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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

OPENING STATEMENT

COMMITTEE ON THE JUDICIARY
HEARING ON:

THE DEPARTMENT OF HOMELAND SECURITY'S
PROPOSED REGULATIONS REFORMING THE
INVESTOR VISA PROGRAM

MARCH 8, 2017



- Thank you, Mr. Chairman for holding this critical hearing, which is particularly timely because it relates to two of the most pressing issues currently in our national conversation: immigration and jobs.
- Let me also welcome and thank our witnesses which are divided into two panels:

- *The first panel will include the distinguished senior Senators for Iowa and Vermont:*
 - The Honorable Chuck Grassley, United States Senate, *Chairman* of the Senate Judiciary Committee; and
 - The Honorable Patrick J. Leahy, United States Senate, *Ranking Member* of the Senate Appropriations Committee.
- *The second panel is evenly divided between supporters and critics of the proposed DHS regulation:*
 - Rebecca Gambler, GAO
 - Sam Walls, *Pine State Regional Center*
 - Angelique Brunner, *EB5 Capital*
 - Dekonti Mends-Cole, *Center for Community Progress*
 - David North, *Center for Immigration Studies*
- The purpose of today's hearing is to evaluate the proposed Department of Homeland Security (DHS) rule intended to modernize the program and make recommendations to further improve the EB-5 program.
- The Investor EB-5 Visa Program was envisioned and created as a "win-win-win" helping both immigrants and U.S. workers by bringing foreign investment to the United States to create American jobs where they are needed most, providing a valuable investment in American communities.

- Under the EB-5 program, 9,940 permanent residence visas are available each year to immigrants (and their immediate family members) who:
 - 1) engage in a new commercial enterprise;
 - 2) invest at least \$1,000,000 in the business, or \$500,000 if the business is located in a TEA (i.e., a rural area or an area with an unemployment rate of at least 150% of the national average); and
 - 3) create 10 full-time jobs for persons eligible to work in the U.S. (other than the foreign national, spouse and children).
- At least 3,000 of the visas each year are reserved for TEAs; but, currently nearly all investments qualify at the \$500,000 TEA level in Regional Center projects.
- The E-B5 program is predicated on the idea that investment in U.S. projects—either from home or abroad—will create a large number of jobs for U.S. workers.
- The growing demand for EB-5 financing is being met largely by new Chinese millionaires—accounting for more than 80% of the program’s applicants—eager for greater freedoms, less pollution, or the opportunity to afford their children an American college experience.
- The United States competes globally against similar programs, including those established by Australia, Canada, and Caribbean nations and in 2012, EB-5 investors contributed \$3.4 billion to the U.S. economy and “supported” 42,000 jobs.

- Given that our country is still recovering from one of the worst economic crises in our history, it is imperative that we ensure that programs like the E-B5 Investor Visa Program operate with high efficiency so as to maximize the benefits to U.S. workers.
- Recently, the program has come under intense scrutiny.
- Concerns have been raised related to national security and the program's susceptibility to fraud and abuse, including whether the incentives to invest in distressed areas have been rendered meaningless.
- The program has come under scrutiny, however, due to inadequate safeguards that have led to criminal indictments, civil actions, and reports of investment scams, as well as allegations of undue influence in adjudications.
- Critics also argue that the program suffers from the failure of the Department of Homeland Security (DHS) to both:
 1. adjust the statutory minimum investment amount to account for inflation; and
 2. to limit the ability of stakeholders to use discounted investment thresholds meant for particularly distressed areas.
- For example, although the program is specially designed to benefit certain rural and depressed areas, most EB-5 investments are directed to some of America's most affluent areas.

- Today, we are here to listen to strategic suggestions addressing these concerns—on January 13, 2017, DHS issued a proposed rule intended to modernize the EB-5 program.
- Among other things, the proposed rule would:
 1. adjust the statutory investment amount for inflation, thus increasing the standard investment threshold from \$1 million to \$1.8 million, to ensure that program requirements reflect the present-day dollar value of the investment amounts established by Congress in 1990;
 2. reduce the discount on investments made in “targeted employment areas” (TEAs), thus increasing the discounted TEA investment threshold from \$500,000 to \$1.35 million; and
 3. reform the TEA designation process to prevent what is known as gerrymandering and thus better promote investments in rural areas and areas of high unemployment, to ensure consistency in TEA adjudications and ensure that designations more closely adhere to Congressional intent.
- The, “*American Job Creation and Investment Promotion Reform Act*,” drafted and supported by Senate Judiciary Committee Ranking Member Patrick Leahy (D-Vt.) and Chairman Chuck Grassley (R-Iowa.), as well as House Judiciary Chairman Bob Goodlatte (R-Va.), Ranking Member John Conyers (D-Mi.), Immigration Subcommittee Ranking Member Zoe Lofgren (D-Ca.) and Congressman Darrell Issa (R-Ca.), is a bicameral, bipartisan proposal would address many of these concerns as well, by providing important reforms at each stage of the program to enable DHS to better guard against abuse

and promote program integrity, in addition to ensuring that more investment reaches the communities that need it most.

Concerns of Abuse in the EB-5 Program

“Gerrymandering” Targeted Employment Areas (TEAs)

- Under current law, EB-5 developers may string together—also referred to as “aggregating” or “gerrymandering”—census tracts from high unemployment zones and affluent areas when seeking TEA designation.
- Critics of the EB-5 program assert that many regional centers abuse this process by aggregating census tracts to create a TEA designation that allows them to place projects in affluent areas, that are subject to the lower TEA investment level.
- The Leadership Conference on Civil Rights (LCCR) has similarly raised concerns that the EB-5 regional center program has been misused with “EB-5 regional center investments largely going to finance developments in wealthy neighborhoods.”
- They note that “Congress originally created the EB-5 regional center program to promote capital investment and job creation in rural and high unemployment urban communities.”
- In 2008, the financial crisis hit and everything changed when banks refused to continue lending money in traditional manners; American construction projects turned to EB-5 investment monies—making the program more popular for immigrants—first, because it offered the only available capital; then, because the capital was cheap.

- Considering the importance of job creation and incentivizing the financial and intellectually investments of those immigrants that contribute to the U.S. economy, it is my hope that today's hearing will reveal ways that we as lawmakers can further this policy.
- It is in our nation's interest to reward those immigrants whose intellectual capital creates jobs for U.S. workers.
- It is important to reward those immigrants who have the necessary entrepreneurial drive and innovative skill to secure a significant amount of money from U.S. based venture capital firms or U.S. based angel investors.
- The EB-5 program, with proper transparency, can serve as a way to mutually reward the innovation of immigrants while simultaneously creating U.S. jobs.
- However, it is imperative we carefully examine these programs to make sure they are functioning at their maximum capacity, and most importantly, creating jobs for hard working Americans.
- Today, the program brings more than \$1.8 billion into the U.S. annually.
- Officials however, within the Securities and Exchange Commission, the FBI, and Immigration and Customs Enforcement, concerned about waste, fraud, and mismanagement, expressed concerns about the program and how prone it is to rampant abuse.
- The virtually unregulated EB-5 industry has become a magnet for amateurs, pipe-dreamers, and charlatans, who see it as an

easy way to score funding for ventures that banks would never touch.

- Any financial investment brings with it the risk of fraud, and the EB-5 program has not been immune from unscrupulous activity.
- According to an August 2015 GAO Report, from January 2013 through January 2015, SEC officials reported receiving over 100 tips, complaints, and referrals related to possible securities fraud violations related to the EB-5 Program.
- Few of the usual safeguards for multimillion-dollar financings exist; for example, EB-5 investments are typically sold through unregistered securities offerings, with documents receiving no SEC scrutiny.
- Attorneys rarely check their clients' claims or backgrounds and many EB-5 attorneys represent both the project and the investors, a clear conflict of interest, and take undisclosed fees from developers—up to \$60,000 per immigrant—to steer clients to particular projects.
- The U.S. Citizenship and Immigration Services (USCIS)—which is not a financial regulator—oversees the EB-5 program and is accustomed to processing visas and conducting immigrant background checks, but are ill-equipped to review business plans, job-creation studies, and securities offerings.
- The SEC retains the power to police fraud, leaving the USCIS no mechanism to sniff out a problem until it has exploded—at which point the agency can only clean up the mess.
- In addition, a complete and detailed account of the monies that fund EB-5 projects has never been completed, nor produced

after several requests, suggesting that the EB-5 program presents serious compliance challenges.

- “Regional centers,” which are legally required and USCIS-certified, sound as if they are federal offices, but they are not; instead, they are typically private, profit-making operations that pool EB-5 money for development projects and function as seemingly independent operations that are actually often launched and operated by the very developers who are raising money, giving them an extra measure of control.
- Yet there are no rules on who can own or run a center, and no audit requirements; specifically, a regional center does not have to report publicly on its performance, identify its principals, or disclose any financial, legal, or regulatory problems they have encountered.
- Currently, EB-5 investors receive credit for all the jobs theoretically spawned by a project, even when EB-5 money represents only a small portion of its financing.
- At the same time, significant EB-5 capital has been and continues to be directed to projects in some of America’s most affluent areas and critics, including both Democratic and Republican Members, argue this has undermined the statutory requirement that investments at the lower investment level be in “Targeted Employment Areas” (TEA).

EB-5 in Texas

- Today, several of the nation's EB-5 Centers call Texas home and are funding public and private sector projects; each of the state's major-metropolitan cities have benefited directly from the EB-5 investor programs.

- For over 10 years, the EB-5 program has attracted capital investment in businesses across the country helping to create jobs in economically distressed communities, particularly in Houston, one of three of the nation's leading cities hosting the EB-5 Regional Centers, that call Texas home.
- After experiencing the devastating natural disaster, Hurricane Ike, the Star of Texas Regional Center was established, through a U.S. government approved EB-5 designation, to help support the Houston Galveston Metropolitan Area through local leadership and foreign partnerships.
- One Texas Regional Center connects foreign investors with a variety of reputable project investments, including: historic preservation and renovation of popular Dallas landmarks and multifamily dwellings in the San Antonio area, international hotels and more.
- Had the sensible and widely supported reforms of the omnibus appropriations bill we offered in previous sessions been enacted, EB-5 investment funds would truly have been directed to distressed urban and rural communities that need it most.
- Furthermore, by not including these bipartisan reforms in the omnibus, an opportunity was missed to capitalize on a rare bipartisan moment in Washington and strengthen the integrity of this immigration program.
- Nonetheless, our efforts to reform this troubled immigration program are not deterred by the special interests who have sought to quash reforms.
- As our economy continues to recover, it is critical that USCIS and EB-5 regional centers work together to ensure international investment is not corrupted and is abiding the

programs original intentions—this hearing would go a long way toward identifying and correcting these issues.

- I support the Invest EB-5 Visa Program and strongly urge my colleagues to institute appropriate oversight reforms that will allow it to infuse economically distressed areas with the capital they need to recover and prosper.
- Thank you, Mr. Chairman. I yield back my time.