



**Homeland
Security**

April 27, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

I am writing regarding the EB-5 Program.

An important part of the EB-5 Program, the regional center program, is up for reauthorization this year. I share your interest in ensuring that any reauthorization of the regional center program serves the purpose of creating jobs in the United States while providing the Department of Homeland Security (DHS) with all necessary and appropriate tools to address any concerns with the program. With these goals in mind, I would like to offer my ideas for strengthening the integrity of the program during the EB-5 regional center reauthorization process.

As an aside, last month I directed the Department's General Counsel to review the case adjudication process and recommend a new protocol to ensure that the entire EB-5 Program is free from even the perception of improper outside influence. That new protocol, which I have adopted, is also outlined below.

Congress created the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The EB-5 Program makes immigrant visas available to foreign nationals who invest at least \$500,000 (if the investment is in a targeted employment area, defined to include certain rural areas and areas of high unemployment) or \$1,000,000 in a U.S. business that will create or preserve at least ten full-time jobs in the United States. Congress created a pilot program in 1992

to set aside an allocation of EB-5 visas for investors in regional centers designated by what was then the Immigration and Naturalization Service (INS); this program is now administered by U.S. Citizenship and Immigration Services (USCIS). A regional center is an economic entity, public or private, which promotes economic growth, regional productivity, job creation, and increased domestic capital investment. Investors participating in the EB-5 Program through a regional center (which, in recent years, has been the vast majority of participants) may demonstrate the required job creation indirectly rather than directly. Since 1992, the regional center program has been subject to statutory sunset and reauthorization; the current statutory authorization expires September 30, 2015.

Over the past few years, USCIS has taken a number of steps internally to overhaul and improve the administration of the EB-5 Program. USCIS realigned the program into the Immigrant Investor Program Office (IPO), and relocated it to Washington, D.C., with a director dedicated exclusively to EB-5 adjudications. USCIS also created a Fraud Detection and National Security EB-5 Division (FDNS EB-5) and embedded its personnel within the IPO to work alongside adjudication officers. FDNS EB-5 identifies application concerns through its background check functions and has developed strong relationships with U.S. Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation, the Securities and Exchange Commission, the U.S. Department of State, and U.S. Attorneys' Offices to assist in investigating EB-5-specific fraud and to address other EB-5 concerns as they arise.

In addition, USCIS has invested in the specialties needed to manage the complex EB-5 caseload by hiring staff with expertise in economics, law, business, finance, securities, and banking to review cases and to enhance consistency, timeliness, and integrity within the program. In May 2013, USCIS published a comprehensive, 27-page policy memorandum to guide EB-5 adjudications, further improving consistency across cases.

While we have accomplished much to improve the EB-5 Program, there is still much more to do that requires Congress's help. In the past, we have unsuccessfully sought from Congress a number of statutory enhancements to the EB-5 Program's integrity, including the express ability to terminate a regional center for national security or fraud-related concerns. S. 744, the bipartisan comprehensive immigration reform bill that passed the Senate in 2013 and was supported by many members of this Committee, contained several such key enhancements. Unfortunately, that bill was not taken up by the House of Representatives.

As you consider reauthorization of the EB-5 Program, we respectfully request that you consider a number of key enhancements that would strengthen the integrity and viability of the program as a whole.

Authorize USCIS to Quickly Act on Criminal and Security Concerns. Under current law, USCIS may terminate a regional center's designation only if the center is no longer promoting economic growth. Criminal activity or national security concerns are not provided as a basis to terminate a regional center. We propose that Congress authorize USCIS to terminate a regional center's designation where there is criminal activity or national security concerns. We further propose that Congress authorize USCIS to deny regional center applications where USCIS finds a significant risk of fraud and/or abuse, as well as to deny or revoke any EB-5-related application or petition due to fraud, misrepresentation, criminal misuse, or threats to national security:

Protect Investors by Regulating Regional Center Principals and Associated Commercial Enterprises. USCIS should be authorized to prohibit persons from participating in regional centers and associated commercial enterprises based upon certain criminal violations and fraud- or securities-related civil violations. In addition, all regional center principals should be required to be U.S. citizens or lawful permanent residents.

Enhance Reporting and Auditing. USCIS should be authorized to enhance the regional center annual reporting process. Specifically, USCIS should be authorized to consider requiring, as appropriate, certification of the center's continued compliance with U.S. securities laws, disclosure of any pending litigation, details of how investor funds were utilized in the project, an accounting of the direct and indirect jobs created, and the progress towards completion of the investment project. These annual reports should be publicly disclosed, to facilitate public oversight of the program and to encourage investor protection. We further propose the creation of an EB-5 Integrity Fund, into which regional centers would pay \$20,000 per year, to underwrite audit and site visits.

Provide Sanction Authority. To enable USCIS to act proportionately where warranted, USCIS should be authorized to sanction regional centers with fines or temporary suspensions where appropriate. This new authority would complement USCIS's existing authority to terminate regional centers on the basis of no longer promoting economic growth.

Improve Integrity of Targeted Employment Areas (TEAs). To prevent gerrymandering (i.e., using isolated or atypical locations to demonstrate high unemployment), we propose limiting TEAs to a specified number of contiguous census tracts. TEAs would be defined to also include closed military bases.

Increase Minimum Investment Amounts. Because the minimum investment amounts have not been adjusted since the program was created 25 years ago, the statutory minimums should be increased both for investments into TEAs and for investments in other areas. USCIS intends to exercise its authority to raise the minimum investment by

regulation, but an increase in the statutory minimum investment would ensure that these increases endure. In addition, we encourage Congress to consider linking minimum investment thresholds to widely accepted inflation indices, so that future applicants will be held to consistent requirements for program participation.

Require Business Plan Filings in Advance of Investor Filings. To improve program efficiencies and reduce the potential for investor fraud, USCIS should be authorized to require regional centers to file investment proposals with business plans and other organizational documents in advance of individual investor filings. USCIS intends to propose this filing structure by regulation, but a change via statute would expedite and codify any such regulatory reform.

The reforms outlined above are not novel or complex, but if Congress incorporates them into any reauthorization of the regional center program, I am convinced that they will strengthen its integrity and viability while continuing to serve its underlying purpose of spurring economic growth and creating jobs in the United States.

In addition to important changes that Congress can help us make, I am also doing what I can within my own authority to improve the manner in which EB-5 Program applications and cases are adjudicated. Yesterday I approved a new protocol to regulate the receipts of communications from outside individuals about specific EB-5 cases, and to govern the circumstances under which a senior leader should become involved in individual cases. The protocol reiterates that EB-5 Program processing must be consistent with existing ethics rules and with the principles of transparency, consistency, and avoidance of even the appearance of impropriety. The protocol applies these principles to specific issues as summarized below:

Contacts with EB-5 Petitioners, Applicants, and Other Stakeholders. Contacts with EB-5 stakeholders should be directed to the adjudicator of the relevant case and should come through the customer service intake process or through other methods of contact specifically permitted by the regulations governing the implementation of the EB-5 program so that the contact can be tracked and documented. All substantive, non-written communications with petitioners, applicants or their representatives must be documented and stored in the case file.

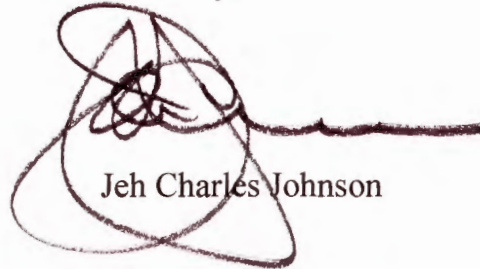
Contacts with Members of the U.S. Congress and Congressional Staff. Although there are many legitimate reasons for congressional communications with DHS about EB-5 Program petitions or applications, DHS employees must be mindful of the importance of responding to such communications in a way that does not create an actual or perceived impropriety. Accordingly, written contacts and questions should be responded to in writing as required by USCIS policy and filed appropriately. Oral communications should be referred to the USCIS Office of Legislative Affairs for proper

handling; where that is not possible, the communication should be memorialized in writing.

Leadership Intervention in Specific EB-5 Cases. Senior leadership intervention in decision-making or appeals regarding particular EB-5 Program cases should be reserved for exceptional circumstances where the senior leader can articulate and memorialize an impartial mission-related reason for intervention. For most such officials, involvement of senior leaders in particular cases would occur only after consultation with the Deputy Director of USCIS, the Chief Counsel of USCIS, the USCIS Ombudsman, and any other officials designated by the USCIS Director. If the Secretary or Deputy Secretary decides to intervene in a particular case, he or she would do so after consultation with the General Counsel.

Thank you for your continued attention to the EB-5 Program. I look forward to working with you and your colleagues to reauthorize the EB-5 regional center program in a manner that ensures its effectiveness and provides every necessary and appropriate safeguard.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeh Charles Johnson". The signature is highly stylized and somewhat illegible, with a long horizontal stroke extending to the right.

Jeh Charles Johnson