

## Hearing Transcript

### House Judiciary Committee Holds Hearing on the Investor Visa Program

February 11, 2016

GOODLATTE:

Good afternoon. The Judiciary Committee will come to order. And without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to this afternoon's hearing on Is the Investor Visa Program an Underperforming Asset?

And I'll begin by recognizing myself for an opening statement.

In 1990, Congress created the Investor Visa Program, EB-5 for short. About 10,000 green cards each year go to aliens who invest in a business and will create 10 jobs. Congress' goal was to create new employment for U.S. workers and to infuse new capital into the country, and to target investments to rural America and areas with particularly high unemployment -- areas that can use the job creation the most.

Finally, Congress was clear that the goal was not to provide immigrant visas to wealthy individuals. I am a supporter of the Investor Visa Program and believe that it has contributed in real ways to economic development.

Unfortunately, over the years the program has strayed further and further away from what Congress envisioned. It is thus not performing at the high-level that we deserve. The Immigration Act of 1990 provided that alien investors must invest \$1 million.

However, the Department of Homeland Security may, in the case of investments made in a targeted employment area, rural or high unemployment, specify a lower amount. Since 1990, over 25 years, this has been \$500,000.

Finally, DHS has the authority to increase the minimum investment amounts. Over the last quarter-century, the minimum investment amounts have never been adjusted for inflation.

As a result, the real value of each investment has fallen by almost 50 percent, depriving the U.S. economy of billions of dollars a year. The Department of Homeland Security now plans to take the long overdue step of adjusting the levels to account for inflation. Congress wanted to incentivize investments through a lower investment amount in areas with a scarcity of jobs that find it hard to attract capital.

As DHS has stated, Congress did this, quote, "In order to spur immigrants to invest in firms that are principally doing business in and creating jobs in areas of greatest need," end quote. Congress' expectation was that the vast majority of EB-5 investors would invest \$1 million.

Yet, last year, almost all investor visas went for \$500,000. Why? Well, as one EB-5 attorney has put it, most investors are interested in realizing permanent residency for a lower price tag. The logic being, why pay \$1 million for a green card when I can get it for \$500,000?

Not surprisingly, this has led to rampant gerrymandering. As DHS Deputy Secretary Alejandro Mayorkas has stated, "This involves the deliberate drawing of TEAs to include prosperous areas that should not be subject to the reduced capital requirements."

Let me give one example: a proposed hotel and conference center in Laredo, Texas, was located in a census tract with 1.4 percent unemployment, far less than the 12.5 percent required to be a TEA. So, what did the project do? Here is a map of the project stretching 200 miles, all the way to the high unemployment area of Brownsville, Texas, in order to make the numbers work.

And here is the vaulted conservatory with Baby Grand Piano at the 926 foot Four Seasons Hotel and private residences at 30 Park Place in Tribeca, which describes itself as, quote, "Perfectly-pitched luxury" that will quote, "Introduce a new caliber of luxury living," end quote.

Beverly Hills magazine says it is quote, "Poised to be one of Manhattan's both most prestigious addresses." And a quote, "New paradigm in sophisticated living." Prices vary from \$2.6 million to over \$60 million for one condo in that building; 30 Park Place wanted to market EB-5 visas for \$500,000.

However, since the unemployment rate there is only 3.8 percent, New York State developed a project map that went upstream along the East River in order to lasso enough high unemployment areas to qualify. Unfortunately, the Department of Homeland Security has facilitated such abusive gerrymandering.

The USCIS accepts as binding maps approved by state agencies, even though, as the Wall Street Journal points out, "They are eager for economic development and have little stake in federal immigration policy."

Projects in affluent areas will always get the lion's share of EB-5 investments. Even if immigrants have to invest more, they prefer the higher degree of safety and the prestige. However, we want to ensure that a healthy percentage of projects locate in rural and depressed areas.

Even if we could determine that a project worker's commute from high unemployment areas, which generally can't be done, that is not enough. We want to revitalize distressed areas and to do that, projects actually have to be located in those areas.

Let me mention two other issues.

First, in instances where a project is financed by EB-5 and conventional capital, the Department of Homeland Security allows foreign investors to receive credit for all the jobs to be created, even those paid for by other people's money. DHS's inspector general has concluded that DHS regulations allow foreign investors to take credit for jobs created with U.S. funds.

In one case, even though EB-5 funds accounted for only 18 percent of the capital, this practice makes a mockery of the job creation goal of the EP -- EB-5 Program.

Finally, as I stated, visas for the wealthy was not a goal of the EB-5 Program. It was to attract investors with entrepreneurial talent. As Phil Gramm stated during Senate consideration, "If people have been successful in business they can bring that talent and the fruits of that talent, \$1 million, to this country."

However, currently aliens can acquire investment funds through inheritance or gift, and there is no real regulatory requirement that they be entrepreneurs. They can simply be limited partners with no role in management. It is not surprising that the vast majority of EB-5 investors now are limited partners. If the EB-5 Program is reformed, it can become a turbocharged engine for economic growth.

I look forward to today's hearing, and I would add that if we are not successful in making reforms for this program, the program is going to either expire or become irrelevant, because of the enormously long waiting list that is already developed for these green cards.

Those who have profited from this are killing off a program that is intended to create jobs and real economic development in this country.

I now recognize the ranking member of the committee the gentleman from Michigan, Mr. Conyers for his opening statement.

CONYERS:

Thank you, Chairman for a very strong set of observations to begin this hearing. We're focusing today on the EB-5 Immigrant Investor Program.

When Congress established the program in 1990, the intention was to create jobs for American citizens and to bring new investment capital to the United States. I believe EB-5 Program can have a positive effect on distressed urban and renewal -- in rural communities by providing a source of jobs and investment.

However, there are fundamental questions about how the program is currently being used and whether adequate integrity safeguards exist. To begin with, the current practices used to draw targeted employment areas must be reformed to help incentivize investment and job creation in rural or high unemployment areas.

The EB-5 Program offered a reduced investment level of \$500,000 for projects in designated target employment areas. However, as reported by The Wall Street Journal, as well as many other news sources, the vast majority of EB-5 investment funds are going to projects in some of America's most affluent areas that qualify as targeted employment areas only because of gerrymandering.

By stringing census tracts together from high unemployment neighborhoods to wealthy ones, project developers have been able to take advantage of the lower targeted employment area investment level, while still investing in projects in more desirable and affluent areas.

This practice has been strongly criticized by the leadership conference on civil rights. It notes that the EB-5 Regional Center Program has dramatically deviated from its original purpose -- to spur job creation and development in rural and high unemployment areas.

Steering investments to projects in our cities' wealthiest neighborhoods at the expense of urban and rural communities that need it most is not what Congress intended when it established targeted employment areas in the lower investment air -- level.

The congressional district, for example, that I represent suffers from an unemployment rate of more than 300 percent the national average. I'm pleased to say today that were starting to come back, but it's slow and tough.

But for those Americans living in urban poverty in my city of Detroit and in many other cities across the country, manipulation of targeted employment areas has diverted a potential source of jobs and neighborhood improvement away from those it was intended to help.

As the leadership conference points out, it is not enough to have development in more affluent areas where low income workers might commute to, because the projects will still leave these communities of concentrated poverty no better off in terms of development and infrastructure after their conclusion.

Also, the EB-5 Program suffers from the absence of good data on projects and jobs created. In order to receive a green card, a foreign investor must prove that the investment will create at least 10 jobs for U.S. workers.

Under the Regional Center Program, investors can account for the 10 jobs by counting direct, indirect and induced jobs. I wonder what an induced job is? These indirect and induced jobs are calculated by econometric models.

While some data exists on the more than \$13 billion of foreign direct investment since 2008, there is very little hard information on actual jobs created by EB-5 Regional Centers. We do not know whether these are jobs that are paying a living wage, whether they offer long-term employment and whether they have benefited workers from distressed communities.

The AFL-CIO shares these concerns and states that increased data will shed light on whether the program is meeting its mandates to spur growth and create jobs in underserved areas.

So in conclusion, I remain committed to working with Chairman Goodlatte and others on this committee to improve the EB-5 Program. The reforms that Chairman Goodlatte, Senate Judiciary Chairman Grassley, Senate Judiciary Ranking Member Leahy and I negotiated last year demonstrate that meaningful, bicameral, bipartisan reform is possible.

I thank the Chair, and I return any time remaining.

GOODLATTE:

The chair thanks the gentleman. And it's now my pleasure recognize the ranking member of the Subcommittee on Immigration and Border Security, the gentlewoman from California, Ms. Lofgren, for her opening statement.

LOFGREN:

Thank you Mr. Chairman. The EB-5 investor visa has proven to be an important job creation program. It provides financing to public-private projects, infrastructure and other ventures, including nursing home facilities for senior citizens outside Dallas, Texas, a charter school in Buffalo, New York and redevelopment of the Hunters Point Shipyard in the Bay Area.

Now, my state of California took steps to reform its policies to avoid gerrymandering. And in my own district, it has allowed -- the EB-5 Program has allowed a new hotel to be constructed near the airport to help revitalize the San Jose airport corridor. This project was in fact, the first hotel built in that airport area in 20 years.

Yet as important as the EB-5 financing has been since the banking and economic crisis of 2008, it pales in comparison to the potential of a visa program for startup entrepreneurs to create new American jobs and businesses. I support long-term reauthorization of the EB-5 Program, so long as it includes much-needed reforms.

The required investment levels are outdated, immigrant investors need security protections and government agencies charged with oversight and enforcement need new authorities. I support reform of the targeted employment area requirements, so that we ensure that EB-5 investments result in job creation in communities that need it most, whether they be urban or rural.

In this respect, it is important that any EB-5 reform be balanced, so the communities across the country have the opportunity to compete for EB-5 investments. For these reasons, my good friend and colleague from Chicago, Mr. Gutierrez and I, introduced the EB Jobs Act.

Our EB-5 reform bill requires disclosures by regional centers and authorizes sanctions ranging from fines, to debarment and termination of Regional Center designation for misrepresentations or other program violations. It provides for site visits, it prohibits regional center participation for persons who are found liable within the past five years of a criminal or civil violation relating to fraud.

I'm pleased to say that these and other transparency and integrity measures are included, not just in our bill, but in bipartisan reform efforts, and they are widely agreed upon among EB-5 financiers and developers. They should be enacted before the program is reauthorized at the end of this fiscal year.

We should also raise the minimum investment levels, which have not been changed in over 25 years since the program was first enacted. And here, again, we have agreement across party lines. Now, I know that reform of the targeted employment area rules has been a major point of contention.

But with balance and compromise, we should be able to reach an agreement that works for urban and rural areas for affluent and distressed communities, and that recognizes that workers do commute to job sites.

There's no reason we shouldn't be able to reach an agreement that is consistent with the program's original intent and works in concert with other programs that direct investments to distressed areas, including enterprise zones -- a Republican idea, advocated by Speaker Ryan's mentor, the late Jack Kemp, the new market tax credits.

However, as I said at the outset of my remarks, far more important than an investment visa is a new startup visa for entrepreneurs. Our bill, the EB Jobs Act, includes provisions that incentivize economic growth and job creating -- creation by creating new green card categories for entrepreneurs who establish startup businesses and create jobs for American workers.

Foreign-born entrepreneurs, many of them educated at U.S. universities, have contributed immensely to our economy. They had been a driving force for innovation in Silicon Valley and the continued prominence of America's technology sector. Nearly half, 24 out of 50 of the country's top venture funded companies, had at least one immigrant founder.

In fact, immigrants are twice as likely to start businesses as native-born Americans and immigrant businesses, including small non-tech businesses, have grown at 2.5 times the national average.

Companies back home like Intel, Google, Yahoo and eBay were all founded by immigrants and now employ tens of thousands of people. The startup visa will require significant venture capital, or seed (ph) financing for innovative ideas and products or the creation of new businesses that can already demonstrate job creation in the U.S.

Immigration has historically made our economy stronger. The inclusion of a startup visa expansion in our bill embraces that history and encourages the world's thinkers and doers to join us.

While, this hearing is focused on EB-5 Program, I remain committed and will work tirelessly to past startup visa legislation.

Today more than ever, immigration is being used to divide us, and much needs to be done to fix our broken immigration system. But I'm pleased that we can recognize programs that work.

And I look forward to working with Chairman Goodlatte, Ranking Member Conyers and others on a bipartisan, bicameral effort to make important reforms that will allow the EB-5 Program to be reauthorized.

I thank you, Mr. Chairman, and yield back the balance of my time.

GOODLATTE:

Thank you very much, Ms. Lofgren. Without objection all the members' opening statements will be made a part of the record.

We welcome our distinguished witnesses today. And if you'd all please rise, I'll begin by swearing you in.

Do you and each of you swear that the testimony that you are about to give shall be the truth the whole truth and nothing but the truth, so help you God?

Thank you. Let the record reflect that all of the witnesses have responded in the affirmative. And I will now begin by introducing them.

The first witness is Mr. Nicholas Colucci. Mr. Colucci is the Chief of Immigrant Visa Investor Program at the U.S. Citizenship and Immigration Services, a position he assumed in December of 2013. In this role, Mr. Colucci leads IPO staff of adjudicators, economists and program support specialists in administering the EB-5 Program.

Mr. Colucci joined USCIS with more than 21 years of experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Department of the Treasury. Mr. Colucci and -- Mr. Colucci received his B.A., Magna Cum Laude, from Long Island University and his MBA from Loyola University.

Today marks the second time that Mr. Colucci has testified before Congress after last week's testimony before the Senate Judiciary Committee. I want to personally thank Mr. Colucci and his team and legislative affairs liaison Mike Rodriguez for all of the technical assistance they gave Mr. Issa, Mr. Conyers, Ms. Lofgren and me last year in formulating legislative reforms to the EB-5 Program.

Our next witness is Ms. Rebecca Gambler, a Director of the U.S. Government Accountability Office's Homeland Security and Justice Team. Ms. Gambler leads GAO's work on border security, immigration, Department of Homeland Security management and elections issues.

Prior to joining GAO, Ms. Gambler worked at the National Endowment for Democracy's International Forum for Democratic Studies. Ms. Gambler is a graduate of the U.S. Naval War College and holds Masters degrees from Syracuse University and the University of Toronto.

Our next witness, Ms. Jeanne Calderon, is a Clinical Associate Professor at the New York University Stern School of Business, where she teaches courses in the areas of law, ethics, professional responsibility and real estate. She is a graduate of Cornell University and the Georgetown University Law Center.

Sitting behind her is her husband, Mr. Gary Friedland, who is a scholar in residence at the NYU Stern school of business and affiliated with Stern Center for real estate finance research.

Since 2014, Ms. Calderon and Mr. Friedland have been analyzing the EB-5 Immigrant Visa Program, and know -- and how it is utilized as a source of capital for commercial real estate projects.

Our final witness is the CEO of E3 Investment Group, Mr. Matt Gordon. E3 is a private equity group that has established E3 Cargo, a trucking company, all of whose equity financing comes from the EB-5 Program.

Mr. Gordon has written extensively on legal topics related to EB- 5 organizational structure and EB-5 policy. Mr. Gordon is a licensed attorney in New York and began his career practicing mergers and acquisitions law on Wall Street.

Mr. Gordon received his B.S. in public policy analysis from Cornell University and his J.D., Cum Laude, from the University of Pennsylvania School of Law.

Welcome to all of you. Your written testimony will be entered into the record in its entirety. I ask that you summarize your oral testimony in five minutes or less to help you stay within that time.

There is a timing light on your table. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, that's it, your time is up. It signals that your five minutes have expired.

Mr. Colucci, you may begin. Welcome.

COLUCCI:

Chairman Goodlatte, Ranking Member Conyers...

GOODLATTE:

You may want to pull that close and make sure that the light is on, on that.

COLUCCI:

Sure. Chairman Goodlatte, Ranking Member Conyers and distinguished members of the committee, I'm pleased to speak with you today about the EB-5 Immigrant Investor Program.

My name is Nicholas Colucci, and since December 2013, I have been chief of USCIS Immigrant Investor Program Office, or IPO, which administers the EB-5 Program. I came to USCIS with more than 20 years of regulatory and law enforcement experience with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Financial Crimes Enforcement Network, where I managed diverse teams dedicated to combating money laundering, fraud and terrorist financing.



I share the committee's dedication to ensuring the integrity of the EB-5 Program, and I will tell you today about the steps we've already taken and those we are planning to further strengthen our administration of the program.

I thank the committee for your continued support and interest in EB-5 Program.

USCIS has built a strong foundation that supports its administration of the program. Most significantly, in 2013, USCIS realigned the EB-5 Program into IPO, or the Immigrant Investor Program Office, and relocated it to Washington D.C., where we hired staff with expertise in economics, law, business, finance, securities and banking to manage the complex EB-5 caseload.

USCIS also created a fraud detection and national security division, and embedded its personnel to work alongside IPO's adjudications officers and economists. In addition to enhancing USCIS's ability to better detect fraud risks, which was noted by the Government Accountability Office in its August 2015 report, this structure has improved our ability to work closely with partners across the federal government to quickly identify and respond to fraud and national security concerns and to develop strategies to mitigate these risks.

Additionally, consistent with GAO's recent review of EB-5 Program, USCIS is working to refine data systems to better collect program information, and has entered into an interagency agreement with the Department of Commerce to conduct an evaluation study of the EB-5 Program.

Since establishing IPO, USCIS has undertaken several initiatives to strengthen the program, including more than doubling the embedded fraud detection and national security staff in fiscal year 2015, and more than tripling the number of overseas verification requests in support of EB-5 adjudications.

Providing ongoing antifraud training to increase IPOs staffs awareness of potential fraud schemes; undertaking a thorough review of existing regional centers and terminating those that failed to submit required information or promote economic growth; expanding security checks to cover regional center businesses and certain executives; and publishing an updated classified intelligence assessment of the EB-5 Program in fiscal year 2015.

We have accomplished much to strengthen the integrity of the EB-5 Program. But as Secretary Johnson noted in his May 2015 letter to the committee, there remains more to be done. USCIS plans to propose potential regulatory action, including changes to make targeted employment area designations more consistent, increase minimum investment amounts that have remained unchanged for 25 years and require business plan filings in advance of investor petitions.

Additionally, USCIS has worked closely with congressional staff to identify key legislative enhancements to strengthen the program, including providing USCIS with specific statutory authority to ensure the Regional Center Program is free of bad actors, to impose graduated sanctions where appropriate, and to collect the information we need to better oversee the program.

If implemented, these common-sense reforms would create immeasurable benefits for the program.

With the continued support of this committee, I'm confident that EB-5 Program can fully realize its goal in stimulating the U.S. economy through job creation and capital investment, while safeguarding national security and program integrity.

We look forward to continuing to work with this committee to further strengthen the EB-5 Program and provide technical assistance, if requested, to any EB-5 related legislation.

Once again, I appreciate the opportunity to be here today. I am happy to answer your questions. Thank you.

GOODLATTE:

Thank you, Mr. Colucci. Ms. Gambler, welcome.

GAMBLER:

Good afternoon, Chairman Goodlatte, Ranking Member Conyers and members of the committee. I appreciate the opportunity to testify at today's hearing to discuss GAO's work reviewing the immigrant investor, or EB-5 Program.

The EB-5 Program was established to promote job creation and encourage capital investment in the U.S. by foreign investors in exchange for lawful permanent residency and a path to citizenship.

Under the program, immigrant investors are to invest \$1 million in a commercial enterprise, or \$500,000 if the business is in a targeted employment area. The investment is to result in the creation of at least 10 full-time jobs. Immigrant investors and their eligible dependents receive two-year conditional green cards if they meet program requirements, including their investments, resulting in at least 10 full-time jobs, they can apply to remove the conditional basis of their green cards.

About 10,085 visas are made available to qualified applicants each fiscal year and the number of EB-5 visas each -- issued each year has grown substantially over time.

My remarks today will address two key aspects of USCIS's oversight and management of the EB-5 Program.

One, the extent to which USCIS has assessed and addressed fraud risks. And two, USCIS's methods for verifying job creation and reporting economic benefits.

First, the USCIS has taken some action to assess and address fraud risks to the program. For example, in recent years, USCIS and partner agencies have conducted various assessments of fraud risks.

USCIS has also increased its fraud unit staffing and has conducted fraud awareness training. While these and other actions have been positive steps, USCIS faces challenges in its efforts to identify and mitigate fraud risks.

For example, USCIS officials have noted the constantly evolving nature of fraud risks, and USCIS is working to implement our recommendation to plan and conduct regular fraud risk assessments.

Further, USCIS's information system and processes make it difficult for the agency to effectively collect and use data on the EB-5 Program to identify potential fraud. USCIS has also not regularly interviewed immigrant investors when they submit applications to remove the conditions on their permanent residency.

To strengthen USCIS's fraud detection and mitigation capabilities, we recommended that USCIS develop a strategy to expand information collected from applicants and petitioners. USCIS concurred with our recommendation and is taking steps to address it, such as planning to begin interviews later this year.

Second, with regard to verifying job creation and reporting economic benefits, USCIS has increased its capacity in these areas. For example, USCIS has increased the size and expertise of its workforce and improved its training on the adjudication process.

However, our work indicates that USCIS does not have a valid and reliable methodology for reporting on the program's economic benefits. Specifically, USCIS's methodology may understate or overstate program benefits in certain instances. This is because USCIS's methodology is based on the minimum program requirements of 10 jobs \$500,000 investment per investor, rather than data collected by USCIS about the number of jobs created and amounts invested.

We recommended that USCIS track and report such data. This is data that immigrant investors report and the agencies verify on program forms. DHS concurred and plans revise its systems and processes to implement this recommendation.

In addition, USCIS's methodology allows immigrant investors to claim all jobs created by projects with both the EB-5 and non-EB-5 investors. We and others have previously raised questions about this practice, as it makes it difficult to determine whether the funds invested by EB-5 investors actually created U.S. jobs.

In some cases, without the practice of allowing immigrant investors to claim jobs created by investments from other sources, a higher investment amount would be required for investors to meet the job creation requirements.

In closing, while the EB-5 Program seeks to stimulate the economy by promoting job creation and encouraging capital investment by foreign investors, it also has unique fraud risk that must be identified and addressed.

USCIS's ability to apply a valid and reliable methodology for reporting EB-5 Program outcomes and economic benefits is also important for program accountability, and to provide the public and

Congress with more complete information to evaluate the program and make reauthorization decisions.

Again, thank you for the opportunity to testify, and I am happy to take any questions that members may have.

GOODLATTE:

Thank you, Ms. Gambler. Welcome, Ms. Calderon and Mr. Friedland (ph).

CALDERON:

Chairman Goodlatte, Ranking Member Conyers and distinguished members of the committee...

GOODLATTE:

Pull that microphone close to you.

CALDERON:

Thank you for inviting me to testify. I'm a Professor at the NYU Stern School of Business for almost 30 years. My (inaudible).

GOODLATTE:

Let me -- that you really almost put that microphone like with an inch of your mouth and we'll be able to hear you much better.

CALDERON:

Oh, I didn't realize.

GOODLATTE:

Pull it really close. Yes, move it over and real close to you.

CALDERON:

So, this morning, I will make four points. The original congressional intent in 1990 was to limit the TEA designation to rural and depressed inner-city areas. But Congress should consider taking a fresh look to incentivize project types and locations that it deems appropriate in today's world.

Gerrymandering is census tract aggregation that sometimes permits projects located in luxury areas to qualify for the TEA discount. CIS contributed to the current gerrymandering system, but has the authority to remedy this as an alternative to a legislative solution.

And finally, creating appropriate visa reserves might be as important as redefining a TEA to stimulate investment in certain locations or project types. Since 2010, the program has been primarily used for real estate projects. EB-5 serves as a government subsidy to developers, because the visa motivates the investor to accept a negligible rate of return that results in a below-market interest rate loan, a major savings to the developer.

This subsidy is available to all developers, whether or not the project is located in the TEA. In general, the minimum investment amount is \$1 million, except where the project is located in the TEA, the amount is reduced to 500. A TEA is defined simply as any rural location, or if an urban area, it needs a defined high unemployment standard.

The legislative history illuminates congressional intent. Senator Boschwitz cosponsored with Senator Phil Gramm, the amendment that added the TEA framework to the Senate bill that became the 1990 Immigration Act. He emphasized that the reduced amount was primarily aimed to stimulate immigrant investment in rural areas, but also intended for depressed areas or inner cities.

Senator Paul Simon, in the conference report, expected that most investors would invest at the \$1 million level. Contrary to this original intent under the current system, virtually all projects qualify as being located in a TEA, including those in luxury areas. So, all immigrants invested the discounted amount.

The reauthorization provides Congress with the opportunity to take a fresh approach as to which locations or project types should be incentivized, without being constrained by the original intent. To test whether new TEA definitions meet Congress' objectives, perhaps it should map the locations in key cities to verify which areas would likely be incentivized.

Gerrymandering is a term applied to census tract aggregation to expand the boundaries of the area to qualify as a TEA. Census tracts are added to the projects tract with the aim that the combined areas unemployment rate meets the high unemployment standard.

If the project is located in a census tract that meets the standard, the area is a TEA. If not, then gerrymandering allows the addition of census tract to the projects tracked until the combined area meets the high unemployment standard. This could be as simple as adding one bordering tract, or it could necessitate adding virtually a countless number until the standard is met, often relying on a remote tracts, poor economic conditions to justify the TEA designation.

The problem occurs because each state creates its own rules to define a TEA. How did this happen? CIS is been fostering gerrymandering since 1991. When the EB-5 law was passed, CIS's predecessor chose to delegate its authority to make all TEA designations to the individual states without any rules, oversight or audit.

The states motivated to promote economic development approved virtually every project. As Chief Colucci has acknowledged, CIS has the power to correct this. It could establish a uniform objective TEA rules for the states to apply, or it could revoke the state's authority and transfer it to the CIS National Office, as contemplated by the Senate reform bill.

Should I finish? Visa reserves the reform bill that died in December propose to reduce the spread to \$200,000 for the minimum investment amount between TEA and non-TEA projects. Since the immigrants' sole reason to invest is to secure the visa, a visa reserve that moves the investor towards the front of the visa line for investments in certain project types or locations may become more important than investing 200,000 less on a very low interest loan.

This becomes especially important as the visa waiting period approaches eight years for Chinese investors. Visa reserves may be an effective tool to incentivize certain investments, but Congress should be mindful of which project types or locations gain the visa priority.

Those investors who aren't granted the visa reserve may decide not to invest in this program.

Thank you.

GOODLATTE:

Thank you. Mr. Gordon, welcome.

GORDON:

Chairman Goodlatte, Ranking Member Conyers and other members of the committee, thank you for allowing me to testify on this important topic.

My name is Matt Gordon, and I am chief executive officer of E3 Investment Group. We are a New York City-based private equity firm whose mission is the harmonious synthesis of economic and social value creation. We focus exclusively on the direct side of the EB-5 Program, as all of our partner investors' capital creates more than 10 jobs each. So, we do not need the econometric labor creation calculations reported to the regional centers.

E3 Investment Group's flagship, of which I am chairman, is E3 Cargo, an Indianapolis, Indiana based trucking company. I'm also one of the founding members of the More American Jobs Alliance, or MAJA. MAJA's constitutional principle is to maximize the social impact for America from the jobs created by the EB-5 Program -- in particular, by focusing on the creation of the jobs in true, economically distressed and rural areas.

Since coming to the EB-5 Program, I have done a significant amount of policy and academic work. I'm the editor of the EB-5 legal treaties, entitled "The EB-5 Book" and I've helped lead researchers of ICIC.org with their work related to EB-5 capital in distressed urban communities that culminated in a policy forum at the Harvard Kennedy school.

The apt title of this hearing questions whether the EB-5 program is underperforming. Unfortunately, the answer is a resounding yes. The EB-5 program consistently fails to maximize social value created for the green cards that our country invests in the process.

The goal of the program is not to enrich real estate developers or others like myself who use the EB-5 program as a capital formation vehicle for their businesses. The goal is to create jobs for America. And the sponsors are never worthy of protecting or perpetuating for their own sake.

An important part of the program was the creation of the policy behind targeted employment areas. Targeted employment areas are supposed to turbocharge the social benefit resulting from the job creation by focusing it in economically distressed areas. Simply put, job creation in distressed areas is more valuable to our society.

The mechanism to incentivize this behavior is the lowered investment threshold from \$500,000 for investments that are made in the TEA. TEA policy has been a failure, because it is not only possible but relatively easy to get any location in America designated as a targeted employment area.

Despite the policy goal of wanting to help distressed urban and rural communities who desperately need the additional investment capital, virtually all EB-5 capital goes into prosperous wealthy areas. They are those who believe that TEAs are working just fine and want to perpetuate the status quo. Their argument is premised on a labor mobility model to support the idea that TEAs are fulfilling their policy objective if the project, built in a low unemployment area, draws workers who live in high unemployment areas.

To frame this debate, it is either about helping the area or about helping the people who may or may not come from the area to work. I submit that a geographically anchored framework must prevail. Structural investment in an area has the premise to effect structural economic change to that area and its population. Labor is always mobile; areas are not.

A TEA is a targeted area, and so it should remain. Some frame the debate has urban versus rural. I submit that is about helping the geographical areas that have, versus the areas that have not. The idea is to give places like Indianapolis, Memphis, Southaven, Mississippi or the Bronx not only a chance, but an advantage against projects located in Los Angeles, Manhattan's West side and Miami.

The advocates for those who seek to have the status quo maintained, either currently or under new rules by another name suggest that sticking to the policy premise would be the death knell of the program. Nothing could be further from the truth.

The issue is about whether we can address these changes for the betterment of the entire program. It is very much likened to the automakers when first seatbelts and then airbags were mandated. They cried. They said it would be an impossible detriment on the industry, and then the market simply adjusted. So, too, will the EB-5 market adjust to proper and reasonable changes to the TEA rules and regulations.

It should not be about maximizing the number of projects that qualify for the benefit, but maximizing the benefit for the communities that are supposed to get it.

If we get this right, then maybe some of the regional centers who support the current rules will -- and invest in wealthy areas, will instead focus their energies and efforts in Indianapolis, Memphis in the Bronx. That would be truly something.

In the end, the question is simple. If Congress wishes to maximize the social impact of the program, then it must provide an incentive for both investors and sponsors to create jobs in truly economically distressed areas. This incentive can take the form of either materially reduced investment amount or segregating visas for investors in true TEAs.

Thank you for the time, and I am happy to answer any questions that the committee might have.

GOODLATTE:

That you thank you Mr. Gordon. We'll now begin questioning of the witnesses under the five minute rule. And I'll begin by recognizing myself.

Mr. Colucci, USCIS has reported that, from program inception through 2014, the EB-5 Program has created a minimum 73,730 jobs and more than \$11.2 billion in investment. How many more jobs and investment funds could the program have created, if the minimum investment amounts had been indexed for inflation?

COLUCCI:

Chairman, that is not a statistic that I have personally calculated nor have my staff members calculate. However, as outlined in the secretary's letter to this committee that is a legislative enhancement we currently seek is to increase the minimum investment amount. And as also mentioned in that letter, if that is not something Congress able to do, we are prepared and we are working to increase this amount through regulation.

GOODLATTE:

Well, as far back as 1987, the INS recommended that the minimum investment amount in an Investor Visa Program be adjusted periodically based on some criteria, such as the consumer price index. And I am pleased that Secretary Johnson has indicated that the USCIS intends to exercise its authority.

Do you intend to fully recapture the value lost to inflation over the past quarter century?

COLUCCI:

I think, sir, that we still need to study exactly where we set -- or proposed to set those investment amounts. I do think that we would certainly look at what Congress did as part of a number of the bills that address this area.

GOODLATTE:



In instances where a capital development project is financed by a combination of EB-5 and conventional capital, DHS currently allows foreign investors to claim credit for jobs created by other people's money.

The DHS Inspector General revealed one instance in which the EB-5 investment accounted for 18 percent of the project's equity, and yet the foreign investors took credit for all the jobs the project created. Doesn't this make a mockery of the Investor Visa Program's job creation goal?

COLUCCI:

Sir, as you pointed out in your opening statement, this is something through our regulation that that we do allow EB-5 investors to take job creation credit from non-EB-5 sources. We recently did some analysis and found that without that, there would be about 160 industries that would not qualify for EB-5 funding, because they could not create those jobs on their own.

I would also say the reverse is true -- there are many projects that are solely EB-5 funded, in addition to projects that are -- about four scenario in which we see lending letters from commercial financial institutions, which state, "We will not loan this money unless are you go out and get that visa financing."

GOODLATTE:

Mr. Colucci, I understand your argument, but doesn't that, again, simply reflect the fact that the DHS has never adjusted the minimum investment levels for inflation? If you had done so, wouldn't the number of jobs created by investments in all the industries you just referenced have increased commensurately?

COLUCCI:

Sir, that is correct. If we did...

GOODLATTE:

I've got a number of other questions, so let me keep moving -- 17,662 aliens with approved investor visa petition, including their spouses and minor children, are waiting for visas to become available right now as we sit here. And you have on hand 21,855 pending petitions.

When you factor in accompanying family members, if any reforms to the EB-5 Program only applied to prospectively filed petitions, such reforms would not actually take effect for over seven years. Can such as the delay be considered real reform?

COLUCCI:

Sir, those statistics you cite are accurate. We do indeed have roughly 21,000 and...

GOODLATTE:

And of an average of three green cards per petition, correct? So, that's over 63,000 pending green cards at 10,000 per year. We're getting over six, closer to seven years of backlog. And under those circumstances, if we only make reforms prospective in nature, those reforms won't take place for seven years.

The program has generally not been authorized for as long as seven years. So, how are they meaningful reforms if they don't take effect for that a long period of time?

COLUCCI:

Sir, you are correct. Any regulations that we would implement would likely be forward-facing for prospective increases.

GOODLATTE:

But for them to be effective, they would have to have some retroactivity if they are going to take effect in any way shape or form before seven years from now?

COLUCCI:

Sir, I know that in and some of the bills that were introduced, there were provisions to increase additional fees for the petitions, the actual -- the 5 to 60 immigrant investor petition and the removal of condition petitions that would add to the costs that were taken in by the United States government.

GOODLATTE:

Let me turn to Ms. Calderon. Thank you Mr. Colucci.

You've written that gerrymandering has rendered the two level investment threshold meaningless, and immigrants flocked to invest in luxury projects by major developers, and we gave some examples up here. Is this consistent with the intent of Congress to incentivize investments in rural and depressed urban areas?

CALDERON:

Thank you. And that's actually why I mentioned the legislative history in the five-minute presentation -- that no, it is not at all consistent with that -- with a two-tier system.

The legislation that was first introduced at one tier, \$1 million. And it was only later that the two-tier system was introduced by Senators Bosch and Graham, and they made clear throughout the congressional record that that we found that the discounted amount was aimed at rural, as well as depressed or inner cities.

GOODLATTE:

The intent was to get a higher amount for those investments in areas that didn't qualify for rural or depressed urban areas.

CALDERON:

Yeah. And apparently, I mean, the belief was that most investors would be investing at \$1 million in 1990.

GOODLATTE:

Right.

CALDERON:

So.

GOODLATTE:

You're right that if Congress seeks to incentivize development areas, which encounter difficulty in attracting the investment capital needed for economic growth, the commuter pattern -- commuter pattern construct would not be an appropriate way to designate TEA.

Could you elaborate briefly on that?

CALDERON:

It is a takeoff on the fact that regional centers, unlike Matt Gordon's company, uses econometric models, basically is basing the job count not on direct jobs, but on the indirect and induced jobs. So, there's really no way of proving where the workers are coming from. He points out that the jobs may not be reflective of long-term jobs.

We don't know the location of their residences, as well.

GOODLATTE:

Thank you.

And lastly, Mr. Gordon, do you believe that the EB-5 Program reforms that I drafted last year -- along with Mr. Conyers, Mr. Issa, Ms. Lofgren and Senators Grassley and Leahy -- would have corrected the abuses that have cropped up in the Investor Visa Program? And do you think these reforms would make the program unattractive to developers or foreign investors?

GORDON:

I think that the draft bills, and there are many versions of them, so I started losing track of which parts we were at which points. But I do think that they went a long way, and also as part of the compromise negotiations that were taking place in December to correct the ills of the program.

GOODLATTE:

And with 63,000 people in the pipeline, 21,000 plus petitions, would they have scared off investors?

GORDON:

To some degree, it might have. And remember that that pipeline really is a problem when you're talking about investors from China, because due to the restrictions and in the quotas for investors from each country, it wouldn't actually affect investors coming from outside of China at all. So, it's...

GOODLATTE:

Who should we ask about the AFL -- yes. But 87 percent are from China, is that correct?

GORDON:

Yes. That's correct.

GOODLATTE:

Right.

GORDON:

So again, markets tend to normalize. And as people have...

GOODLATTE:

Normalize at a higher level of investment in areas that might be more targeted to rural and high unemployment areas?

GORDON:

Sponsors would react to the incentive structure. So, if it was in their best interest to focus on non-prime real estate locations, if it was in their interest to do so, they would look for other opportunities.

And likewise -- and they would also look for investors from locations where there might not be such a non-price issue related to getting them to come on board. So, maybe they will focus on other areas of the world than simply China.

GOODLATTE:

Thank you. Chair recognizes the gentleman from Michigan, Mr. Conyers, for this questions.

CONYERS:

Thank you, Chairman Goodlatte. And I appreciate the testimony, the varied testimony from our four witnesses.

I like to begin by asking unanimous consent to include in the record the testimony of Nancy Zirkin, who was the vice president of the Leadership Conference on Civil Rights. May I -- may I..

GOODLATTE:

Without objection it, will remain a part of the record.

CONYERS:

Right. And the second statement I like to have included in the record is one from the AFL-CIO concerning this Investor Visa Program. I'd also like that included in the record, please.

GOODLATTE:

Without objection, that will also be made a part of the record.

CONYERS:

All right, thank you very much.

Now, we have a situation here where Mr. Colucci, The Wall Street Journal estimates that 80 percent of all EB-5 Projects need gerrymandering to qualify as high unemployment targeted employment areas.

With respect to the reform of targeted employment areas, who has the authority to ensure that the gerrymandering is appropriate, or should not be allowed (ph) in your view?

COLUCCI:

Sir, through our regulation, we allow the states, the states are the ones who put together targeted employment areas. And then through a policy memorandum, not only do we defer that to the states, but we indicate that we will look at their methodology. In other words, we won't ensure that the area that they designated does indeed meet the 150 percent unemployment rate.

CONYERS:

And let me ask you this additional concern. What can the department do to ensure meaningful incentives to invest in distressed areas, as we in the Congress wanted to in enacting this legislation in the first place?

COLUCCI:

Sir, as the secretary indicated in his letter to the committee, targeted employment areas are an area in which we were seeking a legislative enhancement and short of that, as he also indicated this is something that we can address through a regulatory solution that would go out for notice and comment to the public, like any other regulatory solution. So, we do have the power to define how targeted employment areas are put together.

CONYERS:

Turning to Matt Gordon.

Some EB-5 investors claim that they won't invest in projects outside traditional gateway cities, because they believe those projects are safer and more likely to create jobs needed to support their visa applications. What do you think must be done to use the targeted control -- the tool of targeted employment areas to direct or drive investment to more economically distressed areas?

GORDON:

Thank you. That's an excellent question.

It's supposed to be an economic incentive tool. For it to have any power or meaning, there needs to be a difference in the pricing. So targeted employment areas that are outside of the gateway cities need to have an investment amount that is materially lower than those in the gateway cities.

There will always be those who want to live in prime areas and will be willing to pay the premium, and so too, there will always be those who were only interested in investing in prime areas, and they, too, will be willing to pay the premium.

CONYERS:

How do we know -- let's go to Ms. Calderon. How do we know if the jobs created are good jobs that pay a living wage?

CALDERON:

We don't -- we don't know that. Again, because most of the investors are investing indirectly to a regional center structure and because a regional center structure is used, the job count is not based on direct jobs, but instead on indirect and induced jobs. And the way to measure those, we use economic models. We don't count W-2s. We don't check where the people are coming from. And we do not check the length of the employment or the type of employment.

CONYERS:

Who should do this checking in?

CALDERON:

I would think that...

CONYERS:

How do we correct that?

CALDERON:

USCIS could set out the standards for the states to apply, if, again, the standards were objective and uniform, unambiguous. But I would think that it would be better for USCIS, in its D.C. national office, to take over that role.

CONYERS:

As I conclude, does anyone else want or add anything to -- their views to this question that I've asked?

GORDON:

I would just supplement that it is a challenge under the current econometric models to actually gather this type of data. There -- they are not really the right tool for the question that you asked.

It's very different on the direct side of the program. I mean, we can tell you worker by worker what they make, how long they work and how their wages compared to national averages. That's very, very easy.

But when you are using the type of input-output econometric models that's currently excepted for regional center job projection, it's going to be a difficult task. It might require a totally new type of accepted methodology.

CONYERS:

Well, thank you Mr. Gordon and thank you Mr. Colucci.

ISSA:

Mr. Chairman, I have a unanimous consent.

GOODLATTE:

Yes, the chairman has recognized.

ISSA:

Mr. Chairman, I asked unanimous consent, because it's going to be needed, that the GAO report the general lady put into -- be put in the record, from August 2015, entitled, "Additional Actions Needed to Better Assess Fraud, Risk and Report Economic Benefits."

GOODLATTE:

Without objection, it will be made a part of the record.

ISSA:

Additionally, I have a unanimous consent that an editorial published in Roll Call by Senator Dianne Feinstein, entitled, "U.S. Citizenship Should Not Be For Sale," be placed in the record.

GOODLATTE:

Without objection, it will we made part of the record.

ISSA:

Thank you, Mr. Chairman.

GOODLATTE:

And I would ask unanimous consent that a letter to myself and Ranking Member Conyers from IIUSA, Invest in the USA, if you will, dated February 10, 2016 be made part of the record. And without objection, it will be made.

So -- and the chair now recognize the gentleman from California, Mr. Issa, for his questions for five minutes.

ISSA:

Thank you, Mr. Chairman. And I want to thank all of you for being here.

Ms. Gambler, I want to thank you for your report. I think it is insightful. I also appreciate the fact that all of you seem to have followed our attempts, albeit at least temporarily in vain, to reform EB-5.

Mr. Colucci, I'm going to apologize in advance that you are the person on the hot seat. But let's go through a couple of things that I think need to be on the record.



First of all, you are saying that you can do regulatory reform to fix many of the ills pointed out by the GAO's report last year, right? Is that correct?

COLUCCI:

Yes, sir. There are reforms we can do.

ISSA:

OK. And to date, you have not put any out for public comment, is that correct?

COLUCCI:

We have not, sir. We were working on our regulatory reform in 2014, and when Congress signaled its intent to pass a comprehensive bill with respect to EB-5, we moderated our efforts in '15.

However, now that the bill did not pass, we are reengaged on our effort.

ISSA:

So let's go through this. 1990, there was regulatory authority to fix some of these things. Nothing happened. That was a George Herbert Walker Bush.

So then, he left. President Clinton got eight years. He didn't do anything. He left. George W. came in. He had eight years. He did not do anything.

Now, were in the eighth year of President Obama, and you are saying that, because we thought we were going to fix something, you stalled?

Well, let's go through some of these things, and I think -- and again, I apologize in advance. But you saw the chairman's 200-mile long farce of a gerrymandering with no possibility that people were actually going to go 200 miles to a job. And you allowed it, because if I understand correctly, you feel you do not have the authority to fix that, to deny it. Is that correct?

COLUCCI:

I'd like to make two comments. We did actually pass a regulation with respect to Regional Center Program in the 1990s. And I think it -- I believe it was 1993. With respect to that particular slide that was shown that indicated that 200-mile target employment...

ISSA:

Well, whether it's that or the -- up the Hudson River One, they are both pretty egregious, wouldn't you agree?

COLUCCI:

Well, the one in particular, and in Texas, we are not able to find that that was officially submitted by a petitioner for targeted employment area.

We are continuing to look, but we have not located that. With respect to the one that was shown for New York, I -- you know, what I would point out is, they are all contiguous census tracts. What I do not think it was shown there is, there actually our census tracts that border the river and in some land...

ISSA:

Yes, but that's not the -- that's not the question. The question is, isn't it obvious that the discount that was in the legislation before some voters were born, that will be voting in this election, the legislation intended to discount for the enhancement of employment. And if they include census tracts in which the employment is unlikely to come from there, then in fact, they are just throwing it in, when you know -- and let's just be honest. People do not come hundred miles to a job, isn't that correct?

So, you had the ability to -- and correct me if I'm wrong. Did you have the ability to deny them, if you felt that they were including areas which would not have led to employment, but they were scoring the employment? Yes or no, please. Do you have the authority to deny?

COLUCCI:

If an area that has been designated by the state is a geographic area traditionally within a metropolitan statistical area, we do not have the authority to deny.

ISSA:

OK. So, you can -- don't have the authority, which means you do need congressional action to fix that?

COLUCCI:

Well, sir, what we can do is define targeted employment area within our regulations, but as the secretary noted in his letter, we would -- we did recommend some sort of legislative enhancement in this area.

ISSA:

OK. And for all those years I mentioned, there has been no increase in the amount necessary. I might note that Singapore is \$2 million. It's about a million and a half for Britain, and yet we're a half a million dollars.

Let me -- Mr. Gordon, let me just ask you a question. I will try to get it very simple. If Congress determined that the original intent of this was job creation, based on real investment in permanent

jobs, wouldn't it be reasonable to stop loaning a minority amount of money to help real estate be built that creates temporary jobs, often simply rebuilding a hotel?

GORDON:

Generally, yes.

ISSA:

OK.

And Mr. Colucci. My final question I suspect is going to be you know, I hear you saying that you do not have the authority, but are you really telling the American people that if only one percent of the jobs came from money on an EB-5, that they still would be entitled to count 100 percent of the jobs?

In other words, if 500,000 came out of \$500 million, the \$500 million, all from other sources should be able to count toward the job creation. You told me that you did not see something wrong with that, I believe you said you didn't see something wrong, because many programs wouldn't qualify without using the non-EB-5 money.

Is that what you are telling us, that we that we should put up with not -- with considering all the jobs created, including the ones that have nothing to do with the so-called investor?

COLUCCI:

Sir, what I did point out is our regulations do indeed allow it. And there are about 160 industries that would not be able to participate in the EB-5 Program.

ISSA:

Because they don't create enough jobs with investment money.

COLUCCI:

They don't create enough jobs.

ISSA:

And that Congress intended the investment money to be -- create a certain amount of jobs and they don't do it. So what you are saying is, you believe the rules have to be stretched to allow for creation beyond what is actually created by the investment?

GOODLATTE:

The time of the gentleman has expired, but the gentleman is welcome to answer the question briefly.

COLUCCI:

I would just say, sir, that is allowed through our regulation, and that was after a significant notice and comment period in -- in again, as I mentioned, the 1990s.

ISSA:

Mr. Chairman, I'll note that during that notice and comment, I wasn't a member, but I am now. And I disagree with that ruling.

GOODLATTE:

And the chair shares your concern. The chair recognizes the gentlewoman from California, Ms. Lofgren, for five minutes.

LOFGREN:

Thank you Mr. Chairman. Just a couple of comments.

I listen carefully to my colleague from California. And you know, I get -- it needs to be pointed out that Congress has reauthorized the EB-5 Program numerous times, both with Republican and Democratic presidents, with Republican and Democratic majorities in the House and Senate.

So, you know, it isn't until this day, that we've actually had the kind of substantive hearing that we -- I think clearly need. And part of the reason for that is that this was a program that was kind of quiescent. It never hit the 10,000 visa market, it was not really a very active thing until the financial crisis hit.

And now, it is a live matter.

And we -- and I think it's good that we're examining how is this meeting the goals that we had for development, for job creation, economic development in our country. And unlike so many other elements of our immigration law, this is -- the focus isn't on the immigrant, it's on the investment.

And that's why I am so glad that were here. You know, as we were working through how to structure this, you know, if your focus is on immigration, it doesn't mean that you know economic development, and what is the right way to approach that.

I would note that California has, I think, really lead the way in trying to not abuse this program by adopting the 12 census track rule. That may not be perfect, but I think, it's a start and I give them credit for trying to make sure that the investments went where they are needed. And that may be something that we may want to look at for this next reauthorization, understanding that we're going to -- I think, continue to look at this.

You know, I was very interested, Ms. Calderon, in your testimony, and I really had never thought about the visa reserve issue. When you're oversubscribed, the issue -- I mean, these are people who want to get permanent residency in the United States. And I was interested in your comment, Mr. Gordon -- they don't have to live where they investment.

I mean, you know, they get to live anywhere in the United States, it is just do they get the visa? Is this really going to create jobs? And I am wondering, since our two-tier investment didn't really produce the result we wanted in terms of investing in a disadvantaged communities, maybe we just do visa output that put the backlog people without regard to origin.

Maybe throw out the per-country limits and say, it's going to be 2 million apiece. But if you go into a rural disadvantaged area or an urban disadvantaged area, you go to the top of the backlog. Do you think that would work Mister -- Ms. Calderon or Mr. Gordon?

CALDERON:

That it would certainly help, because obviously, the immigrant is investing to obtain the visa.

LOFGREN:

Right.

CALDERON:

And to obtain a visa in the fastest time possible, and to hopefully receive back his investment in as short a time as possible. So.

LOFGREN:

Right. But if you are the investor and you are looking at, I could be in this line for 10 or 15 years and have a guaranteed visa, or I can take a higher level of risk, but next year my family and I can get to where we want to go -- that's a balancing act, but maybe time does matter for these people.

CALDERON:

And I certainly, in our research, we are not out in the field. So I have no idea if, in fact, and they probably will be some immigrants who won't be able to afford, won't be able to obtain the funds necessary to...

(CROSSTALK)

LOFGREN:

But that's really not our question.

CALDERON:

Exactly.

LOFGREN:

That's not our -- you know, so, provided there are an adequate number of investors, we do not care if everybody qualifies. What we care about is their investment being made, right?

So, I guess that goes to the next question which, is, if we were to raise the dollar amount to where it would be to inflation or similar to Singapore, some other countries to two 2 million, say, or one and a half million, even. Do you think that we would have sufficient investment interest for the great benefit of getting a permanent residence in the United States?

CALDERON:

Again, we're not out in the field.

LOFGREN:

Right.

CALDERON:

I don't have any practical experience. It sure seems that at least based on the mainland Chinese immigrant interest in the United States that it would continue.

LOFGREN:

Finally, and I do not know that you can answer this, but I would recommend to the committee that we have some more explanation -- the exploration on this.

We have treated all investments and all job creation is identical, basically. And I don't know that that is the right approach. We have the capacity to identify a menu of investments that provide the most benefit for the United States.

For example, in rural areas, it might be certain kinds of agriculture that provide persistence employment. In inner cities, it might not be a construction project, it might be a small manufacturing project that would provide. So I am wondering, if you or some of the other academics that you associate with have a capacity to provide bang for block information to the committee as we think about what kind of guidance we want to provide to investors in these programs.

CALDERON:

Certainly seem that the easiest type of project to receive incentivization, regardless of its geographic location, would be public infrastructure projects. If anything, that -- with the increase in real estate development EB-5 funded it or otherwise, that obviously puts more of a burden on the roads -- the infrastructure. From our analysis of the drafts of last December, it appears that that would not be controversial. That we're all on board for that.

LOFGREN:

Right. I see that my time is expiring, and I will stop as a consequence, but Mr. Chairman, I hope that we can engage either in a public hearing or some small group settings open to the public some further discussion on the kind of investments we might want to incentivize that would provide lasting value to the country.

And with that, I yield back.

GOODLATTE:

And I thank the gentle lady -- no, I've had no better partner as we tried to reform this than, you Ms. Lofgren.

And with that, we go to the gentleman from Texas, Mr. Gohmert, for five minutes.

GOHMERT:

Thank you, Mr. Chairman and I appreciate you guys for being here today.

You know, just this month, this administration has seen to the release of \$100 billion for Iran's use, the largest supporter of terrorism. They have given us fair warning that they were going to increase their spending on Hamas and Hezbollah with this huge amount of money we're going to get.

Are there any assurances that if Iran decided to come into the U.S. and invest that money in the United States, that they would not get an EB-5 visa and be able to buy strategic land in the United States with the money that this administration released to them? Anybody?

COLUCCI:

Sir, I can just say that as part of our adjudication, we look at each individual who is a prospective immigrant who is participating in the EB-5 Program. We have access to a variety of law enforcement, financial and commercial databases. And we can also check intelligence community holdings right on site.

And we also do screen the funds that each investor proposes to invest to ensure, by a preponderance of the evidence, that it does come from legitimate sources. And we have extensive training in this area, and in some cases, we even engage our partners overseas to do a little bit more due diligence for us when it's a little bit up in the air.

GOHMERT:

So, if somebody is under arrest in a foreign country, has obtained their money from questionable sources, those are not people that you want to grant an EB-5 visa to is that correct?

COLUCCI:

Sir, that is correct, we deny a number of individuals who -- we do not look at. We do not trust their sort of...

GOHMERT:

Are you sure, though, that this desire to have foreign money come rushing into the United States doesn't sometimes override the desire to make sure that we really get good investors in this country?

COLUCCI:

Sir. I can tell you that the adjudicator that that we have hired are of the utmost -- have utmost professionalism and they would never, in any way, put bringing in another \$500,000 into this country above national security or criminal concerns.

GOHMERT:

OK. Well that makes me feel so much better, except the first I ever heard of the EB-5 Program. And I mean, I'm on this committee. I guess, I should have been aware, but I didn't until this story in February, exactly four years ago from Jenna Winter (ph).

It says, a former Mexican government official wanted for embezzling millions was arrested in Texas this month, then promptly ordered released by the State Department in a case that has one lawmaker demanding answers. It says, a day after pulling rank on Smith County law enforcement officials, the State Department rescinded the order, but Hector Hernandez Javier Villarreal (sic) was gone.

Villarreal, the former secretary executive of the tax administration service of Oaxaca, Mexico was arrested in November. They are on charges relating to an alleged scheme involving embezzling millions of dollars from the Mexican government. He posted \$1 million cash bond, got himself a U.S. visa, then skipped town.

The sheriff in my home county at the time said, all we did was make a traffic stop. They didn't have a front license plate. Police were given permission to search the vehicle, found \$67,000 in cash and a shotgun. We ran the check on the shotgun, then all of a sudden everybody in the federal government got interested.

But they go on to say that, the State Department intervened, sheriffs said, according to Homeland Security officials, called to tell him the Federal Diplomatic Agency had ordered Villarreal and his



wife released. Neither State Department nor officials responded to Fox News requests for comment.

Villarreal was granted a visa days after posting a \$1 million bond following his arrest in Mexico. The visa Villarreal was granted was an EB-5, which is given to foreigners who invest at least \$500,000 in a business venture. Turns out, it wasn't properly invested. And I appreciate your assurances a great deal that we would never do anything to compromise American safety.

Unfortunately, you have already done it, and I have no assurance that you are going to protect us any better in the future. And I think we ought to be suspending this program until such time we can be assured that American citizens are safe and from constituents.

As a result of this, I have heard from people in Longview, Texas that they have lost bids to foreign investors because the foreign investors were able to get sweetheart interest deals they couldn't get, so that local property was sold to foreign investors simply because they could get an EB-5 and they could get a better interest deal than American citizens could.

That's just not right. I yield back.

GOODLATTE:

The gentleman yields back. We now continue on our Texas track. And we go to the gentle lady from -- Houston, Texas, Ms. Jackson Lee.

JACKSON LEE:

Let me thank the chairman and the ranking member.

What I have heard, having heard of the -- this particular investor visa. What I have heard today from members, however, is very refreshing and very important.

As I think you've have heard a sense of strengthening and reforming, and if necessary, reinventing this investor visa. But that it does have merit. I am very sorry to hear of the circumstances that my friend from Texas just enunciated, and certainly to find someone hiding from the law under an investor visa is, for me, horrific.

But I do think Ms. Lofgren has it right that this is not an immigration visa, per se. This is an investment visa, and it has some merit. But it does not have any merit for scoundrels who are avoiding the hand of the law in their own country or would be detrimental to any of our citizens.

But if they can invest appropriately, then that would be important. I guess Texas is in the news because I am looking at a case that involved Webb County -- a facility that was supposed to be in the Hotel Conference Center in Laredo, Texas, which had a 1.4 percent unemployment rate.

That's a problem. And that was the gerrymandering; it happened to be in a case here and they had to expand to other counties to get their unemployment rate where it needed to be, Mr. Colucci.

I am to be like -- one of the questions. This is a -- I hope that you see this hearing as being helpful. And so, let me quickly ask a series of questions, because I would like for this visa to work and to work right.

I quickly want to ask whether or not you have the capacity to raise the minimum, and I didn't hear if that was asking before. I heard a million dollars, but raise a minimum investment from \$500,000 to \$1 million.

Can you do that administratively?

COLUCCI:

Ma'am, we are able to do that via a regulatory fix. The only caveat there is we have to consult with your Bureau of Labor Statistics in the State Department to do so, but we do have that ability.

JACKSON LEE:

And so, is the minimum still at \$500,000?

COLUCCI:

That is correct.

JACKSON LEE:

OK. In this day and time, even with the markets collapsing that is chump change. And I do not say that for struggling families. I say that for rich investors. That is that ancient numbers from way long time ago. So, I'm going to on the record for saying it is too low an amount.

The second is what have you been doing to avoid -- The Wall Street Journal reports an estimated 80 percent of all EB-5 projects need gerrymandering. What have you been doing in terms of reforming that or reviewing projects, and not gerrymandering and saying, you just not where the unemployment is?

COLUCCI:

Ma'am, this is something that the secretary included in his letter to the committee as a recommendation for a legislative enhancement.

JACKSON LEE:

I understand that.

COLUCCI:

And it is something that we are taking a look at to do through a regulation in which we can further define and create greater consistency with respect to how targeted areas are put together.

JACKSON LEE:

Well, I'm going to say two points, because I have Census tracks. Right now, the African-American unemployment rate, for example, nationally is at 8 percent. Last year or couple of years back, it was 12, it has been 15 percent. For unemployment youth, it's 15 percent.

And so, I would venture to say, Latinos, youth, young people fall in some of the same categories, the elderly, et cetera. There is not a lacking rural areas for places for investment that are legitimate and true, and if it is a regulatory fix, I would encourage you immediately to do two things which is the \$1 million and the stopping of the gerrymandering.

Let me go to Ms. Calderon very quickly with your business mind, and I didn't hear your specific reforms. But a \$1 million minimum investment, Ms. Calderon, a -- the gerrymandering, I've answered, but can you give me some other frameworks that would be very helpful?

CALDERON:

I think, what -- as a lawyer, might be where I feel most comfortable going and that is, in footnote 6 of our written testimony, stated, technically the statute, and this is been the 1990 statute -- authorizes a third minimum investment level, an amount up to \$3 million to areas of unemployment, quote, "Significantly below," unquote the national average unemployment rate.

JACKSON LEE:

Go ahead. Just expand. You're saying upwards of \$3 million. What is your floor though?

CALDERON:

Well, I mean, I don't feel comfortable saying that. I just think that Congress, this committee should be aware of the fact that in the actual statute, there is a provision that in 1990, believed that certain areas, there could be investment by immigrants through this program, but it should be at a higher rate.

JACKSON LEE:

A higher rate of investment?

CALDERON:

Right.

JACKSON LEE:

Mr. Gordon, do you believe that as well? Would you -- I know you had some reforms.

GORDON:

Sure. Categorically, there should be a tiered system in the market to reflect the amount of bang for the buck, as people are saying, for social value creation. In the community in which we invest, Indianapolis, Southaven, Mississippi, in the office, we just leased. We leased the ninth office of 19.

There are still 10 vacant offices; our money mean something in this community. It's not a fancy rich community. A large trucking company in the area just pulled out, and we're now hiring executives from that, people who would have otherwise lost their careers. The money matters.

And having an advantage over getting investors' attention, it matters as well. I lose interest to the vast majority of investors I interact with on a daily basis, because we are not the fancy, you know, gleaming, you know, tower in a large gateway city.

So, we need an advantage to help build America where the value will be greatest for our society.

JACKSON LEE:

I thank you. And that investment amount is what you are saying makes value and creates jobs in Census tracks that actually needed.

GORDON:

Absolutely.

JACKSON LEE:

OK. Mr. Chairman.

GOODLATTE:

I thank the gentle lady, and I note that the call to vote, if I can just for the record, Mr. Colucci. If you change the amount under your rules, what will the effect be on those 65,000 or more in line? And just as quick as possible, we're going to Mr. Marino

JACKSON LEE:

Thank you for that, Mr. Chairman.

GOODLATTE:

Yes. And I think it completes your thought.

COLUCCI:

I think, so my best answer would be that, in the past, when USCIS and before us, INS, put forward new regulations with respect to immigration, it was -- it was always prospective looking as oppose to it.

GOODLATTE:

Thank you.

Mr. Marino.

TOM MARINO:

Thank you, Chairman.

Mr. Colucci first of all, you come from one of my favorite agencies, ATFE. Did a lot of work with them over the years and great a bunch of people. But since you drew the short straw here today, I have some questions concerning my prosecutorial background.

(LAUGHTER)

And let me start out by, I was paying closest attention to Ms. Gambler's statements about, difficult to conduct fraud. Difficult to conduct fraud at interviews or investigations to talk to people.

Let me ask you this, sir. Do you actually talk to the investors? Do you have face-to-face interviews with these people as to what their intentions are and where they are coming from?

And not only the investors. I want to more specifically talk about the city officials or the county officials who keep expanding these lines out blocks, hundreds of yards, miles, to get this money.

COLUCCI:

Sir, I think my best response to that would be what -- any investor who comes in from overseas is interviewed by the Department of State prior to being allowed to enter into the United States. And often they have the investor's petition in front of him and can ask them questions, based on the evidence that was submitted.

MARINO:

OK. Did you ever go back after a certain period of time to see whose it who is employed and how many are employed, and where they are working?

COLUCCI:

Sir, we do, after the immigrant investor comes into the United States, after two years they file with us a petition to remove conditions -- in other words, so that they can be here without conditions.

We do not, as part of that, we do get the information, but we do not as part of that...

MARINO:

So, you don't go out -- you don't go out and talk to -- you don't get a list of employees and you don't these people in, or you don't go to the job site and talk to them about -- to see if they are actually there?

COLUCCI:

Yes. So what we do -- what we are about to, actually, launch something called a random site visit program.

MARINO:

OK. I understand what you're launching. And again, I'm not targeting you, per se. I'm targeting the system here.

Let's switch gears a little bit, since you're -- we're not going out and talking to the people that are supposed to be employed. Is any conversation with the officials that are expanding these boundaries and as to why they are expanding the boundaries?

COLUCCI:

Sir, I can tell you that we often -- I shouldn't say often, but sometimes field calls from individuals within the states who are putting these boundaries together. And we do point them to our regulation, which does allow them to put these boundaries...

MARINO:

OK. Let me go back a little bit. Do you have the resources to do what I am getting at? Do you have the investigators to go out and interview to see if these people are working?

Do you have the investigators available to go out and say, "I want a complete explanation as to why you are expanding these boundaries," because as a prosecutor for 18 years, I am automatically suspect of everything.

So, given that fact, don't you think someone should be looking at the dealings, the dealings between the officials that are expanding these lines, and the people that are from out of country, or even within the country, that or investing into these areas? I'm a little bit suspect as to "follow the money."

COLUCCI:

Sir, what I can tell you is prior to coming into this position that's exactly what I get for five years.

MARINO:

I know.

COLUCCI:

That was my background, is following the money, and so I agree with that assertion. That is something that that we do every day with respect to those individual petitions.

MARINO:

I'm going get -- raise the point. Is there any question -- has anyone thought about the fact that, given the -- because the cities or the counties have the authority to expand the lines, has anybody ever thought about -- is there any -- are there any -- is there any fraud taking place there?

Is there any bribery taking place there? Is there any cash exchanging hands? This is something that, I think, is just ripe for oversight and investigation that probably could turn into a criminal investigation.

COLUCCI:

Sir, what I -- I've been with the program for about two years. And what I can tell you is that we have not seen an instance of outright fraud with respect to how a particular state puts together.

MARINO:

But you do not have the resources. I'm giving you a chance here to tell me -- it sounds like you do not have the resources to look into these matters. Am I correct in making an assumption? And if you do, somebody better get off their can and fire somebody that should be doing these investigations.

COLUCCI:

Sir, I appreciate your comments and suggestions, and I would point to that we do have resource fraud detection and national security team 20 strong embedded within the program. And we also have fraud detection and national security specialists around the country and if in something did not look like it merited a criminal investigation.

I believe that would be something like graft. I believe that would be in the, in the jurisdiction of the FBI. We do have close relationships with the FBI in Washington D.C. And we certainly would not hesitate to bring that to their attention.

MARINO:

Yes. I see my has time's expired. I yield.

GOODLATTE:

Thank you. And we're going to do our lightning round, we now have the gentle lady from California, Ms. Chu.

CHU:

Yes. Mr. Colucci, I have seen firsthand how I the EB-5 Program can spur development in the community. But of course improvements must be made, especially with regard to fraud.

But just last month in California I attend a groundbreaking ceremony for a development in my district that was financed in part through the EB-5 Program. And I do believe that, that this this particular project will revitalize this area. But I am really concerned about the backlog.

I have seen -- I see that as of November 2015 there were 17,662 individuals with approved petitions. And then for the first time in 2014 annual cap on permanent residence visas for Chinese nationals was reached. With his current backlog, it may take between 6 to 7 years for these visas to become available.

So considering that the number of EB-5 visa petitions have skyrocketed, can you tell me why you think skyrocketed it? But in particular what are you doing about this backlog?

COLUCCI:

Thank you for your question. We -- I can tell you that no one in the program is satisfied with respect to where our processing times stand today. In some ways we were a victim of the success of the program just as we were transitioning the program to Washington D.C. The program truly spiked in popularity.

From fiscal year '13 to '14, we had an increase of 70 percent of immigrant investor seeking to come to the country and then another 30 percent spike between '14 and '15. And I will say, leading up to the sunset dates in September, in December of this past year. We received an unprecedented insuring applications.

We are working diligently to reduce his backlog. Last year we actually approved close to 9,000 petitions which is probably two plus years of visas. We do have a 113 or 115, I should say staff members on board right now and we hope to hire up to 171 by the end of the fiscal year.

And then just one final point in a policy memorandum that we issued in May of 2013. It allowed developers and regional center principles the ability to use bridge financing, temporary financing and replacing that with financing for the EB-5 Program. And that is because we didn't want to stand in the way. We did not want our process and cons to compromise economic development within the United States.



CHU:

You mentioned that there was a spike at that at the time of the deadline in each period. Is the fact that there is the -- are the short-term extensions that, that, that is affecting the increase in these petitions?

COLUCCI:

Yes, we were. I believe prior to the two spikes as mentioned in September and December, I believe we had about 12,000 or so pending petitions and now were in the neighborhood as you mentioned about 21,000 or 22,000. So that that greatly affected the number of filings we receive.

CHU:

So that therefore the program around are more even basis with regard to I time extensions, we might not have the spikes. I would also like to raise the issue about the fact that there are 10,000 visas but in reality the actual number of investors is far less of -- you know, because the family members are considered part that, correct?

COLUCCI:

That is correct.

CHU:

Yes. And so has the ministration explored the possibility of considering foreign investors and their immediate family members as a single unit in terms accounting the visas. We certainly see a precedent with this in H-1B program. Where you only count the actual recipient under the quota and family members are excluded from the cap.

COLUCCI:

Yes, Ma'am. That is correct as I think the chairman indicated we believe approximately for every immigrant investor about two and a half or that means two and a half or three other visas because of a spouse and derivatives or children.

CHU:

But have you considered the idea of having them count as one unit?

COLUCCI:

I am so sorry.

CHU:

There's 10,000 but in reality, if you look at the actual number of visas.

COLUCCI:

Right. There's a cap of 10,000 visas that can be issued each year. So correct.

CHU:

But the actual number of actual investors is far, far less.

COLUCCI:

It's probably 3500 to 4000.

CHU:

Exactly. Yes. Well, anyway that's my concern and I'm saying consider the possibility of counting them as one unit. And also if -- Ms. Calderon, could you -- you mentioned that the California model is a good starting place. And why is that

CALDERON:

Well, at least it sets limit on the number of census tracts that can be aggregated and it sets the number 12. We are not sure where what the significance of 12 is. But it's better than many other states where it -- there is no limit and there are no stated guidelines that, that one can objectively follow regarding the aggregation approach that is used. In terms of, of, of the comment that was made by...

(CROSSTALK)

GOODLATTE:

If you could be brief because she was going to miss her vote.

CALDERON:

Just wanted to say, in terms of the states making the determination, in states typically their economic development offices that are making these determinations and they are that the project, the capital investment made in their state.

CHU:

Thank you.

GOODLATTE:

Thank you. And I apologize, but that this is going to conclude today's hearing.

A number of things I need to ask you would all of you be willing to answer additional written questions placed by those individuals who could not be here to ask them because of the short time.

Thank you.

Additionally, without objection all members will have five legislative days in which to submit additional written questions for the witnesses and additional materials for the record that also includes five additional days. If you have anything additional to put in, including Mr. Colucci.

I thank you very much. We stand adjourned.