The Department of Homeland Security's Proposed Regulations Reforming The EB-5 (Immigrant Investor) Program

Judiciary Committee

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I am grateful to the committee for this chance to testify on the proposed changes in the regulations of the EB-5 program that recently surfaced from the Department of Homeland Security. I speak for the Center for Immigration Studies, a 33-year-old, non-partisan research organization here in Washington, D.C.

Frankly we have no need for an immigrant investor program. Macroeconomic data indicates that it brings in 1% to 3% of the flood of foreign money invested in the U.S., every year, and it does so in a convoluted way that almost invites corruption and theft. It is lodged in an agency that does not deal in high finance, and, of course, it involves the sale of visas to aliens who could not become U.S. immigrants in any other way. The Center has a moral objection to the concept that a U.S. green card, and ultimately citizenship is, or can be, for sale.

Realistically, however, the chances are that the big urban moneyed interests that profit from the EB-5 program – it never places investments in the Appalachias of this country– will prevail, but if the termination battle is lost, perhaps we can make some modest and sensible changes in the program. I will make four specific suggestions in this regard.

As the committee knows, the heart of the EB-5 program being the Regional Center model, will sunset on April 28, unless Congress acts to save it. The program's main activity is to receive half million dollar payments from aliens who want green cards; the typical path of these investments is to a DHS-recognized EB-5 regional center, usually a for-profit entity, which passes along the money to the for-profit developers who are routinely involved in swanky hotels, malls, condominiums and the like. Each of the half million investments is supposed to create 10 jobs; the Congress and the government have interpreted this provision in such a way, through induced and indirect imaginary jobs, that this requirement seemingly is met. There are other minor elements of the program that I will not discuss.

The program is now a quarter century old, and there have been no major changes in it since the 1990s. Just before it left office the Obama Administration issued a proposed new set of regulations – the subject of this hearing – something it, or the Bush II Administration, should have done long ago. It contains two useful sets of changes that I will discuss in a moment; these should be joined by two other sets of changes that are not in the document.

The basic investment. The basic investment for the alien is priced at $500,000, to which the middlemen attach various fees, sometimes to as much as another $50,000 or $60,000 in addition to carried interest and/or equity participation in the project: the level of these fees is <u>not</u> regulated by the government. The proposed regulations would increase that number of $1,350,000 for the pooled investments that dominate the program.

This is an overdue reform. It would bring in more money without the use of more visas; my sense is that the climate of fear that exists among the wealthy in China is such that the visas will continue to be used. Other nations routinely charge more than our old half million-dollar minimum.

The proposed change should be adopted unless an auction element could be added, so that the

aliens would be bidding for permission to enter the program with $1,350,000 as the minimum bid.

The location of the investments. Currently the half million investments can be used only in what DHS calls "targeted employment areas" but these TEAs, constructs of census tracts, can be put together in any way that suits the developers (and the passive state governments that nominally control this process.)

As an illustration of how contrived this process is, we have an illustration showing how this building – Rayburn – and the White House, one of the more expensive residences in the land, could be ruled to be in one of the DHS-mandated TEAs. We, at the Center for Immigration Studies, spent half an hour with census tract data and maps, and found that by extending the boundaries of such a TEA to the other side of the Anacostia River, where there is real poverty and unemployment, you could define the area where this hearing is being held as eligible for EB-5 funds.

If you can put the White House in a TEA, you can construct a TEA anywhere in the country for the EB-5 location. This is not just a creative exercise on our part; EB-5 projects are routinely sited in glitzy downtown areas – Wall Street, Fifth Avenue, and lush parts of California and Nevada – which was clearly not the intent of the framers of this law.

This is a complex subject, but the proposed new regulations would allow the drawing of TEAs to include only the census tract where the work will be done, and those that touch it. This is called the hole and the doughnut approach; this would reduce, if not eliminate the economic gerrymandering in these cases. The new rule is a useful step forward.

An integrity package. You could not tell from these proposals that there have been numerous multi-million-dollar scandals in this program, with both investors, and more often the middlemen cheating the system in numerous ways, with only the Securities and Exchange Commission ever playing the role of the cop on the beat. The investors tend to be much more interested in the visas than in getting their money back, so there are none of the checks and balances we often see in financial arrangements.

There have been massive frauds in South Dakota, in Vermont, in Chicago, in Florida, in the State of Washington, and lots of them in California.

In one of the California frauds, involving more than 100 investors, I decided to see if I (without any special knowledge or law enforcement connections) could detect anything wrong by spending a few minutes on the Internet. I quickly found that the main broker, a lawyer, had been to a for-profit law school (worrisome), had a debt-counseling firm attached to his law firm (concerning), had been twice sanctioned by the California bar, and once was suspended from practice for seven months. Do you invest your money with someone with that record? Sadly, none of the investors – nor the folks who run the EB-5 program – had spent a few minutes the way I had done.

Similarly, our center brought up one of the issues regarding questionable EB-5 participation last August when we reported that USCIS had terminated a Florida-based Regional Center which showed its offices as being located in a China government building in Chongqing, China, suggesting if not Chinese government ownership, then at least very solid ties to such.

There is, in short, a need for a change in the level of alertness among the program managers, and new strong rules that, shall we say, “extremely vet” those who want to participate in this program.

Jobs for U.S. residents only. There was nothing that I could find in the proposed regulations that made sure that any jobs created in the program had to go to legal, full-time residents of this country, i.e., citizens and green card holders. We know that Korean workers (I think H-2Bs) were used to finish a deeply troubled EB-5 funded beef slaughterhouse in South Dakota and that Germans on tourist visas worked on a Germany-connected EB-5 lumber mill in Florida.

Such use of non-U.S. workers should be banned, and site visits made to make sure there are no violations.

There is much more to say about this artificial and flawed program, but that will have to wait until question time.