INVESTOR VISA PROGRAM: KEY TO CREATING AMERICAN JOBS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

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CONTENTS

SEPTEMBER 14, 2011

Page

OPENING STATEMENTS

The Honorable Elton Gallegly, a Representative in Congress from the State of California, and Chairman, Subcommittee on Immigration Policy and Enforcement 1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 2
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 4

WITNESSES

William J. Stenger, President & Chief Executive Officer, Jay Peak Resort, Jay, VT
Oral Testimony 6
Prepared Statement 9
Daniel J. Healy, Chief Executive Officer, Civitas Capital Group, Dallas, TX
Oral Testimony 15
Prepared Statement 18
Jason Mendelson, Managing Director, Foundry Group, Boulder, CO
Oral Testimony 25
Prepared Statement 27
Shervin Pishevar, Managing Director, Menlo Ventures, Menlo Park, CA
Oral Testimony 36
Prepared Statement 40

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 5

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of Patrick F. Hogan, President CMB Export, LLC, and CMB Summit, LLC 57
Letter from K. David Anderson, President, Invest In the USA (IIUSA) 69
Letter from Randel K. Johnson, Senior Vice President, Labor, Immigration, & Employee Benefits, U.S. Chamber of Commerce 75

INVESTOR VISA PROGRAM: KEY TO CREATING AMERICAN JOBS

WEDNESDAY, SEPTEMBER 14, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:35 p.m., in room 2141, Rayburn Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, Gohmert, Lofgren, and Conyers.

Staff present: (Majority) George Fishman, Subcommittee Chief Counsel; Marian White, Clerk; and (Minority) Hunter Hammill, USCIS Detailee.

Mr. GALLEGLY. I call to order the Subcommittee on Immigration Policy and Enforcement.

Good afternoon, everyone. Almost 10,000 green cards a year are available through the Investor Visa Program for foreign businessmen who invest in American businesses and create jobs for American workers.

If investors and their families utilize all these visas, and each investor created the 10 jobs called for in the program, tens of thousands of jobs a year would be created. That is something I am sure all of us could rally around.

And yet the Investor Visa Program is presently underutilized. DHS issued only 749 investor visas in 2006, rising to 2,480 in 2010. The program has the potential to be a far larger job creator.

The recent growth we have seen in the Investor Visa Program has come from the Regional Center Pilot Program. A regional center pools investments in defined economic zones. The establishment of a regional center may be based on general predictions concerning the kinds of commercial enterprises that will receive capital, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such investments will have.

Numerous regional centers exist in my State of California. The Regional Center Program expires in a year. We will examine today its level of success in generating jobs, the merits of the reauthorization, and the appropriate length of reauthorization.

We will also examine another proposal that has been made to utilize unused investor visas. What if we were to make green cards

available, not just to foreign investors willing to invest in American businesses, but to foreign entrepreneurs with visions of new ways of doing business and whole new industries.

For those businesses that pay off, we could be talking not about 10 jobs, but thousands of jobs. This idea, called the Start Up Visa, has gained a lot of support in recent years in venture capital circles. A number of Members have introduced legislation proposing such a visa program, including my good friend, the Ranking Member, Ms. Lofgren. While I'm not prepared at this time to declare my full support, this innovative proposal deserves a lot of support and consideration from Congress. We will be giving that consideration today.

And with that, I would yield to the gentlelady from California, Ranking Member Ms. Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman. We often disagree in this Committee on the role that immigration plays in America, but every once in a while we seem to find something we can agree on. And today's hearing on the EB-5 Regional Center Program and the Start Up Visa concept, I think will highlight some of the ways that immigrants create jobs and will show immigration can be used as a powerful tool for innovation and job creation.

First, the existing EB-5 Regional Center Program provides conditional green cards to immigrant investors who pool their monies in projects that will create jobs in America. If a sufficient number of jobs are created, the conditions are removed and the investors earn permanent residency. The program smartly incentivizes investing in areas of high unemployment, focusing job creation in the areas where it is needed most.

This program seems like a no-brainer, but it is severely underutilized, largely, I think, because of two problems that make the program risky for potential investors.

First, the Regional Center Pilot Program is supposed to, as the Chairman has said, to expire at the end of the next fiscal year, which creates a pretty big uncertainty for investors. Second, there has been a lack of consistency by the government in adjudicating EB-5 petitions, and this, I think, in some cases led to a lack of confidence among investors who question whether they'll actually receive a green card when they put their money at risk through the programs.

Now, I understand that USCIS is trying to address the adjudication issues and will begin implementing new procedures this very month to streamline the process, including premium processing for the program and letting applicants directly contact the agency giving them an opportunity to appear before a panel to resolve issues. And those are positive steps. I think they will fix most of the problems in the application process. But until we get the Regional Center reauthorized for hopefully a long period of time, if not permanently, that uncertainty about the investment will remain and really undercut our goals in the program.

There's another similar job creating immigration proposal that we have enacted that the Chairman mentioned, and that is the startup visa. You know, I thought a couple of years ago how are companies really formed. And I thought about Google as an example. Larry and Sergey did not come in with a million bucks; they

came in with a tremendous idea, and they got venture capital funding. And now, they employ thousands of my constituents in Silicon Valley, and they are hiring. That is how companies get formed usually, not just with your own money that you are investing.

And so, the startup visa really relies on that. If a talented individual has an idea that attracts U.S. venture capital financing, an idea that might lead to the next Google or Intel or Facebook or whatever, the startup visa will allow that entrepreneur to start the company here in the United States rather than abroad. And alternatively, if an individual starts a new commercial enterprise in the U.S. using his or her own sweat equity, that new company creates jobs for U.S. workers, and the promise of creating more of that would allow also for a green card for job creation.

Now, the tremendous success of immigrants in the tech world is something I know pretty well because my district is in Silicon Valley. The National Venture Capital Association, NVCA, found that 40 percent of U.S. publicly traded venture backed companies operating in the high tech field were started by immigrants. And if you take a look at those companies, they employ 220,000 people in the U.S., 400,000 people globally. That is a huge success.

But our immigration system today really does not allow that virtuous activity to continue. And that is why we are here today. As the Chairman said, I introduced the Immigration Driving Entrepreneurship in America Act, the IDEA Act of 2011, which includes a startup visa of the two types that I just mentioned. It provides conditional residency to immigrant entrepreneurs who secure at least $500,000 in venture capital financing, and I am interested to hear if that is the right number from all of you today at the hearing. And if we get that funding from angel investors or the venture world and we create jobs, then the visa would vest.

We also have self-sponsored entrepreneurs. And I think about Marvell in my district, that was founded by a wonderful engineer who was born in Shanghai, her husband a brilliant engineer born in Singapore. They met while getting their Ph.D.s at the University of California at Berkeley. They did not get big VC funding; they struggled. I mean, they borrowed money from their family, and they maxed out their credit cards. They now have 3,500 engineers employed in my district, and they just got the contract for the new cell phone design for the country of China. They are a massive success. This sweat equity self-sponsored plan would be perfect for them.

I do not want to go on. I want to hear this, but I did mention we have someone sitting at the dais who is an important person in developing this concept and that is our colleague, Jared Polis, who is not a Member of the Committee, but had he been able to participate, he would have introduced Jason Mendelson, who is his constituent from Colorado. And I wanted to mention how grateful we are to Jared's leadership in this whole area, and how glad I am that he can sit in at this hearing today.

I will just say that in these perilous economic times, our singular focus should be on creating jobs and more jobs. The startup visa program has the potential to create that, and I am looking forward to hearing from our witnesses today. And I thank you, Mr. Chairman, for allowing me to go over my time just by a bit.

Mr. GALLEGLY. I thank the gentlelady. And at this time I would yield to our good friend from Texas, the Chairman of the full Committee, Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman.

The number one job of Congress is to create jobs. We must ensure that our policies help private enterprise, strengthen our economy, create jobs for American workers and maintain our global competitiveness.

The Investor Visa Program plays a part in achieving this goal. Under the program, almost 10,000 immigrants can receive permanent residence each year if they engage in a new commercial enterprise, invest between $500,000 and $1 million in the business, and see that it creates 10 full time jobs for American workers.

The Regional Center Pilot Project, which is almost two decades old, has become the most used part of the Investor Visa Program. Investment through a regional center is attractive to potential investors because they are relieved of the responsibility of running a new business, and they can count indirect job creation toward the job creation requirement.

Investors may feel more confident about a regional center that is operated through a State or city government. In these difficult economic times, many State and local governments have turned to regional centers as a method of generating economic growth.

The Association to Invest in the USA has estimated that the Regional Center Program has created or saved over 65,000 jobs in the U.S., and had led to the investment to over $3 billion in the U.S. economy.

The program is set to expire at the end of Fiscal Year 2012.

Just as in any visa program, there is the potential for fraud in the Investor Visa Program. We have to ensure, both for the sake of the American people and potential foreign investors, that regional centers operate at the highest levels of professionalism and integrity. The business plans and promotional materials that regional centers produce should meet the same standards as if they were to be submitted to the Securities and Exchange Commission.

Another proposal is the "start-up" visa. Foreign entrepreneurs would be granted conditional permanent residence to come to America to launch their businesses. If the businesses succeed and create a certain number of American jobs, the immigrants would become unconditional permanent residents.

While we can benefit by bringing entrepreneurs to America with their bold ideas, and we need to do so, such a program could be susceptible to fraud and abuse. How is the government to determine which economic vision is feasible and which is pie in the sky? And how will it root out schemes proposed simply to procure a visa?

I look forward to today's hearing to help us answer some of these questions.

Thank you, Mr. Chairman. Yield back.

Mr. GALLEGLY. I thank the gentleman. And at this time, I will recognize my good friend from Michigan, the Ranking Member of the Committee, Mr. Conyers?

Mr. CONYERS. Thank you, Chairman Gallegly. I have asked that my statement be submitted. And I would like to join in with the

Chairman of the Committee and, you, Mr. Chairman, in working out the concerns of fraud that you have so that we can move forward with a very important part of the jobs initiative that we are all committed to.

I thank and I yield back.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

The single biggest issue facing the American economy is the current lack of jobs available for U.S. workers. The majority has talked a great deal about job creation, so I'm glad we're finally having a hearing on how immigration can create jobs for Americans. The hearing today is about two investor visa ideas that can create American jobs—one that is current law, one that is not.

The first of these job creating programs is the EB–5 program. It gives green cards to immigrant investors who invest at least half a million dollars towards projects that create jobs for Americans. And the program wisely focuses on creating jobs where they are needed most—areas of high unemployment.

The EB–5 regional center program is working for my home of Detroit. For example, the Green Detroit Regional Center is working to advance sustainable energy solutions by using immigrant investor funds in the company "Alt-E," which was founded by former employees of Tesla Motors to retrofit fleet-based trucks with electric-hybrid powertrains that greatly increase their fuel efficiency. An article in Crain's Detroit Business noted that the EB–5 investment will let the company "speed up hiring and create more than 300 jobs by the end of 2011."

The program as a whole is working to attract significant capital to the United States. In 2005, the GAO found that the EB–5 program had attracted $1 billion to the country since it began.

Yet, while successful, the program remains underused because of two issues that we'll hear about today. First, the regional center pilot program that targets areas of highest unemployment is not permanent and is set to expire at the end of FY 2012. This creates uncertainty for immigrant investors. Second, the program has been administered in an inconsistent manner by USCIS, and INS before them. This creates even more uncertainty for investors.

I understand that USCIS is working to streamline the EB–5 process and make it easier for immigrant investors to use. This is a welcome change. But we should work towards making the regional center pilot program permanent so that we can continue to attract money and jobs to areas that sorely need both.

I'm also interested in hearing today about another immigrant investor visa concept that does not yet exist. I'm talking about the so-called start-up visa concept that my friend Zoe Lofgren has worked on. This concept would help immigrants stay in the United and start companies here if they have *intellectual* capital and backing from American venture capitalists.

As you know, companies like Google and Intel were started by immigrants. We need to do everything we can to ensure that the next innovative company begins right here in the U.S. and the jobs created by it stay in the United States. So, I'm looking forward to hearing about how we can advance the start-up visa concept.

I thank the witnesses for their participation today.

Mr. GALLEGLY. I thank the gentleman.

At this time, I would like to introduce our witnesses. We are very fortunate today to have the very distinguished panel of witnesses we have. And I would just like to make note that all the statements will be entered into the record in its entirety.

And I would ask the witnesses if you would be kind enough to try to keep your comments summarized within the 5-minute period so we can get into the question and answer session. And we have provided the lights down there as kind of a convenient way to remind you, but to make sure that you do understand that your testi-

mony will be made a part of the permanent record of the hearing in its entirety.

With that, I would introduce our first witness, Mr. William Stenger. Mr. Stenger serves as president and chief executive officer of Jay Peak Resort in Jay, Vermont. He is the general partner of the largest regional center project in Vermont, and one of the most substantial EB-5 projects in America.

He has been appointed by the governor of the State of Vermont to serve on the Governor's Council of Economic Advisors, and serves as a member of the Agency of Commerce and Community Development Advisory Council.

Mr. Stenger earned his associate in science degree from the Corning Community College, and a bachelor of science degree from Syracuse University.

Our second witness is Mr. Daniel Healy. He is co-founder of the Civitas Capital Management, LLC. He is responsible for the general management of the firm. Mr. Healy leads a team that is responsible for identifying and evaluating investments that meet EB-5 Program criteria. Prior to forming Civitas, Mr. Healy served as executive vice president and partner of Royalty Real Estate Capital.

Mr. Healy earned his B.A. from the University of Texas at Dallas and his M.B.A. from Cox School of Business at Southern Methodist University.

Our third witness, Mr. Jason Mendelson, is the co-founder and managing director of Foundry Group, a bolder based venture capital firm that invests in early stage formation of technology companies. He also serves as a board member at the National Venture Capital Association.

Prior to this, Mr. Mendelson was attorney for Cooly LLP and a software engineer for Accenture.

Mr. Mendelson earned his bachelor's degree and J.D. from the University of Michigan.

Mr. Shervin Pishevar—is that close enough?

Mr. PISHEVAR. Pishevar.

Mr. GALLEGLY. Pishevar. Is the managing director of Menlo Ventures at Venture Capital Firm in Silicon Valley. Before joining Menlo, Mr. Pishevar was chief application officer and general manager at Mazelli Corporation after spending most of his career as a serial entrepreneur and angel investor.

He serves on the advisory board of comScore. Mr. Pishevar is one of the 10 members of the UN Foundation Global Entrepreneurs Council.

He earned his B.A. from the University of California at Berkeley.

So, with that, we will start with Mr. Stenger. Welcome, and we look forward to your testimony.

TESTIMONY OF WILLIAM J. STENGER, PRESIDENT & CHIEF EXECUTIVE OFFICER, JAY PEAK RESORT, JAY, VT

Mr. STENGER. Mr. Chairman, thanks very much. Distinguished Members of the Committee, I appreciate the opportunity——

Mr. GALLEGLY. Why do you not pull the mic up a little bit, maybe turn on the button. I am not sure.

Mr. STENGER. Is that better?

Mr. GALLEGLY. I am not sure.

Mr. STENGER. Is that better?

Mr. GALLEGLY. Yes, sir.

Mr. STENGER. Okay. Can we start my clock again? [Laughter.]

Mr. Chairman, thank you very much for the opportunity to be here. Distinguished Members of the Committee. We appreciate you having the hearing on this EB-5 Regional Center extension. It is very important to our economy. It is very important to the job creating initiatives we are all eager to promote. And I and all of my colleagues appreciate your valuable time in conducting this hearing today.

I am president of Jay Peak Resort located in northern Vermont. We are a beautiful, marvelous, physical facility in rural Vermont. We have marvelous assets and characteristics, but we also have some of the highest unemployment and most challenging socioeconomic issues that anyone faces in Vermont.

Jay is one of the most significant employers in Orleans County, a place of great rural agricultural character. However, despite all these issues that I mentioned that are challenging, the most profound economic challenge that we have seen in generations in Vermont and the Nation, the difficulties we are seeing these days. I am very optimistic about the future of our community and its citizens.

We are seeing in our facility 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 economic times solely because the EB-5 Foreign Investor Program exists and is helping us.

Over a decade ago in 1997, I had the opportunity to work with Senator Patrick Leahy and our governor at the time, Howard Dean, to make the Vermont Regional Center happen.

In today's economy, what is strangling the small business community in Vermont and nationally is the lack of access to capital. Affordable capital is almost non-existent in this marketplace; however, through the EB-5 Regional Center Pilot Program, Jay Peak has raised over $200 million of equity capital, and we have welcomed over 400 investors from 56 countries.

This capital has helped us build a wide range of facilities that we desperately need to be competitive, but it also helps us create full time job opportunities for so many citizens throughout Northern Vermont's highest unemployment community.

I have met personally almost every investor participating in Jay Peak. They are a group of wonderful people, so appreciative of the opportunity to live in the United States. 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.

Although Jay Peak is employing many hundreds of direct and indirect year-round employees, Jay is a small business in comparison with our national economy. As a matter of fact, with very few ex-

ceptions all of Vermont is made up of small businesses. The EB-5 Regional Center Program is ideal for the small business community throughout America.

Two years ago on an EB-5 trade mission to South Korea, Governor Jim Douglas, my partner Ariel Quiros, and myself visited with AnC Bio/Korea, a cutting edge biotech research and development company, that was looking for a place in the United States to create a U.S. affiliate. In the past 2 years, AnC Bio/Vermont was created, and tomorrow a 90,000 square foot AnC Bio/Vermont USA facility will be acquired where over 200 quality research and manufacturing jobs will result.

Alex Choi, the chairman of AnC Bio/Korea, could have placed this facility anywhere, but he chose Vermont because of the quality workforce, the quality universities, and our ability to bring equity capital to the table, and create this wonderful facility.

I would like to take a few moments in closing to let you know that extending this program permanently is vitally important to this program. If a project cannot plan, if an investor cannot plan, they cannot expect a good outcome. I urge the Committee, and I would urge the Congress, to extend this program and make it permanent. It is so vital to the projects as well as the investors.

I also think it is very important to work closely with Commissioner Mayorkas to make sure that USCIS is as efficient as possible in processing the applicants. Our applicants need to be processed in a reasonably short period of time so they have predictability, the programs have predictability, and we will have the job outcomes that are so vital to our country right now.

Mr. Chairman, I appreciate very much this time. I thank you again for holding this hearing, and at some point happy to answer questions that you might have. Thank you very much.

[The prepared statement of Mr. Stenger follows:]

TESTIMONY OF

WILLIAM J. STENGER

President of Jay Peak Resort

Jay, Vermont

Hearing on:

"The Investor Visa Program: Key to Creating American Jobs"

Before the

Judiciary Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary

Congress of the United States House of Representatives
Committee on the Judiciary

Washington, D.C.

September 14, 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 in the heart of the "Kingdom."

Jay Peak is one of the most significant employers in Orleans County, a place of great rural agricultural character, with beautiful mountains, streams and lakes, but it also has the most significant poverty and economic challenge of any region in Vermont. Every challenging socio-economic indicator that we measure in Vermont is greatest in Orleans County. From unemployment, alcohol and drug abuse, school drop-out rate, single-parent childbirth, welfare, and foodstamp

dependency are all historically greater in Orleans County than any other place in Vermont.

However, despite these issues and the most profound economic challenges we have seen in generations in Vermont and the nation, I am very optimistic about the 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.

Over a decade ago in 1997, I had the opportunity to work with Sen. Patrick Leahy and the then Governor of Vermont Howard Dean to create the Vermont Regional Center and see Jay Peak become its first EB-5 Pilot Project. It was not until late 2004, because of improved C.I.S. efforts and the renewed commitment by our State officials led by Governor Jim Douglas, that the program became truly functional from our perspective in Vermont.

Starting in 2005 this EB-5 Pilot Project has helped our company create and present to qualified foreign investors an opportunity to invest in job creating initiatives at Jay Peak Resort that are employing many hundreds of direct and indirect citizens of our Northern Vermont communities.

In today's economy, what is strangling the small business community in Vermont and nationally, is the lack of access to capital. Affordable capital is almost non-existent in this marketplace. However, through the EB-5 Regional Center Pilot Program, Jay Peak has raised over $200 million of equity capital by welcoming over 400 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.

Without the EB-5 source of affordable equity capital, none of this significant economic growth would be taking place at my company.

Instead of a distressed Northern Vermont economy getting worse, we are seeing significant signs of economic vitality and optimism in our community. Orleans County no longer is the highest unemployment county in Vermont.

Although Jay Peak is employing many hundreds of direct and indirect year-round employees, Jay Peak is a small business in comparison to our national economy. As a matter of fact, with very few exceptions, all of Vermont is made up of small businesses. The EB-5 Regional Center Program is ideal for the small business community.

Two years ago on an EB-5 Trade Mission to So. Korea we visited with AnC Bio/Korea, a cutting edge biotech research and development company who was looking for a place in the U.S. to create a U.S. affiliate. In those two years AnC Bio/Vermont was created and tomorrow a 90,000 square foot facility will be acquired as the new U.S. headquarters of AnC Bio/ Vermont U.S.A. where over 200 quality research and manufacturing jobs will result. EB-5 capital has made this partnership possible.

Alex Choi, Chairman of the AnC Bio/Korea could have placed this facility anywhere but chose Vermont because of the quality work force and facilities made possible via the EB-5 Program.

There are many other small business entrepreneurial people in Vermont and throughout the country that have great job creating ideas and the drive and desire to make those ideas become reality, but they simply

lack capital to make it happen. EB-5 equity allows small businesses and entrepreneurs to be creative and do what they do best, innovate and stimulate the economy.

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

- Congress should make this program permanent so Regional Centers can concentrate on 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 EB-5 case processing so that predictability can become a program asset and not a program concern.

- Allow premium processing for EB-5 cases desiring it.

- Provide Regional Center projects Business Plan Review and pre-approval before an I-526 submission takes place. Once an agreed upon business plan is approved don't require it be revisited unless there is a substantial change.

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

however, 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.

Mr. Chairman and Distinguished Committee Members, this country needs all the equity investment it can get right now. The EB-5 Program is a wonderful example of an economic stimulus that is tax free, 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.

Sincerely,

William J. Stenger
President & CEO
Jay Peak Resort

7

Mr. GALLEGLY. Thank you, Mr. Stenger, and thank you for being sensitive to the lights with your testimony. We appreciate it.

And with that, we will move to Mr. Healy. Welcome, and we look forward to hearing your testimony.

TESTIMONY OF DANIEL J. HEALY, CHIEF EXECUTIVE OFFICER, CIVITAS CAPITAL GROUP, DALLAS, TX

Mr. HEALY. Thank you. Mr. Chairman and distinguished Members of the Committee, thank you again for the opportunity to testify this morning or this afternoon about the EB-5 Regional Center Program.

My name is Daniel Healy. I am the chief executive of Civitas Capital Group in Dallas, Texas. We are a boutique asset management firm, and we manage the City of Dallas Regional Center in a public/private partnership with the City of Dallas, Texas.

Jobs are at the top of the agenda here in Washington and at kitchen tables across this Nation. With that in mind, my message here today is that the EB-5 Regional Center Program is an extremely effective catalyst for job creation. Congress should act now to permanently reauthorize it.

The City of Dallas Regional Center, or CDRC, is a unique public/private partnership. The city envisioned creating a regional center to facilitate economic development, but they recognize 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 CDRC in late 2009, and we identified our first project in February 2010. In the short time since then, just 17 months, the CDRC has committed to six high quality investments totaling $91 million.

The CDRC is providing low cost, flexible capital for projects across a range of industries, including $15 million for a call center, $5.5 for a boutique hotel, and $8.5 million to help the oldest chain of Tex Mex restaurants in the country open four new locations.

At its core, the EB-5 Program is about jobs, and I am very pleased to report that the first CDRC investments are forecasted to create a total of 1,499 jobs in Dallas. That figure exceeds the minimum job creation requirement under EB-5 rules by more than 50 percent.

Civitas is expanding its activities to new markets, including Houston, San Antonio, and Austin. We are 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 $120 million. But without $40 million in flexible, low cost EB-5 capital, that project would be impossible in today's credit markets, and Amarillo would lose a rare opportunity to create more than 1,000 jobs and revitalize their downtown.

Members concerned that the Regional Center Program has been underutilized in the past should rest easy because 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. Today there are 180 in 36 States, almost a six-fold increase in just 3 years. According to USCIS, just 332 investors applied to participate in the program in Fiscal 2005; by contrast, petitions are on track to total more than 3,200 in Fiscal 2011, nearly a tenfold increase.

The pace of new applications has accelerated dramatically since 2009, with year over year growth averaging 77 percent. With 180 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, all at no cost to the U.S. taxpayer.

These statistics and my own experience with the CDRC demonstrate the EB-5 Program's vast job creation potential. With unemployment above 9 percent, Congress should see the value this program delivers across the Nation. That is why I strongly urge Congress to act on permanent reauthorization now. Even with a full year until the expiration date, I can testify to many personal experiences with respect to investors who are already hesitant to apply because the program may sunset before their petition is approved.

I would like to conclude by acknowledging the good work of the men and women at USCIS. Director Mayorkas is hosting a stakeholder meeting shortly after this hearing, which I am looking forward to attending. I applaud his plans for improving the program's administration, and I am particularly encouraged by the announcement yesterday that premium processing of investor petitions and the ability to communicate directly with adjudicators by e-mail will soon be available.

While I realize premium processing will take time to implement, allowing e-mail contact with adjudicators is a step that can be taken immediately and will lead to a more collaborative, productive, and cost effective adjudication process. In my written testimony, I have included additional suggestions for improvements to this critical program.

Mr. Chairman, thank you again—excuse me—for the opportunity to appear before you and your colleagues today. Thank you also for your support of the Regional Center Program and for pushing its reauthorization forward during these challenging times when it is most needed.

I hope you found my testimony useful and informative, and I am pleased to answer your questions.

[The prepared statement of Mr. Healy follows:]

Written Testimony of

Daniel J. Healy

Chief Executive Officer
Civitas Capital Group

Hearing on
The Investor Visa Program: Key to Creating American Jobs

Mr. Chairman and Distinguished Members of the Committee:

Thank you for the opportunity to testify today. 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, as well as alternative investments and private wealth management. In addition, we are in the process of acquiring a FINRA-member securities broker-dealer.

Prior to founding Civitas in 2008, I held a senior executive position with the real estate private equity arm of the San Antonio insurance firm Southwest Business Corporation. I also held a senior position 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 and 63 securities registrations.

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

Mr. Chairman, jobs are at the top of the agenda here in Washington and at kitchen tables across this nation. This being the case, my message today could not be more timely: the EB-5 Regional Center program is an extremely effective catalyst for job creation, and Congress should act swiftly to permanently reauthorize it.

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. In the short time since then – just 17 months – the CDRC has committed to six high-quality investments totaling $91 million. These investments will require 182 foreign nationals to invest $500,000 apiece, and will be required by EB-5 rules to create a minimum of 1,820 new jobs. In practice, the job creation associated with each of these investments exceeds this minimum number by a wide margin; Civitas's internal underwriting typically requires job creation of at least 120% of the legal requirement.

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.

At its core, the EB-5 program is about jobs, and I am very pleased to report that the first four CDRC investments, which total $37 million and will be funded by 74 foreign investors, are forecasted to create a total of 1,499 new jobs in Dallas. This exceeds the minimum EB-5 job creation requirement of 740 new jobs by more than 50%. Our fifth and sixth investments, which are in the early stages and total $54 million, are expected to create a substantial number – more than 1,500 – of additional direct and indirect jobs. I am particularly proud of one of these, and would like to highlight it for the Committee as an example of exactly what the EB-5 program makes possible in these difficult economic times.

Civitas and the CDRC recently committed to loan $9 million 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 is stepping up with a $1.5 million bridge loan to help facilitate development of the first project. 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.

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*.

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 180 in 36 states[1] – almost a sixfold increase in just three years. 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.

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

According to USCIS, just 332 investors applied to participate in the EB-5 program in fiscal 2005.[2] By contrast, I-526[3] petitions are on track to total more than 3,200 in fiscal 2011 – nearly a tenfold increase.[4] The pace of new applications has accelerated dramatically since fiscal 2009, with year-over-year growth averaging 77%. With 180 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.[5] 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 unemployment above 9%, Congress should see the value this government program delivers across the nation. 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 who are already hesitant to apply because the program may sunset before their petition is approved.

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[6], 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

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

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

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

[5] 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.

[6] As of the date of this hearing, 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.

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.[7] In fact, the Congressional Budget Office has scored the EB-5 program as revenue neutral. Both regional center operators like Civitas and individual EB-5 investors pay substantial fees to USCIS, which fully cover the cost of administering the program. As these costs rise, so do the fees,[8] as is appropriate. Therefore, the EB-5 program costs taxpayers nothing, as Congress intended.[9] 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.

Other Key Issues

In her recently issued annual report[10] 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 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

[7] *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."

[8] 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.

[9] 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.

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

both Regional Center applications (Form I-924) as well as individual investor petitions (Form I-526). As of today, each of these is taking approximately six months, assuming no "request for evidence" (RFE) is issued. 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" – by which Regional Center operators and individual EB-5 applicants will be permitted to pay an extra fee for expedited adjudication of petitions – will soon be available. While I recognize that the agency needs time to recruit staff and implement internal procedures in order to provide premium processing, I urge the agency to publicly announce a date by which premium processing will be available. This will allow Civitas and every other Regional Center operator the ability to plan for the future much more effectively.

2. ***Enhanced Communication with Adjudicators***. Director Mayorkas has also announced that petitioners will soon be able 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. Best of all, allowing e-mail communication between adjudicators and petitioners requires little, if any, new infrastructure, and can therefore be implemented quickly. I urge USCIS to move forward with this smart initiative immediately.

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.

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 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 is hosting a meeting shortly after this hearing to share

progress on a number of initiatives within USCIS, which I am looking forward to attending. Opportunities to interact with the Director and the agency are extremely important, and I would like to thank Director Mayorkas for taking the time to meet with me and other stakeholders. I am confident that working together, the EB-5 Regional Center program will continue to improve, grow and create jobs for many, many Americans, now and for many years to come.

Mr. Chairman, thank you again for the opportunity to appear before you and your colleagues today. Thank you also for your support of the EB-5 Regional Center program and for pushing its reauthorization forward during these challenging times. I hope you have found my testimony useful and informative, and I am pleased to answer your questions.

8

Mr. GALLEGLY. Thank you very much, Mr. Healy.
And now, we will hear from Mr. Mendelson. Mr. Mendelson?

TESTIMONY OF JASON MENDELSON, MANAGING DIRECTOR, FOUNDRY GROUP, BOULDER, CO

Mr. MENDELSON. Thank you. As a co-founder and managing director of Foundry Group, an early stage venture capital firm based on Boulder, Colorado, and as a board member of the National Venture Capital Association, it is my privilege to be here today to share with you my perspective on the critical role that immigration entrepreneurs play in job creation, innovation, and economic growth in the United States.

I would like to thank the Chairman for recognizing that this issue is critical to our country's future. I would also like to thank Ranking Member Lofgren and my own congressman, Jared Polis, for their leadership and support of the startup visa legislation.

At a time when we are in desperate need of both fiscal responsibility and economic stimulus, the Startup Visa Act will create American jobs at no cost to the Federal Government. Each day that passes without this legislation, another company builder is turned away, and jobs are created elsewhere. On behalf of the venture capital and startup communities, I urge Congress to send a message that our company is open for business and eagerly welcome job creating entrepreneurs to our shores.

The startup visa legislation recognizes two elements that have been critical in driving U.S. economic growth and job creation, which are venture backed companies and immigration. Separately, these elements have helped to differentiate our country from all others. When harnessed together, they will be instrumental in maintaining our global leadership.

According to a 2011 IHS Global Insight report, companies, such as Apple, Genentech, and Starbucks, that were founded as small startups of venture capital now account for 12 million jobs and $3.1 trillion in revenues in the U.S. in 20101. That equates to 11 percent of private U.S. employment and 21 percent of our country's GDP.

While America's startup economy would not be what it is today without venture capital, the same can also be said for immigrant entrepreneurs. A 2006 NVCA report entitled "American Made," found that approximately 25 percent of U.S. public companies that were venture financed, including Intel, Google, Sun Microsystems, and Watson Pharmaceuticals, were founded by immigrant entrepreneurs. The same study revealed that nearly half of current startups have immigrant founders. These are companies that are hiring American workers. They are paying taxes and they are creating value for American shareholders.

Anecdotally, I would estimate today that a third or more of the business plans that my firm receives have an immigrant as part of their founding team.

In my written testimony, I discuss my experience with Stratify, just one of our portfolio companies founded by immigration entrepreneurs. The company created more than 400 U.S. jobs before it was sold in 2007, garnering over $150 million to shareholders and employees. More than half a dozen of Stratify's alumni have gone on to become founders or early employees of other startups. Yet despite the strength of this success story, it is my belief that it would

be much more difficult to replicate it today given our current immigration policies.

The current path to a green card is fraught with complex requirements, limitations, and delays, sending a message to these talented people that we do not want them here. Foreign-born graduates who earn their degrees here and want to stay and build businesses are often forced to return to their native country because of our restrictive policies, despite these entrepreneurs attending federally and State-subsidized universities. In effect, we are subsidizing the world's entrepreneurship and not realizing any return.

At TechStars, a seed stage investment program my partners and Jared Polis helped found, we see opportunities lost each year, most recently in the Boston program where four of the 12 companies had immigrant founders from Israel, the United Kingdom, India, and Estonia. In three cases, the founders had to return to their home countries after the program. We estimate that in the immediate term, 20 high paying jobs were lost to these countries, yet the ultimate loss to the U.S. over time will be much, much greater.

And it is the same story in other TechStars programs in New York, Seattle, and Boulder. Immigrant founders want to stay and create fast-growing companies with high paying jobs, but are forced back to their native countries, such as Canada, Israel, and England. We should give them every reason to stay in the U.S. Ironically, our policies are showing them the door.

This negative dynamic is made worse by the fact that the U.S. is no longer the only destination for high tech startup companies. In the last decade, countries such as India and China have adopted the American venture capital model and accelerated their growth by offering government incentives to move there. And the world's venture capital dollars are following these entrepreneurs abroad. Once a company is started in a specific location, its economic benefits remain geographically tied to that region.

Despite all of these government incentives, the United States is still the preferred location to start these types of businesses. But this will not be the case if we keep sending founders out of country.

Reforming high skilled legal immigration policy should be a congressional priority. When we turn away immigration entrepreneurs, not only do we lose bright people, but then we end up competing against them in the global marketplace. The startup visa legislation will help support job creation and innovation right here.

We appreciate the bipartisan support this Committee has given to this initiative, and we stand ready to work with you to get the startup visa legislation signed into law. Thank you.

[The prepared statement of Mr. Mendelson follows:]

U.S. House of Representatives Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

September 14, 2011

"Hearing on the Investor Visa Program: Key to Creating American Jobs"

Testimony of:

Jason Mendelson

Foundry Group

Boulder, Colorado

Introduction

Chairman Gallegly, Ranking Member Lofgren and members of the subcommittee, my name is Jason Mendelson and I am a co-founder and managing director of Foundry Group, a venture capital firm comprised of four partners based in Boulder, Colorado. Foundry Group is focused on making investments in early-stage information technology, Internet, and software startups. Collectively, we have more than five decades of experience in venture capital investing during which time we have invested in over 300 companies as institutional investors and more than 75 companies as angel investors. Additionally, we have over three decades of entrepreneurial experience in founding and working in senior operating roles inside technology startups.

Our passion is working alongside entrepreneurs to give birth to new technologies and to build those technologies into industry-leading companies. We're centrally located in Boulder, Colorado, but we invest in companies across the United States. Our current venture fund of $225 million was launched in October 2010. As true early-stage investors, we are comfortable making small seed investments -- as little as $250,000 -- to help promising entrepreneurs get their ideas

off the ground. Often at the time of our investment, the company does not have a product or revenue, just an exciting idea, a nascent technology, and a compelling entrepreneurial team that holds tremendous promise for growth.

As part of our commitment to launching companies, in 2006, my firm co-founded TechStars, a mentorship-based, seed stage investment program in which startup entrepreneurial teams from around the world participate in an intensive three month program which takes them through the development of their business plan, and through their product launch. Each startup receives a small amount of seed capital with the hopes of obtaining additional financing at the end of that time. Now established in four cities, Boston, Boulder, Seattle and New York, TechStars has launched 90 companies in the last five years. During this time, over 70 percent of the participants have received additional funding from angel and venture investors. Nearly 80 percent of the companies are viable and growing entities today.

In addition to my responsibilities as a venture investor, I am also a member of the Board of Directors of the National Venture Capital Association (NVCA) based in Arlington, Virginia. The NVCA represents the interests of nearly 400 venture capital firms in the United States, which comprise more than 90 percent of the venture industry's capital under management.

It is my privilege to be here today to share with you, on behalf of the venture capital industry and the startup companies in which we invest our perspective on the critical role that immigrant entrepreneurs play in job creation, innovation and economic growth in the United States. I would like to thank the Chairman for holding this hearing and his recognition that this issue is a critical

one to our country's future. I would also like to thank Ranking Member Lofgren and Boulder's own Representative Jared Polis for their leadership and support of the StartUp Visa legislation that seeks to smooth the path for the best and brightest foreign-born entrepreneurs to build their companies here in the United States. Passing this bill will send a signal to the world that our country is not only "open for business" but also very eager to welcome those startup teams to America. The criteria included in the legislation that the entrepreneur visa candidates receive legitimate venture capital funding will ensure proper vetting takes place, and the subsequent requirement for proof of job creation or additional growth will allow government to monitor results.

At a time when we are in serious need of both fiscal responsibility and economic stimulus, the StartUp Visa legislation is an example of smart policy that will create American jobs and cost nothing in terms of additional government spending. Each day that passes, another company builder is being turned away. Our economy cannot wait for comprehensive immigration reform. On behalf of the venture capital and startup communities, I urge Congress to do the right thing for the U.S. and pass the StartUp Visa legislation on its own merits without further delay.

The Startup Economy and Immigrant Entrepreneurs: A Powerful Combination

The StartUp Visa legislation recognizes two elements that have been critical in driving U.S. economic growth and job creation – venture-backed companies and immigration. Separately, these elements have helped to differentiate our country from all others. When harnessed together, they will be instrumental in maintaining our global leadership.

According to a 2011 IHS Global Insight report, companies that were founded as small startups with venture capital accounted for 12 million jobs and $3.1 trillion in revenue in the United States in 2010. That equates to 11 percent of U.S. private employment and 21 percent of our country's GDP. Venture-backed companies are responsible for the creation of entire industry sectors here including semiconductors, biotechnology, Internet content and software. Today, we are creating the companies that will serve as the cornerstones for the clean energy and social media sectors. Companies founded with venture capital as small startups that are now household names include Apple, Genentech, Starbucks, Facebook, Home Depot and FedEx. With more than 6000 companies receiving first-time venture funding over the last six years, the next generation of innovative companies are poised to follow in their footsteps.

Our country has benefited greatly from the startup ecosystem because venture capitalists understand the key essentials to building companies. Two of the most important elements are 1) the ability to provide early-stage funding, active guidance and mentorship and 2) a healthy appetite for, and understanding of, risk. For companies that are built on innovation, the contribution of venture capital is critical early on. When my partners and I decide to invest in a nascent idea, we don't just write a check. We join the team, offering significant guidance and strategic vision across all aspects of building the business including operations, sales and marketing, human capital and financial planning. Our counsel is based on decades of experience working in similar situations and understanding the drivers for success in a particular sector. That contribution early on in a company's life-cycle has helped to start and grow thousands of entities each year.

Yet our passion for this business is balanced by our appreciation for the risk involved in new technologies and business models. Before investing in a company, venture capitalists go through a substantial due diligence process that often takes months to complete. We vet these candidates across multiple fronts, assessing their management teams, business plans, technology risks, financial plans, competition, and growth trajectories. Of the thousands of business plans we receive each year, my firm funds 10 to 15 companies, with the expectation that 25 to 50 percent will not return our invested capital. Failure is built into our model – but so too, are successes and those companies that have succeeded far outweigh the failures.

While America's startup economy would not be what it is today without venture capital, the same can be said for immigrant entrepreneurs. According to *American Made*, a study conducted by Stuart Anderson and commissioned by the NVCA, approximately 25 percent of U.S. public companies that were venture-financed since 1990 were founded or co-founded by immigrant entrepreneurs. These companies include Intel, Google, Sun Microsystems, eBay, Juniper Networks, WebEx and Watson Pharmaceuticals. Further, a survey of 2006 venture-backed startups revealed nearly half (47 percent) had immigrant founders. These are companies that are hiring American workers, paying taxes and creating value for American shareholders. Anecdotally, I will attest that the same holds true today. I would estimate that a third of the business plans we have reviewed in the last year have had immigrants as part of their founding team. Invariably, about 33 percent of the TechStars teams accepted into the program, (which is highly competitive, even more so than entrance into an Ivy League school), also include foreign-born entrepreneurs.

To offer just one example of the value created from immigrant entrepreneurs, I would like to share my experience with Stratify. Stratify was founded by Ramana Venkata, Ramesh Subramonian and Rakesh Mathur. All three are from India, and are graduates of the Indian Institute of Technology, India's version of MIT. They came to the US in the 1980s on student visas to pursue graduate studies, and in search of better opportunities than they could find in India at that time. Their graduate studies were funded by Research Assistantships generously provided by our universities - Stanford, UC Davis and UT Arlington, respectively for Ramana, Ramesh and Rakesh.

Ramana and Ramesh were working on H-1B visas at Intel Microprocessor Research Laboratory in Silicon Valley and Rakesh at Amazon, when they collectively had the idea for novel ways to analyze and manage unstructured data. They founded Stratify, received venture capital, and pursued and received their green cards in late 1999. The company grew steadily and was sold to Iron Mountain in 2007, with returns of over $150 million to shareholders and employees.

Over the course of the company, Stratify created more than 400 jobs in the U.S. More than half a dozen Stratify alumni – including the three immigrant founders -- have gone on to become founders or early employees of other startups, and more will do so in the near future.

The Stratify story is an example of just one of hundreds of immigrant entrepreneurs applying their passion, intelligence and understanding to building U.S. companies. Yet, despite the strength of this success story, it is our current belief that it would be much more difficult to replicate this series of events today given the immigration policies now in place. These

immigrants have been a gift to our country and one that we are dangerously close to forsaking altogether.

Our Game to Lose

America is at high risk for squandering the contribution of immigrant entrepreneurs for two reasons. First and foremost, our legal immigration policies have essentially sent a message to these talented people that we do not want them here in the United States. The current path to a green card is fraught with complex requirements, limitations and delays. Today, foreign-born graduate students who earn their advanced degrees here in the U.S. and want to stay and build businesses here are not encouraged to do so – and remarkably they are often forced to return to their native country because of our restrictive policies.

At Foundry, we have first hand experience with this scenario. In the most recent TechStars class in Boston, four of the 12 companies had immigrant founders from Israel, the UK, India, and Estonia. In three cases, the founders had to return to their home countries after the program. Each of the four companies was funded by U.S. firms with between $350,000 and $2,000,000, but in three of the cases, the companies are now located, growing, and creating jobs outside of the United States. We estimate that in the immediate term, 20 high paying jobs were lost to these countries; yet the ultimate loss to the United States over time will be a much greater multiple of that number, as studies show that most of the job growth occurs once a company is large enough to become public. And these are merely four brand new startups created in Boston in a 90 day period – imagine the potential losses occurring throughout the country.

In years past, we have watched as other TechStars teams were forced to go back to countries such as Canada, Israel and England. In Seattle, where the program is currently in session, one company with Israeli founders has launched its product and is now in its ramp-up phase. They anticipate needing to hire 10 people in the next 6 months. However, the threat of being forced out of country is very real for them. Those ten employees will be hired in Seattle or Israel. We should give them every reason to stay. But ironically our policies are showing them the door.

Compounding the fact that the United States is no longer welcoming these entrepreneurs is the reality that we are no longer the only destination for high tech, high growth startup companies. In the last decade, countries such as India and China have not only adopted the American venture capital model, but they have also supersized their ecosystems by offering powerful government incentives for entrepreneurs to build their companies in their home countries. Once a company is started in a specific destination, the economic benefits of that company remain geographically tied to that region. Innovation is established and further developed, jobs are created, and additional products and value are spun out from there. Imagine if Intel was founded in Europe, Yahoo founded in China and Google founded in Russia. While it seems preposterous (and it was back when we welcomed these entrepreneurs and their home countries did not), make no mistake: the next Google or Intel is at high risk for being located on foreign soil if we do not open our doors to the immigrant founders who today are deciding where to call home.

As history has taught us, many of these immigrant company founders will do their preliminary research and business concept work in graduate school here in the U.S. These foreign-born students have earned their degrees at American universities and want to stay here to build

companies. The StartUpVisa legislation should apply to these individuals as well. It is both ironic and alarming that students are coming to the U.S. and attending schools that are subsidized by our federal and state money – and then we kick them out of the country, compelling them to create jobs overseas. We are effectively subsidizing, as a country, the world's entrepreneurship.

Furthermore, as we continue to deny entrance to these types of entrepreneurs, the world's venture capital dollars are following suit and beginning to increasingly go to countries like China and India because that is where the companies are being started. The venture money will flow to the best and brightest entrepreneurs regardless of their location, so it is imperative that we make it easy for these job creators to locate in the United States.

Conclusion

Reforming our highly skilled, legal immigration policy should be a Congressional priority. Doing so would support job creation and innovation here in the United States without having to spend a dime of the nation's tax dollars. The StartUp Visa legislation is a thoughtful approach, which grants the world's best and brightest entrepreneurs an opportunity that today does not exist. And it does so in a way that mitigates much of the risk by leveraging the venture capital industry's long established and diligent vetting process.

While we recognize fully the need to address the country's illegal immigration challenges, we assert that if the Congress is not able to pass comprehensive immigration reform this year, the StartUp Visa proposal should stand on its own merits and be considered separately in the interest of time. America needs job creation and economic recovery now. And we must remain

competitive with foreign countries that are anxious to usurp our leadership. As we look towards our future we must not forget our past and what has made this country great. We appreciate the bipartisan support that this committee has given to this initiative and we are enthusiastic about its potential. The venture capital industry stands ready to work with government to once again attract highly motivated, highly skilled talent to our shores. In our collective opinion, there is no other option.

Thank you for this opportunity. I am happy to answer questions.

Mr. GALLEGLY. Thank you, Mr. Mendelson.
Now, we will hear from Mr. Pishevar?

TESTIMONY OF SHERVIN PISHEVAR, MANAGING DIRECTOR, MENLO VENTURES, MENLO PARK, CA

Mr. PISHEVAR. Thank you, Mr. Chairman.

My name is Shervin Pishevar. I am a managing director at Menlo Ventures. We have $4 billion under management and a new $400 million fund that we are investing out of.

Yesterday we announced the Menlo Talent Fund, which is specifically for early stage seed stage companies where we will decide within 24 to 72 hours to invest up to $250,000 to a million dollars in new companies.

I am testifying before you today as a venture capitalist, an entrepreneur, and an angel investor who has founded five U.S. companies, and invested in 40 other startups that have gone on to innovate and create jobs in America. From my vantage point and home in Silicon Valley, I witness each day the value that startups can bring to a region and to our country. I am also an immigration entrepreneur.

I would like to read a quote that inspires me and many other people in Silicon Valley every day, "Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has." It is a quote by Margaret Mead, and I believe that it captures the ethos of Silicon Valley.

People from around the world are inspired to come to Silicon Valley, to come to America and pursue their dreams. I am privileged to testify today on behalf of countless foreign entrepreneurs who would like nothing more than to do what I have done—build companies and pursue their dreams here in the United States.

I was born in Iran in 1974. My family was poor. We survived persecution, the Iran-Iraq War, and fled to the United States in 1975 when I was 5 years old. There, my father took a job as a taxi driver in Washington, D.C. driving some of you congressmen. And my mother cleaned hotel rooms.

When I got accepted to the University of California at Berkeley, I remember how proud my parents were. I received the Presidential Fellowship to continue to continue my high school science project, which led to finding a new way to selectively lice malaria-infected red blood cells. Berkeley filed a patent on that discovery, and I was the sole inventor, and that inspired me to actually become an entrepreneur.

In 1994, at the computer lab at Berkeley, I came across a program called NCSA Mosaic, created by Mark Andreessen. I quickly imagined all that I could do, and with my friends, we developed an idea called the web operating system, webOS. A mentor encouraged me to start my own company, and in my senior year I began to pursue my American Dream.

I took a job as a security guard at night to make enough money so I could work day and night on my business. After a number of fortunate breaks and cold calling Jamie Diamond in his office, the company found investors and we launched. And I was on my way with the first of many startups.

History shows us that the location of innovation drives where the economic value is created. Nowhere is that more true than in Silicon Valley, where the economy thrives on technological breakthroughs and innovations that occur each day. If you look at the top startup regions around this country, you will see a familiar combination of successful research universities, a cadre of highly motivated entrepreneurs, and a system of capital and mentorship

that supports the growing of businesses. It is a benevolent circle that begins with that innovation. Where the innovation goes, the value flows.

Immigrant entrepreneurs are an integral part of the Silicon Valley ecosystem. Studies have shown that Silicon Valley has a higher concentration of foreign-born entrepreneurs, technologists, scientists than any other region in the U.S. According to the 2006 "American Made" study, 40 percent of U.S. publicly-traded venture capital companies operating high tech manufacturing were started by immigrants. The story of privately-held venture backed companies is even more compelling, where almost half of the companies across the U.S. had foreign-born founders.

The U.S. innovation pipeline is well fueled by immigrants, and it is our responsibility to ensure that we do not unintentionally divert this energy to other nations overseas.

The startup visa legislation applies two very important filters so that when the United States accepts an immigrant entrepreneur who has received venture investment, we can have the confidence that we are getting the best and the brightest talent from around the world.

First, there is the selection filter, which applies to any individual enterprising enough to leave one's home and pursue their dreams in an attempt to innovate and grow a business in a new country. The second filter is the venture capital vetting process, which only funds those companies that have the highest chance to succeed. The result will be creating a network of highly motivated, well supported entrepreneurs who will generate value and perpetuity here in America.

To wit, the "American Made" survey has reported that nearly two-thirds of immigrant founders of privately-held companies, venture backed companies, have started or intend to start more companies in the United States. Like me, they have become serial entrepreneurs and angel investors, and will continue to serve our economy well by building innovative companies, one after the other.

Reforming the legal immigration process so that our highly motivated immigrant entrepreneurs can grow their businesses in America must be a congressional priority. I am encouraged by the growing bipartisan support for the startup visa proposal, but for this bill to become law, we will need more than bipartisan support. We will need bipartisan compromise. The stalemate has gone on too long.

The "American Made" survey reported that nearly all the immigrant founders and private companies would still start their companies in the United States if they had the choice. But nearly two-thirds believe that it was currently more difficult to enter the United States and start a company than when they started their companies. When I think about that fact, that others like myself, the same commitment and talent and passion for technology and innovation are not being permitted into this country, which I now call home, I can only shake my head and ask why.

I urge this Committee to ask themselves the same question and then act quickly and compromise to reverse an unfortunate path down which we have traveled for too long. I urge Members of Con-

gress to come together, work together as a team, and create a package that is in the spirit of bipartisan compromise before year end. The American people are counting on you to do this for the good of the American economy.

Thank you.

[The prepared statement of Mr. Pishevar follows:]

U.S. House of Representatives Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

September 14, 2011

"Hearing on the Investor Visa Program: Key to Creating American Jobs"

Testimony of:

Shervin Pishevar

Menlo Ventures

Menlo Park, California

Introduction

Chairman Gallegly, Ranking Member Lofgren and members of the subcommittee, my name is Sherwin Pishevar and I am a managing director of Menlo Ventures based in Menlo Park, California. I recently joined Menlo Ventures after spending most of my career as a serial entrepreneur and angel investor. During this time I founded a number of technology companies here in the United States including WebOS, the Social Gaming Network, Webs.com, Hyperoffice and Hotprints where I have had the privilege to hire many U.S. employees. Additionally, I have invested in more than 40 other companies that have gone on to innovate and create jobs here in America. I am a patent holder and I am an immigrant entrepreneur.

I am privileged to testify today on behalf of the countless foreign entrepreneurs who would like nothing more than to do what I have done – build companies, create jobs, and innovate here in the United States. I hope my testimony sheds light on why our country needs these individuals – and why we must act with a sense of purpose and urgency – and in the spirit of compromise -- to welcome them to our country.

My Story

I was born in Iran in 1974. My family was very poor; my father lost both his parents by the time he was twelve years old. Yet, he had great ambition and when I was 2 years old he received a scholarship and brought us with him to the United States where he pursued a graduate degree. We arrived during the bicentennial celebrations and I can still remember the excitement of the parades occurring in the nation's capital. After my father received a master's degree from Catholic University, we had to return to Iran in 1978 where he was promoted to the head of Radio and Television for the country. However, he soon found himself on Khomeini's execution list for bravely broadcasting instructions in a foreign language how to leave Iran. He escaped, fled our home, and the Iran-Iraq war began. My family braved this war without him and I didn't see my father for more than a year and a half when we reunited in the United States in 1979. There he took a job as a taxi driver and my mother cleaned hotel rooms.

I always talked about making it easier for my parents someday. I noticed how happy they would get when I would receive good grades so I threw myself into school. I went from ESOL- English for Speakers of Other Languages- to Gifted and Talented/Honors- to being tested and bused to a Magnet Program for the top 100 students in a county with 120,000 students. Every certificate or reward I got my father would put on a wall of awards. Soon the entire wall was covered. When I got accepted to University of California at Berkeley I remember how proud my parents were. I received a Presidential Fellowship to continue my high school science project which led to finding a new way to selectively lyse malaria infected red blood cells. Berkeley filed a patent on the discovery and I was the sole inventor.

My parents' dream was for me to go to Medical School. I was the one that was supposed to become Dr. Pishevar, MD. My brother became Mr. Pishevar, Esquire, the attorney. My sister became Dr. Pishevar, PhD, and tenured Professor. But my father had made one little mistake. When the Apple IIc came out I begged him for a computer and he saved the money to buy me one. I taught myself how to do simple code and learned every program I could. That single purchase changed my life and set me on a course that would initially break my father's heart.

At Berkeley at the computer lab in 1994 I came across a program called NCSA Mosaic. This was the Internet Browser created by young developers at the University of Illinois. I quickly imagined all that I could do and with my friends developed an idea called the Web Operating System (WebOS). Berkeley's Office of Technology and Licensing, which had paid for the patent on the malaria research I did, had introduced me to a mentor at Cooley Godward, a top tech law firm. He taught me that I could start my own company. I decided to do just that and in my senior year, started a company that evolved into WebOS Inc.

When I told my father I had canceled my application process for joint MD/PhD programs, he was tremendously upset. He thought I was abandoning the American dream and he didn't talk to me for 9 months. But this was MY American dream and I struggled for a year and took a night job as a security guard so I could work all day and night on my idea. After a number of fortunate breaks, the company was launched and I was on my way. My Dad started talking to me again.

I share my story with you because I am just one of thousands of entrepreneurs who were not born in the United States, but who believe that this country is still the land of opportunity. I am fortunate to have been brought here when I was a child, but this is not the case with others. Still we are similar in that we have the talent, the passion and wherewithal to start and grow companies anywhere

in the world. But we know that the best company successes, the most exciting innovations, and the greatest opportunities for value creation will still happen here in America.

Immigrants Contribute to U.S. Innovation

It is imperative that the United States make it a priority to anchor innovation to its shores because history shows us that the location of innovation drives where the economic value is created. Nowhere is that more true than in Silicon Valley where the ecosystem thrives on technological breakthroughs that occur each day. If you look at the components of top startup regions around the country you will see a familiar combination of successful research universities, a cadre of highly motivated entrepreneurs, and a system of capital and mentorship that supports the growing of businesses. Innovations emerge from the research labs and garages of entrepreneurs. The best ideas are funded and companies are formed. As these companies innovate, they grow. As they grow, they create jobs and new products. And as this growth occurs, employees and new ideas spin out of existing companies and new entities are formed. It is a benevolent circle that begins with the innovation. Where the innovation goes, the value follows.

Immigrant entrepreneurs are an integral part of the Silicon Valley ecosystem. Studies have shown that Silicon Valley has a higher concentration of foreign-born

entrepreneurs, technologists, scientists and engineers operating within the high technology sectors including software, semiconductors and biotechnology than any other US region. According to the 2006 *American Made* study, 40 percent of U.S. publicly traded venture-backed companies operating in high technology manufacturing were started by immigrants. Moreover, more than half of the employment generated by these high tech manufacturers came from immigrant founded companies.

The story at privately held venture-backed companies was even more compelling where almost half of the companies across the U.S. had foreign born founders. My sense is that in California, this percentage is much higher. These founders held an average of 14.5 patents with a median of four. The U.S. innovation pipeline is well fueled by immigrants and it is our responsibility to ensure that we don't unintentionally divert this energy overseas.

Immigrants Entrepreneurs are Poised for Success

The StartUp Visa legislation applies two very important filters so that when the United States accepts an immigrant entrepreneur who has received venture investment, we are getting the best and brightest candidates from around the globe. First, there is the self selection filter which applies to any individual enterprising enough to leave one's home and attempt to innovate and grow a business in a new country. Furthermore, the value that many of these countries

place on education in math and science guarantees that the knowledge we are importing is on par if not beyond what is available here in the United States. Consequently, theses immigrants come to our country highly educated and highly motivated – an ideal combination.

The second filter is the venture capital vetting process which only funds those companies that have the highest chance to succeed. The venture capital process also has built in-monitoring which allows these companies to receive follow on funding only if they meet agreed upon milestones. The result will be creating a network of highly motivated, well supported entrepreneurs who will generate value.

To wit, the *American Made* survey reported that nearly two thirds of immigrant founders of privately-held venture-backed companies have started or intend to start more companies in the United States. Like me, they have become serial entrepreneurs and will continue to serve our economy well by building innovative companies one after another. Why the United States is not rolling out the welcome mat for these individuals remains deeply concerning to those who understand the value these entrepreneurs bring with them.

The Time has Come for Compromise

Reforming the legal immigration process so that highly motivated, well-intentioned immigrant entrepreneurs who want to grow their businesses in America must be a Congressional priority. I am very encouraged that we are having this hearing and the growing bipartisan support for the Startup Visa proposal is indeed promising. Passing legislation encompassing much needed reform would be a clear win for both sides of the aisle and Members of Congress need to do all that they can to break this log jam. This is not a Republican issue or a Democratic issue. It is an American competitiveness issue where there is a clear opportunity to create jobs and foster innovation here.

However, for this bill to become law, we will need more than bipartisan support; we will also need bipartisan compromise. Both Democrats and Republicans have advocated for competing priorities with the unfortunate result being that forward movement has remained elusive. The stalemate has gone on too long.

I urge members of Congress to come together and create a package that is in the spirit of bipartisan compromise before years end. The American people are counting on you to do this – to compromise -- which means including provisions

you many not otherwise support but recognize that you must for the good of the American economy. Our country cannot afford to wait any longer.

Conclusion

I appreciate that there are aspects of this bill that are not deemed perfect to one side or the other but our country is not in any position to let the perfect be the enemy of the good. The *American Made* survey reported that nearly all the immigrant founders in private companies (95 percent) would still start their companies in the United States if given the choice. But nearly two thirds believed that it was currently more difficult to enter the United States and start a company then when they started their companies.

Everyday, the U.S. is losing out to other countries that are opening their doors to immigrants. I feel incredibly blessed that I had the opportunity to grow up in the United States and become an entrepreneur in the most promising country in the world. When I think about the fact that others like myself – with the same commitment and passion for technology and innovation – are not being permitted into the country which I now call home, I can only shake my head and ask why? I urge this committee and members of Congress to ask themselves the same question – and then act quickly and compromise to reverse an unfortunate path down which we have traveled for far too long.

Mr. GALLEGLY. Thank you, Mr. Pishevar.

I would like to start by asking a couple of questions of Mr. Stenger.

Where would Jay Peak Resort be today had it not been for the Regional Center Pilot Program?

Mr. STENGER. Well, we would be a resort that would be confined largely to winter operation only. An incredibly capital intensive business like we are, that would be fraught with challenge.

We currently have approaching 2,000 direct employees and indirect employees around our community. We have 450 construction workers working today, all Vermonters that would not would be working otherwise.

So, I can tell you, Mr. Chairman, that were it not for the equity capital of this program, all the things that we have been able to do in the last few years would not have been possible, and especially since the banking challenges of 2008. Equity capital is just not available. And a resort like ours, we are vibrant, we are healthy. We are excited about the future.

The EB-5 capital has made that possible in a rural, high unemployment area where now we are no longer the highest unemployment community in Vermont. We are up and coming, and it is because of this capital access that has made that possible.

Mr. GALLEGLY. How many jobs specifically were created at Jay Peak as a direct result of the program?

Mr. STENGER. I would say right now, as we enter into this current year where we open one of our newest facilities, we will approaching 800 to 900 direct new jobs.

Mr. GALLEGLY. That are a direct result of the program?

Mr. STENGER. Yes, and many, many hundreds more that are indirect—all of the contractors, all of the people who support those businesses. Vermont is a rural State in general, and in our part of the State, even more so. So, the indirect impact is profound throughout the region.

Mr. GALLEGLY. How do you respond to those that claim that the Investor Visa Program simply allows aliens to buy green cards?

Mr. STENGER. Well——

Mr. GALLEGLY. Some have made that accusation.

Mr. STENGER. I appreciate that. What I see in our investors, and I think in all of the quality programs in the country, you see people who are interested in being in this country. They have the capacity to invest in a project that is job creating.

Yes, they are getting a preference, but they are bringing something that we desperately need. We need equity capital. These things, and you asked the question earlier, what would we be if we did not have access to this? The banking community is just not available to us in the manner that we would like it to be. And that is not just true at Jay Peak; that is true for small business throughout this country.

So, when our investors come, they bring their capital. They bring their good educations. Many of them invest in other communities that they live in. And it is truly a win-win-win situation in that they bring capital, they bring their education, they bring their family, they bring their love of this country and their desire to be here.

And it is a great economic benefit to us, and it creates jobs everywhere along the way.

Mr. GALLEGLY. Mr. Healy, from your perspective, do you see any fraud or dubious investment vehicles in the Regional Center Program?

Mr. HEALY. From my perspective, no, I do not regularly see fraud or dubious investments. I think what is important to keep in mind is that like any market, there is a range of investments. Our program at Civitas with the City of Dallas has a particular approach that we take that is different from Mr. Stenger's, that is different from many other regional centers. Some of my competitors I would invest in; some I would not. But in terms of fraud or abuse, I really do not see that.

I mean, we see a great number of investment opportunities. We, you know, try hard to monitor our competition and understand where the market is going. But where I have seen problems is not really in people entering the market or attempting to game the system. It is much more on the regulatory adjudication side.

Mr. GALLEGLY. What competition do you see from the Canadian and Australian programs?

Mr. HEALY. The competition from other countries' programs, including those two that you mentioned, is sometimes quite stiff. Very recently, the Canadian program doubled the required investment because they had substantial demand and were looking to tamp it down.

There is no question that when investors in other countries are considering emigrating, they look at other options. And one of the challenges that we face as regional centers is that while the United States remains the gold standard for many of the reasons that my colleagues have mentioned, the process for going through an EB-5 investment is arduous, time consuming, expensive.

Mr. GALLEGLY. I thank the gentlemen. My time has expired, so I would yield to the gentlelady from California, Ranking Member Ms. Lofgren.

Ms. LOFGREN. Well, thank you very much. And to all the witnesses, it has been great to hear from all of you.

I want to specifically say, Mr. Pishevar, what a thrill it is to see the person responsible for webOS. I mean, it is very cool that you are.

You know, coming from the Valley, there are some things that are obvious to me, but may not necessarily seem as obvious in other parts of the country. One of the things, and I am interested in how you would see this fact factored into how this program needs to be fine-tuned.

I mean, in the Valley, failure is a learning experience, and not every venture is going to hit on all cylinders. I mean, we see people, you know, be successful in later things.

How in your judgment—we have got like in the bill, we have a 2-year window to see whether this is going to take off or not. Twenty-five, maybe half of the ventures you fund, Mr. Mendelson, you in your testimony, are not going to make it. And yet, their founders may go on to found another business. How would you suggest we deal with that phenomenon?

Mr. PISHEVAR. Well, I think, first of all, 2 years is plenty enough time to realize if a venture is going to take hold or not, especially in the dollar amount we are talking. I have heard anywhere from $250,000 to $500,000 as a threshold to enact the startup visa.

That is going to be plenty to get somebody nine to 12 to 18 months. And we are going to know.

Ms. LOFGREN. Okay.

Mr. PISHEVAR. Either more money is going come and they are going to ramp up or not. So, whether they can turn around and create a second company, too, within 24 months, I do not think that happens. But it is certainly plenty for the first.

Ms. LOFGREN. And we have got built into the visa the plan that either you create the jobs or you attract the additional capital.

Mr. Pishevar, in your testimony, you were talking about the screens, I think, because, you know, I really think in this venture, the VC world is going to be better at sorting this out really than some government bureaucracy.

Talk to us about how you evaluate ventures as an angel investor or in your VC capacity, and what that would mean for people who participate in this program?

Mr. PISHEVAR. Absolutely. So, our philosophy at Menlo is that we invest in people, that people are the greatest asset class. And so, we look for the greatest talent that we can find regardless of where they are in the world. In fact, you know, we look at entrepreneurs from all over the world that we would like to attract and invest in.

So, the filter really is around talent, and we invest in those people and those teams that we think have the greatest opportunity to build companies of consequence.

So, I think that is really, you know, in terms of our philosophy, that we want to stick to that, that works. It is a great philosophy that, you know, this is all about people, that investment and entrepreneurship is about finding that band of gold that exists out there in terms of the greatest talent that we can find and back them.

And to the other point that Mr. Mendelson was talking about, many of these companies within 24 months very quickly, you know, figure out that their initial idea was not working, and they can pivot to a new idea, even within the same structure of that company.

Ms. LOFGREN. And space, yeah.

Mr. PISHEVAR. And I completely agree that 2 years is more than enough time to realize that and realign the company as quickly as possible to the right opportunity.

Ms. LOFGREN. Well, I think then the advice I am hearing you give, and it is one I believe in and we put in the bill, is that if the venture world is willing to put their capital on this, that is likelier to be a sound screen than the bureaucracy trying to second guess that decision. Is that basically what you are saying to us?

Mr. PISHEVAR. Absolutely. I mean, venture capital firms have a huge responsibility to invest their limited partners' money well. And they would not be in business if they did not have a high filter for quality and did an immense amount of due diligence on those teams and those companies that they are potentially investing. And so, it is a pretty rigorous process that, you know, I would not consider outsourcing to some other process.

Ms. LOFGREN. Right. The final thing I would ask, you know, we have got a quantified number of jobs that need to be produced in order to turn the visa from conditional to permanent. But, again, coming from the Valley, that is not just the jobs that are going to be grown, because if you have got an ecosystem, was we do in the Valley, it is not just the jobs that one company creates with that one. It is things spin off, other inventors, so that it really is creating—well, we are not creating. The ecosystem is there. It is preventing that ecosystem from degrading.

Mr. MENDELSON. You know, I would add that the people are spinning off through the rest of the country.

Ms. LOFGREN. Yes.

Mr. MENDELSON. I was in the Valley for 10 years before I moved to Boulder, and there are a lot of people from the Valley in Boulder and everywhere else.

Ms. LOFGREN. I know that.

Mr. MENDELSON. So, this is ecosystem is a nationwide thing, not just a particular geography.

Mr. GALLEGLY. Thank the gentlelady. I want to remind Members, I have just been told, we are going to be called to a vote on the floor shortly. So, what I am going to try to do, if we can, wrap up so we do not have to ask you folks to stay while we go and vote and come back. If we cannot, we will go from there.

So, with that, I would yield to Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman. Mr. Stenger, let me ask you a question that we discussed earlier today because I think your answer will be of interest to other Members of this Subcommittee.

In the case of your companies and projects and investment opportunities, I think you have 100 percent foreign investors. Why is it we cannot find more American investors to participate in these kinds of programs?

Mr. STENGER. Well, I think our particular program is very attractive to EB-5 candidates around the world. And we have reached out to various parts of the world.

And earlier the comment was made about Canada. We became very involved in this program in Jay Peak because of our close relationship with or our proximity to Canada.

So, there is an investment market. There is interest in coming to this country. There is a tremendous amount of capital that is looking to become part of programs in the United States. So, we have reached out to various parts of the world to welcome investors to the United States.

The return on investment is competitive to reach out to U.S. investors. We have other investments that U.S. investors can participate in. This particular EB-5 program is focused on foreign investors who have capital, who have a good background, and are capable of investing and making job creation occur in rural areas, such as ours.

Mr. SMITH. Okay.

Mr. STENGER. So, the program is specifically for the foreign investor, bringing capital, creating jobs in rural, high unemployment areas such as ours. And that is where we have focused, and we have seen substantive results and success.

Mr. SMITH. Thank you, Mr. Stenger.

Mr. Healy, we've discussed this before as well, but how would you suggest we improve the program. A few minutes ago, you testified in response to another question that there were some individuals, some enterprises who gamed the system. How can we prevent individuals from gaming the system? How can we better protect investors?

Mr. HEALY. Thank you for the question, Mr. Chairman. I think that the way that I would suggest that most of the regional centers that are operating now are very high quality and are not, you know, attempting to do anything that would be gaming the system. But I think that in order to ensure that that does not occur, all of the best practices suggested by IIUSA, which include complying with and being subject to the regulation of the SEC with respect to unregistered securities just to the extent that these regional center projects are structured as limited partnerships or other forms of unregistered securities, would be appropriate.

I mean, my background is in institutional investments. I was the chief compliance officer at a broker dealer. We are approaching the threshold for being required to register as an investment advisor with the SEC anyway.

This is not new to us, and I think for people that are operating at a high quality level, it is not going to be a problem.

Mr. SMITH. Thank you, Mr. Healy. Mr. Mendelson, I do not know where my time went, but let me squeeze in a last question to you.

And you said in your written testimony that in regard to these companies, 25 to 50 percent will not return our invested capital. What happens to those foreign investors in businesses that do not work out?

Mr. MENDELSON. So, the investors? Well, I am a venture firm that takes money from other folks and invests it in. And in those 25 to 50 percent, I get back less money than I put in, and I take a loss. While the VC, venture capital, diligence process is extremely rigorous, you know, these are high, high risk situations. And, you know, we fund less than .01 percent of all the business plans we get. And despite that, just on pure luck and who knows what, you can have some problems. So, it is a very tough screen.

Mr. SMITH. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. GALLEGLY. Thank you, Mr. Smith.

Mr. Conyers?

Okay. I appreciate that, and we will then yield to Mr. Lungren for his 5 minutes?

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Pishevar, it is good to see somebody that I can relate to. I also had expectations from my mom and dad I was going to be a doctor. And my dad did talk to me, but my mom cried for 2 weeks. But they would probably be happier with me sitting in your shoes, sitting in your seat than here as a Member of Congress, I might say. Actually, my dad was disappointed because I became a lawyer.

The question I have got, Mr. Healy, is this. I am in support of this program and refining the program. But in answer to critics, I have noticed that a representative of your State has talked about how many jobs you create in your State and what a great job you do. And he has done a very good job of taking jobs out of my State

and putting them into your State. In fact, he has talked about how he loves to go on hunting expeditions to California where he bags an employer or two.

With a State that presumably is the best job creating State in the Union and has a lot of investment, why do you need to have a regional center to attract foreign investors when presumably you would be the place for people to want to invest that are already here?

Mr. HEALY. Thank you for the question. There is always room for improvement, Congressman.

In the City of Dallas, there are areas of Dallas that have been underserved for years that have very high unemployment rates. To give you an example that I will briefly summarize that I have written about in my written testimony, we just recently committed to an investment with an affordable assisted living developer to provide seniors' housing for Dallas residents that are underserved in this market completely, because while the investment climate in Texas is indeed strong, there are always areas that are underserved and that, in particular, EB-5 capital can facilitate transactions occurring.

Because the capital can be much lower cost, much more flexible than traditional institutional investment capital or bank financing, there are opportunities to create a great many jobs that would be missed without this program.

Mr. LUNGREN. Okay. Mr. Pishevar, again, I am trying to respond to critics of the program. When I support the program, they would say—someone like you, you and your parents did not come here under a program like this, correct?

Mr. PISHEVAR. Right.

Mr. LUNGREN. And many of the entrepreneurs that you have talked about that have started companies did not come under a program like this. They came as refugees. They came under the regular immigration policy. But there was something about America and the opportunities here that attracted them to be able to succeed as you have.

And so, they would say to me, well, why do we need a special program which, some people say, looks like you are buying a precious commodity, that is, the ability to become an American citizen, when folks such as you—that is not what attracted you here, and yet you succeeded. Can you give me a response to——

Mr. PISHEVAR. Absolutely.

Mr. LUNGREN [continuing]. That kind of a criticism of this kind of a program.

Mr. PISHEVAR. Thank you, Congressman. That is a great question.

So, I believe deeply that we need to move away from passive immigration policy in terms of waiting and hoping that we will attract the types of immigrants that can actually build these types of, you know, companies and that kind of success, and begin to go into recruiting mode, to actually, you know, specifically attract these types of talented entrepreneurs who want to come to America, and be a magnet for them to come here.

We have just seen it over and over again, both inside of Y Combinator and TechStars, in companies that I have invested in so

many. That those incredibly talented entrepreneurs that we want to fund many times have funded, run into immigration issues in terms of getting their visas to move here, move their companies here, and create jobs.

It just happens, you know, in every single class of the companies that we see. In these incubators, we have a number of those. And I am spending a lot of time, you know, trying to help those entrepreneurs with——

Mr. LUNGREN. Mr. Healy, just one quick thing. I have been contacted by one of the regional centers in California, and they have complained about the lack of activity or action by the government agency that is supposed to approve this. Have you seen a similar thing?

I mean, we have the commitment from the head of the government agency to do a better job. But have you seen that as well, that if we are going to have this program? I mean, I have got a situation where they suggest that the USCIS preapproved the project in September 2010. They still do not have final approval, and they have got investors hanging out there that—well, you know, whether they get here or they do not get here, hangs in the balance.

Mr. HEALY. Yes, sir. Thank you. We have indeed seen similar situations. I have personally faced similar situations. I am very encouraged by the director's recent announcements for plans to streamline the program, but there is no question that there is considerable work to do with USCIS to make sure that they have the internal capacity to process these applications in a timely manner, and the expertise that that will require.

We are, as I mentioned, meeting with the director later this afternoon, and I expect to discuss that specifically.

Mr. LUNGREN. Give him my regards, will you please?

Mr. HEALY. I will.

Mr. LUNGREN. Tell him I have a concern.

Mr. HEALY. I will do that. Thank you, sir.

Mr. GALLEGLY. Thank the gentleman. And before we adjourn, I would like to give special thanks for Mr. Polis for joining us today. Glad to have you here.

And I would also like to especially thank all of our witnesses for your testimony today.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to please respond as promptly as possible so that we can make the answers a part of the formal record of the hearing.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, I thank you again.

And with that, the Subcommittee stands adjourned.

[Whereupon, at 2:35 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Written Testimony of

Patrick F. Hogan

President CMB Export, LLC and CMB Summit, LLC

Hearing on
The Investor Visa Program:
Key to Creating American Jobs

Before the
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

September 14, 2011

CMB EXPORT LLC *A Federally-Designated Regional Center*
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Congressman Elton Gallegly
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Mr. Chairman and Distinguished Members of the Judiciary Committee,

In the upcoming week the House Judiciary Subcommittee on Immigration, Policy and Enforcement will hold a hearing on the EB-5 Regional Center Program and adding permanence to the program. First, I want to thank the Committee for having this hearing on the extension or preferably permanent authorization of the program and introduce myself. My name is Patrick F. Hogan and I am the President of the CMB Regional Centers. I have been involved in the EB-5 program for many years. I originally became involved in the EB-5 industry in 1994 which predates the first EB-5 Regional Center Pilot Program. My first Regional Center, CMB Export, LLC was established in 1997 making it one of the oldest, and by our track record, one of most successful Regional Centers in the industry.

Today, I am writing to you in support of a permanent extension of the program and to provide you and your committee with real world data regarding the significant impact the program has had regarding jobs being created and infrastructure investment and development that we have been able to help play a role in throughout California which has all come at no cost to the American Taxpayer.

To date we have raised over $370 Million for infrastructure projects throughout the State of California. CMB EB-5 investor funds are combined with other funding sources such as federal, state and local monies as well as private investment capital. Many times the CMB EB-5 investment capital serves as the seed money that jump starts projects or it is used to accelerate the time tables for construction. CMB EB-5 funds have partnered in the creation of over 10,000 indirect jobs alone in the State of California. Well over 10,000 direct jobs are also being created however we, as a company, focus upon indirect jobs for the needs of our investors. Our work with the redevelopment agencies at the former Norton Air Force Base in San Bernardino and former McClellan Air Force Base in Sacramento have played a significant role in transitioning these former bases from military to civilian use. Both of these California regions were impacted by the BRAC closure of the main employer as were many other communities within California. Our work in these former military base communities has given us experience in working with units of local government. We have adapted our approach and the concept of utilizing EB-5 funding is now being carried over into other communities that have been impacted by the recent downturn in the economy. We have provided capital for investments in projects in the Cities of San

Bernardino and El Monte in fundamental infrastructure improvements such as transportation, water and sewer projects, roadway improvements, new courthouse construction, renewable energy projects and other fundamental infrastructure that is the backbone for all new job creation. We continue to have discussions with cities and redevelopment agencies throughout California to educate and encourage them to consider EB-5 funding in their financing plans for infrastructure projects they are trying to develop.

CMB Export, LLC operates in California with a statewide geographic scope. I also own and operate CMB Summit, LLC in Ohio and it too has a statewide geographic scope. CMB Export, LLC has raised over $370 million in EB-5 investor capital that has been married up to well over $1.5 billion in California infrastructure projects. Our economists have demonstrated that CMB investor partnerships have played a role in the creation of over 10,000 new indirect jobs alone. Each one of these massive infrastructure projects creates thousands of immediate direct jobs but as a Regional Center we have chosen to rely only upon indirect job measurement. CMB has partnered with cities, counties, joint powers authorities. EDA's, RDA's and private developers to transition former military installations and economically depressed regions of California into magnets for successful jobs creating businesses and industries. Many of your fellow members of Congress know first hand the new jobs that have been created and the regional transformations that have occurred as a result of CMB EB-5 capital investments.

Our success stories are nice, but we can do more. The United States economy needs new jobs especially in the hardest hit areas. The fundamental requirement within each EB-5 investment is the creation of no less than 10 new American jobs per investor and again at no cost to the American Taxpayer. The current EB-5 Program is still considered a Pilot Program and as such it is set to expire in September of 2012. The positive no cost impact in job creation discussed here is at risk unless some permanency to the program is secured through legislation. Giving it permanence or at minimum extending the program long term will create an atmosphere in which investors and investments can be assured that businesses can be reliant upon the EB-5 investor capital that comes through this program. The immigrant investors who are considering moving their children and families to the U.S. are also looking for some level of certainty. Businesses are seeking alternative forms of capital in order to build facilities and create jobs. CMB and our investment partnerships have already demonstrated that "If you build it, jobs will follow" regarding investments into infrastructure. Without making the program permanent, or at a minimum securing a long term extension of the program, job-creating projects that can be moved from the drawing board into reality through foreign investment from the EB-5 program are likely to be delayed or left undone due to lack of funding.

By some projections, this fiscal year alone, the EB-5 program is on track to account for approximately $1.25 billion in foreign direct investment and an estimated 25,000 U.S. jobs that are created or saved and all at **no cost** to the American Taxpayer. As a matter of fact the U.S. economy gains much more than the ten new American jobs. The immigrant investors accept the fact that their worldwide income becomes taxable by the U.S. government. The investors themselves establish their homes and businesses that also stimulate the economy. Additionally the investor's entire estate is also subject to the U.S. tax system. The requirements of the program virtually assure that these individuals will not be a burden to the U.S. economy rather they are traditionally higher net worth individuals that bring with them expertise in many disciplines. This economic development program must be provided some permanence in order to remove uncertainty and to create an environment in which EB-5 will be allowed to flourish.

There are many out there that want to change this program. I encourage you to remain true to the original intent of those in Congress who envisioned this program nearly two decades ago. Congress was very clear and bright lines were established regarding which areas of our county were the neediest and who should benefit from a reduced investment threshold. If you have not read the transcripts of those spirited debates detailed in the Congressional record I invite you to do so because it is very clear what the intent of Congress was at the time of the inception of the EB-5 program (Exhibit 1). I have read their words and for nearly fifteen years I have worked in those most needy areas of California. I will concede that the vast majority of CMB's history comes from the past half decade but that is because many out there in the early days attempted to change EB-5 into what they wanted and not what Congress intended it to be. Frankly, the legacy INS dropped the ball in enforcing the rules and regulations and the opportunists ruined what was and could have been a fantastic program for job creation in the U.S. and we lost nearly a decade of growth. The regulations are in place and if the USCIS is allowed and given additional power to regulate we could see amazing growth in job creation in the neediest areas of our country.

One of the greatest dangers is the political system we operate under. Congressional members with good intentions for their districts many times put political pressure on the USCIS to approve projects in their districts. Who can blame them as it is their job to bring jobs back to their home districts. However, the rub comes when the projects do not qualify under the existing law. The law was designed to allow a lower threshold of investment into the highest of the high unemployment areas of our country. Today projects are springing up in areas that in no way qualify as 150% of the national average for unemployment. One cannot classify all of these areas as affluent (some are) however they are defiantly not 150% of national average for unemployment. As a Regional Center operator trying to bring investment to truly high areas of unemployment I see it as unfair and stealing for others to divert the investment capital that was intended for the truly poor areas of our country. The law is the law and if Congress wants to benefit the richer areas of the country at the expense of the truly depressed areas then they should pass an amendment to the law otherwise political pressure should be put on the USCIS in the other way. In other words Congress should insist that this is a jobs program for all areas of the country however the lower threshold for investment must be made into only true 150% plus areas of high unemployment..

THE CALL FOR CHANGES TO THE EB_5 PROGRAM

If there is to be change let it be change for the better not change for someone's personal gain. The following are just a few of my thoughts on how this program, actually yours and my program, can be made better.

Policy or EB-5 Law Change Recommendations

A. Support Common Senses EB-5 Legislation Making the Pilot Program Permanent

Efforts to "water down" EB-5 Program requirements must be stopped. This is a wonderful program and must stay with its original roots as the law was and is a very special job creation tool intended for target markets within the United States. If the area is truly 150% of the national average it deserves the lower threshold for investment. If the area is not 150% of the national average there is the million dollar investment just as Congress intended. Those with special interests are active in lobbying or they are attempting to use their clout on Capitol Hill to advance their narrow (and pecuniary) interests; namely making it easier for the clients (both investors and Regional Center companies) to bypass regulation by the USCIS. The proposed radical TEA

expansion is just one obvious example. Efforts to lower the bar for removal of conditions at the I-829 stage must be opposed, such as the "good faith waiver" and allowing for "material changes" in the business plan.

B. Additional Regulatory Tools and Powers Given to the USCIS

The USCIS seems powerless to stop Regional Center and attorney abuse in the EB-5 community. The Service strives to treat all Regional Centers alike when all Regional Centers are not alike. When a habitual abuser of the program is identified the USCIS should be given increased regulatory authority to take actions other than termination. Congress should listen to the USCIS and give them what they need to properly regulate EB-5

C. Additional Fees Assessed to Regional Centers to Fund Enhanced Program Oversight

The USCIS already has anti fraud operations funded by fees. (H-1B). This is a call for an annual fee to be charged to Regional Centers. Understanding it is nearly impossible to police a program like this from behind a desk; the fee would help to underwrite an investigative division whereby USCIS field officers can actually be out in the field where they can monitor and address what is taking place within the EB-5 industry. This program desperately needs an anti fraud unit. As a Regional Center operator I make a profit on the transactions I conduct. I believe the USCIS should charge a yearly fee to fund an anti fraud unit that could also force compliance on the yearly reporting, marketing and general compliance with the law.

D. The USCIS Needs to Take Back Control of the EB-5 Program From the States

The USCIS has given a portion of the control of the EB-5 program to individual states. The government run Regional Centers are basically not within the control of the USCIS. An example is in a "State Regional Center": An individual project can be up and running touting Regional Center authority for over a year before the USCIS even knows they exist. The project could be marketed for many months signing and taking funds from investors. It is basically too late at the I-526 if the project is fraudulent or structured improperly. Processing times are now 8 months and counting. This means a state/government umbrella project will not be reviewed by the USCIS until the first I-526 is filed. The operators of the State, Regional or government umbrella Regional Centers (cities) will strongly protest this however this statement is fact. They may argue that the state has controls and requirements. I ask then what are those controls and who enforces them. Given that states are totally in charge of the TEA designation determination and many have an abysmal record on following the law as it regards 150% of the national average how could one argue that the states are not in control now. I urge Congress to mandate the Federal government take back control of the EB-5 program or at the very least introduce legislation that forces regulation of the "umbrella" Regional Centers before a project can be marketed.

E. Better Reporting of Project Failures

The USCIS needs to be able to widely disseminate information to the marketplace of Regional Center performance and compliance. The recent disclosure of decisions especially I-829 cases is an example that could provide a warning for potential investors to be wary of substandard performers. Dissemination of this information could possibly prevent future structures that are likely to fail. There needs to be better policing (through the annual Regional Center audit reports or otherwise) of a business failure so the prospective investors do not unwittingly invest in failed businesses. For example, court records indicate that one Regional Center project has filed for

Federal Bankruptcy protection. Publication of this type of information would be particularly valuable to the potential investors, the law community and even other governments as to the EB-5 program participants.

F. Allow the TEA Designation to Exist Throughout the Project Lifetime

The USCIS should not change the requirements for a TEA however it makes common sense once EB-5 funding has commenced that the TEA designation last throughout the project life.

Summary of Recommendations

The EB-5 Immigrant Investor Program is undergoing a resurgence of interest from investors and expansion in the overall number of Regional Centers. This growth continues to be important as it shows the viability of the Immigrant Investor Visa program but problematic in the need for stronger regulation and accountability at the Regional Center, marketing and attorney level. The current economic conditions of tight commercial capital make it very vulnerable to abuse. One should ask why has this program not been in the mainstream for years prior? Capital markets have changed and the requirements for safer or more collateralized projects are the norm in current capital markets rather than the exception. The more speculative projects are not finding traditional funding. The resurgence in EB-5 is fueled by just those reasons. The real problem for these EB-5 newcomers is they found out it's hard to do this within the law and regulations as written by Congress. This is not an easy program however lately with the non enforcement of the TEA requirements it has become a program seen as available anywhere. This lack of respect for the actual law is now transforming into an anything goes situation.

The USCIS, Congress and the EB-5 community that understands the law and respects the original intent are now under attack by the "cheap money, make it easy crowd" that will eventually shut this program down for it is a turning back of the clock to the 1990's when the legacy INS did not regulate. The USCIS are like our police on the street in that they are out gunned and short of manpower. I do not believe for one second that anyone in the USCIS does not see the potential for this program. I question whether they can handle the onslaught of schemes and legal assaults that are being thrown while at the same time they are trying to administer the day to day responsibilities of this program. I urge those of you who believe that really creating jobs in high unemployment areas and increasing productivity regionally are worthwhile endeavors to fight not to let Wall Street and the future Barney Madaoffs take this program over. The reality is without oversight and enforcement the government will ultimately be forced to shut this no cost job creation program down and then we will ask ourselves what did we do or why did we not do it?

Attempts to change the EB-5 law through flawed legislation will cause even greater damage to the industry. Current legislative bills including the so called EB-6 contain language that will weaken important definitions and time-certain aspects of job creation and compliance with business models approved by the USCIS at the time of Regional Center designation and at the time of I-526 adjudication. CMB Regional Centers calls for stronger and tighter legislation of the program coupled with the ethical, responsible and transparent business practices by lawyers and Regional Centers and most importantly TIGHTER REGULATION. The benefit will be a healthy EB-5 program meeting the needs of immigrants and their families, creating jobs in truly needy communities while at the same time achieving the ideals set forth by Congress.

In conclusion, I would like to thank you for your interest and support of this all important program. I offer myself and my organization to be a resource to you and your committee should

you have any questions or need any additional information on how the program could benefit your district.

Respectfully submitted,

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EXHIBIT 1

Legislative History & Early Years of the EB-5 Program

Plain Language of the Original EB-5 Statute and Statements of Key Senators

Let's explore what the roots of the program are and what the members of Congress who fashioned this law intended. It's impossible to get into the heads of the legislators who composed this law. However from the record we can ascertain the intent of Congress and what they were trying to do from a policy standpoint. The debate on the Senate floor was lively and passionate as the Immigration Act of 1990 (INA) was a very comprehensive bill in its effects on U.S. immigration policy. The following are selected excerpts from that debate.

Senator Alan Simpson states;

> **This is an employment creation preference. We have done it before. Other countries do it. It is not for the rich. It is not for the elite. It is 4,800 visas for those who invest a million bucks and create 10 new jobs for U.S. workers. A million bucks. You invest your million bucks, and if you do not maintain the employment of the U.S. workers, then, under the law, on the second anniversary you can lose your conditional visa. ... If they do not do what they are supposed to do, they get their status jerked. That is what happens to them. We have been as cautious and careful as we could be in that one....These people become part of us. The become part of our country, and they invest their resources here, and they invest in American workers.** (Cong. Rec., 12 July 1989: S7772)

Looking at the above comments by Senator Simpson we see that clearly the debate about the "rich mans visa" is as old as the legislation. It also shows the new jobs are intended for "American" workers. However, we also see that Congress wanted to hold the immigrant investors accountable. They had to create ten new jobs and maintain those jobs. It also shows that we have the right and expectation to question not only job creation at the two year point but they (investors) must do what they are supposed to do. There is no "Good Faith" waiver mentioned here rather Congress intended the investor to be at risk like the risk any other businessman takes.

Senator Edward Kennedy, one of INA's chief sponsors, concurred with Senator Simpson and further stated.

> **We say you have to create 10 jobs, 10 new jobs....There was a time not long ago, certainly in my State of Massachusetts, of the top 1,500 employment areas of the country we had three of them. Unemployment was rife in this country. We are doing better now. It is most difficult in many of the rural areas of this country. My part of the country is doing better. It was not long ago that we were concerned about unemployment, and the idea that you are going to provide some new jobs had some appeal. Only three-quarters of 1 percent of the total amount is for this investor program. And if it is unfair and unjust, and it is even a fraction of that 1 percent, it ought to be out. The real question is can you make a plausible argument; whether you can make a plausible argument for the creation of those new jobs through investors....The labor condition--in the year 2000 there are going to be areas of**

> **important need… I think that that is a balance, Mr. President, between family, much more limited balance, in terms of high skills that can be important in terms of our economy, and then the three-quarters of 1 percent left over in terms of the investors** (Cong. Rec. 12 July 1989: S7771)

In Senator Kennedy's statements we see again the requirement for ten new jobs as well as the requirement that those jobs be in areas of high unemployment. He touches on the very sensitive subject in the debate that there must be caps on immigration. His empathies that this investor allotment of visas is only a fraction of one percent of all visas offered and this portion of this massive immigration legislation is also small.

Senator Paul Simon from my home state of Illinois stated;

> **…that this country admits more legal immigrants into our country than all the rest of the world combined. And we are talking about taking less than 1 percent of those and saying, 'You can come in, if you create jobs.' That is certainly not against the ideals of this country. I think it is kind of a minimal thing that we are doing, to say how can you build a better country….If I quote the Senator from Arkansas correctly, and he can correct me. I have jotted this down--and he can talk faster than I can write here, I have to tell you--but he said, 'Anybody with a million bucks and a good immigration lawyer can stay down.' Well, if that is the case--and I am not sure that is the case--why not insist that you put that million dollars into creating jobs?** (Cong. Rec. 12 July 1989: S7772)

The debate on the Senate floor back and forth between Senators shows the important nature of the eventual structure of the final approved bill. They wanted it to be limited in terms of how big the eventual numbers would be in the investor visa category. The overwhelming requirement was this is a jobs creation measure for targeted areas of the country that truly need help in the form of directed investment capital.

This exchange by Senator Simon shows the intent of the final legislation:

> **Finally, he makes a point that has some validity. He said that nobody is going to be investing in South Dakota; nobody is going to be investing in Arkansas; nobody is going to be investing in the southern part of Illinois. If he wants to have an amendment saying that that investment has to go into areas of high unemployment, I cannot speak, obviously, for Senator Simpson or Senator Kennedy, but I will support such an amendment. South Dakota has four or five of the lowest-income counties in this Nation.**
>
> **I would like to see that happen. I would like to see one of those counties where the Pine Ridge Indians live--maybe we can get some priorities there. I would love to see some investment in southern Illinois, where we have high unemployment. But my belief is that the fundamental concept here is sound.**
>
> **Let us set aside a little less than 1 percent of these jobs for people who are going to come in and who are going to create at least 10 jobs, invest at least a million dollars. Canada does it; Australia does it. Canada has a quarter of a million dollar requirement on these kinds of jobs. Other countries do it. I think it makes sense.**

> **I think we have crafted a balanced bill here. Not everything in it is exactly what I would like or what anyone else would like, but I think there is nothing wrong with saying we are going to set aside a few jobs for people who are going to create jobs in this country. My guess is that those who invest in those 10 jobs, generally, are going to be people where those 10 jobs will grow to 20, 30, and 40 and beyond.** (Cong. Rec. 12 July 1989: S7772)

Further evidence of the intent of the legislation is shown by the words spoken by Senator Simon in the INA's Conference Committee Final Report.

> **Our bill distinguishes among investors in only one way. The general rule--and the vast majority of the investor immigrants will fit in this category--is that the investor must invest $1 million and create 10 U.S. jobs. However, we are mindful of the need to target investments to rural America and areas with particularly high unemployment--areas that can use the job creation the most. For this group, we make available at least 3,000 visas annually. America's urban core and rural areas have special job creation needs and this visa program is sensitive to that in this way. Investments in this area must still create 10 jobs but require an investment less than $1 million. The Attorney General is authorized to set the required investment at a lower amount but at least $500,000. Clearly, the closer the Attorney General sets this to $500,000, the more we can encourage investments in these critical areas. The third circumstance the bill envisions is for areas that have significantly lower unemployment levels than the national average. For these areas that are not rural and do not have pockets of high unemployment within them, the Attorney General can set a higher required investment amount.**
>
> **We have an investor program that will permit up to 10,000 people to make investments here, to come to this country and create jobs. It is particularly targeted to areas of high unemployment. I think that will be of great help.** (Cong. Rec. 26 October 1989: S17109)

Of note is Senator Simon's remark that that states, "***For these areas that are not rural and do not have pockets of high unemployment within them, the Attorney General can set a higher required investment amount.***" (emphasis added). The fact the law allows for an increased investment above the $1 million for areas of lower unemployment is never brought up in all the debates about the EB-5 program and the TEA requirements. It is clear the intent of Congress was the $500,000 threshold was reserved only for those targeted high unemployment areas. The legislators called for amounts greater than the $1 million for areas that are lower than the national average.

Further proof to this portion is the law itself. The following is an excerpt from the original EB-5 law that is part of the INA of 1990.

> *(C) Amount of capital required. -*
>
> *(i) In general. - Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be $1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.*

(ii) Adjustment for targeted employment areas.- The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than 1/2 of) the amount specified in clause (i).

(iii) Adjustment for high employment areas.-In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment -

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate, ***the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (I).*** (emphasis added)

8 U.S.C. § 1153 (b) (5)(C)

From this very basic research and the law itself it is abundantly clear the intent of Congress was to offer a lower threshold of investment only to those areas of the country that are higher in unemployment than the national average. The intent is so strong that they authorized a higher minimum investment amount for areas of the United States that are doing well from a jobs and investment standpoint and enjoy unemployment rates below the national average.

Moreover, it is clear from the complete legislative history and related commentary that the EB-5 Regional Center Pilot Program was created to further achieve the INA's original goal of economic development in underserved areas. As established in 1992, the Pilot Program was not intended as a new program in and of itself, but rather as adjunct to the already existing EB-5 Program within the guidelines and framework of the original 1990 law. In fact the goal of the Pilot Program was to advance the goal of increased investment in underserved regions of the U.S. but on a larger scale to help more U.S. citizens and businesses in distressed areas by requiring "increased regional productivity" for Regional Center entities. See §610 of the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act of 1993 (P.L 102-395); see also CRS Report for Congress re Foreign Investor Visas: Policies and Issues, by Chad Haddal, May 1, 2008. In fact on page CRS-5 of the May 1, 2008 report of the Congressional Research Service states, "Areas of high unemployment are especially likely to receive approval as a Regional Center, since they are less likely to receive foreign capital through direct foreign investment." This point is further buttressed by Senator Patrick Leahy's comment during the Senate debate on the 2003 Pilot Program extension bill that "The entrepreneurs must still meet a heavy burden, however, showing that their investment will create 10 or more jobs in these *relatively depressed areas.*" (emphasis added). (Cong. Rec. 3 October 2003: S12476)

This law was debated in the year 1989 and here we are nearly 22 years later and look above what was said. That the bill would require the investment be in areas of high unemployment. The investment must create ten new jobs. The investors should be held accountable for meeting the basic requirements. The two year point is a point that we should in the words of Mr. Simpson ***"then, under the law, on the second anniversary you can lose your conditional visa." ... "If they do not do what they are supposed to do, they get their status jerked. That is what happens to them."*** (emphasis added).

This EB-5 process is an immigration benefit bestowed upon the investor for the performance of an obligation. In the business world you perform under your contract or if you do not you do not

get paid. This is the case with the EB-5 law, it could be considered harsh that the investors are required to give up their immigration benefit for non performance. However the law requires the investor to have a hand in the management of the enterprise. The investor should be involved enough to do the due diligence before the initial transaction. They should hire competent advisors. If the lawyer they hire throw up their hands and say that is a business issue they should find a better lawyer. Many of the requirements under this law are immigration requirements wrapped in business performance. Immigration lawyers that practice in this area should familiarize themselves with the immigration/business requirements in order to provide complete counsel. Accountability is what the members of Congress intended. Some of schemes put forth by Regional Centers are simply not structured to ever comply with the law and it is up to the investor and their counsel to look and decide if it makes sense and meets the requirements of the program this is but the first step in accountability.

There are Regional Centers that are trying to comply that are doing good work in communities that desperately need this type of investment in order to create jobs. Those that are following the rules are literally under attack by those who are not. It is not easy to create ten jobs for every $500,000 investment. I challenge anyone to do it with only the $500,000. It is virtually impossible. The immigrant investor's funds must be combined with some other funding source to be able to create ten jobs. Here is the root of the problem. What private investor wants to invest into a high unemployment area especially in an investment climate where "Cash is King". Most sophisticated investors do not need the added risk of a high unemployment area. So what's a Regional Center to do? They cannot create ten jobs with only $500,000, they must find somebody to invest with them to create enough capital investment to support ten jobs per investor. A monumental task in today's economy – yes - an impossible task – no .

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VIA HAND DELIVERY
U.S. House Judiciary Subcommittee on
Immigration, Policy & Enforcement
Washington, DC 20003

September 14, 2011

RE: IIUSA Written Testimony for September 14, 2011 Hearing on
The Investor Visa Regional Center Program: Key to Creating American Jobs

Need for Permanent Authorization of the EB-5 Regional Center Program

Dear Honorable Subcommittee Members:

This letter by the Association to **I**nvest **I**n the **USA** (IIUSA), the national trade association of EB-5 Regional Centers ("Regional Centers") and other Program stakeholders, is for insertion into the hearing record for the September 14, 2011 hearing entitled "The Investor Visa Program: Key to Creating American Jobs." IIUSA urges Congress to permanently authorize the EB-5 Regional Center Program ("the Regional Center Program") as soon as possible. The Regional Center, which is part of the overall EB-5 program, is currently due to sunset on September 30, 2012. With the EB-5 Regional Center Program on track to account for over $1.25 billion in foreign direct investment (FDI) and more than 25,000 U.S. jobs created or saved in FY2011 (all at no cost to the U.S. taxpayer), IIUSA believes the Regional Center Program must be given the certainty it needs to reach its potential in this time of economic need. This letter details the positive economic impact of the Regional Center Program and concludes that Congress must permanently authorize the Regional Center Program as soon as possible so that it can make its maximum contribution to U.S. job creation and economic development.

Association to **I**nvest **I**n the **USA** (IIUSA)

As background, IIUSA has several missions, as follows:

- Stimulate economic development and job growth in the United States, while aiding to reduce foreign trade imbalances.

- Further immigration to the United States by qualified, educated, highly skilled, and investment-oriented foreign nationals.
- Educate the public and government about the benefits derived by the Regional Centers through the EB-5 Regional Center Program.
- Help Regional Centers address administrative, regulatory and legislative issues.
- Advance and maintain Regional Center industry standards and best practices.
- Be a strong, unified voice for permanent authorization and improvement of the EB-5 Regional Center Program to enhance Regional Center activities.

EB-5 Regional Center Program Background

Congress enacted the Regional Center Program in 1992, in accordance with a Congressional mandate to stimulate economic activity and create jobs for U.S. workers, while simultaneously affording successful foreign entrepreneurs the opportunity to become lawful permanent residents of the U.S. Regional Centers seeking to participate in the EB-5 Program are approved by U.S. Citizenship and Immigration Services ("USCIS") through a lengthy application process. Investors who commit $1 million ($500,000 in rural and high unemployment areas) to a Regional Center project and show that the investment will create or save 10 jobs for U.S. workers first receive a conditional green card. Two years later investors can apply to make their green card permanent.

The Regional Center Program is an important vehicle for large-scale investment of capital for commercial economic development and job creation in economically weak communities across the U.S. Most Regional Centers are located in economically distressed or rural areas. Many are established in conjunction with state and/or local economic development authorities. There are currently 180 approved Regional Centers, with over 40 more applications pending.[1] This is an investment and employment creation program that assists U.S. communities all over the country, generating revenue for cash-strapped localities and creating jobs.

Based on a very conservative approach, IIUSA has compiled the following estimates on economic impact. These numbers do not even consider the leveraging of EB-5 capital with other financing (which typically occurs at a rate of $3/$1EB5), the fact that Regional Centers typically allocate far more than ten jobs per investor, and the other job-creating investments and expenditures made in the U.S. after immigrating by EB-5 investors, many of whom have access to far greater capital than the minimum required for their EB-5 investment.

[1] A list of approved EB-5 Regional Centers is at http://www.uscis.gov/eb-5centers.

EB-5 capital is foreign direct investment (FDI), all from the private sector, invested into U.S. job creating enterprises.

FISCAL YEAR	U.S. JOBS CREATED/SAVED	FDI CAPITAL FORMATION
2011 [projections]	25,000+	$1.25B+
2010	17,000+	$845M+
2009	7,600+	$377M+
2008	6,000+	$290M+
2007	3,200+	$160M+
2006	3,200+	$160M+
2005	1,700+	$82M+
2004	660+	$33M+
2003	450+	$22.5M+

**These statistics were derived from the most recent official U.S. Citizenship and Immigration Services (USCIS) and U.S. Department of State statistics.

TOTALS:	65,000+	$3.1B+

[2]

Based on current trends, IIUSA conservatively estimates that failure to permanently reauthorize the Regional Center Program would represent losses of at least 450,000 U.S. new jobs that could have been created, and investment losses of at least $30 Billion (in foreign direct investment ("FDI") and domestic capital) over the next five years.[3]

As noted in the chart below, the number of EB-5 applications has grown exponentially in recent years.

Fiscal Year and/or Quarter	Form I-526 Petition	Form I-829 Petition
FY11 Q1&Q2	1,601	1,150
FY10	1,955	768
FY09	1,028	437
FY08	1,257	390
FY07	776	194
FY06	486	89
FY05	332	37

[4]

USCIS estimates that over 90% of all EB-5 petitions are filed through Regional Centers.

[2] This statistical extrapolation is based on the following equation: I-526s filed x approval rate x $500,000 = FDI capital formation AND I-526s filed x approval rate x 10 jobs = jobs created/saved.

[3] This is a statistical extrapolation that assumes growth again in FY2012 and bumping up against the 10,000 visa limit in FY2013. The 5-year period starts in FY2013 where, assuming that each principal investor represents an average of 2.5 visas used (as reported by USCIS), the maximum amount that could be accounted for is $2.0B annually (4,000 principal investors x $500,000). Multiply that $2.0B by 5 years = $10.0B. When you take into account leveraging of other financing at a rate of $3/$1 in EB-5 capital, you get $30.0B. At a rate of 10 jobs/investor, $30.0B of EB-5 projects adds up to 600,000 jobs minimum. Trim 150,000 off of that to estimate "new jobs" instead of "created/saved."

[4] USCIS Quarterly EB-5 Stakeholders Meeting Presentation: June, 2011, at http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/National%20Engagement%20Pages/2011%20Events/June%202011/EB_5%20presentation%20063011.pdf.

The EB-5 Regional Center Program is an Economic Development Program

The last five-year reauthorization for the EB-5 Regional Center Program expired on September 30, 2008. A short-term six-month extension was included in the FY 2009 continuing resolution ("CR"). That expired on March 6, 2009. A second six-month extension was included in the FY 2009 omnibus appropriations bill. After almost expiring in September 30, 2009, another 30-day extension passed on another CR. It finally was extended for three years, through September 30, 2012, as part of the FY2010 U.S. Department of Homeland Security appropriations bill.

This is no way to treat an economic development and job creation program at a time when domestic capital markets are weak and unemployment remains above 9%. IIUSA is not asking for more visas or an extension of immigration benefits. The Regional Center Program must be permanently authorized so that the Program can have a larger scale economic impact. The EB-5 Program itself is a permanent part of U.S. immigration law. Only the Regional Center Pilot Program is up for "sunset."

The looming sunset of the Regional Center program is already causing a slowdown in new project offerings because of the time it takes to get EB-5 capital into a project. First, a Regional Center must draft project-specific offering documents to ensure they meet securities law requirements. After that, it can take several months to find foreign investors for a project, and then a few months to do due diligence on potential investors, verify that they earned their money legally, and prepare their EB-5 petitions for submission. Moreover, USCIS currently takes about six months to process I-526 petitions, the first step in the EB-5 process. Typically EB-5 capital is released to the project only after I-526 approval. Cumulatively, the various steps in the process add up to more than a year. Thus, Regional Centers or developers that need EB-5 capital for a new project face the prospect that it will not arrive until after September 30, 2012. Their efforts will be in vain, and U.S. jobs will be lost, unless Congress reauthorizes the Regional Center program immediately.

The typical Regional Center investor locks large sums of private capital at risk in a job-creating enterprise for at least five years. They should not have to worry about whether the Regional Center Program will expire during that time. This uncertainty would make any investor uneasy, and forces them to consider investing elsewhere. Other developed nations have some form of immigrant investor visa, and the U.S. competes with those nations for these investors, their resources, and entrepreneurial success. Many of those programs provide far fewer risks of losing money or immigration status.

EB-5 Investors Are Carefully Screened

EB-5 investors are put through multiple background checks, and the source of their investment capital confirmed as legal, before receiving an EB-5 visa. Regional Centers

have a strong incentive to perform their own background checks on investors before agreeing to embark on the EB-5 process with them. They must be a legitimate business partner with a global perspective, legal source of investment capital and no criminal background. It is a waste of the Regional Center's time to do business with anyone whom they have not pre-screened to ensure that the investor is a suitable candidate for the benefits offered by the EB-5 Regional Center Program. USCIS performs background checks on each individual investor, as well (in some cases multiple times, since these background checks are repeated after a certain amount of time).

The EB-5 Regional Center Program Has a History of Bipartisan Congressional and USCIS Support

With so many local, state, and federal officials around the country publicly supporting their local Regional Center, reauthorization of the Regional Center Program is not controversial. In 2008 the House of Representatives passed a five-year extension of the Program (H.R. 5569) under suspension of the rules with strong bipartisan support. On July 22, 2009, Senate Judiciary Chairman Patrick Leahy and then-Ranking Member Arlen Specter held a Senate Judiciary Committee hearing on the need for permanent authorization of the Program and to seek ways to improve the management, oversight and efficiency of the program. At that hearing Chairman Leahy and Senator Jeff Sessions were unified in their support for the program and their conclusion that permanent authorization is critical to securing the jobs and investments the program is capable of producing. Robert Kruszka, then Deputy Chief of USCIS Service Center Operations, agreed in his testimony and added that permanent authorization would make USCIS' job easier.

The EB-5 Regional Center Program Creates Jobs for U.S. Workers at No Cost to U.S. Taxpayer

The Congressional Budget Office scored the 2008 five-year extension (H.R. 5569) of the EB-5 Regional Center Program as revenue neutral.[5] In addition to coming at **no cost** to the public to run the Program, once EB-5 investors become green card holders, they also become U.S. taxpayers and pay taxes on their worldwide income. This instantly contributes to the general public welfare of the U.S. Using capital in addition to their EB-5 investment, that in many cases is very substantial, they also buy houses, send their children to college, pay local taxes, and purchase other goods and services from U.S. businesses. This secondary economic impact is. It is truly a win for all involved: U.S. workers, businesses, and governments (local, state, and federal), and, of course, public and private Regional Center operators promoting job creation within their communities and their foreign direct investors who use the Program.

[5] CBO Cost Estimate H.R. 5569: May 9, 2008, at http://www.cbo.gov/ftpdocs/92xx/doc9244/hr5569.pdf.

Congress Should Permanently Authorize the EB-5 Regional Center Program Now

Congress must act now to permanently authorize the Regional Center Program. If too much time passes before Congress acts, investors, developers and Regional Centers may lose confidence in starting new projects. Permanent authorization would provide the certainty necessary to promote confidence in the Regional Center Program. With the U.S. economy needing to create over 100,000 jobs per month to begin bringing the unemployment rate down, action is needed now to ensure that the Regional Center Program can continue doing its part in this effort.

IIUSA and its members seek your assistance in ensuring that Congress enacts a permanent extension of the Program as soon as possible. With the unemployment rate currently at 9.1%, we must use all policy tools at our disposal to achieve a sustained economic recovery, especially those that cost the public zero. In today's globalized economy, it is imperative that the U.S. compete with other existing immigrant investor programs around the world. Attracting these successful foreign entrepreneurs – and their resources – to the U.S. is an essential part of a 21st century economic policy.

The Regional Center Program needs certainty to reach its full potential. That certainty can only come with permanent authorization as soon as possible. There is too much at stake, in the form of new jobs for U.S. workers, capital (both FDI and domestic), and U.S. businesses finding much needed funding, to allow the Regional Center program to expire.

We look forward to working with you on this important issue. Please contact me if I or IIUSA can assist you.

Sincerely,

K. David Andersson
IIUSA President

September 21, 2011

The Honorable Elton Gallegly
Chairman
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC 20515

Re: For the hearing record, concerning the September 14, 2011 hearing on:
The Investor Visa Program: Key to Creating American Jobs

Dear Chairman Gallegly and Ranking Member Lofgren:

On behalf of the U.S. Chamber of Commerce, I would like to express our view that one of the most significant areas where Congress can act and have a direct impact on expanding job creation is immigration reform. The Chamber applauds the Committee for holding this hearing and requests that this letter be included in the hearing record.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region. The Chamber's recently established Center for Entrepreneurship, the latest in a series of initiatives launched to target young entrepreneurs through the Chamber's landmark Campaign for Free Enterprise, supports the ongoing and recent initiatives from Congress and the Administration which promote American job growth by encouraging foreign entrepreneurs to invest and start business in the United States.

As you are undoubtedly aware, the March 2011 Kauffman Index of Entrepreneurial Activity, an annual report from the Kauffman Foundation of Entrepreneurship, supports the notion that foreign-born entrepreneurs in the U.S. are increasingly active in creating jobs for Americans in the U.S. The Kauffman study recognizes that until the recent financial crisis, U.S. job and output growth was driven by the formation of startup businesses. Recently, all existing startups older than five years (and possibly those older than one year) on net generated no additional jobs. The additional workers hired by these expanding firms were offset by job layoffs or voluntary departures of workers at firms whose employee number shrank. To create jobs the U.S. needs to facilitate the creation of startup businesses. The most obvious and easiest place to start is by welcoming entrepreneurs and other skilled individuals from abroad who want to come here to build companies and hire Americans. According to the Kauffman study, immigrants start companies here at greater rates than native born Americans do, and are

disproportionately successful in starting high-growth, high-tech firms. Welcoming job creators will expand employment and improve the economic future of the United States.

The Chamber suggests that Congress should:

- Encourage the Administration to create more business-friendly policies and comply with the January 18, 2011 Executive Order requiring agencies to ensure that regulations promote "economic growth, innovation, competitiveness and job creation and predictability." The Administration made an initial effort to promote and streamline entrepreneurship immigration programs in the August 2, 2011 policy announcements of U.S. Citizenship and Immigration Services concerning entrepreneurship, and related outreach efforts that have ensued, but the agency must take additional steps to create a cultural change among those who adjudicate applications filed by foreign entrepreneurs. Additionally, the Administration should be encouraged to launch new engagement opportunities to seek input and feedback on how to address the unique circumstances of entrepreneurs, new businesses and startup companies.

- Cut pre-existing red tape for foreign entrepreneurs. Currently, bureaucratic procedures restrict entrepreneurs trying to immigrate to the U.S. to start their businesses and hire American workers. If Congress is truly interested in facilitating immigrant entrepreneurship, the Administration must be pushed to make changes to regulations and adjudication processes. For example, the Administration must not demand excessive documentation or dismiss the achievements of well-qualified applicants who could start businesses or create jobs in the U.S. Moreover, the way some current laws and regulations are interpreted prevents entrepreneurs from obtaining a visa. For example, under current interpretations, business owners who want to start companies and hire U.S. workers cannot do so in the U.S. because, by definition, they do not have an employer to file a petition for them and they cannot petition for themselves. Common sense changes to the way visas are adjudicated could make a significant difference to aspiring immigrant entrepreneurs.

- Create visas for entrepreneurs who invest in the U.S. and create jobs. The current EB-5 program benefits entrepreneurs who invest at least $1 million in commercial enterprises ($500,000 in rural or high unemployment areas). However, this visa program could be simplified and made more effective. Entrepreneurs who invest smaller amounts are also important to the economy and job creation, and Congress should be encouraged to create or modify a visa program to accommodate these job creators. Further, immigrant entrepreneurs who live outside the country or currently reside in the U.S. should be given opportunities to start up businesses and create jobs within the U.S. Consistent with the "StartUp Visa Act", Congress should be encouraged to create a new visa category, the EB-6 visa, for these individuals that lead to permanent residency.

- Remove hurdles for foreign students with desirable skills to remain in the U.S. Current law prevents companies from obtaining green cards for foreign students without the student first having to return home for a period of time or without first having to obtain a temporary H-1B visa. This law makes staying in the U.S. after graduation often

uncertain and expensive for foreign graduates. As a result, foreign students are pursuing career opportunities outside the U.S. and the country is losing valuable talent. To mitigate these effects, immigration law should allow foreign students in graduate programs to remain in the U.S. after graduation or the expiration of their practical training to pursue job growth activities, including filling skilled labor positions and creating start up business ventures.

Each successful startup business creates new jobs, further strengthens our economy and contributes to the intellect capital of our nation. These reforms are practical and deserve bipartisan support. They promote the entrepreneurial spirit that makes the United States the most unique and progressive country in the world, while creating American jobs that are so desperately needed during this difficult time. The Chamber believes improvements in these programs are only one part of America's dysfunctional immigration system in need of reform. It is our hope that Congress can also move legislation concerning other aspects of immigration reform, recognizing that compromises will be necessary. The Chamber commends your effort to take a deeper look at these programs and looks forward to working with you on this crucial issue for our economy.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration, &
Employee Benefits

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