00 each. Then the money can be withdrawn.

1. The misplaced program. Let's say that water safety is a good idea, and let's acknowledge that someone dying a preventable death in Great Salt Lake is just as dead, and just as mourned, as someone dying a similar death off a Florida beach. Preventing maritime deaths is a good thing, so is increasing foreign investment. That does not mean that the US Coast Guard is best positioned to run a water safety program in Utah, its nearest assets being a thousand miles away.

Similarly, if our goal is to increase foreign investment in the U.S., there are lots of government agencies and programs – in Treasury, in State, in Commerce – that are far more sophisticated about investment matters, and far better placed to encourage investment – in significant hunks – than the USCIS. Further a relatively minor official in a major Chinese or Swiss bank can probably generate more investment in the U.S. in a single memo, than USCIS

can, huffing and puffing, all year long. A single 32-year-old executive at Goldman Sachs, similarly, could, by opening an attractive IPO to foreign investors, bring more money from overseas than all those EB-5 immigrant families, with their (temporary) half million contributions.

2. The scale is wrong. As I have written in a research paper that the Center for Immigration Studies is about to publish, foreign investment comes to the U.S. routinely, in large volume, with minuscule help from EB-5. In 2010 total foreign investment in the U.S. increased by 1.9 *trillion* dollars,[i] according to the U.S. Department of Commerce. My estimate (based on the investors' greencard applications filed two years after the first investment) is that EB-5 investment that year was about $191 *million*[ii], and that was a well-above-average year for the program. So, for every $100.00 of increased foreign investment that year, the EB-5 program contributed *about one penny.*

I have heard that using a much more wobbly statistical base (the initial applications of would-be immigrant investors) USCIS is telling journalists that the level of investment in the just concluded fiscal year (2011) was at the $1.2 billion level. For the sake of argument let us accept that estimate, but even this (probably inflated) number would bring the amount of increased foreign investment up to the level of only *six cents for every one hundred dollars.*

If we do continue such a program, we should, as the other English-speaking countries [iii]do, require much larger investments than the half million now prevailing.

Needless to say, because the regional centers part of the program requires only half a million dollars, the other part of the EB-5 program where the basic level is one million, has just about become a dead letter.

3. Passive investments or the creations of jobs and businesses. The emphasis in the current regional center part of the EB-5 program is all wrong, it is on making passive investments through these centers for a two-year period, and getting greencards for the investor's family at the end of that time.

This is not a program that seeks to bring entrepreneurs from overseas. Similarly, early in its life the program called for the creation of ten-full time jobs for each investment, with the jobs going to citizens and greencard holders who were not members of the investor's family. More recently the jobs do not need to be identified as such, they can be calculated as "indirectly created" by just about any "reasonable" methodology the regional center can conjure up.

The actual creation of businesses and jobs should be the thrust of the program. We also should be realistic about the requirements – what kind of investment – in the real world – can create ten full-time jobs with an investment of $500,000? Maybe a small restaurant in a small city. But do we really want more little start-up restaurants? Clearly there are basic activities such as farming, mining, and manufacturing where $500,000 could not possibly create ten

full-time, year-around jobs.

4. Too many questionable projects. As a one-time publicist, both on Madison Avenue and in the greyer confines of government offices, I have often wondered why the EB-5 program, so heartily promoted by USCIS, has not issued a series of press releases about its success stories, or why that agency has not, at least, sponsored an outside evaluation of its own program. (I am, however, expecting one of my witness colleagues to provide a ski-slope success story today.)

The lack of internal research on the program was confirmed in a recent *Los Angeles Times* article which stated: "The USCIS, by its own admission, has failed to closely track the flow of EB-5 money, how the projects are being sold to investors or whether the projects were successful. . ."[iv]

Certainly if you are in the business of increasing investment in America over the last 20 years your program must have found some new wonder drug, brought year-around minor league sports to some sports-free small city, converted a dying coal town to an artist's and tourists' center, or done something along one of those lines. That there have been no press releases like these suggest either PR dullness or, more likely, nothing to publicize.

On the other hand, if you pay a little attention to news reports on EB-5 programs, as I have done, you encounter myriad examples of EB-5 projects that have gone wrong, in one of many ways. Here is a small and recent sample:

- o there was a bankrupt dairy farm in South Dakota, where 16 of the 17 jobs created by EB-5 funds, albeit briefly, turned out to be held by illegal aliens[v];
- o a convoluted effort, eventually rejected by USCIS, to use some legitimate money and some questionable (Iranian) funds to revive the old Watergate Hotel in Washington[vi];
- o a scheme that was so lacking in integrity, in the Mojave Dessert in Central California, that the sponsoring EB-5 regional center itself was terminated[vii];
- o similarly, a mixed-use real-estate development, in El Monte, California, with a highly controversial set of developers, has collapsed taking down another EB-5 regional center[viii].

There are many more.[ix]

There is a built-in reason for these EB-5 failures. There is, in the broader world, a wide spectrum of investment opportunities.

There are the topnotch ones, which are known to only the innermost of the insiders. Then there are those more publicized good deals in which major Wall Street outfits jostle each other to get a fraction of the play. Further down the ladder, there are other opportunities that can find the needed financing without going beyond familiar sources of capital. And then there

are truly marginal opportunities in which the promoters have to struggle to get any money at all, and are willing to go to the extremes, in this case of: accepting a complex government program and limiting their take to half a million per investor.

It is these bottom-of-the-barrel investment opportunities that predominate in the EB-5 program. If you cannot get money for your new business, except by offering a greencard to every member of the investor's family, maybe it's not a very attractive business.

It is no wonder that the Congressional ceiling of 10,000 EB-5 investor visas has never been approached, let alone filled. In some there were only a few hundred applicants; those numbers have risen recently, however, as USCIS has beaten the drums for this program.

5. Too many middlemen. There are too many private and public sector middlemen in the regional center program. Meanwhile, in the main-line, million-dollar investment program the whole thing is much simpler, but it is not used much because a half a million requirement beats a million dollar requirement every time. So why not let the regional center program die? That would automatically double the size of the initial investment, and remove most of the middlemen entirely.

I am not philosophically opposed to certain sensible governmental interventions in markets – such as the creation of the social security and Medicare programs – but I must point out to my friends on the right that eliminating the regional center part of this program should be praised by all thinking free marketers.

I think that such de-regulation makes perfect sense, though it would probably reduce the number of visas issued, and probably reduce the amount of money to be raised by this program. The reduction of EB-5 visas, by the way, would allow those visas to flow into the other employment-based categories, which is not a bad thing. Perhaps pending legislation could be amended so that any EB-5 visas not used would go directly into the EB-1 category for really skilled people.

6. Streamlining is NOT the answer. Faced with massive disinterest on the part of potential investors, the new leadership of USCIS has taken a number of steps to promote the EB-5 program, and to modify its administration to attract more successful applicants.

One of the ways to get more successful applicants is to make it more likely that the staff of USCIS says "yes" to the applications than it has in the past. The rarely discussed problem, for the agency's leadership, is that the staff has been much more likely to reject EB-applications than those it sees elsewhere in the agency's programs.

USCIS is an agency that loves to say yes to aliens, whatever they want. In fact, as we show in the attached table, the agency said "no" to less than 1% of the time to one major kind of application, in FY 2009, and said "no" about 8% of its time to all agency forms in FY 2011.

(Prying data out of USCIS, particularly on its "no" decisions, is very difficult.)

In contrast, the staff said "no" to 11, 14, 17, 31, and 45% of the time on various EB-5 applications. A small number of these denials, 28 in FY 2010 were appealed to the DHS review panel, the Administrative Appeals Office, and *all* 28 of the denials were upheld. In short, the staff found a lot *not* to like in the EB-5 applications.

Rather than focusing all its efforts on raising the quality of the applications, USCIS has floated a "reform" program[x] that is designed to re-shape the decision-making to get more "yeses" out of the system. There will be (or are) new staff members at the bottom of the decision-making process, and a new command structure within the organization.

Further, in an unusual move, under certain circumstances people who want to open regional centers will be given a right to talk directly to USCIS staff about their proposals. It is often not realized that except in certain categories, USCIS staff makes all their decisions on paper (or computer) records, and rarely see any applicants face to face. If you are a citizen, for instance, and you want to bring to the US a relative dying of cancer in some medically-under-served part of the globe you are not allowed to talk to a USCIS decision-maker, but if you want to create a regional center – why there's a partial *open sesame* waiting for you.

Given the unusually large number of apparent problems with these applications, as shown by the unusually high number of staff-level denials, as reflected in the table, USCIS should be increasing its checks and balances in this program, not reducing them.

7 Let's assume that the aliens arriving as EB-5 immigrants have only the half million dollars with them, if that is the case letting them into the country – because they have money -- actually *lowers* the average net worth of American families.

This is hard to grasp, but the average (that's the mean) net worth of an American family in 2007 was $556,300, according to the Federal Reserve, and printed in the *Statistical Abstract of the United States*[xi]. A family arriving with $500,000 in hand would thus *lower* the average net worth of American families.

If we are going to have an immigrant investor program at all, obviously we should raise the stakes.

We can do so, without lifting a finger, by simply letting the regional center program die, thus increasing the minimum investment for immigrants to one million dollars.

# # #

Table

USCIS Staff Finds More Problems in EB-5 Applications than in Most Others

Applications and years	Receipts*	Approvals	Non-Approvals **	Non-Approval Percentage
nonimmigrant worker visa, FY '09, (I-129); agencywide	295,061	294,016	1,045	0.4%
all agency forms, first three quarters FY '11	4,024,628	3,695,843	328,843	8%
investor's conditional visa (I-526)	FY'09 1,469 FY'10 1,534	1,262 1,369	207 165	14% 11%
investor's green card application (I-829)	FY'09 403 FY'10 330	347 274	56 56	14% 17%
regional centers (I-924) **	FY '10 110 FY '11 146	61 101	49 45	45% 31%
AAO appeals, FY '10 (complete set); EB-5 investor cases	28	0	28	100%

* actual receipts in rows 1, 2, and 6, and sum of approvals and denials in rows 3 and 4; non-approvals in row 2 include both denials and petitions not acted upon, and in other rows denials only. See note immediately below about row 5. USCIS does not consistently publish denial statistics.
** USCIS data in row 5 are presented in numerical totals of proposals and then percentages for denials; the author calculated the numbers of approvals and non-approvals from those data. The FY '11 data are for the first half of the year.

Data Sources: row 1, data from FOIA request to USCIS from Center for Immigration Studies, 2011; row 2, published USCIS data at [http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static_files/all-form-types-performance-data-2011-june.pdf];
rows 3 and 4, published USCIS data at [http://www.ilw.com/immigrationdaily/news/2011,0922-eb5.pdf];

row 5, published USCIS data at [http://blog.lucidtext.com/category/eb-5-statistics/]
row 6, calculated by the author from AAO decision files at
[http://www.uscis.gov/portal/site/uscis/menuitem.2540a6fdd667d1d1c2e21c10569391a0/?vgnextoid=0609b8a04e812210VgnVCM1000006539190aRCRD&vgnextchannel=0609b8a04e812210VgnVCM1000006539190aRCRD&path=%2FB7+-+Form+I-526+and+I-829%2FDecisions_Issued_in_2010]

Source of Table: Center for Immigration Studies, Washington, D.C., 2011

End Notes

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i. U.S. Commerce Department data as quoted in a recent Bureau of Economic Analysis press release at [http://www.bea.gov/newsreleases/international/intinv/2011/pdf/intinv10.pdf]

ii. The $191 million investment total estimate is based on the number of investors in 2009 who successfully filed I-829 petitions (there were 347 of them that year, according to USCIS statistics, the peak in the program's history). Approvals of these documents confirmed that their investment obligations had been met, and granted the investors, and all members of their immediate families, greencards for life. The dollar total estimate is based on the assumption that 10% of the investments were at the $1 million level, and the rest at $.5 million. The math is:
(312 x $.5 million = $156 million) + (35 x $1 million = $35 million) = $191 million.

Unfortunately, USCIS has not published data on the total amount of money invested in the EB-5 program.

iii. Other than Canada. The Bahamas, for example, in effect, requires a $1.5 million dollar investment, such as in a mansion, before it gives a permanent visa to the alien investor; since our economy is 2,000 times as large as that of those islands, this means that The Bahamas gets 6,000 times as much bang for the buck for its minimal investment than we do for our minimal investment, of a half million. (For more on these comparisons, see the forthcoming CIS Backgrounder on the EB-5 program).

iv. P.J. Huffstutter "In U.S. visa program, money talks", *Los Angeles Times*, September 3, 2011, at [http://articles.latimes.com/2011/sep/03/business/la-fi-easy-visa-20110904/3]

v. See my Center for Immigration Studies blog: "Case Study: Alien Investor Program Has a Spectacular Failure in S. Dakota" at: [http://www.cis.org/search/node/south%20dakota]

vi. See my blog "Another Watergate Mystery" at
[http://www.cis.org/north/watergate-eb5-scheme] February 20,2011

vii. See my blog "USCIS Does the Right Thing on Immigrant Investor Scheme in the Mojave" at
[http://www.cis.org/north/mojave-investor-visa-scam] January 2, 2011

viii. See my blog "Total Crash of Calif. EB-5 Project Makes USCIS Look Careless" at

[http://www.cis.org/north/total-crash-of-california-eb5-program] November 28, 2011

ix. For more examples, see the about-to-be published CIS backgrounder mentioned in endnote 3; some of the material in this section of the testimony is drawn from that source.

x. See [http://www.uscis.gov/USCIS/Outreach/Feedback%20Opportunities/Operartional%20Proposals%20for%20Comment/EB-5-Proposal-18May11.pdf] **Note:** at first glance there would appear to be a typographical error in our citation -- "Operartional" when "operational" was intended -- but the URL is written exactly as noted in the brackets.

xi. *Statistical Abstract of the United States: 2012* table 721. The average (mean) family net worth among families owning their own homes was even higher: it was $778,200 in 2007.

xii. The plethora of tiny type seen at the bottom of this table is an illustration of why it is difficult, for outsiders, and perhaps for insiders as well, to work with USCIS statistics.

PREPARED STATEMENT OF ROBERT C. DIVINE

Written Testimony of

Robert C. Divine

Attorney
Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C.

Vice President
Invest In the USA (IIUSA)

Hearing on
Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities

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

December 7, 2011

EMBARGOED UNTIL DELIVERY
As Prepared for Delivery

Mister Chairman and Distinguished Members of the Committee:

My name is Robert C. Divine. I have practiced immigration law since 1986, and since 1999 at Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C. Since 1994 I have authored Immigration Practice, a practical treatise on all aspects of immigration law. In 2004 I left private practice to serve as the first presidentially appointed Chief Counsel of U.S. Citizenship & Immigration Services (USCIS) here in Washington, and before I left USCIS in late 2006 I served a spell as Acting Director. I returned to Baker Donelson, and I have spent considerable time representing business people in developing offerings to EB-5 investors. For the last two years I have been elected Vice President of the Association to Invest In the USA (IIUSA, see www.iiusa.org), the industry association of "regional centers." Thank you for inviting me to testify about the EB-5 immigrant investor program.

I wish to explain how the EB-5 program works, how the regional center component of the program works, how renewing the regional center enabling legislation long before expiration on September 30, 2012 is critical for uninterrupted job creating effects, and how permanent authorization is timely and necessary for the program to reach its job creating potential.

Legislation to permanently authorize the program does not cost the taxpayer (and scores neutral) and generates job creating benefits.

History of the EB-5 Immigrant Investor Program

Congress created the fifth employment-based preference (EB-5) immigrant visa category in 1990 for foreign nationals seeking to invest in a commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs.[1] The required investment amount is $1 million, but by statute and regulation that amount is reduced to $500,000 if the investment is made in a "targeted employment area" (TEA), meaning a high unemployment or rural part of the United States.[2]

Congress has allotted 10,000 visas annually for EB-5 investors, their spouses and minor children under age 21.[3] EB-5 investors and family could receive at most 7% of employment based visas and about 1% of all immigrant numbers. In fact, EB-5 allocations historically have gone unused, though usage has been increasing steadily in recent years as other sources of funding for projects, particularly involving real estate development, have been restricted. According to reports of the Departments of State and Homeland Security, EB-5 investor petition approvals have increased steadily from 179 in 2005 to 1,369 in 2010, and EB-5 visa numbers used (including family members) have increased from 158 in 2005 to 3700 in 2010. Since the EB-5 category's limit has not been approached, per-country limitations have not taken effect.[4]

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[1] INA § 203(b)(5), 8 U.S.C. § 1153(b)(5). For a detailed treatment of the EB-5 immigrant investor category, see 3 Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, Immigration Law and Procedure § 39.07 (rev. ed. 2009).
[2] INA § 203(b)(5)(C)(ii), 8 U.S.C. § 1153(b)(5)(C)(ii); 8 C.F.R. § 204.6(f).
[3] Any unused numbers are "spilled up" annually to other employment based categories.
[4] This is by virtue of INA § 202(a)(5)(A). The Department of State has been allocating 700 otherwise unused visas per year from EB-5 to "pay" for the visas used by the Chinese Student Protection Act ("CSPA"), Pub. L. 102-404 § 2(d) (1992), which required that the visas issued under that Act be taken out of future allocations in EB categories at

The Regular EB-5 Program

To qualify under the EB-5 category as enacted in the Immigration and Nationality Act (without regional center affiliation), the new enterprise must: (1) be one in which the person has invested (or is in the process of investing) at least $1 million (or at least $500,000 if investing in a targeted employment area) after November 29, 1990; (2) benefit the U.S. economy; and (3) directly create or save jobs for at least 10 U.S. workers (per EB-5 investor). By regulation, if the investment is into a "troubled business" whose net worth has decreased by 20% during the 12 or 24 months preceding investment, jobs saved count as jobs created. Multiple EB-5 investors (and other investors) may join together in an enterprise, but the entity into which the investor places his capital or its 100% subsidiary must be the actual employer of the new jobs to be counted toward the 10 per investor EB-5 requirement.

An EB-5 investor files a Form I-526 petition and $1,500 filing fee with USCIS to show the nature of the project, the plan for job creation within two years, and the legitimate source of the investor's funds. USCIS typically takes five to ten months for adjudication. Then the investor moves forward with application for an immigrant visa at a U.S. consulate abroad or with USCIS within the U.S, which takes typically three to six months. Once the visa is approved and the investor enters the U.S., he becomes a "conditional" permanent resident with a two-year expiration on his status. Within the 90-day window leading up to expiration, he must file a petition with USCIS to remove the conditions, showing that he kept his money invested in the project and that the enterprise created the jobs or will finish creating them within a reasonable time.[5]

An EB-5 investor is not required to maintain the investment longer than the removal of conditions, but in order to extract the capital he or the project organizer would need to find someone to buy or refinance the investment. While no systematic tracking of the phenomenon has been undertaken, it seems likely that EB-5 investors able to obtain return of their initial project funds, having become U.S. permanent residents, will tend to reinvest in the United States.

The EB-5 Regional Center Pilot Program

To encourage immigration through the EB-5 category, particularly in pooled investments, Congress created a temporary pilot program in late 1992 in an appropriations bill ("Appropriations Act").[6] A copy of the text of the Appropriations Act language, as amended in 2002, is attached as Exhibit A. After five successive extensions typically tied to the appropriations process,[7] most recently to September 30, 2012, USCIS now refers to it as the Immigrant Investor Pilot Program.

1,000 per year. The other 300 for FY2011 are taken from EB-3. This CSPA payback provision and all EB per-country limitations would be stricken by H. R. 3012, which members Chafe and Smith recently introduced and was passed overwhelmingly by the House of Representatives last week.

[5] INA § 216A, 8 U.S.C. § 1186b.

[6] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828; S. Rep. No. 102-918 (1992).

[7] Pub.L. 105-119, Title I, § 116(a), 111 Stat. 2467 (Nov. 26, 1997); Pub.L. 106-396, Title IV, § 402, 114 Stat. 1647 (Oct. 30 2000); Pub.L. 107-273, Div. C, Title I, § 11037(a), 116 Stat. 1847 (Nov. 2, 2002); Pub.L. 108-156, § 4, 117 Stat. 1945 (Dec. 3, 2003); Pub.L. 111-83, Title V, § 548, 123 Stat. 2177 (Oct. 28, 2009).

Under the program, USCIS designates entities who apply to function as "regional centers" "with the purpose of concentrating pooled investment in defined economic zones."

A regional center is defined as "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] A center seeking USCIS approval must submit a proposal showing how it plans to focus on a geographical region within the United States and to achieve the required growth by the means specified.[9] USCIS typically takes six to twelve months to adjudicate the application, including typically a "request for information" that requires extra time and effort for response.

Importantly, an investor in a project affiliated with a regional center may count not only "direct jobs" of the investment enterprise but also "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 resulting from the pilot program." Investors may "establish reasonable methodologies" to estimate the jobs created. Regional center affiliated projects also may involve more complex funding structures than "regular" EB-5 investments.

In essence, the pilot program encourages pooling of funds for larger projects that are more impactful on communities by spurring creation of regional centers that show USCIS their readiness to identify worthy projects, to facilitate arrangements that meet immigration and other requirements, and regularly to monitor investment and job creation through at least annual reporting to USCIS. Investors in projects affiliated with regional centers can count toward the required 10 new jobs per EB-5 investor the indirect jobs projected through the same methodologies that governments at all levels use to measure job creation for a host of purposes (normally IMPLAN, RIMS II, or REDYN).

Normally regional centers include in their initial application the full documentation, including economic effects analysis, of the first project they plan. Thus, USCIS approval should give investors in that first project and others closely modeled after it a healthy sense of confidence that their petition can be approved if they can show their source of funds. USCIS has begun to allow amendment of regional center designation to approve subsequent projects so that investors in those projects can enjoy similar confidence. The complexity of the adjudication is reflected in the $6,230 filing fee for Form I-924 for this purpose. Recognizing that good business opportunities do not wait indefinitely, USCIS leadership is working to improve and streamline the regional center and project application process to facilitate resolution of complex issues associated with the voluminous and intricate sets of documents involved.

About 200 EB-5 regional centers have been approved, and more are applying as the program becomes better known. Some regional centers are controlled by a project developer or its principals, while other regional centers (some governmental) facilitate projects of unrelated developers. EB-5 regional centers now operate in 43 states and two territories and fund such projects as farms, ski resorts, film production, mixed use real estate development, nursing and

[8] 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 11037(a)(2), 116 Stat. 1758 (2002); 8 C.F.R. § 204.6(e) (definition of "regional center").
[9] 8 C.F.R. § 204.6(m)(3).

assisted living facilities, and bridge construction. I encourage every member of Congress to contact the principals of the regional center(s) in his or her state to learn about the transformational projects underway or in development using EB-5 investment.

The Appropriations Act requires the Government to set aside 3,000 of the annual 10,000 EB-5 visa allotment for regional center-affiliated investors, but they have consistently constituted well over 90% of all EB-5 investors. This makes sense. While immigrants generally create new businesses themselves at significant rates, they tend to do that after they have been in the U.S. some time. Setting up a new business individually as a means to get here is daunting, particularly if that business must be organized to meet EB-5 requirements' challenging complexity. Thus, for someone reviewing options from abroad, passively investing in a business specifically configured to meet EB5 requirements is more attractive.

While regional center projects are not required to be located in Targeted Employment Areas (TEAs), almost all EB-5 investment projects are in TEAs. USCIS regulations recognize state designation of a contiguous geographic or political area meeting the high unemployment requirements based on current data and methodology recognized by the U.S. Department of Labor's Bureau of Labor Statistics. The resulting availability of projects allowing $500,000 investments tends to make projects requiring $1,000,000 impractical in the market for investors.

EB-5 Projects as Securities Offerings

Regional centers inherently facilitate pooled passive investments, which directly implicate U.S. securities laws. No regional center project I know of has elected to pursue the exhaustive and expensive process of "registering" the security as an initial public offering with the Securities and Exchange Commission. Instead, they typically make use of the "Regulation S" exemption for offerings conducted outside the U.S., and/or of the "Regulation D" exemption for private offerings to "accredited investors" (having at least $1 million in assets or $300,000 annual income).

Even when issuers use securities exemptions, U.S. law prohibits offerings from being misleading. Thus, almost all regional center-affiliated offerings to EB-5 investors include a private placement memorandum carefully summarizing the nature of the investment vehicle and the job creating activity, and detailing any conflicts of interest and business and immigration risks to the investors. Thus, when combined with careful professional economic analysis, the preparation of a project for EB-5 approval is a significant multi-month effort. IIUSA seeks to educate its members about compliance with immigration, economics, securities, and other requirements.

Some EB-5 offerings, made by humans in a difficult business climate, are likely to be subject to the same types of problems that plague other offerings: bad luck, unexpected delays, poor planning or execution, market fluctuations, technical violations, or even misrepresentation. Such failures will result in a frustrating loss of investment and loss of immigration status for affected EB-5 investors. Nevertheless, the inevitable failure of some EB-5 businesses will not reflect that the EB-5 program is ineffective, but that it inherently involves business and immigration risk, and sometimes risk results in failure. U.S. securities laws are not designed to prevent risk or

failure in investment, nor should they be. Risk is inherent in investment, and USCIS specifically requires that the foreign national's investment be "at risk." What is required is honest disclosure.

It appears that USCIS has opened channels of communication and coordination with the SEC, and it makes sense for USCIS to flag and refer opportunities for SEC enforcement in the EB-5 context. Investors affected can pursue remedies with the SEC and in the courts, where existing authorities support harsh personal consequences for those who mislead investors. Countries of significant EB-5 participation are becoming more aware of the program and are tightening regulation of and enforcement against brokers operating under their own countries' laws. Meanwhile, investors should heed the prominent warnings on their offering documents and on the SEC web site[10] diligently to investigate potential investments and their principals before investing.

Source of Funds and Investor Scrutiny

USCIS continues to apply rigorous analysis to the source of an investor's funds. The agency scours the path of funds from the investment enterprise back to where the foreign investor or his grantor earned it, in an unapologetically "hypertechnical" analysis. USCIS requires license or clearance from the Treasury Department's Office of Foreign Assets Control (OFAC) for investments made by Iranians or originating in Iran or other countries subject to economic sanctions.

USCIS and the State Department require of EB-5 investors and their families the same background screening, aided by biometrics matching against databases, that is applied to permanent residence applicants in all other categories.

The Economic Impact of the EB-5 Program

In 2003, Congress asked the U.S. Government Accountability Office (GAO) to study the EB-5 program.[11] The GAO report concluded that the program has been underused for a variety of reasons.[12] The report found that even though few people have used the EB-5 category, EB-5 participants had invested an estimated $1 billion in a variety of U.S. businesses.

That amount has dramatically increased in the last eight years as the number of approved regional centers has skyrocketed and the number of approved investor petitions has gone from essentially zero to approaching 1,500 per year. Assuming $500,000 per investor, this is $750,000,000 of investment per year that could result in 15,000 jobs per year. While some businesses will fail to reach their potential, others plan far more than 10 jobs per investor, and some may do better than planned.

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[10] See, e.g., http://www.sec.gov/investor/pubs/askquestions.htm.
[11] Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, § 5, 117 Stat. 1944.
[12] U.S. Government Accountability Office, No. GAO-05-256, Immigrant Investors: Small Number of Participants Attributed to Pending Regulations and Other Factors (Apr. 2005), *available at* http://www.gao.gov/new.items/d05256.pdf.

If all 10,000 EB-5 green cards were used each year, and if half of the numbers represented investors (the rest being family), the investment would be $2.5 billion dollars and job creation might be 50,000 per year. Yet the economic impact is far greater than that. Many EB-5 investors have far more than their minimum $500,000 investment. EB-5 investors invest considerably more in the U.S. economy than the minimum capital required. They do so by buying houses, sending their children to private universities, paying local, state and federal taxes, and investing in our economy both through publicly traded securities as well as in private investments. Their job-producing capacities far outstrip their actual EB-5 investment. And, having immigrated, they become U.S. investors, not foreign investors.

In addition to the significant economic contribution EB-5 investors themselves add to the economy, their investments in also prime small and large EB-5 regional center projects most of which would not go forward otherwise. In the current economy, EB-5 money is filling the gap in the traditional levels of equity to debt. All this occurs at no expense to the U.S. taxpayer.

USCIS has initiated a new, systematic effort to track the primary results of EB-5 regional center investment. This month the first annual filings are due from regional centers using Form I-924A, which collects from each regional center the number of dollars invested and jobs created, sorted by industry, by investment enterprise, and by project. This exercise involves more complexity than one might expect, and USCIS is working on clarifications for regional centers in using this form that with hope will provide useful information to Congress going forward. But the form will not track the significant non-EB-5 financing that EB-5 capital begets or the other spending and investment that EB-5 investors and their families make.

The Need for Immediate and Permanent Re-Authorization of Regional Centers

The arrangements and documentation associated with EB-5 projects take significant time and money to put together. Only upon completion can the regional center file for project approval. In many cases, investors cannot file their individual petitions (even after investing) until the regional center is amended with the project approved. Many investors understandably insist that their money be held in escrow until USCIS approves their petition or even until conditional residence is approved, so many projects provide for escrow. All of these processes create significant lag time to get EB-5 money injected into their job-creating projects. Some projects have imploded during the waiting process. Bridge financing is not always available. Considering the inherent time challenges to realizing EB-5 capital to a project, it is not surprising that the program has not experienced full utilization.

Given the development life cycle of an EB-5 project resulting in EB-5 approvals, the prospect of regional center pilot program expiration on September 30, 2012 already has begun to shut down development of worthy projects. This can be understood by looking at the timelines in reverse. In order to obtain and keep an EB-5 green card, an investor must make it all the way to admission as a conditional permanent resident before the Appropriations Act expires on September 30, 2012.[13] So, working backward, and even assuming the fastest typical times:

[13] USCIS has stated that investors definitely cannot receive I-526 petition approval after the law expires. USCIS and the State Department have not determined whether an investor whose I-526

- Immigrant visa processing: 3-6 months (June 30, 2012)
- I-526 petition to USCIS: 5-10 months (December 30, 2011)
- I-924 Regional center/project approval: 3-12 months (September 30, 2011)
- Economic/offering document preparation 3 months (June 30, 2012)

This shows that the specter of expiring authorization has been affecting project development for six months already. Of course, some developers and investors have confidence that the program will be extended, or they have no other options, so they continue to pursue projects. But many savvy business people, knowing that extensions are not always enacted and that immigration legislation is particularly sensitive politically, will not be willing to take the significant risk.

Permanent authorization is needed, and it is time to have it. The pilot program has been extended five times for 19 years. The program went through its darkest hour in the late 1990s and came through it. It has gained ground in the last several years, primarily due to contraction of financing otherwise available for business developers and to the anxiety of wealthy people in a few particular countries. But the EB-5 program will not be able to draw the interest of larger institutional interests until it receives permanent extension. Permanent extension will tend to improve the quality of the projects offered to EB-5 investors, whose experience with the program in turn will build confidence for future investors.

USCIS, which is committed to careful adjudications at every stage, is trying to staff up for speedier and ever-higher quality adjudications, but the prospect of expiration of the legislation at the heart of the EB-5 program has to undercut the agency's ability to commit to the levels of officers and significant training needed in complex EB-5 issues. Prompt and permanent re-authorization will authorize USCIS with the confidence to hire and train the needed staff to conduct its rigorous analysis in a timely basis to make EB-5 financing worth pursuing for more developers of excellent job creating projects.

Conclusion

Since the last Senate hearing in 2009, the EB-5 Immigrant Investor Program has caught on better, and it is creating needed jobs for U.S. workers in a suffering job market, but the regional center pilot program at the backbone of the program needs immediate and permanent legislative authorization to bring the program's job creating potential to its originally intended level in an internationally competitive environment.

Thank you. I look forward to answering your questions.

Attachment: Copy of the current authorization, expiring September 30, 2011

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petition has been approved before expiration could then obtain an immigrant visa and be admitted after expiration, so investors and developers must assume the negative. It appears clear that someone admitted as a conditional permanent resident before the law expires would be able to remove conditions and keep the green card, but the notion of involvement of a regional center in that process after expiration of the law giving rise to regional centers is confusing.

Exhibit A to testimony of Robert C. Divine

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended, provides:

(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3000 visas annually until September 30, 2012 to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, 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 resulting from the pilot program

(d) In processing petitions under section 204(a)(l)(H) of the Immigration and nationality Act (8 U.S.C. 115(a)(l)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(3) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.

PREPARED STATEMENT OF CHAIRMAN PATRICK J. LEAHY

U.S. SENATOR PATRICK LEAHY

VERMONT

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
"Reauthorizing The EB-5 Regional Center Program: Promoting Job Creation And Economic Development In American Communities"
December 7, 2011

I thank our witnesses for joining us today to discuss the EB-5 Regional Center Program and its proven record of creating jobs in America. In 2011 alone, this program is on track to create an estimated 25,000 jobs, and provide direct investments in American communities of $1.25 billion dollars. And there is great potential to increase the program's annual benefits. If the full number of visas allocated to the program are utilized, based upon investment and job creation requirements, this program has the potential to create or preserve 100,000 jobs per year, with contributions of $5 billion in foreign capital investment. And these benefits come at no cost to American taxpayers. This program is and should continue to be an important component of our overall immigration system that contributes to our economic growth.

The current authorization for the program is set to expire at the end of September 2012. It is critical that Congress support U.S. Citizenship and Immigration Services (USCIS), which administers the program, along with the many men and women who are working hard to bring jobs to their communities, by enacting the permanent authorization legislation that I introduced in March of this year. I thank the Chairman of the Subcommittee on Immigration, Refugees, and Border Security, Senator Schumer, for joining me as a cosponsor of this legislation. I know that like many parts of the United States, from Alabama to Vermont, entrepreneurs in New York City have turned to financing through the EB-5 Regional Center Program.

Like any program, there is always room for improvement. I commend Director Mayorkas at USCIS and Department of Homeland Security Secretary Janet Napolitano for making the program a central part of the Department's contribution to President Obama's broader job creation efforts and for their efforts to improve it. The history of our Nation has been written in part through the contributions of immigrants. The EB-5 visa and other employment-based visa categories within our immigration system can play a meaningful role in writing our future economic resurgence.

In addition to USCIS's administrative efforts, I have been working for many months with interested parties and USCIS to put together a legislative framework to make significant improvements to the overall program. This framework will provide USCIS with additional authorities to ensure that this important program maintains the highest level of integrity and efficiency. I have shared this framework with the Judiciary Committee's ranking member, Senator Grassley, and I hope we can work together to make this program an even more secure and effective job creation engine for Americans across the country.

We should be moving forward without further delay to reauthorize this important program. Congress must show potential investors from around the world that America welcomes immigrant investors and values their contributions. If we do not, potential investors will be lost to Canada, the United Kingdom, Australia, and other nations that recognize immigration through investment. We are already hearing that the uncertainty about the program's future is a drag on investments and on our economic recovery.

The Committee will hear from Bill Stenger of Jay Peak, Vermont. His work, financed in part through the EB-5 Regional Center Program, has revitalized a very rural part of Vermont, and turned a beloved and iconic Vermont ski resort into a world class, four-season resort. In Texas, the City of Dallas has recently entered a partnership with a capital management firm to create the City of Dallas Regional Center to develop projects and create jobs for the people of Dallas. Companies like Marriot Hotels and Lennar Homes have turned to the EB-5 program to finance job-creating projects around the country. Projects like this are occurring all over America, and there is every reason to support these job creators as well as the immigrants who wish to invest in and contribute to America.

Reauthorization of the EB-5 Regional Center Program should not be controversial. This program has been in existence for 18 years. It is time for a permanent authorization to provide investors with the certainty and predictability they need to invest and conduct business with confidence.

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PREPARED STATEMENT OF SENATOR CHUCK SCHUMER

Statement of Senator Charles E. Schumer
for December 7, 2011 Hearing
"Reauthorizing the EB-5 Regional Center Program:
Promoting Job Creation and Economic Development in American Communities"

Thank you Mr. Chairman for holding this important hearing on the EB-5 Program—a program that has done so much good in New York State, and which needs to be made permanent.

In New York State, we have 9 USCIS-approved regional center projects that are doing a world of good to create good-paying American jobs. Let me give you a list of examples of job-creating projects in New York that were made possible by the EB-5 program:

- **Steiner Studios**—which received $65 million of EB-5 funding to assist with the expansion of this incredibly important film production studio project in Brooklyn;

- **Global Vascular Institute on the Buffalo Niagara Medical Campus**– EB-5 funding helped the Buffalo Niagara Medical Campus support Kaleida Health's development of the new Global Vascular Institute. This created jobs, and improved health care for the people of Buffalo.

- **Acadia Realty Trust**—This project received $200 million of EB-5 funding to assist with the construction of the City Point project in Downtown Brooklyn;

- **SJM Company**—This project received $72 million of EB-5 funding to assist with the redevelopment of the George Washington Bridge Bus Station; and

- **Dermot Company and Harry's Restaurant**—This project received $96 million of EB-5 funding to assist with the redevelopment of the Battery Maritime Building and Pier A in Lower Manhattan.

These are worthy projects that are employing thousands of New Yorkers right now. But, we will not be able to continue funding worthy infrastructure projects like these if the EB-5 program expires in September 2012.

What's more, the mere threat of the program expiring creates a major disincentive for attracting foreign investment. People will not invest $500,000 if there is a threat that they will be caught in immigration limbo because their green card may expire if Congress lets the EB-5 program expire.

That's why I am proud to be sponsoring S.642 with Senator Leahy to permanently authorize the EB-5 program. We need to permanently authorize the EB-5 program as soon as possible, and we should not tie the reauthorization of the EB-5 program to any other program. If all of us agree that this is a good program, let's all cosponsor and pass S.642.

I thank you Mr. Chairman for holding this hearing, and look forward to working with you to pass S.642.

QUESTIONS SUBMITTED TO WILLIAM J. STENGER BY SENATOR GRASSLEY

[Note: At the time of printing, the Committee had not received responses from William J. Stenger.]

Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

Submitted by Senator Chuck Grassley

To Mr. Stenger:

In your experience, what oversight is conducted by USCIS to ensure that jobs created by the EB-5 program are being filled by legal residents of the United States and not by individuals here unlawfully? Given that you use E-Verify, would you support requiring all regional centers to use E-Verify, the free, web-based employment verification program run by USCIS?

Mr. North and others have expressed concern about the calculation used to determine the number of jobs created by each investment. To your knowledge, how are the job creation figures confirmed by USCIS?

In your experience, how often do foreign investors keep their capital in your regional center beyond the initial two year requirement? If investments have been withdrawn immediately after one receives a green card, has this had a detrimental impact on the business? How many of the 500 investors in your center withdrew their investments? How many of the 500 investors in your center have obtained green cards? How many have obtained green cards but no longer reside in the United States?

You discussed how Vermont's regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Please explain, to the best of your ability, what other regional centers require of their investors, particularly the time frame for investors to stay connected to the center. Are your center's requirements more strict than others? Which centers have more lenient requirements?

Do you think that all regional centers should be run by the states?

What do you think is the appropriate dollar amount required by foreign investors in the regional centers? To your knowledge, has USCIS ever considered increasing the amounts required, given that they have the authority to do so? Would you oppose raising these levels? Please explain.

Would you support making more information about EB-5 regional centers – including financial statements, names of investors, and investment outcomes - more available to the public? If so, what information could be made available via USCIS's website to increase transparency over the program?

What can be done by USCIS to ensure that EB-5 promoters are acting responsibly and disseminating only reliable information on the EB-5 program when abroad? Would you support the creation of a registry to track individuals who are promoting the program abroad?

What effect has dishonest promotion abroad had on the confidence of foreign investors? Are you aware of any instances where a promoter has been dishonest, or has lured investors to the U.S. under false pretenses? Please elaborate.

No federal program is without fault or cumbersome red tape. What is your biggest complaint, as a regional center, about the program or the application process?

In your testimony, you suggested that USCIS make every effort to be as efficient as possible in their processing of applications. Can you please be more specific and provide suggestions on how the agency can more swiftly adjudicate petitions and applications?

What policies do you have in place to ensure investments come from reliable and reputable foreign sources? What do you do if there's question or concern about the investment?

You stated that Jay Peak, Inc. has developed several projects, creating over 2,000 jobs in the region. What types of jobs are being created with the funds? What is the annual salary and for how long do these jobs last?

What does Vermont's regional center charge to investors beyond the $500,000 or $1 million? Do centers typically charge "processing fees?" What is your regional center's processing fee? How are those fees used?

QUESTIONS SUBMITTED TO DAVID NORTH BY SENATOR GRASSLEY

Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

Submitted by Senator Chuck Grassley

To Mr. North:

You stated that the investment required of investors has remained the same since 1990, when the program was created. You also said that $500,000 is "not as significant as it used to be." What amount would you require of investors for both the regional center program and the EB-5 investor visa?

You mentioned that you spent time in Australia, studying their immigrant investor program. We discussed this a bit during the hearing. Do you have additional thoughts on what we can learn from other countries who have immigrant investor programs?

You suggested that USCIS is not the ideal agency to screen these foreign investments, and that the program is grounded in the wrong place. If the program is not ended, as you prefer, would it be beneficial to involve other agencies with more experience? If so, which agencies?

You suggested that we alter the program to be more about creating business entities, not passive investments. What changes would you recommend to achieve this goal?

If Congress were to eliminate the regional center program, would you support the continuation of the EB-5 visa for investors who bring $1 million of capital for projects in the U.S.?

Do you have any suggestions about policies that should be enacted to ensure that investments come from reliable and reputable foreign sources?

In an effort to promote more transparency into the program, what type of data would be most relevant for the agency to make available to the public (possibly via their website)?

Mr. Stenger discussed how Vermont's regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Can you comment on whether some regional centers have more lenient requirements than others? Do you think that all regional centers should be run by the states?

QUESTIONS SUBMITTED TO ROBERT C. DIVINE BY SENATOR GRASSLEY

Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

Submitted by Senator Chuck Grassley

To Mr. Divine:

What oversight is conducted by USCIS to ensure that jobs created by the EB-5 program are being filled by legal residents of the United States and not by individuals here unlawfully? Has USCIS ever, to your knowledge, considered requiring regional centers to use E-Verify as a means of participation in the program? Are there any requirements of employers to monitor or verify the immigration status of their workforce?

If E-Verify were a prerequisite for participation in the EB-5 program, how would you envision it working? Would centers be required to use it for their employees? How would we ensure that direct and indirect jobs created are run through the electronic verification system as well?

Mr. North and others have expressed concern about the calculation used to determine the number of jobs created by each investment. How are the job creation figures confirmed by USCIS? Is there diligent vetting before investors are able to adjust to permanent legal residents? If so, please explain.

To your knowledge, how often do foreign investors keep their capital in a regional center beyond the initial two year requirement? Are there instances, to your knowledge, in which investment funds have been removed immediately after the end of the two year period? If so, has the withdrawal of funds had a detrimental impact on the business or entity it had been invested in?

Mr. Stenger discussed how his regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Please explain, to the best of your ability, what other regional centers require of their investors, particularly the time frame for investors to stay connected to the center.

What do you think is the appropriate dollar amount required by foreign investors in the regional centers? To your knowledge, has USCIS ever considered increasing the amounts required, given that they have the authority to do so? Would it be beneficial to raise investment requirements, perhaps to levels similar to those required in Canada and Australia? Please explain.

To your knowledge, does USCIS maintain any records of regional centers which have not adhered to program requirements? In such instances, what was done to rectify the situation by USCIS? What immigration implications are in play for foreign investors if a regional center fails? Are these investors, if they do not yet have a green card, allowed to remain in the United States or are they required to depart the country? To your knowledge, has an investor ever been allowed to remain in the United States even when the investment did not create the desired outcomes of the EB-5 program?

Would you support making more information about EB-5 regional centers – including financial statements, names of investors, and investment outcomes - more available to the public? If so, what information could be made available via USCIS' website to increase transparency over the program?

Aside from reforms made public by USCIS, are you aware of any other changes to the processing or administration of the EB-5 regional center program in response to the failure of some regional centers, such as the bankrupt dairy farm in South Dakota, the Mojave Dessert in California, and the real-estate development in El Monte, California? Please elaborate.

What can be done by USCIS to ensure that EB-5 promoters are acting responsibly and disseminating only reliable information on the EB-5 program when abroad? Would you support the creation of a registry to track individuals who are promoting the program abroad?

What effect has dishonest promotion abroad had on the confidence of foreign investors? Are you aware of any instances where a promoter has been dishonest, or has lured investors to the U.S. under false pretenses? Please elaborate.

No federal program is without fault or cumbersome red tape. What one complaint do regional centers lodge most often when discussing the program or the application process?

Mr. North suggested that USCIS's attempt to streamline the program is simply a way to find a way to a "yes" for applicants. How do you respond?

Mr. North suggested that USCIS is not the ideal agency to screen these foreign investments. He suggested that the program is grounded in the wrong place. Would it be beneficial to involve other agencies with more experience? If so, which agencies? To your knowledge, has USCIS ever convened inter-agency discussions to improve the way they process the applications or review the business plans? To your knowledge, does USCIS converse regularly with the Securities and Exchange Commission on regional centers and the investments they bring in?

What oversight is in place to ensure investments come from reliable foreign sources? What instances, if any, have there been of EB-5 investors providing money from sources which are hostile or contrary to the values of the United States? If there's question or concern about the investment, what process does USCIS undertake to notify other agencies, such as the CIA, the FBI, or other money laundering-interested agencies?

To the best of your knowledge, what do regional center charge to investors beyond the $500,000 or $1,000,000 investment? Do centers typically charge "processing fees?" Please explain what charges are assessed to investors and what purpose those fees serve.

QUESTIONS SUBMITTED TO DAVID NORTH BY SENATOR KLOBUCHAR

Questions for the Record

Hearing: "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities"

December 7, 2011

Submitted by Senator Amy Klobuchar

Question for David North:

Some critics have described the EB-5 program as a mechanism for simply selling visas to wealthy foreign nationals. Supporters argue that the EB-5 program is a sensible way of encouraging foreign investment in the United States. How would you assess these competing claims?

QUESTIONS SUBMITTED TO ROBERT C. DIVINE BY SENATOR KLOBUCHAR

Questions for the Record

Hearing: "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities"

December 7, 2011

Submitted by Senator Amy Klobuchar

Question for Robert Divine:

Some critics have described the EB-5 program as a mechanism for simply selling visas to wealthy foreign nationals. Supporters argue that the EB-5 program is a sensible way of encouraging foreign investment in the United States. How would you assess these competing claims?

RESPONSES OF DAVID NORTH TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

Submitted by Senator Chuck Grassley

Question for David North:

You stated that the investment required of investors has remained the same since 1990, when the program was created. You also said that $500,000 is "not as significant as it used to be." What amount would you require of investors for both the regional center program and the EB-5 investor visa?

Reply from David North:

As background, half a million in 2011 dollars is equal to $270,000 in 1990 dollars, back when the program began, and every year the real value of the half a million slips a little more.

I think the minimum investment should be for at least $1 million in current dollars, with annual automatic adjustments for inflation. This would apply to both the regional center program and for the balance of the EB-5 program. That would be $1 million per visa, not $1 million per investment.

What would be even better would be to use the notion of selling visas - if we engage in that practice at all -- to bring the money into the U.S. Treasury, as payments, not investments, and start the bidding at $1 million per individual visa, not half a million for a family's worth of visas, as we have at the present. This proposal, which would bring the U.S. at least five billion dollars a year, is spelled out more thoroughly in an answer to a similar question posed by Senator Klobuchar. Such a direct-sale program would replace the current immigrant-investor program.

Question:

You mentioned that you spent time in Australia, studying their immigrant investor program. We discussed this a bit during the hearing. Do you have additional thoughts on what we can learn from other countries who have immigrant investor programs?

Reply:
Yes, several of them.

In the first place many of these programs are seeking active business people, entrepreneurs, not just people willing to write checks for passive investments.

Second, most of the other English-speaking nations want something more than just money; the program in Great Britain demands that the investor speak English; the programs in Australia and New Zealand demand, variously, that the alien business people be below 45, 55, or 65 years of age.

Third, most of them, excepting Canada, have set higher minimum investments than our $500,000. The Bahamas, which is looking for people to build mansions, has a *de facto* minimum investment of $1,500,000 million. New Zealand wants $7,896,000 minimum for its Class 1 program which has no age limits, and $1,184,000 for its Class 2 program which does. The U.S. is a very soft touch at half a million.

Question:

You suggested that USCIS is not the ideal agency to screen these foreign investments, and that the program is grounded in the wrong place. If the program is not ended, as you prefer, would it be beneficial to involve other agencies with more experience? If so, which agencies?

Reply:

Other agencies are needed for two reasons, to prevent fraud and scandals, and to make savvy decisions about business plans; these are two separate matters.

To prevent scandals every name in every proposal, such as developers and their attorneys, should be checked with IRS and Justice to make sure that they have paid their taxes and have not been indicted for something; if it is a real estate development, a base touch with HUD would be appropriate.

As to advice on business plans, there must be units of the Commerce Department, and perhaps the Small Business Administration, that would be helpful.

Question:

You suggested that we alter the program to be more about creating business entities, not passive investments. What changes would you recommend to achieve this goal?

Reply:

The law could be changed to make it explicit that we want entrepreneurs willing not only to invest their own money, but capable of creating a business with that money, as some other nations have done.

Currently all we ask for is a passive investment, and that is what we usually get.

Question:

If Congress were to eliminate the regional center program, would you support the continuation of the EB-5 visa for investors who bring $1 million of capital for projects in the U.S.?

Reply:

I think the minimum should be $1,000,000 per visa, not per investment, and that value be adjusted annually to account for inflation. This would apply to both programs.

I would prefer, as noted earlier, if we are to sell visas for greencards, to run a straightforward auction for 5,000 visas, with the minimum price being $1,000,000 per visa, not a collection of greencards for the whole family at $500,000, our current price.

Question:

Do you have any suggestions about policies that should be enacted to ensure that investments come from reliable and reputable foreign sources?

Reply:

This is not my field so I cannot be very precise. There are arms of the State Department and Treasury that deal with such matters, and they certainly should be consulted routinely by the EB-5 program.
Keeping crooked alien money out of the program – which really does not attract the sharpest of investors, anyway -- is less of a problem than making sure that decent alien money is not squandered, in the U.S., on less than wholesome schemes.

Question:

In an effort to promote more transparency into the program, what type of data would be most relevant for the agency to make available to the public (possibly via their website)?

Reply:

The **first step** would be to transfer the responsibility for statistical reporting to the Office of Immigration Statistics (OIS)in DHS and away from USCIS. The former is far more sophisticated and open about numbers than USCIS; further OIS is not part of USCIS.

Second, DHS should report, preferably on its website, the number of receipts, approvals, and denials; and appeals from denials, per month or per quarter for each of the three basic forms in the program. It should report, annually, the number of appeals from denials and the actions taken by the Administrative Appeals Office on those appeals. Further AAO should be required by law to publish the names of all parties that are involved in AAO cases, not suppressing them as is the current practice, an odd practice that runs counter to that of all similar government appeals agencies.

The three sets of applications getting this treatment would be:
the I-526, the investor's conditional visa; the I-829, which seeks green cards, confirming the investment; and the I-924, which creates the regional centers. (Some data on the disposition of the three forms, and the current problems with these statistics, can be found in the table that accompanied my testimony.)

Three, USCIS should be instructed to conduct an longitudinal study of say 200 randomly selected I-526 approvals in, say, the years 2004 through 2006, to determine what happened to them. There appears to be a sharp drop-off between those approvals and the approvals of the I-829 forms; such a study would cast light on the internal workings of this currently secretive program.

Four, USCIS should contract with an auditing firm to determine, nationwide, the extent to which funds raised through the program have remained invested in the U.S. after the passage of say five or six years. Similarly, a study focused on the investments from point of view of the actual investors should be conducted, by an outside firm.

Question:

Mr. Stenger discussed how Vermont's regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Can you comment on whether some regional centers have more lenient requirements than others? Do you think that all regional centers should be run by the states?

Reply: Again, I have limited knowledge of the implied question here: which entity, the regional center, or the investee (like Jay Peak), or both, or either, sets the rules about when the investment has to be returned?

There are real advantages to the investee – the recipients of the funds – for a more-than-two-year rule. Having long-term money to invest as one sees fit, is always preferable to having "hot money" that has to be turned around quickly.

The disadvantage, however, is a serious one. If a five year-rule is in effect, no one is likely to learn about the fate of those investments for five years. In the case of Jay Peak there was no testimony regarding what had happened to all those investments, from the investors' point of view, all of which I think are less than five years old.

It might be helpful, incidentally, if the investees were required to issue annual financial reports on the state of individual investments, with copies going to USCIS. I am fairly sure that this is not now done.

The second part of the question relates to varying length of investment requirements, and I have no information on that except that there must be variations.

The third part is a policy question, who should run the regional centers? I suppose one could decide to issue new licenses only to state entities, and to grandfather in the existing regional centers that are private, as most are; otherwise, deciding that only states could run regional centers would create a torrent of complaints about the feds changing the rules in the middle of the stream.

It probably would have been the better part of wisdom to have the states run these centers, as the EB-5 program started, but it is a bit late in the game to try to do anything about that now. Both of the regional centers that have been terminated, incidentally, were of the private, for-profit variety.

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RESPONSES OF DAVID NORTH TO QUESTIONS SUBMITTED
BY SENATOR KLOBUCHAR

Questions for the Record

Hearing: "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities
December 7, 2011

Submitted by Senator Amy Klobuchar

Question for David North:

Some critics have described the EB-5 program as a mechanism for simply selling visas to wealthy foreign nationals. Supporters argue that the EB-5 program is a sensible way of encouraging foreign investment in the United States. How would you assess these competing claims?

Reply from David North:

As I point out in my testimony, the immigration process is an ungainly and inefficient mechanism for the encouragement of foreign investment in the U.S In 2010, for example, of the $1.9 *trillion* additional foreign investment in the U.S. reported by the U.S. Department of Commerce either $191 *million* (my estimate for that year) or $1.2 *billion* (USCIS' estimate given informally to the press) was contributed by the EB-5 program. This amounts to either one penny or six pennies per $100.00 in additional foreign investment, a pittance.

The program is launched from the unlikely site of our immigration program, rather than a more sensible location within a government agency that routinely handles financial matters.

In addition to EB-5's being a minor league activity, and one troubled with too many cooks, too many complications, and too many scandals there is the basic question: should be the U.S. be selling visas to people who cannot otherwise qualify for green cards?

I think not, but if we are going to do so, let's put an appropriate price on our visas, and get a substantial benefit out of the deal.

What I would suggest, if we are to actually sell our visas, is to do it this way: let's announce an auction for 5,000 green cards, with no bids accepted for less than $1 million. The visas would go to the highest bidders, and would cost at least $1 million for each individual visa – not half a million for a family's worth– and the payments would go directly into the U.S. Treasury or maybe the Social Security Trust Fund.

This would produce, if it works, at least a hefty five billion dollars a year to help balance the budget, and, since the cards would be subtracted from the employment based ceiling of 140,000 it would not increase the flow of migrants to the U.S.

Those with winning bids would be told that they could get their greencards within 60 days, provided they had appropriately clean police records.

To make this work we would have to, of course, close down the immigrant-investor program on the grounds that it would undercut the proposed sale of green cards at one million each.

That's what we should do, if we want to sell our visas.

RESPONSES OF ROBERT C. DIVINE TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Questions for the Record
Hearing on the EB-5 Regional Center Program
December 7, 2011

To Mr. Divine:

What oversight is conducted by USCIS to ensure that jobs created by the EB-5 program are being filled by legal residents of the United States and not by individuals here unlawfully?

> **RESPONSE:** Two years after initially immigrating, investors must file Form I-829 to remove conditions on permanent residence. In this filing, investors must show that the enterprises into which they maintained their investment created 10 new full-time U.S. jobs. When the jobs were created directly by the enterprise or other job creating enterprise, the investor must submit direct proof that the workers whose jobs are claimed are authorized to work in the U.S., presenting such documents as the enterprise's I-9 forms (E-Verify where voluntarily used), payroll records, W-2s, etc. USCIS double checks the information about such workers against databases to which it has access, and sometimes USCIS determines that the workers are not authorized, giving the investor the opportunity to demonstrate otherwise (or for the employer to use USCIS' notice to lead to termination of unauthorized workers and hiring of authorized workers). USCIS is quite stringent about these rules, and some investors' representatives have complained that USCIS' documentary requirements and process are unreasonable and beyond its authority in EB-5 cases, but USCIS has defended and persisted in the practice.
>
> When the investor claims credit for indirect job creation based on economic projections (available with regional center affiliation), specific workers are not required to be identified, and the only process ensuring that the workers in those jobs are authorized are the employment verification requirements applicable to all U.S. employers (I-9, etc.).

Has USCIS ever, to your knowledge, considered requiring regional centers to use E-Verify as a means of participation in the program?

> **RESPONSE:** Not to my knowledge, though some Regional Center programs do use it. I do not believe current legislation allows USCIS to require any employer to use E-Verify, as the statute provides that it is a voluntary program.

Are there any requirements of employers to monitor or verify the immigration status of their workforce?

> **RESPONSE:** Yes. Every employer is required to complete Form I-9 to verify the employment authorization of each worker.

If E-Verify were a prerequisite for participation in the EB-5 program, how would you envision it working? Would centers be required to use it for their employees? How would we ensure that direct and indirect jobs created are run through the electronic verification system as well?

> **RESPONSE:** It is conceivable that the "new commercial enterprise" into which the EB-5 entity places his capital could be required to use E-Verify, but some already do, and those that

don't face the audit of USCIS in I-829 adjudication ostensibly against the same types of data involved in E-Verify. But over 90% of EB-5 investors involve projects with regional affiliation, and most jobs claimed involve indirect job creation under employers over whom the EB-5 investor and regional center have little if any control. Requiring use of E-Verify for any more than direct jobs would likely have little real effect or would inhibit economic impact of the program by severely limiting the market and scope of development projects eligible for EB-5 capital investment.

Mr. North and others have expressed concern about the calculation used to determine the number of jobs created by each investment. How are the job creation figures confirmed by USCIS?

RESPONSE: For direct jobs, USCIS requires direct proof including I-9s, payroll records, W-2s, etc. For indirect jobs, USCIS requires the investor to provide proof that the enterprise into which he has invested, and any "job creating enterprise" into which the capital might have been forwarded as equity or loan, has satisfied its own business plan and met the economic accomplishments that serve as the basis for projections of indirect job creation made by an economist using well-accepted economic methodologies routinely used by state, local, and national government bodies for various economic development purposes, including IMPLAN, REDYN, and RIMS II.

Is there diligent vetting before investors are able to adjust to permanent legal residents? If so, please explain.

RESPONSE: Yes. Before an investor can obtain conditional residence, USCIS must approve an I-526 petition in which it determines that the business plan for job creation is detailed and credible. Before an investor can have conditions removed two years later, USCIS must determine in I-829 petition adjudication that the investor kept the minimum capital plowed into job creating activity (with no money siphoned off for organizational or promotional expenses) and created the jobs as described above. This is a tedious petitioning process that usually involves scores or hundreds of pages.

To your knowledge, how often do foreign investors keep their capital in a regional center beyond the initial two year requirement? Are there instances, to your knowledge, in which investment funds have been removed immediately after the end of the two year period? If so, has the withdrawal of funds had a detrimental impact on the business or entity it had been invested in?

RESPONSE: I have yet to see an enterprise affiliated with a Regional Center able to repay after only a two year term of residency. [But note that I do not have comprehensive awareness of the practices and accomplishments of all regional center projects.]

Mr. Stenger discussed how his regional center requires investors to stay committed to the project for five years, beyond the 2 years required to get a green card. Please explain, to the best of your ability, what other regional centers require of their investors, particularly the time frame for investors to stay connected to the center.

RESPONSE: USCIS will not approve a project that will remove EB-5 capital from job-creating activity (resulting in return of capital to the EB-5 investor) before the removal of conditions from the EB-5 investor's permanent residence. Given the time it takes to subscribe all the investors in

a project, for the investors to obtain I-526 approval and immigrate initially, for the two years of conditional residence to be completed, and for I-829 adjudication to finish, many enterprises affiliated with regional centers rule out "liquidity events" and return of the pooled EB-5 capital earlier than five years from subscription in order to ensure enough time for all those things to occur. But an enterprise could instead just prohibit liquidity events leading to return of EB-5 capital until removal of conditions from residence of affected EB-5 investors, and there should be nothing wrong with this. If the investment enterprise is able to sell or refinance the business and recoup all the investment capital, or if the job creating enterprise is able to fully pay off a loan, after two years, three years, five years, whatever the term, it should not be prohibited from doing so. In today's economic climate, there are few qualifying EB-5 investments that can accomplish this even in five years.

What do you think is the appropriate dollar amount required by foreign investors in the regional centers? To your knowledge, has USCIS ever considered increasing the amounts required, given that they have the authority to do so? Would it be beneficial to raise investment requirements, perhaps to levels similar to those required in Canada and Australia? Please explain.

RESPONSE: To my knowledge, the U.S. EB-5 program's job creation requirement is unique among the world's most well-known immigrant investor programs and serves an important legislative policy. Some countries require higher investment than $500,000 in some instances, but none that do (to my knowledge) require investment risk and job creation. I do not see the value to the nation in raising the amount of the investment as long as the job creation requirement is met. If the relative value of $500,000 becomes too low for businesses obtaining it to use it to create 10 jobs, then developers will not be able to organize projects requiring only that amount, and the market naturally will move to a higher amount. $500,000 is a lot of money for one person or family to risk in one business. U.S. securities laws generally require investors to show they have at least $1 million in net worth or $200,000 annual income, and most EB-5 investors I have known have quite a bit more than that. Raising the minimum investment above $500,000 will tend to reduce the number of investors able or willing to take the risk the U.S. requires, which will only reduce the number of jobs created. That would seem to be self-defeating.

To your knowledge, does USCIS maintain any records of regional centers which have not adhered to program requirements?

RESPONSE: Yes.

In such instances, what was done to rectify the situation by USCIS?

RESPONSE: First, USCIS constantly calls regional centers into compliance by adjudicating their applications for initial and amended regional center designation and their affiliated investors' permanent residence filings. In all these filings, USCIS evaluates the arrangements in the projects that have been guided by the regional center. Regional centers frequently change their project structures to come into compliance and gain approval. USCIS keeps records of all of those adjudications, although they are varied and case-specific. Second, USCIS has the authority to revoke a regional center's designation, and it keeps records of those proceedings. I am aware of two instances of this, but there may be more. Revocations could arise from USCIS determinations that a regional center lacks meaningful activity, that the regional center is not

founded on practices calculated to meet the program's goals, or that the regional center has not actually done what it said it was doing (or was doing bad things). Third, USCIS has required periodic filings of regional centers relating to their practices and accomplishments. USCIS has records of those filings.

What immigration implications are in play for foreign investors if a regional center fails? Are these investors, if they do not yet have a green card, allowed to remain in the United States or are they required to depart the country? To your knowledge, has an investor ever been allowed to remain in the United States even when the investment did not create the desired outcomes of the EB-5 program?

RESPONSE: If a regional center-affiliated commercial enterprise into which EB-5 investors have placed capital fails economically, then ostensibly the investors will lose money, and if the required jobs are not created and maintained then the investors will be unable to have conditions removed from their residence, their conditional residence will be terminated, and they will be subject to removal, subject to opportunities to petition in connection with another investment or seek residence in some other category. [Even apart from other categories of residence, DHS might choose to parole the investor temporarily for purposes of testimony against wrongdoers.]

If a regional center itself loses its designation or goes out of business, it is not clear to me what happens to the investors in commercial enterprises affiliated with that center. It is possible that USCIS could allow the investor already approved for conditional residence to proceed with the investment as long as the investor and enterprise comply with continued investment and job creation requirements and supply reports to USCIS.

Would you support making more information about EB-5 regional centers – including financial statements, names of investors, and investment outcomes - more available to the public? If so, what information could be made available via USCIS' website to increase transparency over the program?

RESPONSE: The more I think about it, the less I think it would help, and it could cause confusion and drive good people away. The program's goal is to foster private investments. People will be less likely to get involved, whether as developers or as investors, if they must do their business in a fish bowl. We already have rules and process to allow people who really need information about regional center arrangements to get it. Developers needing building or other permits must disclose as much as any other developer. Employers using EB-5 capital must submit filings to government offices about their employees' pay, benefits, workplace saftey, and other aspects just as any other employer. Prospective investors can ask the Offeror anything they want to know, and that might include statistics and explanations about the filings of other investors in projects affiliated with that Offeror or regional center.

Outside of a dynamic information exchange, information about outcomes could be misleading. For instance, USCIS might deny an I-526 petition of an investor in a project based solely on inadequacy of proof of source of funds, and statistics about a regional center including such denials might convey inaccurately that the investment was not qualifying. Petitions might be denied for very technical reasons of timing (such as that there was a clause in one of the project documents that USCIS felt was not compliant, and to cure the problem the parties had to change the documents and re-file the petition).

Regional centers with successful completed projects have their own incentive to publicize that success but with regard to restrictions arising from securities laws. If a regional center wants to organize a true "public offering" requiring an SEC registration statement, then all that information will be public.

USCIS has begun this year to gather data from each regional center about the investment dollars and job creation of the various enterprises in each center, and USCIS will convey that information to Congress. USCIS can follow up on those reports, asking for whatever additional information seems warranted from the initial reports. This seems to be enough for now.

Aside from reforms made public by USCIS, are you aware of any other changes to the processing or administration of the EB-5 regional center program in response to the failure of some regional centers, such as the bankrupt dairy farm in South Dakota, the Mojave Dessert in California, and the real-estate development in El Monte, California? Please elaborate.

RESPONSE: I do not believe that the examples mentioned reflect problems requiring changes to legislation associated with regional centers or anything else. The EB-5 program as interpreted by USCIS explicity requires investors to take risks. Sometimes risk results in loss. These losses have been well publicized, and that will continue. If investors in those projects did not ask enough questions, perform other due diligence, or heed disclosed or obvious risks, then they are stuck with loss. If they were mislead, U.S. and state securities and other laws may provide some recourse. The known experience of loss should drive prospective investors to require comprehensive information, and enforcement of securities and other laws in these projects as appropriate will deter other developers from engaging in misleading offerings.

What can be done by USCIS to ensure that EB-5 promoters are acting responsibly and disseminating only reliable information on the EB-5 program when abroad? Would you support the creation of a registry to track individuals who are promoting the program abroad?

RESPONSE: Misrepresentation in the sale of securities is as old as the concept of a security. People have a tendency to take advantage of each other. Securities laws have built up in this and other countries mainly to prohibit misleading information about investment opportunities, but not to prohibit the offering of risky investments whose risks are disclosed to the investors. EB-5 investments are no different than any other securities offerings in this regard. In EB-5 there is the added goal of obtaining U.S. immigration status and the risk that it might not work out. When investors are adversely affected by non-compliant securities offering practices, U.S. and state securities laws provide redress in various ways, including private lawsuits, agency enforcement, and even criminal prosecution. U.S. and state securities laws generally do not try to regulate the way securities may be offered exclusively in other countries, leaving that up to the other countries, some of whom deal more severely with securities fraud than we do. But there is no exemption from the rule against misleading an investor anywhere in offering a security in a U.S. investment. I see no need for more rules about these matters in EB-5 offerings than already exist for all offerings.

One step that might make sense is for USCIS to forward to the SEC copies of projects filings if USCIS has some reason to think that the filings deserve SEC review. For all I know, that might already be happening. I know I have heard Director Mayorkas say publicly that USCIS is

cooperating with SEC to deal with misrepresentation involved in marketing of EB-5 investment offerings.

What effect has dishonest promotion abroad had on the confidence of foreign investors? Are you aware of any instances where a promoter has been dishonest, or has lured investors to the U.S. under false pretenses? Please elaborate.

RESPONSE: I have not had personal experience with investors who claimed to have been misled. I have heard rumors about agents in other countries suggesting that the projects they promote are guaranteed or risk free, but all the documents my clients take pains to prepare go overboard in disclosing the risks involved with the investment, and investors sign agreements confirming that they have read all these warnings before they can invest. IIUSA promotes such practices among regional centers and affiliated enterprises. I have seen foreign agents negotiate effectively for better protections and security before they promote a project. I have been impressed with the level of scrutiny that foreign agents have applied to investment offerings, finding little inconsistencies that lawyers even overlooked-- showing that they care what is in those documents. I expect that publicity about the business failures your earlier question mentions will spur more skepticism, caution, and due diligence on the part of investors.

One issue that has concerned me is disclosure of fees. I believe that an investor deserves to know if someone advising him to invest in a project is receiving a fee from the offeror. I have had to push clients to disclose in offering documents that agents might earn such fees. One improvement might be to require that EB-5 filings include documentation reflecting the involvement of any agent including a disclosure by that agent of any fees earned from the offeror, directly or indirectly.

No federal program is without fault or cumbersome red tape. What one complaint do regional centers lodge most often when discussing the program or the application process?

RESPONSE: Processing times are just too long. People normally don't try to set up a regional center unless they have an investment project they want to subscribe. Getting a regional center application adjudicated has been taking 9 months or more, and some are now pending longer than a year. And once a regional center is approved and investors file I-526 petitions, they are waiting 8 months for adjudication, while their capital languishes in escrow. Anything more than three months is a meaningful impediment to getting EB-5 capital to good projects, many of which cannot wait around for delay like that. USCIS leadership has been trying to staff up, but they are not making headway in processing times as volume increases. I think this underscores the need to pass S.642 to make the program permanent so that USCIS can plan and budget for proper staffing for speedy adjudication.

Mr. North suggested that USCIS's attempt to streamline the program is simply a way to find a way to a "yes" for applicants. How do you respond?

RESPONSE: Some people will use any fact to criticize something. He uses the fact that USCIS has denied cases involving unauthorized employment to suggest that the program spawns unauthorized employment. He uses the fact that USCIS has revoked regional centers to suggest

that regional centers have run amok. The efforts USCIS has used to "streamline" the process include the following:

- Allowing a regional center to file an application for approval of a project even apart from initial regional center designation, rather than waiting for individual investors to file their I-526 petitions about the project. Before, if USCIS had an issue with a project, it would have to scattershot queries about its concerns to each of the investors in the context of their I-526. This was the equivalent of a home inspector at final inspection telling the home buyer that the subdivision's roads and setbacks are out of code or the easements are wrong, and it was not businesslike. USCIS listened to stakeholder input and used it to fashion a process to adjudicate an "exemplar" petition by the regional center, to resolve issues about the project early dealing with the developer, who then could offer an approved project to investors who can be more confident that their petition will be approved if their source of funds is legitimate.
- Allowing the regional center and the adjudicator to have email interaction about a pending regional center application. These regional center filings and adjudications are far and away more complicated than any other immigration filing I know of, as reflected by the $6,230 filing fee with is about 20 times larger than the $325 fee for an L-1 petition. Using the normal "request for evidence" process can lead to interminable adjudication, because sometimes the applicant cannot understand the question, and the adjudicator does not really understand the complex documents. The email procedure allows the possibility of getting the question straight before answering it. The result should be to increase the chances that a well-intended regional center applicant with a job creating project can resolve an adjudicator's concern or can tweak a provision in a complex securities offering document to more clearly fit the requirements. Americans wanting the chance at jobs from these EB-5 investments should expect no less.

Mr. North suggested that USCIS is not the ideal agency to screen these foreign investments. He suggested that the program is grounded in the wrong place. Would it be beneficial to involve other agencies with more experience? If so, which agencies? To your knowledge, has USCIS ever convened inter-agency discussions to improve the way they process the applications or review the business plans? To your knowledge, does USCIS converse regularly with the Securities and Exchange Commission on regional centers and the investments they bring in?

RESPONSE: USCIS does partner with other agencies such as the Securities and Exchange Commission and the Department of Commerce (including SelectUSA), although I do not claim to know specifics of interagency interaction. The adjudication ultimately results in an immigration benefit, and that involves USCIS, which is the right agency to handle this. USCIS needs to beef up its staff with people who understand economic theory of job creation, entrepreneurship, and business transactions, and USCIS states it is in the process of doing so.

What oversight is in place to ensure investments come from reliable foreign sources? What instances, if any, have there been of EB-5 investors providing money from sources which are hostile or contrary to the values of the United States? If there's question or concern about the investment, what process does USCIS undertake to notify other agencies, such as the CIA, the FBI, or other money laundering-interested agencies?

RESPONSE: USCIS unabashedly applies a "hypertechnical" analysis in scouring the investor's proof of the source of the funds and the path to the investment enterprise. Investments associated with countries subject to foreign assets control require prior clearance from the Treasury Department's Office of Foreign Assets Control (OFAC). Banks receiving the funds apply terrorist screening. USCIS and the Department of State run fingerprints and biographic data against various criminal and national security and international security databases and watch lists. I cannot speak further about USCIS cooperation with other law enforcement and national security agencies in the context of their immigration adjudications. Regional centers have a natural interest in avoiding investment from shady sources.

To the best of your knowledge, what do regional center charge to investors beyond the $500,000 or $1,000,000 investment? Do centers typically charge "processing fees?" Please explain what charges are assessed to investors and what purpose those fees serve.

RESPONSE: Regional centers typically charge EB-5 investors between $25,000 and $60,000 beyond the capital investment to be used for administrative expenses of organizing the regional center and the investment enterprise and offering and marketing the investment opportunity, because USCIS does not allow the minimum capital investment of $1,000,000 or $500,000 to be used for such purposes, so that the capital is only plowed into job creating activity.

RESPONSES OF ROBERT C. DIVINE TO QUESTIONS SUBMITTED BY SENATOR KLOBUCHAR

Questions for the Record

Hearing: "Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities"

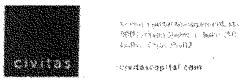
December 7, 2011

Submitted by Senator Amy Klobuchar

Question for Robert Divine:

Some critics have described the EB-5 program as a mechanism for simply selling visas to wealthy foreign nationals. Supporters argue that the EB-5 program is a sensible way of encouraging foreign investment in the United States. How would you assess these competing claims?

RESPONSE: The EB-5 program allows up to 10,000 visas per year for foreign investors who risk their investment in a business to create 10 new full-time jobs for U.S. workers through that investment. This is at maximum 1% of annual visas and is a small and sensible part of larger U.S. immigration policy. Our system brings in about 10 times as many refugees than investors and 13 times more workers in other categories than investors. And unlike immigrant investor programs in some other countries, the U.S. program requires investment to create jobs. These investors tend to invest more money in other ventures and create more jobs after they immigrate. In the larger scheme of U.S. immigration policy, the EB-5 program is a relatively small and sensible component serving the valuable policy of job creation for U.S. workers.



November 28, 2011

The Honorable John Cornyn
Ranking Member, Senate Subcommittee on Immigration, Refugees and Border Security
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Sen. Cornyn:

I write today in support of immediate and permanent reauthorization of the EB-5 Regional Center Program (the "***EB-5 Program***"). Legislation that would accomplish this is pending in the Senate as S. 672, and I strongly urge you to become a co-sponsor. The EB-5 Program attracts huge sums in foreign direct investment and is a source of tens of thousands of new jobs each year, while costing taxpayers literally nothing. With unemployment at 9%, Congress must move quickly to reauthorize this common-sense program now. Any delay will deter investors from participating in the program due to the fear that it will sunset before their application is approved. Thus, time is of the essence.

My firm, Civitas Capital Management, has partnered with the City of Dallas to develop the City of Dallas Regional Center ("***CDRC***"). Through this important partnership, the CDRC has committed to six major transactions which total more than $100 million and will create a minimum of 2,000 new full-time jobs. We work closely with the Mayor's office, City staff and the Dallas business community to identify investment opportunities that meet or exceed the EB-5 Program's job creation requirements. We have an additional $150 million worth of projects in the pipeline, which will create thousands of new jobs in Dallas.

Our success in Dallas demonstrates that the EB-5 Program is indeed a catalyst for job growth. We are actively expanding our EB-5 platform to other markets, and we are not alone. Two years ago, there were 30 Designated Regional Centers; today there are more than 200. The EB-5 Program is working, but because it has continually been temporarily reauthorized as a "pilot" program, each time the sunset date approaches, prospective investors are deterred from investing for fear that the program will lapse before their application to participate is approved. Permanent reauthorization – **now** – would solve this problem.

In 2011, the EB-5 Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. Upon full utilization, which is likely to occur in 2013, the EB-5 Program will create or save well over 100,000 jobs annually. These statistics and my own experience prove the EB-5 Program is an innovative, job-creating economic development initiative – one that comes at **no cost to U.S. taxpayers**. Permanent reauthorization will provide the certainty that both EB-5 investors and job creators like me need in order to continue to use the program and maximize its job creation potential. Please support S. 672.

Very truly yours,

Daniel J. Healy
Managing Partner, Civitas Capital Management, LLC

The Honorable John Cornyn
United States Senate
November 28, 2011

cc: Matt Johnson
Minority Chief Counsel, Senate Subcommittee on Immigration, Refugees and Border Security
Senate Subcommittee fax: (202) 228-2856
Matthew_Johnson@cornyn.senate.gov

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Fax: (972) 221-1217

November 28, 2011

The Honorable Senator John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

As the president of a diversified development company in Dallas, Texas, I have experienced firsthand the benefits provided through the EB-5 Regional Center Program. Having witnessed the success of this program, I urgently request that Congress enact a permanent extension of this valuable initiative now, well before its sunset date next fall. Legislation that would accomplish this is pending in the Senate as S. 672, and I strongly urge you to add your name as a co-sponsor.

I like to describe my firm, Matthews Southwest, as a small company that does big deals. Just two weeks ago, we completed development of the $500 million, 1,001-room Omni Dallas Convention Center Hotel in downtown Dallas. Just a few blocks south of the convention center, in an area plagued by unemployment, we set our sights on redeveloping a historic building into a 76-room NYLO boutique hotel. Through the City of Dallas Regional Center (CDRC), we received $5.5 million in EB-5 capital for this project, and the hotel is expected create 161 new full-time jobs. That is many more than this area of Dallas has seen in a long, long time.

There is no question that without EB-5 capital from the CDRC, we would have not been able to fund this development due to the lack of capital available for projects in distressed areas, and we are grateful to the CDRC and its EB-5 investors for their confidence in us and our project.

Over the past five years, the EB-5 Program has grown dramatically and has become an essential catalyst for job creation in financially challenged areas across the U.S. In 2011, the Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. Upon full utilization, which is likely to occur in 2013, the EB-5 Program will create or save well over 100,000 jobs annually. These statistics and my own experience prove the EB-5 Program is an innovative, job-creating economic development initiative – one that comes at **no cost to U.S. taxpayers**.

Permanent reauthorization will provide the certainty that both EB-5 investors and job creators like me need in order to continue to use the program and maximize its job creation potential. Already, because the lead time for investor approvals is so long, I am hesitant to rely on EB-5 capital for new projects because the September 2012 sunset date is looming. The solution is simple: immediate and permanent reauthorization of the EB-5 Program. Please support S. 672.

Sincerely,

Jack Matthews
President
Matthews Southwest

MICHAEL S. RAWLINGS
MAYOR

November 28, 2011

The Honorable Kay Bailey Hutchison
United States Senate
Washington DC 20510
VIA FIRST CLASS MAIL AND FACSIMILE: (202) 224-0776

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Hutchison:

As Mayor of the City of Dallas, I have seen firsthand the immediate need to provide new employment opportunities not only in my city, but in cities across the United States. This country faces a job crisis, and it is with that in mind that I am urgently requesting that Congress enact a permanent extension of the EB-5 Regional Center Program ("EB-5 Program"). S. 642 would accomplish this, and I strongly urge you to co-sponsor this legislation. This EB-5 Program enables regional centers to be a key economic driver in their communities, creating desperately needed jobs in a tough economic environment. As our country experiences record job losses due to offshoring, the EB-5 Program attracts foreign direct investment to job-creating United States businesses. This job-saving initiative comes at no cost to U.S. taxpayers and has been extended with bipartisan support since its inception in 1993.

In 2008, The City of Dallas entered into a vital partnership with Civitas Capital Management to create the City of Dallas Regional Center ("CDRC"). Since its inception, the CDRC has committed to six major transactions, totaling more than $100 million and at a minimum, creating 2,000 new full-time jobs. The CDRC works closely with my office, major developers and the Dallas business community to identify and develop investment opportunities that meet or exceed the EB-5 Program's requirements for job creation. Just last week, our first EB-5 investors received USCIS approval, and I am eager to build on this positive momentum – but investors are already beginning to worry that if they file a petition now, the program may disappear before they are approved. This uncertainty curtails new investments and the jobs they will create – jobs Dallas needs.

Over the past five years, the EB-5 Program has grown tremendously. In 2011, the Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. By 2013, when the EB-5 Program will likely achieve full utilization, it will create or save well over 100,000 jobs annually. With numbers like these, and zero cost to taxpayers, there is no reason to delay permanent reauthorization. The time to act is now.

Failure to provide permanent authorization will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most.

Thank you for your support for this important program. Please feel free to contact me with any questions, and please support S. 642.

Best regards,

Michael S. Rawlings
Mayor

OFFICE OF THE MAYOR CITY HALL 1500 MARILLA ST., 5EN DALLAS, TEXAS 75201 TELEPHONE 214-670-4054 FAX 214-670-0646

November 29, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Sen. Cornyn:

My name is Andres Ruzo. I am the former Chairman of the Greater Dallas Hispanic Chamber of Commerce, and I am the founder and Chief Executive Officer of LinkAmerica, Inc., based in Rowlett, Texas My firm develops, deploys and manages Critical Communications Systems for public safety networks such police, fire and EMS. Last year, LinkAmerica was recognized as one of the fastest-growing privately held companies in the D/FW Metroplex. I employ more than 16 people.

I write to urge you to support S. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. I have firsthand experience with this vital, job-creating program, as I have worked closely with the City of Dallas on many different initiatives, including the City of Dallas Regional Center ("***CDRC***"). The CDRC is a unique public-private partnership between the City of Dallas and Civitas Capital. I am actively working with the CDRC to obtain financing for a $90 million communications system, the installation and maintenance of which will create hundreds of new jobs.

In this difficult economic environment, with credit scarce, the availability of CDRC funds is likely to make the difference between this project happening – or not.

The EB-5 Program is scheduled to sunset in September 2012, if it is not reauthorized. If this program is to be successful, business owners – job creators – like me need to know that the program will be around when it comes time to actually fund. Because it takes several months to structure and fund an EB-5 transaction, it is imperative that Congress reauthorize the program permanently now, well before the sunset date, so the uncertainty that grows with each passing day is eliminated and we can get on with the business of creating jobs. I strongly urge you to support this legislation.

Sincerely,

Andres Ruzo
Chief Executive Officer

3002 century drive rowlett tx 75088 www.linkam.com 972.463.0050

December 1, 2011

The Honorable John Cornyn
United States Senate
517 Hart Building
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

My name is John Taylor. I am the Chief Executive Officer of StoneGate Senior Living, LLC, based in Lewisville, Texas. My firm operates thirty skilled nursing, assisted living, memory support and independent living facilities in Missouri, Oklahoma and Texas, serving an aggregate of more than 3,000 residents and their families. In the aggregate, StoneGate and its affiliates employ more than 3,200 people.

I write to urge you to support S.B. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. I have firsthand experience with this vital, job-creating program. Today, my firm closed a $1,500,000 bridge loan with the City of Dallas, Texas. The City made this bridge loan in anticipation of our receiving EB-5 financing through the City of Dallas Regional Center ("***CDRC***"), a unique public-private partnership between the City of Dallas and Civitas Capital. The CDRC has committed to provide my firm with $10 million in EB-5 financing for two affordable assisted living facilities to be located in dramatically underserved areas of Dallas. Between them, these facilities are forecasted to create more than 400 direct and indirect jobs.

I can tell you that in this difficult economic environment, capital for affordable assisted living is extremely scarce. The Federal Home Loan Bank of Dallas has recognized this by awarding StoneGate a $500,000 Affordable Housing Assistance Grant for this project. The EB-5 financing from the City of Dallas Regional Center has made it possible for StoneGate to provide its trademark high-quality and personalized level of service to lower-income elderly residents of Dallas, enabling them to stay in their neighborhoods. We are very proud to be partnering with the City of Dallas, the Dallas Housing Authority, the Home Loan Bank and the CDRC to make these projects happen.

1500 Waters Ridge Drive Suite 200 Lewisville, Texas 75057
TELEPHONE 972.899.4401 FACSIMILE 972.899.4460
www.stonegatesl.com

The EB-5 Program is scheduled to sunset in September 2012, if it is not reauthorized. Stories like mine make clear that the program is an unqualified winner for all stakeholders. We are using EB-5 capital to create new jobs, and the program costs the U.S. taxpayer literally nothing – it is fully funded by the fees the investors pay to the government. There is simply no downside to permanently reauthorizing the EB-5 Regional Center program, and I hope you will support the pending legislation that would do so.

Sincerely,

John F. Taylor
Chief Executive Officer

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Elise A. Healy
ehealy@spencercrain.com
214.290.0004

December 2, 2011

The Honorable Patrick Leahy
United States Senate
Russell Senate Office Building 437
Washington, DC 20515

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Leahy:

My name is Elise A. Healy. I am a founder and shareholder of Spencer Crain, a majority women-owned law firm of 30 lawyers in Dallas and Houston. I have practiced immigration law for 20 years, and represented the City of Dallas in obtaining USCIS approval of the City of Dallas Regional Center (CDRC).

I write to urge you to support S. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. In addition to representing the City of Dallas in its successful regional center application in 2009, I also represented five of the first ten investors in the CDRC, whose EB-5 petitions USCIS approved just before Thanksgiving. This will create 250 direct and over 400 indirect jobs in Dallas and is, we hope, just the beginning of a substantial flow of job-creating capital to Dallas.

The EB-5 program needs to be reauthorized permanently, **right now**. The reason is straightforward: the repeated short-term extensions of its "pilot" status result in a cloud of uncertainty that makes planning very difficult, especially given the lengthy USCIS approval processes involved. (The abovementioned ten petitions took a year!)

To make full use of the EB-5 program, businesses and investors need to know it is not going away. This is an easy problem to fix and there is no downside, as the program does not cost taxpayers a dime – it is fully funded by the fees the investors pay to the government. Please co-sponsor S. 642and urge your colleagues to do the same.

Sincerely,

Elise A. Healy

Elise A. Healy
Attorney at Law

340263

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713.375.2499 (Fax)

DEC-05-2011

Greater New York Chamber of Commerce

December 5th 2011

The Honorable Patrick Leahy
Russell SOB Room 437
Washington, DC 20510

RE: PERMANENT STATUS FOR THE EB-5 REGIONAL CENTER INVESTMENT PROGRAM

Dear Senator Leahy:

I write this letter to urgently request that Congress enact a permanent extension of the EB-5 Regional Center Investment Program ("EB-5 Program") as soon as possible. The EB-5 Program must become a permanent vehicle for economic development in our nation's cities and rural communities. The most pressing and immediate challenge facing our country is helping more people get back to work. We need innovative ways to help spur job creation. The EB-5 Program is a common sense job creator that is straightforward with no cost to U.S. taxpayers and has been extended with bipartisan support since its inception in 1990.

Over the past five years, the EB-5 Program has grown dramatically and become an essential catalyst for job creation in financially challenged areas across the United States. In 2011, the EB-5 Program will create and/or save 25,000 American jobs and generate direct investment of over $1.25 billion. If fully utilized, the EB-5 Program would create and/or save over 100,000 jobs annually.

Over the past 12 months, New York City has been leading the nation in private sector job growth. The EB-5 Program has become an important ingredient in this success by helping fund large-scale, public/private real estate projects that create much needed jobs in areas of high unemployment. To date, over $270 million of capital has been invested in New York City through the EB-5 Program. An additional $310 million of EB-5 capital is expected to be invested over the next eight months. We anticipate over $1 billion of EB-5 investment in the coming years. Below are examples of projects in our City that are utilizing EB-5 funding. These projects will create thousands of jobs and put New York City on a continued path to economic recovery and growth. They include:

- *$102 million of EB-5 funding* to assist with the redevelopment of the Brooklyn Navy Yard, New York City's largest industrial park and one of the most successful urban manufacturing districts in the country.
- *$72 million of EB-5 funding* to redevelop the George Washington Bridge Bus Station. The project will transform this important Manhattan transportation facility into a modern commuter and retail hub.

20 West 44th Street, 4th Floor · New York, NY 10036
Tel: 212-686-7220 · Fax: 212-686-7232 · www.ny-chamber.com

Greater New York Chamber of Commerce

- *$65 million of EB-5 funding* to complete the expansion of Steiner Studios, New York City's largest film and television production facility.
- *$228 million of EB-5 funding* to assist with the construction of New York City's newest sports and entertainment arena as well as surrounding infrastructure and transportation improvements. The EB-5 funding is an integral component of one of the largest job creation projects in the history of Brooklyn.
- *$93 million of EB-5 funding* to help redevelop the waterfront along the East River. The project will renovate landmark transportation facilities and continue New York's redevelopment of Lower Manhattan after 9/11.
- *$200 million of EB-5 funding* to assist with the redevelopment of Downtown Brooklyn's Central Business District including the construction of the largest retail and residential complex in Brooklyn and a series of infrastructure work to support this new complex.

The EB-5 Program has clearly become a key partner in New York City's efforts to fund critical, multi-year redevelopment projects that spur significant job creation in areas of high unemployment. Given the enormous unemployment our nation faces and the worsening job prospects for the 15 million people who are trying to find work, we must act – decisively, responsibly, and immediately.

One important way is by making the EB-5 Program permanent as soon as possible in order to remove any uncertainty regarding the future of the Program so projects in New York and across the country continue to receive foreign investment that creates jobs for American workers. Failure to provide permanent authorization of this innovative, economic development vehicle will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most.

With the U.S. economy needing to create over 100,000 jobs per month, action is needed now to ensure that the EB-5 Program can continue doing its part in this effort. We must use all policy tools at our disposal to achieve a sustained economic recovery, especially those that are at no cost to the U.S. taxpayer.

Thank you for your consideration.

Mark Jaffe
President & CEO

20 West 44th Street, 4th Floor · New York, NY 10036
Tel: 212-686-7220 · Fax: 212-686-7232 · www.ny-chamber.com

THE greater DES MOINES partnership

December 5, 2011

The Honorable Charles Grassley
U.S. Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

I write this letter to urgently request your support for enacting a permanent extension of the EB-5 Regional Center Program ("EB-5 Program") as soon as possible. As you know, the EB-5 Program was established by Congress in 1990 to stimulate economic growth through foreign investment. The Program's mandate is to use foreign investment to spur job creation in areas of high unemployment while simultaneously affording eligible foreign investors the opportunity to become lawful permanent residents of the United States.

It is important to make EB-5 Program a permanent vehicle for economic development in our nation's cities and rural communities. One of the most pressing and immediate challenges facing our country is helping more people get back to work. We need innovative ways to help spur job creation. The EB-5 Program is a common sense job creator that is straightforward with no cost to taxpayers and has been extended with bipartisan support since its inception in 1990.

Over the past five years, the EB-5 Program has grown dramatically and become an essential catalyst for job creation in financially challenged areas across the nation. In 2011, the EB-5 Program will create and/or save 25,000 American jobs and generate direct investment of over $1.25 billion. If fully utilized, the EB-5 Program would create and/or save over 100,000 jobs annually.

Given the enormous unemployment our nation faces and the 15 million people who are trying to find work, we must act - decisively, responsibly, and immediately. One important way is by making the EB-5 Program permanent as soon as possible to remove any uncertainty regarding the future of the Program so projects across the country continue to receive foreign investment that helps create jobs for American workers. Failure to provide permanent authorization of this innovative, economic development vehicle will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most.

With the U.S. economy needing to create over 100,000 jobs per month, action is needed now to ensure that the EB-5 Program can continue doing its part in this effort. We must use all policy tools at our disposal to achieve a sustained economic recovery, especially those that are at no cost to the U.S. taxpayer. Thank you in advance for your consideration.

Sincerely,

Jay R. Byers
Senior Vice President of Government Relations & Public Policy

cc: Des Moines Office

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Des Moines, IA 50309 • tel 515-286-4950 • fax 515-286-4974
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CITY OF AMARILLO

OFFICE OF THE
MAYOR

December 5, 2011

The Honorable Kay Bailey Hutchison
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 224-0776

RE: Immediate permanent reauthorization of the EB-5 Regional Center Program

Dear Senator Hutchison:

I am writing to you today about the EB-5 Regional Center Program, which creates jobs – American jobs, and a lot of them. I did not know too much about this program until several months ago, when the City began working with a group of private sector partners on $42.5 million in EB-5 financing for the first phase of an ambitious downtown redevelopment plan. This effort has been the subject of numerous community meetings and City Commission briefings. I personally have spent a great deal of time on this, and I am convinced it will be a major step toward revitalizing downtown Amarillo, creating a significant number of new jobs along the way. I can assure you that without EB-5 capital, this project would be next to impossible.

For EB-5 investors to invest their hard-earned money in Amarillo, they need to be certain that the EB-5 Program is going to continue to exist. U.S. businesses need the same certainty to effectively make use of EB-5 capital. With unemployment hovering around 8.6%, we need to bolster any program that brings investment dollars to American shores and creates American jobs, all at no cost to the taxpayer.

For these reasons, I urge you to support S. 642, legislation that would make the EB-5 Program permanent, and to ask your colleagues to do the same. As importantly, I ask you to push the reauthorization through now, not later, so job creators and investors alike have the certainty they need to justify taking the substantial risks we ask of them.

Sincerely,

Paul Harpole
Mayor

509 S.E. SEVENTH AVE. • P.O. BOX 1971 • AMARILLO, TEXAS 79105-1971 • 806/378-3003 • FAX 806/378-9394 • TDD 806/378-4229

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First Vice Chair, *National Association of Real Estate Investment Trusts*

Boyd R. Zoccola
Executive Vice President
Hokanson Companies, Inc.
Chairman & Chief Elected Officer
BOMA, International

The Real Estate Roundtable

December 5, 2011

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: December 7 Hearing on EB-5 Immigrant Investor Program
Support for S. 642

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of The Real Estate Roundtable, I write to encourage permanent re-authorization of the EB-5 "immigrant investor" program through support of S. 642, the "Creating American Jobs Through Foreign Capital Investment Act" introduced by Senator Leahy and co-sponsored by Senator Schumer. The Roundtable represents the leadership of the nation's top privately owned and publicly held real estate ownership, development, lending and management firms, as well as the elected leaders of the 17 major national real estate industry trade associations. Collectively, Roundtable members hold portfolios containing over 5 billion square feet of developed property valued at over $1 trillion; over 1.5 million apartment units; and in excess of 1.3 million hotel rooms. More information on The Roundtable can be found at www.rer.org.

Congress established the EB-5 program in 1990 to use foreign investment as a means to spur U.S. job creation in areas of high unemployment, while simultaneously affording eligible foreign investors the opportunity to become lawful permanent residents of the United States. In our capital constrained economy, Roundtable members have looked to the EB-5 program as an important funding source for vital real estate development projects that create well-paying American jobs.

The most pressing and immediate challenge facing our country and the real estate industry is to get Americans back to work. The EB-5 program serves an important and effective role in fulfilling that objective. It has grown dramatically during the past five years, as over 200 regional centers have been created to distribute foreign investment capital in 45 states.[1] Failure to provide permanent authorization of this innovative, economic development vehicle will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most. In 2011, the EB-5 program will create and/or save 25,000 American jobs and generate direct investment of over $1.25 billion. If fully utilized, the EB-5 program could create and/or save over 100,000 jobs annually.

[1] http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=d765ec0f4c014210VgnVCM100000082ca60aRCRD&vgnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD.

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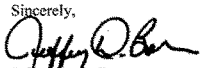
Significantly, the EB-5 program is revenue neutral. The fees charged in issuing resident visas to foreign investors offset the program's costs. As there is no taxpayer impact, the EB-5 Program has been extended with bipartisan support since its inception. Congress should permanently reauthorize it now.

The Roundtable also sees promise in the EB-5 program as a means to help finance retrofit projects to make buildings across the country more energy efficient. Our members are at the vanguard of innovation in efficiency retrofit projects, but to make deeper and more significant energy reductions in buildings, we must encourage programs that assist with the upfront capital expenses associated with expensive renovations. To the extent that EB-5 funds can be used to help underwrite retrofit costs, we can re-employ construction workers, lower energy costs, modernize our building infrastructure to stay competitive in the global marketplace, and help secure our nation's energy future.

With the U.S. economy needing to create over 100,000 jobs per month, action is needed now to ensure that the EB-5 program can continue doing its part in this effort. We must use all policy tools at our disposal to achieve a sustained economic recovery, especially those that are at no cost to the U.S. taxpayer. Accordingly, The Roundtable strongly encourages enactment of S. 642 to permanently reauthorize the EB-5 immigrant investor program.

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer

cc:

The Hon. Herb Kohl
The Hon. Dianne Feinstein
The Hon. Chuck Schumer
The Hon. Dick Durbin
The Hon. Sheldon Whitehouse
The Hon. Amy Klobuchar
The Hon. Al Franken
The Hon. Chris Coons
The Hon. Richard Blumenthal
The Hon. Orrin Hatch
The Hon. Jon Kyl
The Hon. Jeff Sessions
The Hon. Lindsey Graham
The Hon. John Cornyn
The Hon. Michael S. Lee
The Hon. Tom Coburn

Marriott

Marriott International, Inc.
Global Development

10400 Fernwood Dr.
Dept. 30/921.98
Bethesda, MD 20817

Anthony G. Capuano
Executive Vice President
301/380-8116
301/380-8400 Fax

December 6, 2011

Senator Patrick Leahy
437 Russell Senate Office Building
United States Senate
Washington, DC 20510

Senator Chuck Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Leahy and Senator Grassley:

On behalf of Marriott International, Inc., we would like to express support for proposals to extend and permanently authorize the EB-5 Regional Center Investment Program ("EB-5 Program"). Marriott has had considerable success with the EB-5 Program in the past, and is looking forward to using it to finance additional projects in the near future. It is important for the EB-5 Program to become a permanent vehicle for economic development, as the most pressing and immediate challenge facing our country is to stimulate job creation in our economy.

Over the past 5 years, the EB-5 Program has grown dramatically and has become an essential catalyst for job creation in distressed areas across the United States. In 2011, the EB-5 Program will create 25,000 full-time American jobs, and generate direct investment of $1.25 billion. If fully utilized, the EB-5 Program would create 40,000 jobs annually, while providing $2 billion in direct investment. Since EB-5 funds are generally leveraged with additional capital, it results in the creation of hundreds of thousands of new jobs each year for American workers.

Recently, developers of Marriott hotels have successfully partnered with EB-5 Regional Centers in order to finance hotel projects throughout the United States. Many of these projects would not have been completed without EB-5 funding. Marriotts in Los Angeles, Portland, Seattle, Milwaukee, and Washington, D.C., have been funded or partially funded with EB-5 investments. All of these projects are located in 'Targeted Employment Areas' and result in the creation of thousands of full-time jobs for American workers.

The EB-5 Program has clearly become a key ingredient in Marriott's efforts to fund critical, multi-year redevelopment projects that spur significant job creation in distressed areas. Given the high unemployment rates our nation faces, making the EB-5 Program permanent would be a significant boost to our nation's economic future. Failure to provide permanent authorization for

the EB-5 Program will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when they are needed most.

We support continuation of the EB-5 Program, and we are looking forward to partnering with successful Regional Centers in the future. The EB-5 Program has been extended with bipartisan support since its inception almost 20 years ago, and it continues to provide foreign direct investment with zero cost to the U.S. taxpayers. As long as it is monitored and regulated, we feel that the EB-5 Program can be of significant value to local economies with regards to stimulating job creation.

Please feel free to contact us for further information on our experience with the EB-5 Program. Thank you for your consideration.

Sincerely,

Anthony G. Capuano
Executive Vice President, Global Development

cc:

Senator Lindsey Graham
Randy Johnson, U.S. Chamber of Commerce

ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

December 6, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2586

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

For more than 20 years, the EB-5 investment program has helped cities across the nation fund projects that both contribute to the economic vitality of the region and lead to the creation or retention of local jobs. As the Mayor of Houston, I see firsthand the importance of the EB-5 program that generates American jobs and strengthens small businesses. Please support this program and co-sponsor S.642.

All EB-5 investors must meet rigorous qualification standards to participate. Typical investors are well-educated, entrepreneurial, and eager to contribute to the communities in which they locate. A minimum investment of $500,000 is required under the program, which helps spur the economy by supporting local projects. The EB-5 program is an important driver for growth and development of U.S. communities, and yet comes at no cost to the American taxpayer. It's a win-win for investors, job seekers, small businesses and communities.

As you are aware, the EB-5 program is scheduled to sunset on September 30, 2012. It is imperative that Congress act swiftly to reauthorize this program and remove the uncertainty inaction is causing for potential investors. The United States Citizen and Immigration Service (USCIS) estimates that the EB-5 program has created at least 34,000 U.S. jobs. With unemployment at 9%, we can't afford to lose a program that both stimulates economic development and creates local jobs.

Legislation is currently pending in the Senate to permanently reauthorize the EB-5 Regional Center program, thereby removing uncertainty and ensuring there is opportunity for qualified investors to move to the U.S. and contribute to the economy. The City of Houston is actively interested in EB-5 and strongly urges Congress to permanently reauthorize this important program.

Thank you for your attention to this important matter.

Sincerely,

Annise D. Parker

Annise D. Parker
Mayor

POST OFFICE BOX 1562 • HOUSTON, TEXAS 77251

Written Testimony of

Daniel J. Healy

Chief Executive Officer
Civitas Capital Group

Hearing on
Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities

Before the
Committee on the Judiciary
United States Senate
Washington, D.C.

December 7, 2011

EMBARGOED UNTIL DELIVERY
As Prepared for Delivery

Mr. Chairman and Distinguished Members of the Committee:

Thank you for the holding today's hearing on this important topic and for the opportunity to submit written testimony for the record. My name is Daniel J. Healy. I am the Chief Executive Officer of Civitas Capital Group, a boutique asset management firm based in Dallas, Texas. My testimony begins with a brief summary of my background and that of my firm. Next, I discuss the vital importance of permanently reauthorizing the EB-5 Regional Center program, an engine of American job creation, drawing primarily upon my experience managing the City of Dallas Regional Center on behalf of the City of Dallas, Texas. Finally, I conclude with recommendations for improvement of the program and my thoughts on recent initiatives announced by U.S. Citizenship and Immigration Services (USCIS).

Company Background

Civitas Capital Group's lines of business include management of investment funds under the EB-5 Regional Center program, alternative investments, private wealth management and securities brokerage.

Prior to founding Civitas in 2008, I held senior executive positions with the real estate private equity arm of the San Antonio insurance firm Southwest Business Corporation, as well as with a Dallas-based investment advisor with approximately $23 billion in assets under management as of this writing. My roles at these firms involved management of commercial real estate investments and portfolios on behalf of both institutional and high-net-worth individual investors, as well as investor relations, general financial management and other duties. I have negotiated, documented, executed and managed dozens of real estate investments, including

senior debt, equity and structured transactions totaling several hundred million dollars. I am experienced with real estate and private equity fund structuring and management. In addition, I have served as Chief Compliance Officer of a securities broker-dealer. I currently maintain FINRA Series 7, 24, 28, 63 and 65 securities and investment advisory registrations.

The EB-5 Regional Center Program: Creating American Jobs
Case Study: The City of Dallas Regional Center

The EB-5 Regional Center program came to my attention in 2008, at the outset of what has become a global credit crisis of historic proportions. For many commercial real estate projects, on which I was focused at the time, traditional sources of financing – commercial banks, credit companies and other lenders, especially – refused to lend or simply disappeared altogether. As the credit crisis developed into a full-blown recession, illiquidity worsened and many projects were shelved or even abandoned midstream. While Texas has fared better in the downturn than much of the rest of the United States, there is no question that the state has been hard-hit by the sluggish economy and that both business and project financing dried up, a situation that has improved little in the last three years. It was in this context that I began to explore the EB-5 program with the City of Dallas.

I am pleased to report that as a result of a collaborative effort between Civitas and the City, Civitas Capital Management, LLC, is the manager of the City of Dallas Regional Center (CDRC), a unique public-private partnership. Forward-thinking leaders at the City of Dallas envisioned creating a Regional Center to facilitate economic development, but they recognized that investment management is best left to the private sector. Civitas collaborated with the City to design a Regional Center that reflects the pro-business, pro-growth culture that has made Dallas a magnet for employers and families alike.

USCIS approved the City of Dallas Regional Center in late 2009, and we identified our first project in February 2010. As I discussed in my testimony before the House Judiciary Subcommittee on Immigration Policy and Enforcement this past September,[1] in its first 17 months of operations, the CDRC committed to six high-quality investments totaling $91 million. In the three months since that House hearing, the CDRC has committed to two additional transactions totaling just under $40 million. Thus, in Dallas alone, the EB-5 Regional Center program, through the CDRC, is on track to result in more than $130 million in foreign direct investment and a minimum of 2,600 new jobs.[2]

In this short period, the CDRC has provided low-cost, flexible capital for projects across a range of industries, including $15 million for a call center, $5.5 million for a boutique hotel, and $8.5 million to help the oldest chain of Tex-Mex restaurants in the country open four new locations.

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[1] *Written testimony of Daniel J. Healy, Chief Executive Officer, Civitas Capital Group.* Hearing on "The Investor Visa Program: Key to Creating American Jobs." U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration Policy and Reform, September 14, 2011.

[2] For these projects, the CDRC will have 260 individual EB-5 investors, each of whom will invest $500,000. By law, each investor must account for the creation of ten (10) new jobs; thus, 260 investors will mean that a minimum of 2,600 new jobs must be created, directly or indirectly. In practice, the job creation actually forecasted to result from each of these investments is substantially in excess of the minimum requirement: Civitas's internal underwriting typically requires job creation of at least 120% of the legal minimum.

In my testimony for the House hearing on the EB-5 program held in September, I highlighted a particular transaction that the CDRC is in the process of funding, and I would like to do so again for the Committee today. I am particularly proud of our firm's and the CDRC's involvement in this project, not least because it illustrates exactly what the EB-5 program makes possible in these difficult economic times.

Civitas and the CDRC recently committed to loan $10 million[3] to an experienced senior housing operator for the purpose of establishing two affordable assisted living facilities in Dallas. Both of these facilities will be located in areas of Dallas which have long been underserved. As Members on the Committee are certainly aware, the aging of the Baby Boom generation has resulted in quite an increase in demand for assisted living and other seniors' housing facilities across the country, and Dallas is no exception. However, in Dallas, as in many other cities, development in this sector has largely been limited to higher-end facilities targeted toward residents who are insured or have the means to pay privately. There are very few, if any, options for middle- and lower-income Dallas residents who wish to stay in Dallas, let alone stay in their neighborhood near family and friends.

That is where the CDRC's most recent project comes in: these two facilities are smaller, designed to attract residents from their immediate areas, rather than competing to attract people from all over the Dallas-Ft. Worth area, as is typical. The low cost of the CDRC's EB-5 financing, combined with the operator's innovative financial structure, is a crucial factor in making these projects financially feasible, and the City of Dallas stepped up with a $1.5 million bridge loan to help facilitate development of the first project, which closed last week. In addition to this being a solid and conservative financial investment for the CDRC's EB-5 investors, Dallas wins by both creating jobs within the City and facilitating the development of housing for its older middle- and lower-income residents, so they are not forced to leave the City in order to receive the care they need. I am very proud of this outcome, and I look forward to a great many similar lasting and positive impacts on my hometown in the future. We are actively working with the project sponsor to replicate this structure elsewhere in Texas and in other U.S. markets.

Civitas has more than $150 million in additional EB-5 investments in the pipeline for the CDRC, and is expanding its EB-5 activities to new markets, including Houston, San Antonio and Austin. We are also working closely with the City of Amarillo on their ambitious downtown redevelopment plan, which will include a 300-room hotel and a minor league baseball stadium, at a cost of $120 million. Without $40 million in EB-5 capital, this project would be impossible in today's credit markets, and Amarillo would lose a rare opportunity to create more than 1,000 jobs while revitalizing its downtown economy.

Civitas Capital's experience with the EB-5 Regional Center program – in particular, the CDRC's rapid growth and facilitation of projects that would be impossible absent EB-5 capital, and our rapid growth and expansion into new markets – clearly demonstrates not just the great potential of the EB-5 Regional Center program to have a positive impact on job creation and economic growth in the United States, but also what the program is accomplishing *right now*.

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[3] In my testimony at the House hearing in September, I described a $9 million EB-5 loan. Just last week, the loan amount was increased to $10 million.

Building on Success: Permanent Reauthorization

Members concerned that the EB-5 program has been underutilized in the past should rest easy – those days are over. Civitas is hardly alone in grasping the huge potential of the EB-5 program to facilitate economic activity and create jobs. When I began evaluating the EB-5 program in 2008, there were perhaps 35 Regional Centers; of those, only a handful were active. Today, there are more than 200 Regional Centers in 43 states, the District of Columbia, and Guam[4] – more than a sixfold increase in just three years, and an increase of more than 10% in the three months since I testified on this topic before the House. There are success stories like the CDRC's all over the United States. Among the most notable is Jay Peak Resort in Vermont, represented at the hearing today by my friend Bill Stenger. Jay Peak has been a singularly important job creation engine in its community for years.

According to USCIS, just 332 investors applied to participate in the EB-5 program in fiscal 2005.[5] By contrast, I-526[6] petitions are on track to total more than 3,200 in fiscal 2011 – nearly a tenfold increase.[7] The pace of new applications has accelerated dramatically since fiscal 2009, with year-over-year growth averaging 77%. With more than 200 Regional Centers competing for investors and more coming online every day, it is clear that the annual allocation of 10,000 EB-5 visas will soon become a constraint on the program's ability to create more jobs for U.S. workers and bolster local economic development.

This is especially true when one takes into account that each petition submitted by an EB-5 investor requires, based on USCIS data for fiscal 2009, three EB-5 visas: one for each of the primary investor and two dependents.[8] In fact, my firm's investors alone are likely to require between 500 and 800 EB-5 visas over the next twelve months – i.e., 5% to 8% of the total annual allocation of 10,000. Thus, I strongly urge Congress to resist any proposal to reallocate EB-5 visas to any other category. Doing so would slow the program's great momentum just when USCIS is in the process of streamlining the adjudication process in order to truly unleash this program's potential to create American jobs. This would be counterproductive, to say the least.

These statistics and my own experience with the CDRC demonstrate the EB-5 program's vast job creation potential. With the unemployment rate stubbornly high, Congress should do everything possible to ensure that this valuable program reaches its full potential to attract investment and create jobs. That is why I strongly urge Congress to act on permanent reauthorization **quickly**. Even with a full year until the expiration date, I can testify to many personal experiences with prospective investors and job creators who are already hesitant to rely on the program because it may sunset in the short term.

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[4] *See* http://www.uscis.gov/eb-5centers for a comprehensive list of Regional Centers.

[5] U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

[6] Form I-526 is the initial petition that a foreign investor must submit to USCIS for approval to participate in the EB-5 program.

[7] U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

[8] Office of the Citizenship and Immigration Services Ombudsman, *Annual Report 2010*, June 30, 2010, pg. 26, figure 14. This table shows that in fiscal 2009, 3,663 EB-5 visas were issued, of which 35.2% were issued to "principals" – i.e., investors – and 64.8% were issued to "derivatives," i.e., their dependents.

To illustrate this uncertainty, consider this example: My team recently identified a $45 million EB-5 investment opportunity in California, a new market for us. But when I add up the eight to ten months it currently takes to establish a new Regional Center[9], four months to recruit 90 investors, and six to seven months for investor petition processing, the total time required to close is up to twenty-one months – well beyond the program's currently scheduled sunset date of September 30, 2012. It is important to understand that the EB-5 process is arduous, time-consuming and expensive, both for investors and Regional Center operators. Civitas will invest a great deal of time and money on this effort, and even more importantly, will ask investors to risk millions of dollars. With each passing day, the uncertainty surrounding the program's reauthorization increases, making EB-5 capital more difficult to raise and therefore hampering the job-creation goal of the program. Without permanent reauthorization, my opportunity to create hundreds of desperately needed jobs in California – and many similar opportunities across the country – will likely slip away.

I recognize that as a general matter, permanently authorizing any government program may not be palatable to some Members. The concern that public programs may take on a life of their own, leading to endless taxpayer expenditures if they are not regularly reviewed, is a valid one. However, in the case of the EB-5 program, I feel strongly that this concern is misplaced. It is important to keep in mind that the EB-5 program is, like all immigration benefits, required by law to be fully self-funding.[10] Both Regional Center operators like Civitas and individual EB-5 investors pay substantial fees to USCIS, which fees fully cover the cost of administering the program. As these costs rise, so do the fees,[11] as is appropriate. Therefore, the EB-5 program costs taxpayers nothing, as Congress intended.[12] Accordingly, in terms of maintaining fiscal discipline, permanent reauthorization is quite appropriate. Of course, Congress always retains its ability to hold hearings, modify the Regional Center program or even abolish it altogether should it choose to do so. This means that, effectively, "permanent' reauthorization of the Regional Center program is actually no more than the removal of an automatic expiration provision in the current law that frustrates the policy goal of the program – i.e., job creation.

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[9] USCIS is currently adjudicating new Regional Center applications that were filed in November 2010. Further, the difficulty with processing times is not limited to applications for new Regional Centers. For example, consular processing for an EB-5 visa at the U.S. Consulate in Guangzhou, China, currently takes nine months. Since I-526 processing currently takes six to seven months, the total time required for a typical Chinese investor is, again, approximately sixteen months – again, well beyond the sunset date – even for an investor in a Regional Center that is approved today.

[10] *See* Section 286(m) of the Immigration and Nationality Act of 1990, 8 U.S.C. §1356(m), which provides in pertinent part that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected."

[11] When these fees rise, the increases can be substantial. For example, in November 2010, USCIS raised the fee for processing EB-5-related adjudications. The fee for an application to establish a Regional Center (Form I-924) was increased from $0 to $6,230. The fee for processing Form I-526 was raised from $1,435 to $1,500, a 4.5% increase, and the fee for processing Form I-829, an individual investor's application to remove green card conditions, was increased from $2,850 to $3,750, a 31.6% increase.

[12] The EB-5 program's fiscal impact is actually quite positive, rather than neutral, when one takes into account the fact that EB-5 investors and their dependents become U.S. taxpayers, and their worldwide income becomes subject to taxation. Thus, because all of the costs of the program are covered by the aforementioned fees paid by program participants, there is no question that in addition to creating a great many jobs for U.S. workers, the EB-5 program is a net benefit to the public purse. Based on my personal experience, I can assure the Committee that the income and non-EB-5 investment activity of a majority of Civitas's EB-5 investors will result in substantial tax revenue for the United States.

Other Key Issues

In her 2011 annual report[13] to Congress, Citizenship and Immigration Services Ombudsman January Contreras highlighted several key issues facing the EB-5 Regional Center program, as well as the status of legislative and agency administrative efforts to resolve these issues. I urge Members to review this important report and give careful consideration to the Ombudsman's recommendations in the section entitled "Revisiting the Immigrant Investor Visa Program." I would like to take this opportunity to provide the Committee with my thoughts on certain of the issues addressed by the Ombudsman, as well as a few other areas of particular importance.

1. ***USCIS Processing Times***. Easily the most challenging aspect of deploying capital via the EB-5 Regional Center program is the length of time it takes for USCIS to process both Regional Center applications (Form I-924) as well as individual investor petitions (Form I-526). The official USCIS estimate of processing time for an I-526 petition is currently eight months.[14] This is simply too long for many projects, and it is crucial that processing time be reduced. I applaud Director Mayorkas's recent announcement that USCIS is hiring a large number of adjudicators, economists and other personnel in order to expand the agency's capacity and bring processing times down. Even more encouraging was the Director's announcement that "premium processing" – the ability to pay an extra fee for expedited adjudication of petitions – will soon be available. However, on the most recent stakeholder conference call, Director Mayorkas made clear that while the agency plans to implement premium processing for applications to establish new Regional Centers, it does not yet have plans to do the same for individual investors. In my view, implementing premium processing for new Regional Centers but not individual investors is the wrong approach. The result will be even more rapid growth in the number of new Regional Centers and, presumably, a higher volume of individual petitioners – who will face even longer processing times than they do today unless USCIS devotes significant additional resources to processing I-526 petitions. This will frustrate investors, Regional Center operators and, most importantly, the job creators seeking to deploy EB-5 capital into their projects. In my view, the agency should concentrate its resources first on reducing processing times for individual petitioners, including through premium processing, on a first-come, first-served basis. If and when premium processing is implemented, existing investors with petitions on file should be able to pay the required fee and expedite adjudication. This will result in the acceleration of existing, shovel-ready projects that are simply waiting for EB-5 capital to be released from escrow – and the associated job creation.

   While I recognize that USCIS needs time to recruit staff and implement internal procedures in order to provide premium processing, I urge Director Mayorkas to publicly announce a date by which premium processing will be available for individual petitioners, and to hold the agency accountable for meeting that target. This will allow Civitas and every other Regional Center operator the ability to plan for the future much more effectively.

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[13] Citizenship and Immigration Services Ombudsman, *Annual Report 2011*, June 29, 2011.

[14] *See* https://egov.uscis.gov/cris/processingTimesDisplay.do.

2. ***Enhanced Communication with Adjudicators.*** Director Mayorkas also recently began permitting I-924 petitioners to communicate directly with adjudicators via e-mail, so that adjudicators will have the ability to resolve questions about petitions without issuing an RFE. I commend the Director for implementing this common-sense procedure, which will be an important step toward making the adjudication process more transparent, collaborative, cost-effective and ultimately, productive. Unfortunately, as with premium processing, this new procedure applies only to I-924 petitions to establish new Regional Centers, rather than to I-526 petitions filed by individual investors. In a draft EB-5 policy memorandum released to the stakeholder community on November 9, 2011, the Director referenced the agency's plans to establish "an expert Decision Board to assist adjudicators in rendering final decisions on Regional Center petitions." I believe this is a positive step that should be taken in addition to, and not in lieu of, permitting email communication between I-526 adjudicators and petitioners. The two are complementary and, again, ultimately will result in a more efficient, cost-effective and collaborative process that promotes the policy goal of the program: job creation.

3. ***Meaningful Pre-filing Engagement for Regional Centers.*** Often referred to as the "exemplar" process, this refers to the ability of a Regional Center manager such as Civitas to obtain pre-approval for a project business plan prior to coordinating my investors' submission of hundreds of individual petitions. It is vitally important that this process be streamlined and that decisions by USCIS be final and not subject to reinterpretation by USCIS in the context of an individual investor's I-526 petition. I have personal experience with relying on an approved exemplar petition – which cost $6,230 to submit and took eight months to adjudicate – only to have investors receive RFEs on issues that should have been addressed at the exemplar stage. This process must be reformed, standardized and streamlined so that it serves its intended purpose: eliminating uncertainty for Regional Centers and individual investors with respect to a particular project's compliance with EB-5 requirements, leaving only factors related to the individual investor to be adjudicated at the I-526 stage. The good news is that Director Mayorkas has stated on numerous recent occasions his strong belief the exemplar process should serve its intended purpose and is working with agency staff to make that a reality. I am encouraged by these statements and encourage the agency issues additional guidance on the exemplar process as soon as possible. An effective exemplar process will make the entire Regional Center program more predictable and efficient for users of EB-5 capital.

Resolution of these key issues will increase transparency and reduce both cost and uncertainty, dramatically enhancing my ability to create U.S. jobs through the City of Dallas Regional Center and in new markets around the country.

Conclusion

I would like to conclude first by acknowledging the good work of the men and women of the United States Citizenship and Immigration Services. I applaud the agency's recent efforts to streamline EB-5 adjudications. Director Mayorkas and his team are making sincere efforts to

improve the agency's administration of the Regional Center program, and I look forward to continuing to work with them moving forward.

In addition, I would like to recognize the work of the Association to Invest in the USA (IIUSA), the trade association for Regional Centers and other EB-5 stakeholders, represented at the hearing today by the very capable Robert Divine, who served as Chief Counsel at USCIS. Importantly, IIUSA has established standards and best practices for its membership, which Civitas endorses and to which we closely adhere. It is important that Congress understand that Regional Center operators, Civitas included, know that participation in the EB-5 program is a privilege, not a right, and that the highest standards of business ethics must be upheld with respect to every aspect of the program. This is what IIUSA stands for, and I am pleased to work with them to ensure that the rapid growth of the EB-5 program – a very positive development for this country in terms of both capital investment and job creation – is matched by the evolution of best practices as new Regional Centers use the program in new and innovative ways. Finally, I am particularly grateful to IIUSA Executive Director Peter Joseph for doing yeoman work to facilitate communication among Regional Centers and between stakeholders and USCIS. Communication is the crucial first step toward finding solutions to common problems, and the community owes Mr. Joseph a debt of gratitude for his tireless efforts.

Mr. Chairman, thank you again for the opportunity to submit my testimony to you and your colleagues today. Thank you also for your support of the EB-5 Regional Center program and for pushing its reauthorization forward now. I hope I have demonstrated that immediate and permanent reauthorization of the Regional Center program is of paramount importance.

BERTHEL FISHER & COMPANY

December 5, 2011

The Honorable Charles E. Grassley
135 Hart Senate Building
Washington D. C. 20510-1501

The Honorable Charles E. Grassley
721 Federal Building
210 Walnut Street
Des Moines, Iowa 50309

Dear Senator Grassley:

Thank you for taking the time to meet with me last month in your office. After that meeting, I became aware there is a hearing scheduled this week regarding funding of the EB-5 Regional Center Program, including whether to continue the program on a temporary basis or to fund it on a permanent basis. I write this letter to urgently request that you continue the funding for the EB-5 Regional Center Program on a permanent basis. As you are aware, the EB-5 Regional Center Program was enacted to stimulate economic growth through foreign investment. The program sunsets every few years, and while it has been re-authorized each time, the uncertainty of not having a permanent program is a major hurdle in utilizing the program to its full extent.

We recently became aware of this program as a fund-raising vehicle for Iowa projects. We have been researching how to establish a program that could create jobs for Iowans through investment in Iowa companies.In conducting this research, we determined that the possible sunset of the program in 2012 can be a significant issue. We know that establishing such a program will be expensive and time-consuming. We do not want to commit our resources to form and build a Regional Center and see the program go away only months later.

Even if the program is re-authorized on a temporary basis, the lack of permanence could be a stumbling block to the ultimate success of our efforts. Investors are willing to take some risks for a future reward. But this type of uncertainty may be too much for the market to bear. In this time of global competition, we cannot afford to make foreign investment difficult, especially given the nature of our economy at this time.

Rarely do we find a program that does not rely on taxpayer funding or bank funding that is available at reasonable rates of return. It is our opinion it may be poor fiscal policy to cut off such a funding stream at this critical time.

Therefore, we request your assistance in making a permanent extension of the EB-5 regional center program a reality.

Sincerely,
Berthel Fisher & Company

Thomas J. Berthel
CEO

CC: Judiciary and Appropriations Committee Members

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Marion, IA 52302-0609
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December 12th, 2011

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Response from December 7th, 2011 Hearing

Dear Senator Leahy:

I am pleased to submit testimony in relation to the Judiciary Committee's hearing on the EB-5 Regional Center Program ("Program"). I would like to take this opportunity to respond to testimony given by David North at the hearing. I first would like to thank you for your steadfast support for the Program. It has developed into a very important program, and I am happy to see U.S. corporations, such as Marriott, Hilton, and Hyatt, take such a vested interest in its disciplined continuation. I was able to commission strong letters of support from those corporations, and it was great to hear you read part of the Marriott letter as official record.

I had the pleasure of working with the Vermont Regional Center on my EB5 Sugarbush project, and I am proud to have been able to bring $20 million to the Sugarbush Ski Resort in Vermont's Mad River Valley. Our investment was able to preserve, or save, hundreds of jobs, and I am pleased to see that the Sugarbush Ski Resort recently has been awarded the precious '1-2-3' award by *Ski Magazine* - #1 in terrain variety, #2 in overall satisfaction, and #3 in service. The resort is clearly not 'dying', as Mr. North had put it.

Before I discuss Mr. North's testimony, below are my qualifications and experience as it pertains to the EB-5 Program. I have been in the EB-5 industry since 2006 when I funded the Sugarbush resort. Currently, I focus my efforts on mixed-use projects under the D.C. Regional Center, which I co-own. I am in the process of funding $19 million to an urban infill project in Washington, DC. Additionally, I co-authored an article in 2009, which was published in *Bender's Immigration Bulletin*, about an 'integrated Targeted Employment Area definition.' More recently, I have presented to both the U.S. Chamber of Commerce and the Brookings Institute on EB-5 law and policy, and I was asked by USCIS Director Mayorkas to provide comments and feedback about the current TEA definitions in the law. Academically, I received my Master in Policy and Certificate in Urban Planning from the Woodrow Wilson School at Princeton in 1997. I have both private and public sector experience, including working for Public Financial Management (PFM), where I placed $2 billion in public debt.

Regarding Mr. North's testimony, I would like to focus my rebuttal on the following five topics that were addressed during the hearing:

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Phone: (202) 652-2437 | Fax: 888-338-3316

1. Other countries' investment immigration programs are better
2. The $500,000 investment amount is too low
3. Only direct jobs should be counted
4. The Program has had too many scandals
5. Immigration visas should only be given for significant reasons

1. **Other countries' investment immigration programs are better**

Mr. North's main issue is that our EB-5 Program pales in comparison to the other immigrant investor programs around the world. In his written testimony, he highlights that, *"The Bahamas, for example, in effect, requires a $1.5 million dollar investment, such as in a mansion, before it gives a permanent visa to the alien investor; since our economy is 2,000 times as large as that of those islands, this means that The Bahamas gets 6,000 times as much bang for the buck for its minimal investment than we do for our minimal investment, of a half-million."* (p. 8)

The EB-5 Program is about job-creation. Each investment, whether for $500,000 or $1,000,000, must create at least 10 full-time, permanent jobs for U.S. workers. In addition, the investment must be 'at-risk.' There are no redemptions or guarantees associated with the investment. Other programs do not have these requirements.

It also should be noted that our Program was based on the highly successful program in Canada. It is common knowledge that the city of Vancouver, now very much an international city, was built using immigrant investor funds via their program. Their program, until very recently, had a much lower investment amount, and there was no 'at-risk' requirement or job-creation requirement.

In summary – although many developed countries have their own versions of an immigrant investor program, the U.S. EB-5 Visa Program actually has the highest standards, as it incorporates both a job-creation requirement and an 'at-risk' requirement that is not present in other programs.

2. The $500,000 investment is too low

Mr. North also claims that the presence of the $500,000 investment overshadows the $1,000,000 investments that are available to investors. He says, *"Needless to say, because the regional centers part of the program requires only half a million dollars, the other part of the EB-5 program where the basic level is one million, has just about become a dead letter."* (p. 3)

I would first like to clarify the misconception that the Regional Center Pilot Program, which is the program that is up for permanent reauthorization, has no correlation to a lowered investment amount of $500,000. The main benefit of investing via a designated

Regional Centers is that you are allowed to count indirect job creation in addition to direct job creation. It has absolutely nothing to do with the investment amount. This is solely determined by the location of the project. According to the EB-5 regulations, if a project is located in a rural community, or in an area with an unemployment rate which is greater than 150% of the national average, it qualifies for a lowered investment amount of $500,000.

Is Mr. North suggesting that we should do away with the $500,000 investment amount, and only allow investors access to $1,000,000 projects in non-TEA areas? Should the investors be funding in areas such as Bethesda, MD, or in Beverly Hills CA, as opposed to the distressed Anacostia neighborhood of Washington, DC, or the rural areas in Vermont? Or is Mr. North suggesting that we only allow $1,000,000 investments, regardless of the unemployment rate in the location? This would certainly remove an advantage of the smaller neighborhoods and distressed towns in the country of attracting an investment, as the foreign investors would surely invest in the wealthier areas. I cannot seem to follow Mr. North's logic with this issue.

In short, Mr. North states that, *"If we are going to have an immigrant investor program at all, obviously we should raise the stakes. We can do so, without lifting a finger, by simply letting the regional center program die, thus increasing the minimum investment for immigrants to one million dollars."* (p. 6) For someone claiming to be an 'immigration expert', I would have to question the accuracy of his testimony based on the fact that he is lacking in a basic understanding of the Regional Center Pilot Program.

In summary – it is important to have special requirements for those areas designated as 'Targeted Employment Areas', as it is in those areas that foreign direct investment is needed most. Whether the attraction is a lowered investment amount, or a lowered job-creation amount (10 jobs in TEAs vs. 20 jobs in non-TEAs), or some other difference, it is important for the Program to have that distinction.

3. Only direct jobs should be counted

"Such programs, if we have them at all, should be about creating business entities, not passive investments; it should be about creating real jobs, not elaborate calculations about the indirect creation of jobs." (p. 2)

Mr. North claims that Regional Centers do not need to identify the jobs that were created, as the jobs can be calculated by any 'reasonable' methodology that the Regional Center can '*conjure up.*' (p. 3) This statement implies that job-creation is not a priority for the Regional Centers, and that uncommon or unnatural calculations are used to prove job creation. As a Regional Center operator, I'd like to state that this is completely without merit..

As successful Regional Center operators all know, job creation is the most important aspect to the Program. It's the first question investors ask and the first question I ask of developers. Without a clear record of job creation, the investor's permanent Green Cards may be at risk. Almost all Regional Centers use one of three economic methodologies – IMPLAN, RIMS-II, or REDYN. These methods are all approved by USCIS and have long histories of economic modeling. IMPLAN, for example, was developed in the 1980's in coordination between the USDA Forest Service and the Agricultural Economics Department of the University of Minnesota. The Bureau of Economic Analysis (BEA) developed RIMS II in the 1980's, which is based on an economic accounting framework called an Input-Output table, first developed by Wassily Leontief, and for which he received the Nobel Prize in Economics in 1973. These are not 'made-up' methodologies that Regional Centers use. By and large, a few well-known economists who specialize in job-creation modeling for EB-5 purposes submit the economic reports in conjunction with the investors' immigration petitions.

Using an economic model to predict job-creation is important in the Program, because EB-5 funds are generally leveraged with other forms of capital. It is important to correctly capture the impact the total investments make on the local communities. Mr. North claims that only 'real' jobs should be counted; I assume he means direct employees hired by the new business. As we all know, sizeable investments in local communities will have an indirect effect on the area, and the effect goes well beyond the number of direct employees that are hired. Every community is a mini-GDP, and it's these investments that help to grow the GDP. As local economies grow around the country, our national economy will as well.

In summary – the analytical methods employed by Regional Centers are highly scrutinized by investors. The use of independent, disciplined methodologies is critical to the integrity of the Regional Centers. Disciplined Regional Centers go to great lengths to hire expert economists in order to produce reports that will accurately capture the effect of an investment in a local community.

4. The Program has had too many scandals

"The program, by its nature, attracts sub-par investments, and often scandals. Perhaps that is one reason it has failed, year after year, to reach its legislative goal of 10,000 investment visas." (p. 2)

There have been a number of real scandals in the investment and accounting industries in the past 20 years. The fall of Enron, Madoff Investment Securities, and more recently, MF Global were all large, serious, and devastating scandals all under the nose of federal regulation. There has been outright fraud, insider trading, and securities violations in all of these cases, yet these industries were not terminated or shut down. In comparison, the negative cases in EB-5 have been few and far between in the past twenty years.

It appears that Mr. North is using the excuse of "fraud" to attack another immigration program. If Mr. North had accurately understood the history of the Program, he would see that there have actually been a very small amount of failures in the Program. The Program has been in existence since 1992. Throughout much of the 90's, while the Program was under the guidance of INS, it was not able to gain much traction, especially in light of Canada's program doing so well overseas. There was little structure to the program, and a few bad actors were able to cause significant damage to the Program for a long time. The Program was effectively shut down until 2003, when the Department of Homeland Security and USCIS took over jurisdiction. Since then, the Program has been steadily growing in popularity overseas and there have been relatively few failures. Mr. North mentions the *'bankrupt dairy farm in South Dakota, where 16 of the 17 jobs created by EB-5 funds, albeit briefly, turned out to be held by illegal aliens'* (p. 4) Yes, this is indeed true. The jobs were found to be held by illegal aliens and the investors did not receive their permanent Green Cards. The process worked just as it's supposed to work. In another example, *"a convoluted effort, eventually rejected by USCIS, to use some legitimate money and some questionable (Iranian) funds to revive the old Watergate Hotel in Washington."* (p. 4). Again, this is true. This was done by Capitol Area Regional Center. This Regional Center has been trying to bring in investors since 2005 but has failed to do so. The Watergate project was not in a TEA, the operators were issued a formal memorandum by USCIS, and their AAO appeal was denied. This denial is publicly available on the USCIS site. Again, the process worked. I was the first operator to ever put a Regional Center on top of a Regional Center; that is, they were not bringing much-needed capital to Washington, DC, I applied for a Regional Center in the same geographical jurisdiction, and have placed $28 million into various projects throughout the District. This is yet another example of the program working.

Mr. North is quick to name the one or two 'scandals' that the Program has seen in its years, but he refused to name any success stories. Much press has been written about the hundreds of millions of dollars that CMB Regional Center has provided to redevelop former military bases that have been closed due to BRAC realignment throughout distressed areas in California. Small towns in Jay Peak and at Sugarbush were literally saved due to the sizeable EB-5 investments in Vermont. Small wineries, vineyards, and other small businesses in California's wine country have benefited from EB-5 due to the investments provided by the California Consortium of Agricultural Export (CCAE) Regional Center, which is one of the most successful Centers to date. Industry leaders such as Marriott have combined EB-5 funds with other funds to build countless hotels,

providing much needed jobs to communities in Seattle, Milwaukee, and Washington, D.C.

In summary – All industries have bad actors. Both regulation and enforcement is needed to ensure that bad actors do not succeed. Looking back on the history of the Program, it is quite clear that, by and large, bad actors have not succeeded. Although further regulation and enforcement is needed to ensure the longevity of the Program, there have been very few failures. Similar to any other industry or business, you do not terminate the entire Program over a few small failures.

5. Immigration visas should only be given for really significant reasons

"Further, immigration visas to this struggling, over-populated nation should be regarded as precious, and given only for really significant reasons." (p. 2)

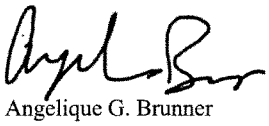
Mr. North goes on to say that immigration visas should only given to spouses of U.S. citizens, refugees fleeing dictators, or to talented foreign nationals. Whatever happened to our nation being 'a country of immigrants'? As the Statue of Liberty says, "Give me your tired, your poor; your huddled masses yearning to breathe free." The majority of the EB-5 investors are truly yearning to be free. They want better education opportunities for their children. They want to open businesses here. When asked why wealthy immigrants participate in the EB-5 Program, I say, "They are buying things they cannot buy at home, such as clean air and drinking water, safe food, freedom of press, and public safety. Investors coming from China, especially, yearn for the freedoms held under our democratic republic. Many of our investors are already living in the United States. They are studying at our universities on student visas, or they are working for our companies on work visas. Many of these students, after we educate them and spend many resources on them, are sent home by our immigration policy. To do what exactly? They will essentially end up competing with us in the international marketplace.

I'd like to remind Mr. North that the Regional Centers are not so much competing with one another, but we are competing with Australia, Canada, Singapore, and other first-world destinations for the world's wealthy immigrants. Most of the Regional Centers are members of IIUSA, which is the EB-5 industry trade association. I am a founding member of the Best Practices Committee and serve on the Legislative Committee. An employee is the Chair of the Membership Committee. We go to the same overseas investment trade shows, and we meet at the events. The EB-5 Program already has high enough standards in terms of job-creation and the 'at-risk' requirement. By allowing this Program to 'wither and die', as Mr. North suggests it, not only would local communities lose out on important, taxpayer-neutral capital resources, but our nation would lose out on attracting the very best and brightest the world has to offer. And, if that were to happen to the United States of America, a country once founded on the world's best and brightest, then that would be a shame.

I would like to thank you for the opportunity to contribute my statement to the hearing record. I trust my brief biography above provides enough assurance that I am knowledgeable and passionate about this issue.

Thank you for your time and opportunity to provide this testimony.

Sincerely,



Angelique G. Brunner

President, EB5 Capital
Owner, DC Regional Center
Principal, EB5 Sugarbush

Stephen G. Haggerty
Global Head Real Estate
and Development

71 South Wacker Drive
Chicago, IL 60606

Tel: 312.780.5833

December 14, 2011

Senator Patrick Leahy
437 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of Hyatt Hotels Corporation, I would like to express support for the current proposals to extend and permanently authorize the EB-5 Regional Center Investment Program ("EB-5 Program"). It is important for the EB-5 Program to become a permanent vehicle for economic development, as the most pressing and immediate challenge facing our country is to stimulate job creation in our economy.

Recently, developers of Hyatt hotels have begun to partner with firms like EB5 Capital to explore using EB-5 Regional Centers in order to finance hotel projects throughout the United States. Many of these projects will not be completed without EB-5 funding. Since EB-5 funds are generally leveraged with additional capital, it results in the creation of thousands of full-time jobs for American workers.

The EB-5 Program has been extended with bipartisan support since its inception almost 20 years ago, and it continues to provide foreign direct investment with zero cost to the U.S. taxpayers. The EB-5 Program also has the support of the President's Council on Jobs and Competitiveness. As long as it is monitored and regulated, we feel that the EB-5 Program can be of significant value to local economies with regards to stimulating job creation. We support the responsible practice of the EB-5 Program, and we are looking forward to partnering with successful Regional Centers in the future.

Sincerely,

Stephen G. Haggerty
Global Head Real Estate and Development

FACSIMILE TRANSMITTAL SHEET

TO: The Honorable Patrick Leahy	FROM:
COMPANY:	DATE: December 1, 2011
FAX NUMBER: 202.224.3479	TOTAL NO. OF PAGES, INCLUDING COVER: 3
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HARRY'S
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November 30, 2011

The Honorable Patrick Leahy
Russell SOB 437
Washington, DC 20510

RE: PERMANENT STATUS FOR THE EB-5 REGIONAL CENTER INVESTMENT PROGRAM

Dear Senator Leahy:

I write this letter to urgently request that Congress enact a permanent extension of the EB-5 Regional Center Investment Program ("EB-5 Program") as soon as possible. The EB-5 Program must become a permanent vehicle for economic development in our nation's cities and rural communities. The most pressing and immediate challenge facing our country is helping more people get back to work. We need innovative ways to help spur job creation. The EB-5 Program is a common sense job creator that is straightforward with no cost to U.S. taxpayers and has been extended with bipartisan support since its inception in 1990.

Over the past five years, the EB-5 Program has grown dramatically and become an essential catalyst for job creation in financially challenged areas across the United States. In 2011, the EB-5 Program will create and/or save 25,000 American jobs and generate direct investment of over $1.25 billion. If fully utilized, the EB-5 Program would create and/or save over 100,000 jobs annually.

Over the past 12 months, New York City has been leading the nation in private sector job growth. The EB-5 Program has become an important ingredient in this success by helping fund large-scale, public/private real estate projects that create much needed jobs in areas of high unemployment. To date, over $270 million of capital has been invested in New York City through the EB-5 Program. An additional $310 million of EB-5 capital is expected to be invested over the next eight months. We anticipate over $1 billion of EB-5 investment in the coming years. Below are examples of projects in our City that are utilizing EB-5 funding. These projects will create thousands of jobs and put New York City on a continued path to economic recovery and growth. They include:

- *$102 million of EB-5 funding* to assist with the redevelopment of the Brooklyn Navy Yard, New York City's largest industrial park and one of the most successful urban manufacturing districts in the country.

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12/01/2011 10:39AM (GMT-05:00)

William B. Fortier
Senior Vice President
Development – Americas
1+ 703.883.1051

Hilton Worldwide
7930 Jones Branch Drive
Suite 1100
McLean, VA 22102

December 12, 2011

Senator Patrick Leahy
437 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of Hilton Worldwide, I would like express support to Congress regarding the current proposals to extend and permanently authorize the EB-5 Regional Center Investment Program ("EB-5 Program"). Hilton, through its franchisees, has had success with the EB-5 Program in the past, and is looking forward to our small business owners using it to finance additional projects in the near future. It is time for the EB-5 Program to become a permanent vehicle for economic development, as the most pressing and immediate challenge facing our country is to stimulate job creation and increase the overall growth rate of our economy.

Over the past 5 years, the EB-5 Program has grown dramatically and has become an essential catalyst for job creation in distressed areas across the United States. In 2011, the EB-5 Program will create 25,000 full-time American jobs, and generate direct investment of $1.25 billion. If fully utilized, the EB-5 Program would create 40,000 jobs annually, while providing $2 billion in direct investment. Since EB-5 funds are generally leveraged with additional capital, it results in the creation of hundreds of thousands of new jobs each year for American workers.

With traditional bank lending at record lows independent franchisees of Hilton Worldwide have begun to partner more with firms like EB5 Capital and explore using EB-5 Regional Centers in order to finance hotel projects throughout the United States. In fact, the Hilton development team is currently working on five new hotel projects with more than 800 rooms with owners looking to use EB-5 financing. In today's environment these projects cannot be completed without EB-5 funding and, when leveraged with additional capital, will result in the creation of thousands of full-time jobs for American workers.

We support the responsible practice of the EB-5 Program, and we are looking forward to helping our franchisees partner with successful Regional Centers in the future. The EB-5 Program has been extended with bipartisan support since its inception almost 20 years ago, and it continues to provide foreign direct investment with zero cost to the U.S. taxpayers. As long as it is monitored and regulated, we feel that the EB-5 Program can be of significant value to local economies with regards to stimulating job creation.

Sincerely,

William B. Fortier
SVP Development Americas

IOWA ECONOMIC DEVELOPMENT AUTHORITY
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iowaeconomicdevelopment.com

IOWA
economic development

December 8, 2011

Honorable Charles E. Grassley
721 Federal Building
210 Walnut Street
Des Moines, IA 50309-2140

RE: EB-5 REGIONAL CENTER INVESTMENT PROGRAM

Dear Senator Grassley:

On behalf of Gov. Branstad and the Iowa Economic Development Authority I would like to thank you for the opportunity to discuss with you our desire to see a permanent extension of the EB5 Regional Center Program.

As you know Iowa has operated a Regional Center Program that was among the first such state-sponsored programs. It was formed to address the shortage of milk producers in Iowa that was developing at the time. By utilizing the EB5 program to attract qualified and experienced dairy farmers from other countries, we have been successful in maintaining a reliable milk supply for the dairy processing companies in Iowa. In other words, the validity and usefulness of the EB5 Regional Center Program was never in doubt: It has been an important tool for economic development in rural Iowa.

However, this economic development tool has even greater untapped potential for Iowa that we would like to more fully utilize.

When the current administration took office, we reviewed the existing economic development programs and realized the great potential of our regional center. Instead of limiting the center to dairy farmers, it could be expanded to encompass other valuable industries to Iowa as a fund-raising tool for Iowa businesses, as is being done in our localities.

We have been exploring the best way to make this happen in light of our new economic development structure at the State level, and expect to file an amendment to our regional center so that the benefits of such a program can be realized and jobs created in Iowa.

However, one of the major drawbacks to the current program is its uncertainty. Every few years the regional center program sunsets and must be re-authorized. As such it is difficult to justify our investment in the program as a State (the start-up costs for the amended regional center will be significant) or to convince foreign investors that the program is sound in light of this limited authorization.

We understand that the current authorization ends in 2012, and encourage you not only to vote in favor or re-authorization, but to make that authorization permanent.

#2115275

Among the many benefits of the EB5 program, such as encouraging investment in growth of Iowa businesses, adding jobs and avoiding the use of tax-payer dollars, one of the most striking is that our regional center can be utilized in rural counties, which will facilitate investment in areas of the state that are particularly at risk. As you know, economic development in rural Iowa is one of our biggest challenges.

We expect that hundreds of jobs could be created through strategic use of the EB5 program. The lack of permanence of this program is a real concern for us and we hope you will be able to assist us by procuring a permanent extension.

Sincerely,

Deborah V. Durham
Director

cc: Members of Senate Judiciary and Appropriation Committees

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee

11 December 2011

The Honorable Chuck Grassley
Ranking Republican Member

RE: Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities

Dear Senators Leahy and Grassley:

I appreciate your consideration of the EB-5 Immigrant Investor Pilot Program. After attending the Committee meeting and listening to Mr. North's testimony, I felt compelled to provide you with some additional information. While Mr. North has impressive credentials, his testimonies (both verbal and written) demonstrate a distinct lack of knowledge of the EB-5 program. As the former Chief Economist for US Citizenship and Immigration Services, I have a unique perspective of the EB-5 program from policy formulation to implementation to the real-world economic impact of the program.

I have identified five major areas of concern in Mr. North's testimony: regulatory inaccuracies, problematic data reporting, misunderstanding of process improvements, limited understanding of investment quality, and most importantly a serious confusion concerning EB-5 job creation. In my rebuttal, I will rectify a number of Mr. North's most striking inaccuracies and provide actual data that refute his conclusions.

Regulatory Inaccuracies

Throughout his testimony, Mr. North claims that investing via the Regional Center Pilot Program (rather than the individual investor part of the EB-5 program) gives the immigrant investor the benefit of a lower investment requirement ($500,000 vs. $1 million). This is simply not correct. I would refer Mr. North to 8 CFR 204.6(f).

This regulation clearly outlines the criteria required for an investor to qualify for the lower investment threshold. In order to participate at the lower amount, the job creating enterprise must be located in a rural area (defined as outside a metropolitan statistical area or a city/town with population over 20,000) or in an area that suffers unemployment at 150% of the national average unemployment rate. Clearly, this criteria exists to encourage investment into areas that otherwise might not enjoy such economic development opportunities.

Problematic Data Reporting

There are a couple of areas where Mr. North reports statistics from sources outside of the Center for Immigration Studies. I find his data reporting disingenuous at best. First, Mr. North asserts several times that USCIS does not provide information concerning petition denial rates. This

information is readily available on the public engagement portion of the USCIS website.[1] USCIS has been providing approval and denial data for Forms I-526 and I-829 during stakeholder engagements since December 2009, and for Form I-924 since its creation in November 2010. Instead of reporting denials, Mr. North provides his own calculations that describe "non-approvals".

The second problematic statistical representation is Mr. North's claim that EB-5 investors will lower the average net worth of American families. In his testimony, Mr. North chooses to report the average net worth of an American family, calculated by the Federal Reserve as $556,300. A more representative statistic, from the same source material, is the median net worth of an American family: $120,300.

A median net worth of $120,300 indicates that half of American families have a net worth *above* $120,300 and half of American families have a new worth *below* $120,300. In other words, over 58 million American families have a net worth between zero and $120,300. By reporting average rather than median, Mr. North paints a skewed statistical portrait of America that fits too conveniently with his thesis.

Adjudication Process Improvements

Mr. North is adamantly opposed to the streamlining efforts being made at USCIS, and considers these steps an opportunity for the agency to arbitrarily approve petitions. Having worked with policy-makers and adjudicators at USCIS, I can emphatically state that this is untrue. USCIS is increasing their staff-level expertise in order to improve adjudications. Adjudicators are well-trained intelligent people, but they are immigration specialists, not economists or business analysts. The process reforms will ensure that adjudicative decisions are justified, equitable, and timely. Additionally, these process improvements will help reduce the number of "scandals" in the program by improving program oversight.

One of the primary difficulties with EB-5 submissions and adjudications is that they are complex and have a countless number of variations. Other than the minimal information contained in the forms, most of the submissions (hundreds of pages) follow no established format. Since the Regional Center Pilot Program has always been temporary, USCIS has not published regulations concerning these submissions, which would improve the quality of submissions and reduce adjudication times.

Further, I applaud the agency's initial efforts toward improving the EB-5 adjudication process. I would like to point out that USCIS is a fee-funded agency that carefully allocates its scarce resources. This resource allocation is made more difficult when forecasting is uncertain with regard to the EB-5 program extension. At $6,230, the Regional Center Designation fee is by far the highest fee for an immigration-related service, and this amount does not yet cover the new expenses that the process improvements will trigger. Uncertainty makes decisions difficult for all stakeholders.

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[1] See www.uscis.gov

Limited Understanding of Investment Quality

Mr. North claims that EB-5 investments are too small and insignificant to make any real difference in the US economy. Mr. North is uninformed about the nature of Regional Center investments. Regional Centers pool investment dollars from a number of investors (sometimes hundreds of millions of dollars) and subsequently invest this capital into large-scale projects within rural or high unemployment areas of the country.

The current business environment makes it difficult for firms to borrow from traditional sources, particularly for construction projects. Additionally, municipal governments have found their ability to raise capital diminished due to shrinking property values. EB-5 investments have allowed many large projects, which would have otherwise been scrapped, to continue during these troubled economic times.

There are also some unsuccessful examples, which Mr. North outlined. During the Committee Meeting, we heard the Vermont Regional Center's EB-5 success story. Beyond Vermont there are a number of other successful Regional Centers that are fostering job creation across the nation. There are major construction projects using EB-5 capital from hotels and convention centers, to environmental remediation at Superfund sites, to building critical infrastructure like roads, bridges, sewers, and electrical generation.

Finally, successful EB-5 projects do not prosper alone. As Mr. North points out, it is impossible to create the requisite 10 jobs with only $500,000 dollars. Knowledgeable EB-5 practitioners use business models that require significant *additional* capital investment from sources outside of EB-5. This approach is critical and further improves the quality of such investments.

Critical Information on EB-5 Job Creation in the US

Mr. North does not understand econometric modeling and, therefore, assumes that these methods are invalid. In his testimony, Mr. North contends that Regional Centers may calculate jobs "by just about any *reasonable* methodology the regional center can conjure up." This is not the case. The models used in EB-5 jobs analysis are well-document and widely-accepted means of forecasting changes within our economy. Much of the modeling framework is based upon the same Bureau of Economic Analysis (BEA) data that is used to calculate Gross Domestic Product.

There are several erroneous statements in Mr. North's testimony concerning job creation that must be addressed. First, Mr. North repeatedly states that the immigrant investors are investing their capital temporarily. From an economist's perspective, the jobs are created as the capital flows into the economy (meaning when the money is spent). Therefore, the repayment of the investor's capital after the term of conditional residence does not negatively impact this job creation.

Mr. North uses a couple of examples from similar programs in other countries. One of these is the example of the Bahamas getting more "bang for the buck". Mr. North describes an investor being required to invest $1.5 million into buying a mansion to qualify for a permanent visa. While $1.5 million is a significant investment, I would like to note that in economic terms simply

buying a mansion does not actually create many jobs. So, in the Bahamian example, the investor is truly buying a visa rather than participating in a job creation program.

Finally, I would like to give an example that shows the importance of the job creating aspect of our unique American program. We can use Mr. North's petition approval data to calculate the number of jobs created directly and indirectly by those approved investors for Fiscal Year 2010. According to Mr. North, in FY10 USCIS approved 1,369 Form I-526 petitions. This equates to $684,500,000 of EB-5 investment injected into the US economy.

Let's assume that all of the $684.5 million of EB-5 investment went into a single construction project in the state of Ohio. Using the BEA RIMS II model to estimate the impact of this change on the economy, we find that this level of investment in Ohio creates 13,987 jobs (6,566 directly and 7,421 indirectly).[2] Those 13,987 people that now have jobs probably disagree with Mr. North's conclusion that this is an insignificant program.

Conclusion

The Regional Center Pilot Program is a job creation program with significant impact and merit. While there are some issues that remain unresolved, many of these are easily remedied by pending legislation, improved regulation, and immediate permanent re-authorization of the program. I appreciate your time and consideration of a valuable program that helps create thousands of jobs for Americans each year.

Very respectfully,

Kimberly Atteberry
President
Vermilion Consulting LLC

[2] The RIMS II multipliers utilized for this exemplar analysis are the final demand employment multiplier (20.4339) and the direct effect employment multiplier (2.1302) both for the construction industry.

ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

December 6, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2586

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

For more than 20 years, the EB-5 investment program has helped cities across the nation fund projects that both contribute to the economic vitality of the region and lead to the creation or retention of local jobs. As the Mayor of Houston, I see firsthand the importance of the EB-5 program that generates American jobs and strengthens small businesses. Please support this program and co-sponsor S.642.

All EB-5 investors must meet rigorous qualification standards to participate. Typical investors are well-educated, entrepreneurial, and eager to contribute to the communities in which they locate. A minimum investment of $500,000 is required under the program, which helps spur the economy by supporting local projects. The EB-5 program is an important driver for growth and development of U.S. communities, and yet comes at no cost to the American taxpayer. It's a win-win for investors, job seekers, small businesses and communities.

As you are aware, the EB-5 program is scheduled to sunset on September 30, 2012. It is imperative that Congress act swiftly to reauthorize this program and remove the uncertainty inaction is causing for potential investors. The United States Citizen and Immigration Service (USCIS) estimates that the EB-5 program has created at least 34,000 U.S. jobs. With unemployment at 9%, we can't afford to lose a program that both stimulates economic development and creates local jobs.

Legislation is currently pending in the Senate to permanently reauthorize the EB-5 Regional Center program, thereby removing uncertainty and ensuring there is opportunity for qualified investors to move to the U.S. and contribute to the economy. The City of Houston is actively interested in EB-5 and strongly urges Congress to permanently reauthorize this important program.

Thank you for your attention to this important matter.

Sincerely,

Annise D. Parker

Annise D. Parker
Mayor

POST OFFICE BOX 1562 • HOUSTON, TEXAS 77251

CITY OF AMARILLO

OFFICE OF THE
MAYOR

December 5, 2011

The Honorable Kay Bailey Hutchison
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 224-0776

RE: Immediate permanent reauthorization of the EB-5 Regional Center Program

Dear Senator Hutchison:

I am writing to you today about the EB-5 Regional Center Program, which creates jobs – American jobs, and a lot of them. I did not know too much about this program until several months ago, when the City began working with a group of private sector partners on $42.5 million in EB-5 financing for the first phase of an ambitious downtown redevelopment plan. This effort has been the subject of numerous community meetings and City Commission briefings. I personally have spent a great deal of time on this, and I am convinced it will be a major step toward revitalizing downtown Amarillo, creating a significant number of new jobs along the way. I can assure you that without EB-5 capital, this project would be next to impossible.

For EB-5 investors to invest their hard-earned money in Amarillo, they need to be certain that the EB-5 Program is going to continue to exist. U.S. businesses need the same certainty to effectively make use of EB-5 capital. With unemployment hovering around 8.6%, we need to bolster any program that brings investment dollars to American shores and creates American jobs, all at no cost to the taxpayer.

For these reasons, I urge you to support S. 642, legislation that would make the EB-5 Program permanent, and to ask your colleagues to do the same. As importantly, I ask you to push the reauthorization through now, not later, so job creators and investors alike have the certainty they need to justify taking the substantial risks we ask of them.

Sincerely,

Paul Harpole
Mayor

509 S.E. SEVENTH AVE. • P.O. BOX 1971 • AMARILLO, TEXAS 79105-1971 • 806/378-3000 • FAX 806/378-9394 • TDD 806/378-4229

MICHAEL S. RAWLINGS
MAYOR
November 28, 2011

The Honorable Kay Bailey Hutchison
United States Senate
Washington DC 20510
VIA FIRST CLASS MAIL AND FACSIMILE: (202) 224-0776

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Hutchison:

As Mayor of the City of Dallas, I have seen firsthand the immediate need to provide new employment opportunities not only in my city, but in cities across the United States. This country faces a job crisis, and it is with that in mind that I am urgently requesting that Congress enact a permanent extension of the EB-5 Regional Center Program ("EB-5 Program"). S. 642 would accomplish this, and I strongly urge you to co-sponsor this legislation. This EB-5 Program enables regional centers to be a key economic driver in their communities, creating desperately needed jobs in a tough economic environment. As our country experiences record job losses due to offshoring, the EB-5 Program attracts foreign direct investment to job-creating United States businesses. This job-saving initiative comes at no cost to U.S. taxpayers and has been extended with bipartisan support since its inception in 1993.

In 2008, The City of Dallas entered into a vital partnership with Civitas Capital Management to create the City of Dallas Regional Center ("CDRC"). Since its inception, the CDRC has committed to six major transactions, totaling more than $100 million and at a minimum, creating 2,000 new full-time jobs. The CDRC works closely with my office, major developers and the Dallas business community to identify and develop investment opportunities that meet or exceed the EB-5 Program's requirements for job creation. Just last week, our first EB-5 investors received USCIS approval, and I am eager to build on this positive momentum – but investors are already beginning to worry that if they file a petition now, the program may disappear before they are approved. This uncertainty curtails new investments and the jobs they will create – jobs Dallas needs.

Over the past five years, the EB-5 Program has grown tremendously. In 2011, the Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. By 2013, when the EB-5 Program will likely achieve full utilization, it will create or save well over 100,000 jobs annually. With numbers like these, and zero cost to taxpayers, there is no reason to delay permanent reauthorization. The time to act is now.

Failure to provide permanent authorization will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most.

Thank you for your support for this important program. Please feel free to contact me with any questions, and please support S. 642.

Best regards,

Michael S. Rawlings
Mayor

OFFICE OF THE MAYOR CITY HALL 1500 MARILLA ST., 5EN DALLAS TEXAS 752[illegible]1 TELEPHONE 214-670-4054 FAX 214-670-0646

November 29, 2011

The Honorable John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Sen. Cornyn:

My name is Andres Ruzo. I am the former Chairman of the Greater Dallas Hispanic Chamber of Commerce, and I am the founder and Chief Executive Officer of LinkAmerica, Inc., based in Rowlett, Texas My firm develops, deploys and manages Critical Communications Systems for public safety networks such police, fire and EMS. Last year, LinkAmerica was recognized as one of the fastest-growing privately held companies in the D/FW Metroplex. I employ more than 16 people.

I write to urge you to support S. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. I have firsthand experience with this vital, job-creating program, as I have worked closely with the City of Dallas on many different initiatives, including the City of Dallas Regional Center ("***CDRC***"). The CDRC is a unique public-private partnership between the City of Dallas and Civitas Capital. I am actively working with the CDRC to obtain financing for a $90 million communications system, the installation and maintenance of which will create hundreds of new jobs.

In this difficult economic environment, with credit scarce, the availability of CDRC funds is likely to make the difference between this project happening – or not.

The EB-5 Program is scheduled to sunset in September 2012, if it is not reauthorized. If this program is to be successful, business owners – job creators – like me need to know that the program will be around when it comes time to actually fund. Because it takes several months to structure and fund an EB-5 transaction, it is imperative that Congress reauthorize the program permanently now, well before the sunset date, so the uncertainty that grows with each passing day is eliminated and we can get on with the business of creating jobs. I strongly urge you to support this legislation.

Sincerely,

Andres Ruzo
Chief Executive Officer

3002 century drive rowlett tx 75088 www.linkam.com 972.463.0050

December 1, 2011

The Honorable John Cornyn
United States Senate
517 Hart Building
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

My name is John Taylor. I am the Chief Executive Officer of StoneGate Senior Living, LLC, based in Lewisville, Texas. My firm operates thirty skilled nursing, assisted living, memory support and independent living facilities in Missouri, Oklahoma and Texas, serving an aggregate of more than 3,000 residents and their families. In the aggregate, StoneGate and its affiliates employ more than 3,200 people.

I write to urge you to support S.B. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. I have firsthand experience with this vital, job-creating program. Today, my firm closed a $1,500,000 bridge loan with the City of Dallas, Texas. The City made this bridge loan in anticipation of our receiving EB-5 financing through the City of Dallas Regional Center ("***CDRC***"), a unique public-private partnership between the City of Dallas and Civitas Capital. The CDRC has committed to provide my firm with $10 million in EB-5 financing for two affordable assisted living facilities to be located in dramatically underserved areas of Dallas. Between them, these facilities are forecasted to create more than 400 direct and indirect jobs.

I can tell you that in this difficult economic environment, capital for affordable assisted living is extremely scarce. The Federal Home Loan Bank of Dallas has recognized this by awarding StoneGate a $500,000 Affordable Housing Assistance Grant for this project. The EB-5 financing from the City of Dallas Regional Center has made it possible for StoneGate to provide its trademark high-quality and personalized level of service to lower-income elderly residents of Dallas, enabling them to stay in their neighborhoods. We are very proud to be partnering with the City of Dallas, the Dallas Housing Authority, the Home Loan Bank and the CDRC to make these projects happen.

1500 Waters Ridge Drive Suite 200 Lewisville, Texas 75057
TELEPHONE 972.899.4401 FACSIMILE 972.899.4460
www.stonegatesl.com

The EB-5 Program is scheduled to sunset in September 2012, if it is not reauthorized. Stories like mine make clear that the program is an unqualified winner for all stakeholders. We are using EB-5 capital to create new jobs, and the program costs the U.S. taxpayer literally nothing – it is fully funded by the fees the investors pay to the government. There is simply no downside to permanently reauthorizing the EB-5 Regional Center program, and I hope you will support the pending legislation that would do so.

Sincerely,

John F. Taylor
Chief Executive Officer

Matthews Southwest
1660 South Stemmons Freeway
Suite 100
Lewisville, Texas 75067-6315
Tel.: (972) 221-1199
Fax: (972) 221-1217

November 28, 2011

The Honorable Senator John Cornyn
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Cornyn:

As the president of a diversified development company in Dallas, Texas, I have experienced firsthand the benefits provided through the EB-5 Regional Center Program. Having witnessed the success of this program, I urgently request that Congress enact a permanent extension of this valuable initiative now, well before its sunset date next fall. Legislation that would accomplish this is pending in the Senate as S. 672, and I strongly urge you to add your name as a co-sponsor.

I like to describe my firm, Matthews Southwest, as a small company that does big deals. Just two weeks ago, we completed development of the $500 million, 1,001-room Omni Dallas Convention Center Hotel in downtown Dallas. Just a few blocks south of the convention center, in an area plagued by unemployment, we set our sights on redeveloping a historic building into a 76-room NYLO boutique hotel. Through the City of Dallas Regional Center (CDRC), we received $5.5 million in EB-5 capital for this project, and the hotel is expected create 161 new full-time jobs. That is many more than this area of Dallas has seen in a long, long time.

There is no question that without EB-5 capital from the CDRC, we would have not been able to fund this development due to the lack of capital available for projects in distressed areas, and we are grateful to the CDRC and its EB-5 investors for their confidence in us and our project.

Over the past five years, the EB-5 Program has grown dramatically and has become an essential catalyst for job creation in financially challenged areas across the U.S. In 2011, the Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. Upon full utilization, which is likely to occur in 2013, the EB-5 Program will create or save well over 100,000 jobs annually. These statistics and my own experience prove the EB-5 Program is an innovative, job-creating economic development initiative – one that comes at **no cost to U.S. taxpayers**.

Permanent reauthorization will provide the certainty that both EB-5 investors and job creators like me need in order to continue to use the program and maximize its job creation potential. Already, because the lead time for investor approvals is so long, I am hesitant to rely on EB-5 capital for new projects because the September 2012 sunset date is looming. The solution is simple: immediate and permanent reauthorization of the EB-5 Program. Please support S. 672.

Sincerely,

Jack Matthews
President
Matthews Southwest

November 28, 2011

The Honorable John Cornyn
Ranking Member, Senate Subcommittee on Immigration, Refugees and Border Security
Washington, DC 20510
VIA FACSIMILE: (202) 228-2856

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Sen. Cornyn:

I write today in support of immediate and permanent reauthorization of the EB-5 Regional Center Program (the "***EB-5 Program***"). Legislation that would accomplish this is pending in the Senate as S. 672, and I strongly urge you to become a co-sponsor. The EB-5 Program attracts huge sums in foreign direct investment and is a source of tens of thousands of new jobs each year, while costing taxpayers literally nothing. With unemployment at 9%, Congress must move quickly to reauthorize this common-sense program now. Any delay will deter investors from participating in the program due to the fear that it will sunset before their application is approved. Thus, time is of the essence.

My firm, Civitas Capital Management, has partnered with the City of Dallas to develop the City of Dallas Regional Center ("***CDRC***"). Through this important partnership, the CDRC has committed to six major transactions which total more than $100 million and will create a minimum of 2,000 new full-time jobs. We work closely with the Mayor's office, City staff and the Dallas business community to identify investment opportunities that meet or exceed the EB-5 Program's job creation requirements. We have an additional $150 million worth of projects in the pipeline, which will create thousands of new jobs in Dallas.

Our success in Dallas demonstrates that the EB-5 Program is indeed a catalyst for job growth. We are actively expanding our EB-5 platform to other markets, and we are not alone. Two years ago, there were 30 Designated Regional Centers; today there are more than 200. The EB-5 Program is working, but because it has continually been temporarily reauthorized as a "pilot" program, each time the sunset date approaches, prospective investors are deterred from investing for fear that the program will lapse before their application to participate is approved. Permanent reauthorization – **now** – would solve this problem.

In 2011, the EB-5 Program will create or save 25,000 American jobs and generate direct investment of over $1.25 billion. Upon full utilization, which is likely to occur in 2013, the EB-5 Program will create or save well over 100,000 jobs annually. These statistics and my own experience prove the EB-5 Program is an innovative, job-creating economic development initiative – one that comes at **no cost to U.S. taxpayers**. Permanent reauthorization will provide the certainty that both EB-5 investors and job creators like me need in order to continue to use the program and maximize its job creation potential. Please support S. 672.

Very truly yours,

Daniel J. Healy
Managing Partner, Civitas Capital Management, LLC

The Honorable John Cornyn
United States Senate
November 28, 2011

cc: Matt Johnson
Minority Chief Counsel, Senate Subcommittee on Immigration, Refugees and Border Security
Senate Subcommittee fax: (202) 228-2856
Matthew_Johnson@cornyn.senate.gov

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Elise A. Healy
ehealy@spencercrain.com
214.290.0004

December 2, 2011

The Honorable Patrick Leahy
United States Senate
Russell Senate Office Building 437
Washington, DC 20515

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Senator Leahy:

My name is Elise A. Healy. I am a founder and shareholder of Spencer Crain, a majority women-owned law firm of 30 lawyers in Dallas and Houston. I have practiced immigration law for 20 years, and represented the City of Dallas in obtaining USCIS approval of the City of Dallas Regional Center (CDRC).

I write to urge you to support S. 642, legislation that would permanently reauthorize the EB-5 Regional Center program. In addition to representing the City of Dallas in its successful regional center application in 2009, I also represented five of the first ten investors in the CDRC, whose EB-5 petitions USCIS approved just before Thanksgiving. This will create 250 direct and over 400 indirect jobs in Dallas and is, we hope, just the beginning of a substantial flow of job-creating capital to Dallas.

The EB-5 program needs to be reauthorized permanently, **right now**. The reason is straightforward: the repeated short-term extensions of its "pilot" status result in a cloud of uncertainty that makes planning very difficult, especially given the lengthy USCIS approval processes involved. (The abovementioned ten petitions took a year!)

To make full use of the EB-5 program, businesses and investors need to know it is not going away. This is an easy problem to fix and there is no downside, as the program does not cost taxpayers a dime – it is fully funded by the fees the investors pay to the government. Please co-sponsor S. 642and urge your colleagues to do the same.

Sincerely,

Elise A. Healy

Elise A. Healy
Attorney at Law

340263

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214.290.0000
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713.375.2499 (Fax)

Written Testimony of

Daniel J. Healy

Chief Executive Officer
Civitas Capital Group

Hearing on
Reauthorizing the EB-5 Regional Center Program: Promoting Job Creation and Economic Development in American Communities

Before the
Committee on the Judiciary
United States Senate
Washington, D.C.

December 7, 2011

EMBARGOED UNTIL DELIVERY
As Prepared for Delivery

Mr. Chairman and Distinguished Members of the Committee:

Thank you for the holding today's hearing on this important topic and for the opportunity to submit written testimony for the record. My name is Daniel J. Healy. I am the Chief Executive Officer of Civitas Capital Group, a boutique asset management firm based in Dallas, Texas. My testimony begins with a brief summary of my background and that of my firm. Next, I discuss the vital importance of permanently reauthorizing the EB-5 Regional Center program, an engine of American job creation, drawing primarily upon my experience managing the City of Dallas Regional Center on behalf of the City of Dallas, Texas. Finally, I conclude with recommendations for improvement of the program and my thoughts on recent initiatives announced by U.S. Citizenship and Immigration Services (USCIS).

Company Background

Civitas Capital Group's lines of business include management of investment funds under the EB-5 Regional Center program, alternative investments, private wealth management and securities brokerage.

Prior to founding Civitas in 2008, I held senior executive positions with the real estate private equity arm of the San Antonio insurance firm Southwest Business Corporation, as well as with a Dallas-based investment advisor with approximately $23 billion in assets under management as of this writing. My roles at these firms involved management of commercial real estate investments and portfolios on behalf of both institutional and high-net-worth individual investors, as well as investor relations, general financial management and other duties. I have negotiated, documented, executed and managed dozens of real estate investments, including

senior debt, equity and structured transactions totaling several hundred million dollars. I am experienced with real estate and private equity fund structuring and management. In addition, I have served as Chief Compliance Officer of a securities broker-dealer. I currently maintain FINRA Series 7, 24, 28, 63 and 65 securities and investment advisory registrations.

The EB-5 Regional Center Program: Creating American Jobs
Case Study: The City of Dallas Regional Center

The EB-5 Regional Center program came to my attention in 2008, at the outset of what has become a global credit crisis of historic proportions. For many commercial real estate projects, on which I was focused at the time, traditional sources of financing – commercial banks, credit companies and other lenders, especially – refused to lend or simply disappeared altogether. As the credit crisis developed into a full-blown recession, illiquidity worsened and many projects were shelved or even abandoned midstream. While Texas has fared better in the downturn than much of the rest of the United States, there is no question that the state has been hard-hit by the sluggish economy and that both business and project financing dried up, a situation that has improved little in the last three years. It was in this context that I began to explore the EB-5 program with the City of Dallas.

I am pleased to report that as a result of a collaborative effort between Civitas and the City, Civitas Capital Management, LLC, is the manager of the City of Dallas Regional Center (CDRC), a unique public-private partnership. Forward-thinking leaders at the City of Dallas envisioned creating a Regional Center to facilitate economic development, but they recognized that investment management is best left to the private sector. Civitas collaborated with the City to design a Regional Center that reflects the pro-business, pro-growth culture that has made Dallas a magnet for employers and families alike.

USCIS approved the City of Dallas Regional Center in late 2009, and we identified our first project in February 2010. As I discussed in my testimony before the House Judiciary Subcommittee on Immigration Policy and Enforcement this past September,[1] in its first 17 months of operations, the CDRC committed to six high-quality investments totaling $91 million. In the three months since that House hearing, the CDRC has committed to two additional transactions totaling just under $40 million. Thus, in Dallas alone, the EB-5 Regional Center program, through the CDRC, is on track to result in more than $130 million in foreign direct investment and a minimum of 2,600 new jobs.[2]

In this short period, the CDRC has provided low-cost, flexible capital for projects across a range of industries, including $15 million for a call center, $5.5 million for a boutique hotel, and $8.5 million to help the oldest chain of Tex-Mex restaurants in the country open four new locations.

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[1] *Written testimony of Daniel J. Healy, Chief Executive Officer, Civitas Capital Group.* Hearing on "The Investor Visa Program: Key to Creating American Jobs." U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration Policy and Reform, September 14, 2011.

[2] For these projects, the CDRC will have 260 individual EB-5 investors, each of whom will invest $500,000. By law, each investor must account for the creation of ten (10) new jobs; thus, 260 investors will mean that a minimum of 2,600 new jobs must be created, directly or indirectly. In practice, the job creation actually forecasted to result from each of these investments is substantially in excess of the minimum requirement; Civitas's internal underwriting typically requires job creation of at least 120% of the legal minimum.

In my testimony for the House hearing on the EB-5 program held in September, I highlighted a particular transaction that the CDRC is in the process of funding, and I would like to do so again for the Committee today. I am particularly proud of our firm's and the CDRC's involvement in this project, not least because it illustrates exactly what the EB-5 program makes possible in these difficult economic times.

Civitas and the CDRC recently committed to loan $10 million[3] to an experienced senior housing operator for the purpose of establishing two affordable assisted living facilities in Dallas. Both of these facilities will be located in areas of Dallas which have long been underserved. As Members on the Committee are certainly aware, the aging of the Baby Boom generation has resulted in quite an increase in demand for assisted living and other seniors' housing facilities across the country, and Dallas is no exception. However, in Dallas, as in many other cities, development in this sector has largely been limited to higher-end facilities targeted toward residents who are insured or have the means to pay privately. There are very few, if any, options for middle- and lower-income Dallas residents who wish to stay in Dallas, let alone stay in their neighborhood near family and friends.

That is where the CDRC's most recent project comes in: these two facilities are smaller, designed to attract residents from their immediate areas, rather than competing to attract people from all over the Dallas-Ft. Worth area, as is typical. The low cost of the CDRC's EB-5 financing, combined with the operator's innovative financial structure, is a crucial factor in making these projects financially feasible, and the City of Dallas stepped up with a $1.5 million bridge loan to help facilitate development of the first project, which closed last week. In addition to this being a solid and conservative financial investment for the CDRC's EB-5 investors, Dallas wins by both creating jobs within the City and facilitating the development of housing for its older middle- and lower-income residents, so they are not forced to leave the City in order to receive the care they need. I am very proud of this outcome, and I look forward to a great many similar lasting and positive impacts on my hometown in the future. We are actively working with the project sponsor to replicate this structure elsewhere in Texas and in other U.S. markets.

Civitas has more than $150 million in additional EB-5 investments in the pipeline for the CDRC, and is expanding its EB-5 activities to new markets, including Houston, San Antonio and Austin. We are also working closely with the City of Amarillo on their ambitious downtown redevelopment plan, which will include a 300-room hotel and a minor league baseball stadium, at a cost of $120 million. Without $40 million in EB-5 capital, this project would be impossible in today's credit markets, and Amarillo would lose a rare opportunity to create more than 1,000 jobs while revitalizing its downtown economy.

Civitas Capital's experience with the EB-5 Regional Center program – in particular, the CDRC's rapid growth and facilitation of projects that would be impossible absent EB-5 capital, and our rapid growth and expansion into new markets – clearly demonstrates not just the great potential of the EB-5 Regional Center program to have a positive impact on job creation and economic growth in the United States, but also what the program is accomplishing *right now*.

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[3] In my testimony at the House hearing in September, I described a $9 million EB-5 loan. Just last week, the loan amount was increased to $10 million.

Building on Success: Permanent Reauthorization

Members concerned that the EB-5 program has been underutilized in the past should rest easy – those days are over. Civitas is hardly alone in grasping the huge potential of the EB-5 program to facilitate economic activity and create jobs. When I began evaluating the EB-5 program in 2008, there were perhaps 35 Regional Centers; of those, only a handful were active. Today, there are more than 200 Regional Centers in 43 states, the District of Columbia, and Guam[4] – more than a sixfold increase in just three years, and an increase of more than 10% in the three months since I testified on this topic before the House. There are success stories like the CDRC's all over the United States. Among the most notable is Jay Peak Resort in Vermont, represented at the hearing today by my friend Bill Stenger. Jay Peak has been a singularly important job creation engine in its community for years.

According to USCIS, just 332 investors applied to participate in the EB-5 program in fiscal 2005.[5] By contrast, I-526[6] petitions are on track to total more than 3,200 in fiscal 2011 – nearly a tenfold increase.[7] The pace of new applications has accelerated dramatically since fiscal 2009, with year-over-year growth averaging 77%. With more than 200 Regional Centers competing for investors and more coming online every day, it is clear that the annual allocation of 10,000 EB-5 visas will soon become a constraint on the program's ability to create more jobs for U.S. workers and bolster local economic development.

This is especially true when one takes into account that each petition submitted by an EB-5 investor requires, based on USCIS data for fiscal 2009, three EB-5 visas: one for each of the primary investor and two dependents.[8] In fact, my firm's investors alone are likely to require between 500 and 800 EB-5 visas over the next twelve months – i.e., 5% to 8% of the total annual allocation of 10,000. Thus, I strongly urge Congress to resist any proposal to reallocate EB-5 visas to any other category. Doing so would slow the program's great momentum just when USCIS is in the process of streamlining the adjudication process in order to truly unleash this program's potential to create American jobs. This would be counterproductive, to say the least.

These statistics and my own experience with the CDRC demonstrate the EB-5 program's vast job creation potential. With the unemployment rate stubbornly high, Congress should do everything possible to ensure that this valuable program reaches its full potential to attract investment and create jobs. That is why I strongly urge Congress to act on permanent reauthorization **quickly**. Even with a full year until the expiration date, I can testify to many personal experiences with prospective investors and job creators who are already hesitant to rely on the program because it may sunset in the short term.

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[4] *See* http://www.uscis.gov/eb-5centers for a comprehensive list of Regional Centers.

[5] U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

[6] Form I-526 is the initial petition that a foreign investor must submit to USCIS for approval to participate in the EB-5 program.

[7] U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

[8] Office of the Citizenship and Immigration Services Ombudsman, *Annual Report 2010*, June 30, 2010, pg. 26, figure 14. This table shows that in fiscal 2009, 3,663 EB-5 visas were issued, of which 35.2% were issued to "principals" – i.e., investors – and 64.8% were issued to "derivatives," i.e., their dependents.

To illustrate this uncertainty, consider this example: My team recently identified a $45 million EB-5 investment opportunity in California, a new market for us. But when I add up the eight to ten months it currently takes to establish a new Regional Center[9], four months to recruit 90 investors, and six to seven months for investor petition processing, the total time required to close is up to twenty-one months – well beyond the program's currently scheduled sunset date of September 30, 2012. It is important to understand that the EB-5 process is arduous, time-consuming and expensive, both for investors and Regional Center operators. Civitas will invest a great deal of time and money on this effort, and even more importantly, will ask investors to risk millions of dollars. With each passing day, the uncertainty surrounding the program's reauthorization increases, making EB-5 capital more difficult to raise and therefore hampering the job-creation goal of the program. Without permanent reauthorization, my opportunity to create hundreds of desperately needed jobs in California – and many similar opportunities across the country – will likely slip away.

I recognize that as a general matter, permanently authorizing any government program may not be palatable to some Members. The concern that public programs may take on a life of their own, leading to endless taxpayer expenditures if they are not regularly reviewed, is a valid one. However, in the case of the EB-5 program, I feel strongly that this concern is misplaced. It is important to keep in mind that the EB-5 program is, like all immigration benefits, required by law to be fully self-funding.[10] Both Regional Center operators like Civitas and individual EB-5 investors pay substantial fees to USCIS, which fees fully cover the cost of administering the program. As these costs rise, so do the fees,[11] as is appropriate. Therefore, the EB-5 program costs taxpayers nothing, as Congress intended.[12] Accordingly, in terms of maintaining fiscal discipline, permanent reauthorization is quite appropriate. Of course, Congress always retains its ability to hold hearings, modify the Regional Center program or even abolish it altogether should it choose to do so. This means that, effectively, "permanent" reauthorization of the Regional Center program is actually no more than the removal of an automatic expiration provision in the current law that frustrates the policy goal of the program – i.e., job creation.

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[9] USCIS is currently adjudicating new Regional Center applications that were filed in November 2010. Further, the difficulty with processing times is not limited to applications for new Regional Centers. For example, consular processing for an EB-5 visa at the U.S. Consulate in Guangzhou, China, currently takes nine months. Since I-526 processing currently takes six to seven months, the total time required for a typical Chinese investor is, again, approximately sixteen months – again, well beyond the sunset date – even for an investor in a Regional Center that is approved today.

[10] *See* Section 286(m) of the Immigration and Nationality Act of 1990, 8 U.S.C. §1356(m), which provides in pertinent part that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected."

[11] When these fees rise, the increases can be substantial. For example, in November 2010, USCIS raised the fee for processing EB-5-related adjudications. The fee for an application to establish a Regional Center (Form I-924) was increased from $0 to $6,230. The fee for processing Form I-526 was raised from $1,435 to $1,500, a 4.5% increase, and the fee for processing Form I-829, an individual investor's application to remove green card conditions, was increased from $2,850 to $3,750, a 31.6% increase.

[12] The EB-5 program's fiscal impact is actually quite positive, rather than neutral, when one takes into account the fact that EB-5 investors and their dependents become U.S. taxpayers, and their worldwide income becomes subject to taxation. Thus, because all of the costs of the program are covered by the aforementioned fees paid by program participants, there is no question that in addition to creating a great many jobs for U.S. workers, the EB-5 program is a net benefit to the public purse. Based on my personal experience, I can assure the Committee that the income and non-EB-5 investment activity of a majority of Civitas's EB-5 investors will result in substantial tax revenue for the United States.

Other Key Issues

In her 2011 annual report[13] to Congress, Citizenship and Immigration Services Ombudsman January Contreras highlighted several key issues facing the EB-5 Regional Center program, as well as the status of legislative and agency administrative efforts to resolve these issues. I urge Members to review this important report and give careful consideration to the Ombudsman's recommendations in the section entitled "Revisiting the Immigrant Investor Visa Program." I would like to take this opportunity to provide the Committee with my thoughts on certain of the issues addressed by the Ombudsman, as well as a few other areas of particular importance.

1. ***USCIS Processing Times***. Easily the most challenging aspect of deploying capital via the EB-5 Regional Center program is the length of time it takes for USCIS to process both Regional Center applications (Form I-924) as well as individual investor petitions (Form I-526). The official USCIS estimate of processing time for an I-526 petition is currently eight months.[14] This is simply too long for many projects, and it is crucial that processing time be reduced. I applaud Director Mayorkas's recent announcement that USCIS is hiring a large number of adjudicators, economists and other personnel in order to expand the agency's capacity and bring processing times down. Even more encouraging was the Director's announcement that "premium processing" – the ability to pay an extra fee for expedited adjudication of petitions – will soon be available. However, on the most recent stakeholder conference call, Director Mayorkas made clear that while the agency plans to implement premium processing for applications to establish new Regional Centers, it does not yet have plans to do the same for individual investors. In my view, implementing premium processing for new Regional Centers but not individual investors is the wrong approach. The result will be even more rapid growth in the number of new Regional Centers and, presumably, a higher volume of individual petitioners – who will face even longer processing times than they do today unless USCIS devotes significant additional resources to processing I-526 petitions. This will frustrate investors, Regional Center operators and, most importantly, the job creators seeking to deploy EB-5 capital into their projects. In my view, the agency should concentrate its resources first on reducing processing times for individual petitioners, including through premium processing, on a first-come, first-served basis. If and when premium processing is implemented, existing investors with petitions on file should be able to pay the required fee and expedite adjudication. This will result in the acceleration of existing, shovel-ready projects that are simply waiting for EB-5 capital to be released from escrow – and the associated job creation.

   While I recognize that USCIS needs time to recruit staff and implement internal procedures in order to provide premium processing, I urge Director Mayorkas to publicly announce a date by which premium processing will be available for individual petitioners, and to hold the agency accountable for meeting that target. This will allow Civitas and every other Regional Center operator the ability to plan for the future much more effectively.

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[13] Citizenship and Immigration Services Ombudsman, *Annual Report 2011*, June 29, 2011.

[14] *See* https://egov.uscis.gov/crisi/processingTimesDisplay.do.

2. ***Enhanced Communication with Adjudicators***. Director Mayorkas also recently began permitting I-924 petitioners to communicate directly with adjudicators via e-mail, so that adjudicators will have the ability to resolve questions about petitions without issuing an RFE. I commend the Director for implementing this common-sense procedure, which will be an important step toward making the adjudication process more transparent, collaborative, cost-effective and ultimately, productive. Unfortunately, as with premium processing, this new procedure applies only to I-924 petitions to establish new Regional Centers, rather than to I-526 petitions filed by individual investors. In a draft EB-5 policy memorandum released to the stakeholder community on November 9, 2011, the Director referenced the agency's plans to establish "an expert Decision Board to assist adjudicators in rendering final decisions on Regional Center petitions." I believe this is a positive step that should be taken in addition to, and not in lieu of, permitting email communication between I-526 adjudicators and petitioners. The two are complementary and, again, ultimately will result in a more efficient, cost-effective and collaborative process that promotes the policy goal of the program: job creation.

3. ***Meaningful Pre-filing Engagement for Regional Centers***. Often referred to as the "exemplar" process, this refers to the ability of a Regional Center manager such as Civitas to obtain pre-approval for a project business plan prior to coordinating my investors' submission of hundreds of individual petitions. It is vitally important that this process be streamlined and that decisions by USCIS be final and not subject to reinterpretation by USCIS in the context of an individual investor's I-526 petition. I have personal experience with relying on an approved exemplar petition – which cost $6,230 to submit and took eight months to adjudicate – only to have investors receive RFEs on issues that should have been addressed at the exemplar stage. This process must be reformed, standardized and streamlined so that it serves its intended purpose: eliminating uncertainty for Regional Centers and individual investors with respect to a particular project's compliance with EB-5 requirements, leaving only factors related to the individual investor to be adjudicated at the I-526 stage. The good news is that Director Mayorkas has stated on numerous recent occasions his strong belief the exemplar process should serve its intended purpose and is working with agency staff to make that a reality. I am encouraged by these statements and encourage the agency issues additional guidance on the exemplar process as soon as possible. An effective exemplar process will make the entire Regional Center program more predictable and efficient for users of EB-5 capital.

Resolution of these key issues will increase transparency and reduce both cost and uncertainty, dramatically enhancing my ability to create U.S. jobs through the City of Dallas Regional Center and in new markets around the country.

Conclusion

I would like to conclude first by acknowledging the good work of the men and women of the United States Citizenship and Immigration Services. I applaud the agency's recent efforts to streamline EB-5 adjudications. Director Mayorkas and his team are making sincere efforts to

improve the agency's administration of the Regional Center program, and I look forward to continuing to work with them moving forward.

In addition, I would like to recognize the work of the Association to Invest in the USA (IIUSA), the trade association for Regional Centers and other EB-5 stakeholders, represented at the hearing today by the very capable Robert Divine, who served as Chief Counsel at USCIS. Importantly, IIUSA has established standards and best practices for its membership, which Civitas endorses and to which we closely adhere. It is important that Congress understand that Regional Center operators, Civitas included, know that participation in the EB-5 program is a privilege, not a right, and that the highest standards of business ethics must be upheld with respect to every aspect of the program. This is what IIUSA stands for, and I am pleased to work with them to ensure that the rapid growth of the EB-5 program – a very positive development for this country in terms of both capital investment and job creation – is matched by the evolution of best practices as new Regional Centers use the program in new and innovative ways. Finally, I am particularly grateful to IIUSA Executive Director Peter Joseph for doing yeoman work to facilitate communication among Regional Centers and between stakeholders and USCIS. Communication is the crucial first step toward finding solutions to common problems, and the community owes Mr. Joseph a debt of gratitude for his tireless efforts.

Mr. Chairman, thank you again for the opportunity to submit my testimony to you and your colleagues today. Thank you also for your support of the EB-5 Regional Center program and for pushing its reauthorization forward now. I hope I have demonstrated that immediate and permanent reauthorization of the Regional Center program is of paramount importance.

SUBMISSION FOR THE RECORD FROM HON. MICHAEL BLOOMBERG

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Statement for the Record

U.S. Senate Committee on the Judiciary

"Reauthorizing the EB-5 Regional Center Program:
Promoting Job Creation and Economic Development in American Communities"

December 7, 2011

As the mayor of a city that has actively used the EB-5 program to create jobs, I commend the Committee for taking up reauthorization of the EB-5 Regional Center Program for immigrant investors. The Program is based on a simple, but powerful idea: By offering green cards to foreign investors who commit at least $500,000 to projects in areas of high unemployment, the Program matches ready sources of capital to well-defined business projects that create jobs for American workers.

Today, 200 Regional Centers operate in more than 40 states, drawing investment to areas of high-unemployment, as well as to rural areas. And in just the last fiscal year, the Program generated over 25,000 new U.S. jobs. If fully used, the Program would generate 100,000 jobs annually. But the Regional Center Program remains a pilot that must be renewed every few years, which introduces uncertainty for would-be investors. That's why Congress should act now to make the Program permanent, guaranteeing its future and the foreign investment it attracts. Without permanent authorization of this powerful vehicle for economic development, we imperil thousands of new jobs for Americans and precious sources of capital at a time when we need them most.

New York City has seen the power of the Program up close. The Program has been used to attract over $250 millions of dollars to public-private, job-creating projects, including the redevelopment of the Brooklyn Navy Yard – one of the most successful urban manufacturing districts in the country; the expansion of Steiner Studios; the Atlantic Yards sports arena and transportation project; the redevelopment of the George Washington Bridge Bus Station; the redevelopment of the East River waterfront in Lower Manhattan; and the City Point project in Downtown Brooklyn. It would be highly counter-productive to take away this vital funding source for projects that will help drive economic growth and job creation in our great city.

In fact, $300 millions of dollars are *already* in escrow for New York City Regional Center projects awaiting federal-government approval. To date, 100% of foreign investor applications from New York City have been approved by USCIS. But with the Program set to expire in

September 2012, every day that passes raises the risk that these new projects won't be approved in time. So hundreds of millions of dollars for investments and jobs for Americans could be left on the table—and that's in New York City alone, and just the money that has been committed.

At this moment, other potential investors are looking at a program that may or may not be available in a year and are wondering whether to spend the time and money necessary to pursue the next job-creating project. That's why Congress must act immediately to make the Program permanent—or at a bare minimum reauthorize it before we run out of time.

The Regional Center Program should be a no-brainer for one simple reason: It will help recharge the economy and create the jobs that our workforce needs so badly. We cannot afford to pass up solutions like this—especially when they don't cost taxpayers a dime.

Thank you.

ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

December 6, 2011

The Honorable Patrick J. Leahy
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510
VIA FACSIMILE: (202) 224-9516

RE: Immediate permanent re-authorization of the EB-5 Regional Center Program

Dear Chairman Leahy:

For more than 20 years, the EB-5 investment program has helped cities across the nation fund projects that both contribute to the economic vitality of the region and lead to the creation or retention of local jobs. As the Mayor of Houston, I see firsthand the importance of the EB-5 program that generates American jobs and strengthens small businesses. Please support this program and co-sponsor S.642.

All EB-5 investors must meet rigorous qualification standards to participate. Typical investors are well-educated, entrepreneurial, and eager to contribute to the communities in which they locate. A minimum investment of $500,000 is required under the program, which helps spur the economy by supporting local projects. The EB-5 program is an important driver for growth and development of U.S. communities, and yet comes at no cost to the American taxpayer. It's a win-win for investors, job seekers, small businesses and communities.

As you are aware, the EB-5 program is scheduled to sunset on September 30, 2012. It is imperative that Congress act swiftly to reauthorize this program and remove the uncertainty inaction is causing for potential investors. The United States Citizen and Immigration Service (USCIS) estimates that the EB-5 program has created at least 34,000 U.S. jobs. With unemployment at 9%, we can't afford to lose a program that both stimulates economic development and creates local jobs.

Legislation is currently pending in the Senate to permanently reauthorize the EB-5 Regional Center program, thereby removing uncertainty and ensuring there is opportunity for qualified investors to move to the U.S. and contribute to the economy. The City of Houston is actively interested in EB-5 and strongly urges Congress to permanently reauthorize this important program.

Thank you for your attention to this important matter.

Sincerely,

Annise D. Parker

Annise D. Parker
Mayor

POST OFFICE BOX 1562 • HOUSTON, TEXAS 77251

FACSIMILE TRANSMITTAL SHEET

TO: The Honorable Patrick Leahy	FROM:
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November 28, 2011

The Honorable Patrick Leahy
Russell SOB
Room 437
Washington, DC 20510

RE: PERMANENT STATUS FOR THE EB-5 REGIONAL CENTER INVESTMENT PROGRAM

Dear Senator Leahy:

As the Managing Principals of the New York City Regional Center, we write this letter to urgently request that Congress enact a permanent extension of the EB-5 Regional Center Investment Program ("EB-5 Program") as soon as possible. The EB-5 Regional Center Program must become a permanent vehicle for economic development in our nation's cities and rural communities. The most pressing and immediate challenge facing our country is helping more people get back to work. We need innovative ways to help spur job creation. The EB-5 Program is a common sense job creator that is straightforward with no cost to U.S. taxpayers and has been extended with bipartisan support since its inception in 1990.

Over the past five years, the EB-5 Program has grown dramatically and become an essential catalyst for job creation in financially challenged areas across the United States. In 2011, the EB-5 Program will create and/or save 25,000 American jobs and generate direct investment of over $1.25 billion. If fully utilized, the EB-5 Program would create and/or save over 100,000 jobs annually.

Over the past 12 months, New York City has been leading the nation in private sector job growth. The EB-5 Program, through the New York City Regional Center, has become an important ingredient in this success by helping fund large-scale, public/private real estate projects that create much needed jobs in areas of high unemployment. To date, over $270 million of capital has been invested in New York City through the EB-5 Program. An additional $310 million of EB-5 capital is expected to be invested over the next eight months. We anticipate over $1 billion of EB-5 investment in the coming years. Below are examples of projects in our City that are utilizing EB-5 funding. These projects will create thousands of jobs and put New York City on a continued path to economic recovery and growth. They include:

- *$102 million of EB-5 funding* to assist with the redevelopment of the Brooklyn Navy Yard, New York City's largest industrial park and one of the most successful urban manufacturing districts in the country.
- *$72 million of EB-5 funding* to redevelop the George Washington Bridge Bus Station. The project will transform this important Manhattan transportation facility into a modern commuter and retail hub.

NEW YORK CITY REGIONAL CENTER, LLC 299 BROADWAY, STE 1220, NEW YORK, NY 10007
TEL 212-619-1270 FAX 212-577-2606 www.nycrc.com

- *$65 million of EB-5 funding* to complete the expansion of Steiner Studios, New York City's largest film and television production facility.
- *$228 million of EB-5 funding* to assist with the construction of New York City's newest sports and entertainment arena as well as surrounding infrastructure and transportation improvements. The EB-5 funding is an integral component of one of the largest job creation projects in the history of Brooklyn.
- *$93 million of EB-5 funding* to help redevelop the waterfront along the East River. The project will renovate landmark transportation facilities and continue New York's redevelopment of Lower Manhattan after 9/11.
- *$200 million of EB-5 funding* to assist with the redevelopment of Downtown Brooklyn's Central Business District including the construction of the largest retail and residential complex in Brooklyn and a series of infrastructure work to support this new complex.

The EB-5 Program has clearly become a key partner in New York City's efforts to fund critical, multi-year redevelopment projects that spur significant job creation in areas of high unemployment. Given the enormous unemployment our nation faces and the worsening job prospects for the 15 million people who are trying to find work, we must act -- decisively, responsibly, and immediately.

One important way is by making the EB-5 Program permanent as soon as possible in order to remove any uncertainty regarding the future of the Program so projects in New York and across the country continue to receive foreign investment that creates jobs for American workers. Failure to provide permanent authorization of this innovative, economic development vehicle will result in the loss of hundreds of thousands of new jobs and billions of dollars of investment at a time when we need them most.

With the U.S. economy needing to create over 100,000 jobs per month, action is needed now to ensure that the EB-5 Program can continue doing its part in this effort. We must use all policy tools at our disposal to achieve a sustained economic recovery, especially those that are at no cost to the U.S. taxpayer.

Thank you.

Sincerely,

Paul Levinsohn, Esq.
Managing Principal

George Olsen, Esq.
Managing Principal

PRO-BUSINESS · PRO-TEXAS
FOR OVER 85 YEARS

December 13, 2011

The Honorable Patrick Leahy
U.S. Senate
437 Russell SOB
Washington, DC 20510

RE: Coalition in support of permanent reauthorization of the EB-5 Regional Center Pilot Program

Dear Senator Leahy:

Texas Association of Business is pleased to share this growing list of coalition members from private, public, and not-for-profit sectors of the United States – all in support of permanent reauthorization of the EB-5 Regional Center Program via Congressional enactment of S. 642 and H.R. 2972 as soon as possible.

- Marriott International, Inc.
- Real Estate Roundtable
- City of Citrus (California)
- Florida Chamber of Commerce (Florida)
- Greater Miami Chamber of Commerce (Florida)
- Atlantic USA (Iowa)
- The Greater Des Moines Partnership (Iowa)
- Berthel Fisher & Company (Iowa)
- Iowa Economic Development Authority (Iowa)
- Greater New York Chamber of Commerce (New York)
- Acadia Realty Trust (New York)
- Alliance for Downtown (New York)
- Dermot Company, Inc. (New York)
- Harry's Restaurant (New York)
- George Washington Bridge Bus Station Development Venture, LLC (New York)
- Steiner Studios (New York)
- Buffalo Niagara Medical Campus (New York)
- Jefferson County Industrial Development Agency (New York)
- Communications Workers of America – District 1 (New York)
- New York City (New York)
- Cuyahoga Country (Ohio)
- City of Amarillo (Texas)
- City of Dallas (Texas)
- Matthews Southwest (Texas)
- Stonegate Senior Care (Texas)
- Global Manufacturing Direct (Texas)
- Link America (Texas)
- Encore Enterprises, Inc (Texas)
- Greater Houston Partnership (Texas)
- City of Houston (Texas)
- Dallas Regional Chamber (Texas)
- Tech Launch Center (Washington)

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512.477.6721 • 512.477.0836 fax • www.txbiz.org

Please join us in support this effort to permanently reauthorize a Program that is currently creating jobs for American workers, without costing the American taxpayer anything.

TAB is available to answer any questions or assist with your efforts to secure support from local beneficiaries of this innovative economic development Program.

Sincerely,

Bill Hammond
President