

Hearing Transcript

Senate Judiciary Committee Hearing on EB-5 Immigrant Investor Program

April 13, 2016

GRASSLEY:

(OFF-MIKE) would ask that Congressmen to sit at the table. I'll introduce you. I know that the House is on a different schedule than the Senate. So what we're going to do is give the courtesy of the Congressmen to testify and -- and then I and Senator Leahy will give our opening statements afterwards.

It's my privilege to introduce -- I'll introduce all three of you at one time. Congressman Bob Goodlatte serves as Chairman of the House Judiciary. He has served the 6th district of Virginia for 23 years.

As my counterpart on the House side, Congressman Goodlatte has been an indispensable partner in the fight to reform EB-5 Immigration Investor Program. He has been an advocate for putting integrity back into the program, fixing the fraud and abuse, and making sure that there's a level playing field across the country.

Congressman Goodlatte was an important part of negotiating the bipartisan, bicameral deal that we had hoped to include in the omnibus package last year. I look forward to continuing that fight with you, Chairman Goodlatte.

I have a friend of mine serving in the House of Representatives. He was there 10 years before I got there. So he's been a member of the House of Representatives for a long time.

Congressman John Conyers serves as Ranking Member of the House Committee Judiciary. He represents Michigan's 3rd district and as I indicated, 10 years before I got to the Congress. So he has started in 1964.

As Ranking Member of the -- of the committee, Congressman Conyers has been an important player in reforming EB-5 program. He was critical in gaining bipartisan support for EB-5 reform in the House and we appreciate his advocacy to ensure this program helps build communities through economic development and supports job creation.

Then we have Congressman Mark Amodei -- I hope that's right. If it isn't, correct me. Congressman Amodei served the people of Nevada's 2nd district since 2011. He's also a member of the House Judiciary Committee during the 112th Congress and is currently on the House Appropriations Committee.

In 2014 and 15, he and Congressman Jared Polis sponsored the American Entrepreneurship and Investment Act. That bill sought to make EB-5 a permanent federal program.

I . . .

LEAHY:

(OFF-MIKE)

GRASSLEY:

Oh, OK. Yeah. So Congressman Goodlatte, would you please proceed?

GOODLATTE:

Well, thank you, Mr. Chairman. As . . .

GRASSLEY:

Is your microphone on?

GOODLATTE:

It is now.

UNKNOWN:

Bob Weelis (ph) . . .

(LAUGHTER)

GOODLATTE:

Well, thank you Chairman Grassley and Ranking Member Leahy and members of the committee. I thank you for the opportunity to appear before you. It's my pleasure to be here with my colleague and ranking member, Mr. Conyers, as well as my good friend Mark Amodei - who's a former member of the Judiciary Committee.

We have not forgiven him for leaving us but we -- we welcome his input on this issue as well. And I want to thank Senators Grassley and Leahy as well as Congressman Conyers for being my partners in seeking fundamental reform of the Investor Visa Program.

Congress's goal in creating the Investor Visa Program was to create new employment for the U.S. workers and to infuse new capital into the country. And to target investments to rural American 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." That's a direct quote.

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 level that we deserve. The Immigration Act of 1990 provided that alien investors must invest one million dollars. However, DHS may - in the case of investments made in a targeted employment area, rural or with high unemployment - specify a lower amount.

Since 1990, this has been \$500,000 dollars. Finally, the Department of Homeland Security 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. Congress wanted to incentivize investment through a lower investment amount in areas with a scarcity of jobs that find it hard to attract capital.

Congress's expectation was that the vast majority of EB-5 investors would invest one million dollars. Yet last year almost all investor visas went for \$500,000 dollars.

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 one million dollars for a green card when I can get it for \$500,000 dollars?

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. Here is the 926 foot, Four Seasons Hotel and private residences at 30 Park Place in Tribeca. Which describes itself as perfectly pitched luxury that will quote, "introduce a new caliber of luxury living," end quote.

Beverly Hills Magazine says it is, "poised to be one of Manhattan's most prestigious addresses in a new paradigm in sophisticated living." Prices vary from \$2.6 to over \$60 million dollars per residence.

30 Park Place wanted to market EB-5 visas for \$500,000 dollars. However, since the unemployment rate there was only 3.8 percent, New York State developed a project map that went upstream along the East River in order to lasso enough high-end employment areas to qualify.

Unfortunately, DHS 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 more -- have to invest more, they prefer the high 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's workers 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. As the Leadership Conference on Civil and Human Rights has concluded, "projects built in neighboring, affluent areas will leave communities of concentrated poverty no better off in terms of development and infrastructure."

Let me mention two other issues. First, in instances where a project is financed by EB-5 and conventional capital, DHS allows foreign investors to receive credit for all the jobs to be created. Even those paid for by other people's money.

The 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 a project's capital, foreign investors got to claim credit for all the jobs the project was projected to create.

This practice makes a mockery of the job creation goal of the 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 a million dollars to this country."

If the EB-5 program is reformed, it can become a turbo charged engine for economic growth. I look forward to our two judiciary committees working together to achieve this goal. And again, I thank you for the opportunity to testify.

GRASSLEY:

Thank you, Chairman Goodlatte. Now Ranking Member Conyers?

CONYERS:

Thank you very much.

GRASSLEY:

Is the red light on?

CONYERS:

(OFF-MIKE)

GRASSLEY:

OK.

CONYERS:

The red light is on. Thank you very much Chairman Grassley, Ranking Member Leahy, and my former colleague Schumer. I'm very pleased and honored to be here with Chairman Goodlatte and Mr. Amodei.

Over the past several (ph) months, I've been honored to work with you and Chairman Goodlatte in a bipartisan effort to reform the EB-5 Investor Visa Program. I remain confident that we can accomplish these important legislative reforms this Congress and I look forward to continuing to work with all of you.

I've taken a particular interest in the EB-5 Investor Visa Program because I believe it has drifted from the program initially envisioned by Congress.

As a result, the communities that need investment the most, specifically rural and poor urban zones, struggle to attract investors and are unfairly placed in a direct competition with developed affluent areas.

When the 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.

To help encourage investment and job creation in rural or high unemployment areas, the EB-5 program offered a reduced investment level of \$500,000 dollars for projects in designated target employment areas - commonly referred to as TEAs.

However, as reported by the GAO academics (ph), the Wall Street Journal, and many other news sources - the vast majority of EB-5 investment funds are going to projects in some of America's most wealthy corridors.

They qualify as TEAs only by stringing together census tracts across many miles. Sometimes across state lines and often across natural boundaries such as rivers. Gerrymandering as Chairman Goodlatte referred to it.

This practice has been criticized by the Leadership Conference on Civil Rights noting that EB-5 regional set (ph) of program has dramatically deviated from its original purpose: to spur job creation and development in rural and high unemployment areas.

Steering investment to projects and our cities well-to-do neighborhoods comes at the expense of EB-5 funds for urban and rural communities. Surely this is not what a targeted employment area was supposed to mean.

The congressional district that I represent, for instance, suffers from unemployment rate of more than 300 percent the national average. I'm pleased to say that today we're starting to come back - and it is slow and we have a long way to go.

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 originally intended to help.

In closing, I wanted to dispel any notion that reforms to the EB- 5 Regional Center Program are somehow targeted at disadvantaging, more affluent urban areas. We cannot forget that there are no restrictions on where an investment may be located outside of the TEAs.

If a project in downtown D.C. wants to use the EB-5 program, they can do so without proving a connection to a high unemployment area. They would be simply required to recruit investors at a slightly higher dollar amount under our reform proposal.

The much needed bipartisan and bicameral reforms that my colleagues and I worked on last year preserve the option for investment to take place in any location regardless of unemployment or poverty levels.

However, if we're going to continue to provide an incentive for investment at a lower dollar amount for targeted employment areas - TEAs - then we must make sure that incentive works.

This can be done through a set-aside of a small but meaningful percentage of EB-5 visas that would be specifically reserved for the areas that need it most. I thank the Chairman, Ranking Member, and other members of this committee for the opportunity to testify at today's hearing.

GRASSLEY:

Thank you -- thank you Congressman Conyers. Now Congressman Amodei?

AMODEI:

Thank you, Mr. Chairman, Mr. Ranking Member. It's a pleasure to be sitting here with the two distinguished gentlemen to my right. My tenure on the judiciary committee and the House was cut short when they decided to give an entrance exam for membership and I couldn't make the grade for that. Hence I ended up on appropriations - but now with full disclosure.

Thank you for the opportunity to talk about this issue. And it is my hope in the few minutes that I have to provide some food for thought in terms of the program.

The EB-5 program is a car in need of a new set of tires. It's a car who's engine still runs pretty well. And it's a car who's paint job may need a little wax job.

But let's face it, it has created a lot of jobs. It has done so at almost no cost to the tax payer. It has done so at a time when we've struggled economically in the last few years and therefore, I would submit on a basic value judgment basis this is a good thing.

And so when we talk about what to do with reauthorization - and it is my hope that we can get there - that you talk about, "alright, what are the lessons learned in the last quarter of a century this program? What do we need to do"?

If you want to incentivize urban redevelopment, then fine - let's do that. I'm not sure this is the program to do that. Or if we're concerned about gerrymandering areas for economic activity that we want to target, that's fine.

Maybe you raise the rates, or something like that. It is my concern that -- that the perfect is becoming the enemy of the good. And so I -- I want to just throw out for thought a couple of things.

One is economic activity goes where there's opportunity. So while nobody is opposed to urban redevelopment or getting -- getting investment into rural areas -- and by the way, I come here representing an area who -- who -- who is most described as -- as rural if not in fact frontier.

They say, "well, Nevada - he must be a Vegas guy." With all due respect to my colleagues from the southern part of the state, no. I've got, you know, we say if you've just been to Las Vegas, you haven't been to Nevada.

So with that in mind, nobody would -- no district would benefit more than mine if you said, "we want some no kidding rural stuff." The challenge is how do you fashion a policy that requires investment where economic activity quite frankly doesn't compete with, for instance, the folks in the Empire State?

I'm certainly not here to be the defender of New York State. But you know what, there is an itty bitty economic activity going on there. And if they did create the jobs and it did do what it wanted to do for the economy, than I would think we would be able to find some value judgment middle ground where we can keep going forward with that.

And in that regard, that's why we took -- we took the -- the lead from some of your members that the Senator from Texas, the Senator from New York - on the -- the EB-5 Integrity Act of 2016.

Which is like nobody I think comes before it and says, "it's fine. Don't touch it. It's not -- it's not broken." I don't think it's broken. But I think it needs maybe a tune-up and a new set of tires or something like that.

The problem is as we sit here and talk about this, this has been going on for a while. And when we talk about economic activity, which is an important based -- part of our tax base, among other things.

It's like, "hey, the uncertainty and unpredictability of continuing piecemeal extensions so that people don't know what the rules are is insidious in terms of using this as a tool."

It's not the answer to all of our economic problems but it is a tool that works pretty well at no cost to the government. And so on that basis, my purpose in -- in appearing here today -- thank you for your indulgence -- is to say, "there are issues that need to be dealt with."

I think there is, for the most part, consensus amongst your organization and Chairman Goodlatte's organization on the -- on the north side of the building -- or south side of the building.

And it's -- it's -- the view from the bottom, Mr. Chairman, is, "OK. Well, let's figure out what those things are and go forward." And if the -- and if the vehicle for urban redevelopment or urban economic incentives or rural economic incentives exist elsewhere in law, then let's concentrate on that.

And -- and by the way, one of the things that I'll say and then I'll conclude is if we need to raise the limits, then -- I mean, things have changed. And so when you look at that, it's like, "fine, raise the limits."

But let's not kid ourselves. There's not a lot of mom-and-pop EB-5 eligible investors floating around. So when I hear cliches about the rich people's visa program, it's like, "well, if -- if we wanted it for mom-and-pop, it would be if you create one job."

If you invest a hundred million dollars. I mean, I think the -- the track record, as pointed out by the Chairman, is especially a lesson (ph) above is listen, "if you want to come invest and you want to create jobs in downtown Manhattan, that's great."

Guess what? The price of poker (ph) there is two million dollars - or whatever makes sense under the circumstances. But my -- my -- my request of -- of this committee and also of our side, Mr. Chairman, is let's take what works and give it a new lease on life. Let's fix what's obviously broken. If it's in this mechanism, than fine. If it's another mechanism, fine.

But let's move forward because while it's not the whole answer to our problems, it is an important piece that I think on balance, when you look back over history, has been successful.

Thank you for your indulgence and if you have any questions, I'd be happy to hang around.

GRASSLEY:

To -- to my members, they have a meeting that has to go at 10:30 so I hope you don't have -- you want to say something?

LEAHY:

No I just want to . . .

GRASSLEY:

Go ahead.

LEAHY:

I chuckled at Congressman Amodei's comment. Most of us are grandfathered in so we didn't have to take the -- take the -- take the test.

(LAUGHTER)

That's how I -- that's how I got to be the -- the senior member on appropriations as well as on judiciary.

As the Chairman has heard me say, I -- I didn't like the seniority system when I came here but I understand it a lot better now.

(LAUGHTER)

Thank you. Thank you, Mr. Chairman.

GRASSLEY:

OK. We'll -- thank you very much for your testimony. And if there aren't any questions, I don't think that will upset you. And -- and look forward to continuing to work on this.

And hopefully between now and sunset of this, we've got something that can get to the President of the United States. That's our goal. Thank you all.

While -- while Senator Leahy and I are giving our opening statements, would the second panel please come and then I'll introduce you after we're done here.

When Congress passed the Omnibus Appropriation Bill four months ago, we reauthorized EB-5 immigrant investor program for the remainder of the fiscal year. Unfortunately, we reauthorized a program that remains deeply flawed because the omnibus bill failed to include much needed reforms.

At the time, I gave a speech on the Senate floor explaining that the next few months would be spent conducting oversight of the program and exposing the truth about how it is being used.

This hearing is part of that quest. We held a hearing in February related to fraud abuse - national security vulnerabilities of the program. We heard from U.S. Citizenship Immigration Service and the Security and Exchange Commission.

At that hearing, I encouraged the agencies to do more to exercise oversight and to tighten up the program using the authority already in the law. Citizenship and Immigration Services has responded to that call and is working on regulations that will, I hope, improve the program.

I've given them several suggestions and personally expressed to Secretary Johnson my desire to work with him in that effort. Today, the committee will learn about the targeted employment areas. A term used in the Immigration Nationality Act to describe rural areas and areas with high unemployment in which EB-5 investments are made.

The law authorizes a lower investment threshold for such areas in order to incentivize foreign nationals to invest there. Targeted employment areas have been a part of EB-5 program since the beginning.

Senator Phil Gramm offered this concept as an amendment in 1989 to the Immigration Act 1990. Supporting him, Senator Boschwitz said this quote, "I see no reason to shut out willing investors while our small towns and inner cities across America are facing hard times," end quote.

He said the Gramm Amendment authorizing targeted employment areas would benefit rural areas that have difficulty attracting capital for economic growth.

Senator Paul Simon of Illinois, who served on this committee, said on the Senate floor quote, "we are mindful of the need to target to investments in 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 -- is sensitive to that in this way.

Investments in this area must still create 10 jobs but require an investment less than a million dollars. The Attorney General has authorized to set the required investment at a lower level amount but at least \$500,000.

Clearly, the closer the Attorney General sets this to \$500,000, the more we can encourage investment in these critical areas," end of Senator Simon's quote.

Though Congress intended for most EB-5 investments to be made at the one million dollar level, nearly all EB-5 investments today are made at the \$500,000 dollar level and targeted employment areas. And of course, that's just not right.

As a result, cities in Georgia, North Carolina and Minnesota compete with Beverly Hills, Miami, and New York City. It's hard for smaller states and cities to compete with the glitzy hotels and luxury condo projects.

In Iowa, we're trying to create jobs through value added agricultural, biofuels and egg (ph)-based manufacturing. Wealth investors understand that the real estate market is booming and see the dollar signs big returns and their green cards that come along.

Gerrymandering the boundaries of targeted employment areas allow very affluent areas to benefit from the lower investment threshold. Resulting in little incentive to invest EB-5 funds in distressed rural areas, as envisioned by Senator Simon, Gramm and Boschwitz.

This is done by drawing the targeted employment areas to include long chain census tracts linking the affluent area at one end with the least affluent contract or census tract, perhaps many miles away that includes low income residence or subsidized housing.

One TEA designation has an astonishing 190 census tracts covering 200 miles in Oregon (ph) cluth (ph) far away economic distressed areas. This problem could be fixed tomorrow if the Obama administration had willingness to challenge and question states.

You see, states control the designation of targeted employment areas. State officials will gerrymander the boundaries of targeted employment areas any way they can to ensure the flow of investment money into their state.

Unfortunately, the administration refuses to challenge the designations. This administration has a chance right now to change this and bring the program back to the way Congress envisioned.

Targeted employment areas are at the heart of the controversy over EB-5 and the principle reason we were unable to pass common sense reforms last year. Yet we proposed a lot of good reforms last year.

For example, Grassley, Leahy, Conyers, Goodlatte proposal for the first time incentivize EB-5 investment in manufacturing and infrastructure. Manufacturing employers create direct, long-term quality jobs in communities.

As for infrastructure, we have a lot of needs in Iowa - in the Midwest. Including rail, river transportation, waste water treatment plants and bridges. More EB-5 capital in infrastructure projects would reduce the burden on tax payers and especially when local governments are up against federal mandates.

We also proposed reallocating the visas carving out enough for a rural and high unemployment areas but leaving more than half of the visas for projects that come in at the higher investment level.

Yet the supporters of the status quo propose ideas that will continue to steer investments to luxurious real estate developments in affluent areas. They propose allowing targeted employment areas to continue to be gerrymandered based on complicated commuter patterns from remote census tracts but without evidence that the new jobs are actually being created in the communities people are allegedly commuting from.

They even propose having just one investment level which does nothing to incentivize foreign investors to put money in areas that need it. My hope is that today's hearing will shed light on the problems and why the status quo only benefits a few areas of the country.

I'm proud that we have an Iowan here today to talk about my home state. Iowa and surrounding states are at a clear disadvantage. We have a good mix of witnesses here today.

I want to thank everybody for coming and the hard work you have to put into this testimony. And before Senator Leahy speaks, I want to thank him because all last year he worked very closely with us on this project and that's very important to get anything done in the United States Senate. Thank you, Senator Leahy.

LEAHY:

Thank you. We actually do get some things done and Senator Cornyn and I have too on a number of issues. In fact, I might note that we had all four leaders of the Senate and the House judiciary committee here in the same room, on the same side of the issues - Democrats and Republicans.

Chairman Grassley, Chairman Goodlatte, Ranking Member Conyers and I are committed to bringing much needed reforms to EB-5 Regional Center Program. We all know the program is designed to bring jobs to underserved areas.

Unfortunately, it has become an unintended boom for some of the wealthiest business districts in the country. In a bicameral compromise, all four of us supported last December, it would have ushered in much needed reforms to improve the program.

It would have even included improvements requested by the Department of Homeland Security. We addressed vulnerabilities and concerns raised by the Government Accounting Office, the DHS Inspector General, and others.

Importantly, it would have restored incentives Congress created to promote investments in under capitalized locations known as targeted employment areas or TEAs.

Newspapers across the country have exposed the abuse of TEAs that have come about through gerrymandering. The abuse occurs in wealthy neighborhoods qualify for incentives intended to underserved areas.

The Wall Street Journal business friendly paper reported just yesterday that one big city developer referred to EB-5 financing as legalized crack cocaine. Developers draw TEA maps in any shape necessary to connect an affluent area with enough distressed areas to obtain discounting EB-5 financing.

The manipulation of the EB-5 program, Beverly Hills can be considered just as distressed as Detroit. Have you visited those two cities? You know what depiction (ph) that is.

And that practice has been sharply criticized by the Leadership Conference in Civil and Human Rights. It's been suggested that TEA reforms have bicameral compromise to treat urban areas unfairly.

That couldn't be further from the truth. Our reforms would reserve a relatively small number of visas for true urban poor and rural projects. Investors are often reluctant to invest in those distressed areas.

So we would allow true TEA projects to compete at a slightly reduced investment level. Up to 80 percent of EB-5 investment dollars would continue to flow into urban areas.

And we know that much of those funds would be funneled into luxury (ph) areas. But our reforms for the first time are gonna provide some meaningful incentives to invest in true urban poor and rural areas.

And these reforms have been supported by the leading industry group, Invest in the U.S.A. - IIUSA. Which is here today. But even these modest reforms were too far for those who wanted to continue driving cheap investment to wealthy projects at the expense of rural and urban poor.

Despite broad recognition our program needs reform, congressional leaders blocked our efforts in December. As Chairman Grassley said, and I agree with him, this time our House and Senate leadership failed us.

If this Regional Center Program is to continue, it has to reformed. I will not support mere window dressing. I will not vote for a continuation of the EB-5 if all it has is window dressing reform.

And I can assure you there are a lot of Democrats and Republicans who feel the same way. Proposals that do not require transparency and accountability for EB-5 project are just window dressing.

The program's in need of a blood transfusion not a band-aid. We know what's needed to repair the program. It's a long time passed the time we need to fix it. I think it's safe to say EB-5 faces an uphill battle in the Congress, in both parties, unless it's reformed.

So thank you, Mr. Chairman for holding this hearing.

GRASSLEY:

Our first witness, Mr. Healy, from Dallas, Texas. Suggested to us by our colleague, Senator Cornyn - thank you for doing that Senator Cornyn. He is CEO of Cavitas Capital Group and its family of companies.

Mr. Healy brings experience in both real estate investment and security compliance. Throughout his career, he has helped manage projects of all kinds. Previously, Mr. Healy was a senior executive at Royalton Real Estate Capital and Highland Capital Management.

Mr. Timothy Whipple joins us from Iowa. He's an attorney from Drake University Law School, 2007. As General Counsel for the Iowa Economic Development Authority, he was largely responsible for managing Iowa's EB-5 program. He has also worked as legal counsel to the Iowa Legislature for Economic Development and Tax Law.

Mr. Whipple is currently the General Counsel for the Iowa Association of Municipal Utilities. Today he brings first hand knowledge of EB-5 and particularly it's role in the Iowa economy or rural economy, as I highlighted in my opening statement.

Now we have Mr. Peter Joseph - Executive Director for the non- profit trade association known as -- I'm going to spell it out: I-I-U- S-A. Or associated -- well, here it says it, Association for the Investment of the U.S.A.

This association is a leading voice of the EB-5 industry representing over 280 regional center members of all different sizes and missions (ph). Under Mr. Joseph's leadership, the group has worked with Congress to reauthorize the program and provide expertise on how best to reform it.

Mr. Friedland is a Scholar-in-Residence, New York University Stern School of Business in the Center for Real Estate Finance Research. Mr. Friedland's extensive research and writing on EB-5 program are well known within the industry.

Previous to his work at Stern, Mr. Friedland was involved with all aspects of real estate development, financing, acquisition, and operations in corporate law. And he has a JD degree from Georgetown University Law Center.

We'll do it the way we introduced you. So Mr. Friedland and Mr. Whipple, Mr. Joseph, Mr. Healy, proceed.

HEALY:

Thank you, Mr. Chairman. And before I begin, I just wanted to take a moment to also thank you for your work on criminal justice reform in this -- this Congress. It's an issue that's close to my heart.

GRASSLEY:

Thank you very much.

HEALY:

Chairman Grassley, Ranking Member Leahy, members of the committee. Cavitas Capital Group is a leading manager of EB-5 investments throughout Texas and around the United States with more than \$500 million dollars in assets under management from more than a thousand immigrant investor families from more than 30 countries.

I founded Cavitas in 2008 at the outset of the global financial crisis. We helped create the City of Dallas Regional Center - an innovative public-private partnership.

Today we manage more than \$350 million dollars in EB-5 capital invested in more than 20 job creating projects in Dallas alone. Including several in historically underserved neighborhoods.

While not the topic today, I wanted to commend you, Mr. Chairman and the Ranking Member, for incorporating important integrity enhancements into EB-5 reform. Mr. Chairman, I have two goals today. First, my written statement offers three case studies of how EB-5 works.

Each project shows A) the power of EB-5 to create jobs and B) why TEA reform must balance the program's broad job creation mandate with the desire to drive capital to distressed communities - be they urban or rural.

I welcome the chance to talk about these projects in the Q&A. Second, I encourage you to radically reform TEA policy. The title of this hearing makes plain your view, Mr. Chairman.

That TEA designations have been abused. We can create a new TEA policy that meets your goals. From ending so-called gerrymandering to eliminating rubber stamping by state authorities to incentivizing investment in truly distressed communities.

My challenge to this committee is don't just tinker with TEA policy, reimagine it. Imagine a TEA policy that incentivizes investments in Pecos, Texas and Orogrande, New Mexico without disadvantaging Dallas and Houston and for that matter, New York City.

I suspect we agree that creating jobs in the large and medium sized urban markets where the vast majority of Americans live is a good thing. Doing so should not preclude driving EB-5 capital to distressed areas be they urban or rural.

The solution is objective, narrow, place-based criteria. TEA eligibility should be the exception, not the rule. And would be reserved for areas that are truly distressed.

Congress need not invent anything new to achieve this goal. Rather, you can craft a simple, straight forward TEA policy by adopting a tighter version of the poverty, income, and unemployment criteria used to determine census tract eligibility for the new market's tax credit program.

Specifically, a TEA could be defined as one of the following. First, a priority urban investment area would be a census tract within a metropolitan statistical area with any two of the following: a poverty rate greater than 30 percent or medium family income that does not exceed 60 percent of the state-wide medium or unemployment of at least 150 percent of the national average.

Second, a priority rural investment area would be a census tract outside an MSA (ph) that has any one of the following characteristics: a poverty rate of at least 20 percent and medium family income that does not exceed 80 percent of the state-wide income -- state-wide medium, excuse me.

For urban TEAs, the priority urban investment area idea is a more restrictive version of the severely distressed concept from the New Markets Program. Applying new markets criteria would also provide a meaningful boost for truly distressed rural areas.

Note that the proposed thresholds for TEA qualification as a priority rural investment area are lower than those for urban areas. Finally, TEA qualification criteria are inextricably linked to the minimum investment threshold for each tier if we're to have a meaningful two-tier regime.

My written testimony sets forth what I believe to be the appropriate investment amounts. Mr. Chairman, I urge you to seriously consider this TEA reform proposal. I think you'll find that it meets your goals from ending so-called gerrymandering to eliminating rubber stamping to incentivizing investment in truly distressed communities.

Thank you for your interest in the EB-5 program and the opportunity to testify today.

GRASSLEY:

(OFF-MIKE)

WHIPPLE:

Thank you. Thank you, Mr. Chairman. Distinguished members of the committee. Thank you for the opportunity to testify today on the topic of EB-5 targeted employment areas.

My name is Timothy Whipple. I'm a native Iowan. I grew up in rural Franklin County and graduated from Cedar Falls High School. From 2007 to 2011, I was legal counsel to the Iowa Legislature for Economic Development and Tax Law.

From June, 2011 to November, 2015, I was the General Counsel for the Iowa of Economic Development Authority. In this capacity, one of my duties was to coordinate the state's effort to leverage the federal EB-5 Immigrant Investor Visa Program.

The State of Iowa, through it's Economic Development Agency, has operated an EB-5 regional center since approximately 2004. The regional center was originally set up to bring Dutch dairy farmers to Iowa.

And these early efforts met with modest success. But over time it became clear that we were underutilizing EB-5. Other areas of the country were more successful at using the program to attract foreign capital and we decided to expand our regional center in order to bring that capital to Iowa for a number of reasons.

The first reason we moved forward with an expanded regional center was that we felt the state government was better positioned than local communities to deal with the legal and financial complexities of EB-5.

The second reason was that the EB-5 program seems to offer opportunities for rural areas. For example, Iowa has 99 counties and 77 of them would qualify for the \$500,000 dollar investment tier by virtue of their rural status.

Third, as the state's lead economic development agency, (inaudible) economic development authority has a steady stream of industrial projects that we thought might attract EB-5 investment.

Fourth, we felt that as a state agency who's primary mission is to benefit Iowans through economic development rather than making a profit, we felt we had the right incentive to operate a regional center.

Finally, we hoped that we could bring consistency and predictability to the use of EB-5 within the state by bringing most projects through the state's regional center.

However, the state's regional center has yet to attract the kind of capital that other states have attracted. One reason for this is that the gerrymandering of TEAs means the lower investment tier can be achieved almost anywhere.

Urban areas generally have more and bigger developments than rural areas so the capital goes there. Another reason is that because of the political incentives of state and local officials continuing to allow state designation of TEAs will almost guarantee that the gerrymandering continues.

A third reason is that rural and manufacturing economies like Iowa's don't offer the kind of flashy commercial development that affluent urban areas do. A fourth reason is that the ability to leverage indirect job creation favors affluent urban areas because of the way economic multipliers are calculated.

This makes it less efficient from a business standpoint to invest in smaller projects in rural areas. Finally, a TEA designation should be an indicator of economic distress.

The current focus on unemployment as the exclusive basis for TEA designation fails to recognize other indicators of distress such as low wages and high poverty rates.

Given all of these challenges, I hope this committee and this Congress will consider reforming the EB-5 program. Reserve a minimum of 20 percent of the annual available visas for investors who make investments in rural areas.

Stop the gerrymandering of TEAs. Use additional economic distress criteria for purposes of TEA designation. Require each individual census tract in the TEA to meet the criteria. Incentivize projects built in true distressed areas, rural and urban, that represent underserved capital markets.

Create and enforce a consistent set of national TEA standards. Create incentives for infrastructure and manufacturing projects rather than commercial real estate development.

With a few common sense reforms like these, the EB-5 program will better fulfill its original intent of creating jobs and improving distressed areas throughout the country.

Once again, I appreciate the opportunity to address the committee on this important topic. Thank you.

GRASSLEY:

Mr. Joseph and Mr. Friedland, I'm going to leave for five or seven minutes and I asked him to take over so I can go to Budget and ask a question. Hopefully I can get in line. Thank you. Go ahead.

JOSEPH:

Mr. Chairman and Ranking Member Cornyn, distinguished members of the committee - thank you for inviting me to testify today. My name is Peter Joseph and I'm the Executive Director of Invest in the U.S.A. or IIUSA.

And we're the National Trade Association for the EB-5 Regional Center Program. Prior to this role, I worked in the legal and private sectors of EB-5 before becoming Executive Director of IIUSA over six years ago.

I consider it an honor and a privilege to be here today to share my perspective with you on this important economic development program, that after years of underutilization, has become an essential financing tool in post 2008 financial crisis. Capital markets provide an economic development opportunity in diverse communities and industry sectors around the country.

Since 2008, the program's contribution of foreign direct investment has grown over 1,200 percent - from \$320 million in 2008 to almost five billion in 2015. All of this capital is being invested directly into the U.S. economy to create American jobs all at no cost to the tax payer.

So a little background on the association. We were founded in 2005. We're a national association for the -- the EB-5 regional center industry with a mission to make the program a permanent and successful part of 21st Century economic development policy.

We're a diverse organization with more than 280 regional center members and 200 associate members. Collectively representing big and small projects, urban and rural development, and industry sectors ranging from real estate, manufacturing, energy, infrastructure, and more.

Our regional center members are engines of economic growth in the U.S. responsible for the vast majority of investment capital flowing through the program.

Our operations cover advocacy, education, industry development, and research. We are big fans of and rely on the foyer (ph) process, which I know several of you are -- are big fans of as well and we very much appreciate all the work on that issue.

We advocate for policies that will maximize the economic impact of the program and for ethical standards in EB-5 business practices.

Our policy to adopt positions is comprehensive and concludes only after careful consideration of key factors including national and global industry data, existing internal-external records on relevant deliberations, feedback from our membership, committee recommendations, and our advisory board and board of directors.

We take pride in being a resource to Congress and other stakeholders from across sectors for facts - data and legal such (ph) policy analysis on the regional center industry.

We have over 10 standing committees that each have a unique role to deliberate on aspects of the EB-5 regional center industry. We've had the honor of working closely with many of your offices on EB-5 in the last several years and believe we have a shared goal in making it a more efficient and effective program.

Today's hearing on targeted unemployment areas, or TEAS, is an important opportunity to discuss a subject that is at the core with other interrelated issues that need to be considered in the context of a -- a -- a long-term reform and reauthorization package for this important program.

EB-5 has grown exponentially, as I mentioned before, and become an important part of capital markets in post financial crisis national economy that has made financing economic development

in the U.S. more complex and requiring a more diversified set of financing to make projects happen.

EB-5 has emerged as a potent tool in the development finance tool box that economic development professionals put to use to create jobs in their communities across the country.

Given the diversity of stakeholders involved in EB-5 and including in IIUSA membership, TEA policy has always been an area with diversity of opinion. Making it all the more important that we get this right when it is reformed.

Currently, the program requires an investor create at least 10 jobs and invest \$500,000 dollars in a TEA or one million dollars in a TEA. The geographic area has to consist of an area that's experiencing over 150 percent of the national unemployment rate or a rural area.

Federal regulations give states the right to determine how TEA boundaries are drawn. Similar to discretion given to states and other federal programs that use unemployment data.

USCIS, who administers the EB-5 program, reviews for proposed designations to ensure the use of most recent federal statistics. These methodologies take into account (inaudible) of inputs such as labor and other economic activity in regional economies consistent with how the Bureau of Labor statistics calculate employment and consistent with the regional economic development mission of -- of the Regional Center Program.

Over the years, many different proposals for TEAs have -- have been -- we've seen many different proposals for TEAs. Last year in supporting a process that's had a long-term reauthorization and reform package, IIUSA offered a compromised proposal to Congress on how to approach four major issues in reform negotiations including TEAs.

The compromise was supported by IIUSA's Board of Directors and Public Policy Committee and polled at our membership with about 80 percent support.

This suggestion was based on the California TEA policy that limits census tract aggregation to 212 (ph). Since offering this feedback to Congress, though, IIUSA's process for agenda setting and considering policy continues.

Next week at our annual membership meeting, we will continue our process of soliciting widespread member feedback and committee input and board approval on various ideas.

TEAs is one issue that we continue to take a close look at as the priorities of our industry have changed. The annual visa backlog for EB-5 threatens the -- the viability of this program.

There are only 10,000 visas allocated. It is a heavily backlogged line and there are now over 22,000 investors pending government adjudication that represent over 11 billion dollars in foreign direct investment.

With this growth comes need for reform whether through legislation or regulation. And IIUSA is ready to put its policy consideration process to work to consider any ideas in either of these paths to reform.

And I respectfully urge Congress to support an open process, whether it be legislative or regulatory, to achieve this comprehensive reform that's necessary for this program to continue its contribution to the United States.

I thank you for the opportunity to be here today.

GRASSLEY:

Thank you, Mr. Joseph. Mr. Friedland?

FRIEDLAND:

Chairman Grassley, Ranking Member Cornyn and distinguished members of the committee. Thank you for this opportunity. I am a Scholar-in-Resident at NYU's Stern School of Business.

Professor Jeanne Calderon and I have co-authored numerous papers on EB-5 capital. She testified at the House hearing. EB-5 capital has become the mainstream capital source to fund real estate development projects.

EB-5 serves as a government subsidy to developers because the visa motivates the investor to accept a minimal rate of return that results in a below market rate interest rate loan - a major savings to the developer.

All projects are eligible to receive EB-5 capital at the subsidized rates whether or not in a TEA. The minimum investment amount is a million dollars except if the project is located in a TEA, the amount is reduced to \$500,000.

TEA is defined as any rural location or if an urban area meets a high unemployment standard. The legislative history illuminates congressional intent.

Senator Boschwitz co-sponsored with Senator Phil Gramm the amendment that added the TEA framework to the Senate bill that became the 1990 law. 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. His aim was to incentivize investment in areas that were unable to attract capital. Senator Paul Simon expected that most investors would invest at the million dollar level.

Contrary to this original intent, under the current system all projects qualify as a TEA including those in affluent areas so all immigrants invest at the discounted \$500,000 dollar level.

Congress has the opportunity to take a fresh approach as to which location or project types should be incentivized. Congress should be respectful of but not constrained by the original intent.

In any event, we recommend that Congress test the effectiveness of any new TEA definition by mapping key areas such as Manhattan and reviewing TEA designation letters issued to the largest real estate projects.

This will increase the likelihood that the law will work to incentivize the desired locations. The census tracts should be reviewed to determine whether they would qualify or not based on these standards.

The TEA designation letters reveal the number of tracts that were combined to create the TEA. We applied the alternative TEA definitions contained in S.1501 discussion drafts to New York City because it is the epicenter of the debate.

We have compiled a database of 52 large scale EB-5 real estate projects that would raise more than \$10 billion dollars of EB-5 capital, requiring more than 20,000 investors. That translates to more than 50,000 visa applicants.

This might be a good starting point for testing the number of tracts that comprise the relevant TEA for each project. The California 12 tract approach is hailed as the model.

This is certainly an improvement over the virtually unlimited gerrymandering permitted by some states. However, we don't know how many existing large projects would still qualify under that approach.

The Beverly Hills Waldorf Astoria recently qualified under the California model and at the least suggests that further scrutiny is required. USCIS has fostered gerrymandering since 1991.

When the law was passed, it's predecessor chose to delegate authority to make all TEA designations to the individual states without any rules or oversight. The states motivated to promote economic development approved virtually every project.

USCIS has the power to correct this. It could establish uniform objective TEA rules. The individual states could continue to administer the process or it could revoke the state's authority and transfer it to the USCIS National Office as contemplated by S.1501.

As USCIS formulates ATA definition, we recommend that the effectiveness be tested by following the same approach that I outlined above for Congress to consider.

Visa reserves - the last discussion draft proposed to reduce the spread to \$200,000 dollars 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 investing in certain project types or locations may become more important than investing \$200,000 dollars less in a loan.

This becomes especially important as the visa waiting period exceeds six years for Chinese investors.

Finally, the visa reserves should be carefully coordinated with the TEA rules to make sure that the reserves don't undermine the TEA incentives, and that they work in tandem. Thank you.

GRASSLEY:

We will have the five-minute rounds of questions. I'm going to start with Mr. Whipple.

I don't have to tell you how diverse our state's economy is. Yet in a large part it's built around agricultural economy, bio-based renewable fuels, value-added agriculture and that's very different from other states and how other regional centers use EB-5.

So a very general question, but give you a chance to tell about the problems for rural America. Could you talk about the types of projects for which EB-5 funding has been considered in Iowa, how the program could better benefit the state if there were changes, and what challenges you and others in our state have faced when trying to make the case to foreign investors or companies looking to locate in our state?

WHIPPLE:

Thank you, Mr. Chairman. The challenges in rural Iowa are obviously different than in urban areas. And as you know, you've been around our state many times, one thing that I'd like to point out right out of the gate is that unemployment levels, low unemployment aren't always the best indicator of distress in some of our states where we've had real populations declining for a century. And I'd like the Committee to consider how to measure distress in rural areas in different parts of the state.

Another challenge that we've faced as a state is related to this problem of depopulation. So, as we try at the state level to recruit employers to come to the state, work force is a limiting factor. Not just capital but work force. And in an area where you have depopulation, it becomes difficult for employers to make a go of it when they don't have the work force that's available.

So, it isn't just about the capital in some areas of the state, and you have a chicken and egg problem when you can't bring jobs to a community because there are no people, so more people leave.

But you're exactly right, that we also do focus on, as a state, building out those sectors of our state's economy that make the most sense. And as the state has invested in bio-fuels, ethanol and

bio- diesel, there are opportunities to have presser (ph) development around those sectors of the economy, to move now from the investments in bio-fuels and renewable fuels into renewable chemicals and second and third-tier investments built on those initial bio-fuels investments.

Those types of -- that type of growth in our economy presents opportunities. And the state has been trying to recruit in that area. We have considered EB-5 for projects like that, for projects, large industrial projects like fertilizer plants. A couple large -- the largest couple investments in the last five years in the state have been billion-dollar fertilizer plant investments. And any time you have industrial projects that large, you want to take a look at the complicated financing and the tools available.

But it doesn't always work out. Sometimes other types of financing, and more attractive tax-exempt bonds sometimes -- there's internal capital available. These companies finance their own projects. So even once you get all the way through taking a look at EB-5 and the eligibility, and would a project make sense, sometimes it isn't a good business deal. It isn't a good economic deal.

So for those reasons, the state -- those reasons and others, the state has not really gotten off the ground with its regional center.

GRASSLEY:

Again, Mr. Whipple, in your testimony you talked about how states are incentivized to approve (ph) TEA designations. Doing so means economic growth for the state, whereas denying it brings both blowback and criticism. I'd like to have you elaborate. The question then, if the federal government were to adjudicate TEA designations, wouldn't that save states' time and resources, and especially when the federal agency can use the fees that are charged to regional centers?

WHIPPLE:

I think that would be a good idea, for a number of reasons. One reason that we tried to bring the regional center at the state level in Iowa was just for that consistency, that set of consistency. Consistency in decision making is good. And the other advantage you get from a consistent set of federal regulations is a level playing field across the country.

When you have a diverse set of decision making in local communities about how to designate TEAs, you will have wide swings. And it's well known how much pressure local officials are under to make projects go ahead. So for both the burden on a state agency and for a consistent and level playing field across the country, I think it would be a good idea to allow the USCIS to designate the TEAs or police them.

GRASSLEY:

Mr. Friedland, we have heard a lot about drawing the boundaries of targeted employment areas in such a way to include at one end a census tract and a luxurious real estate development being constructed. The other end, maybe miles away, one or more census tracts from which workers are allegedly (ph) commuting to a tract containing real estate projects.

Do you find credible claims that job creation in the commuter origin census tracts can be linked to EB-5 project miles away? And don't such commuter -- commuter pattern proposals just suffer from the same serious flaws that affect targeted employment areas gerrymandered under existing rules?

And that'll have to be my last question.

FRIEDLAND:

Thank you.

I assume the industry has determined whether large projects would qualify under that method. And if large projects would qualify, then I would question whether that is an appropriate test, because essentially you'll end up with the same result that we have today, which is a single investment level, but just changing the name.

And I think what's happening with the commuter traffic pattern as a test is, some are confusing the purpose of EB-5 and the job creation component with the TEA standard, which is intended as an added incentive reserved for a limited number of projects or locations that are most deserving, that are unable to attract capital.

So, for example, we conducted a database which I refer to in my testimony. And there are at least -- we found at least 19 projects which are aiming to raise at least \$200 million. That translates to 400 investors, at least 400 investors, which is -- translates again to at least 1,000 visa applications.

One project of that size would alloc -- would use up or absorb 10 percent of the annual quota limitation. This is at a time when there are record visa waiting lines that everyone is complaining about. So I'm not sure what the justification would be to use this limited resource, the TEA, and allocate it to these -- to large projects which are the ones that are most likely to utilize the commuter traffic pattern approach.

On the other hand, keep in mind that these large projects are still eligible for all EB-5 benefits. They get the benefit of the low interest rate loan to subsidize the subsidy, which is the purpose of EB-5. They are able to utilize 100 percent of the jobs from the project, and allocate that to the EB-5, even though, as Chairman Goodlatte mentioned, that there was one instance where 18 percent of the capital was EB-5 capital, yet it received all the jobs.

Our study showed that virtually every large project uses a -- EB-5 as a small slice of the capital stack, roughly between 10 percent and 25 percent. Yet all of the jobs are allocated to the EB-5

capital. That and -- I'm not advocating that that be changed, but I think when they push for the TEA benefit in addition to the other EB-5 benefits, it's a little bit difficult to reconcile.

GRASSLEY:

Senator Leahy.

LEAHY:

Thank you, Mr. Chairman.

I think I've made clear my concern about EB-5 and what's happening. I will ask consent that I be able to put some material in the record.

GRASSLEY:

Oh, without objection, sir.

LEAHY:

Thank you, Mr. Chairman.

I --let me ask Mr. Joseph a question. I know you're the executive director of IIUSA, Invest in America. And that's by far the largest trade industry association for EB-5. I think your membership is -- I think it's safe to say involves the vast majority of EB-5 projects. Is that correct?

JOSEPH:

Yes, sir.

LEAHY:

And you -- your organization supported our reform proposal last December, and I certainly appreciate that. Why do you believe there'd be investor interest in affluent area projects if the investment amount was \$200,000 higher than two TEAs.

JOSEPH:

Well, sir, I think that question is important in that it illuminates the different inter-related policy issues that we have here. Whether it's the amount the -- that's required of investors in particular projects, or other incentives that may include visa availability, balancing those issues to find middle ground that would allow for this balanced system of incentives is what is important.

And in -- when taking all those issues into consideration, we were carefully working with your offices to find that balance last year.

LEAHY:

Well, I know that there's a conflict idea as to what to grow -- hopefully everybody's trying to reach agreement. I don't think we have such agreement yet. Some of the reform bills I don't think go far enough. They -- including some fraud vulnerabilities. I think we -- if we're going to save the program, and I've been a supporter in the past. I would not be without reforms. It's going to have to some broad reform.

Do you -- do you -- how do you feel? Should be try piecemeal reform, if you had your druthers, or go for the real broad reform?

JOSEPH:

Well, we really see these issues being interrelated, and therefore really requiring a comprehensive approach. Whether it's the backlog of visa availability or just the backlog of investor petitions, these things are interrelated with the other reforms on whether it be TEA, whether it be issues to enhance program integrity. They are interrelated and require a comprehensive approach to make sure this program can keep providing capital to communities around this country.

LEAHY:

Thank you. And speaking of TEAs, Mr. Friedland, you had talked about this. The -- historically, these TEAs have consisted of high unemployment and rural areas. Now, try as I might I can't think of a perfect way to capture undercapitalized areas. But in our reform bill we've provided a new poverty qualifier based on New Market Tax Credit criteria. And I realize this is getting a little bit into the weeds.

But what's your bets metric for getting into these distressed or these undercapitalized areas?

FRIEDLAND:

I think -- I agree with the broad concept that was outlined by Mr. Healy, that the New Market Tax Credit approach, which takes into account poverty rates and median income. Maybe a better

approach, or at least one that should be overlaid with the high unemployment, we analyzed the proposal that was made in the discussion drafts in December, which is a variation on what Mr. Healy proposed.

We found that 67 percent of the tracts in Brooklyn would qualify under that approach, and 43 percent of the tracts in Manhattan would. However, the -- that's on the one hand, and under the approach that was suggested in the discussion draft that related to this, they also took into account the tracts that neighbor -- that were neighboring to those tracts.

But as far as what tracts are most unable to attract capital, the New Market Tax Credit approach is one that's -- that takes that into account, particularly in urban areas. In the case of rural areas, I don't believe that is as appropriate. The rural areas don't need an additional hurdle to overcome. They're unable to attract capital, and in the New Market Tax Credit program they faced a problem where rural areas are unable to attract much New Market Tax Credit capital.

In fact, Treasury commissioned a study in 2013 and this -- the conclusion was that the New Market Tax Credit approach is not attracting much capital to the rural areas.

LEAHY:

Mr. Chairman, if I might . . .

GRASSLEY:

Yes.

LEAHY:

One more question.

GRASSLEY:

Go ahead.

LEAHY:

Following up on what Mr. Friedland said, you know, harder (ph) times to (ph) get capital in rural areas. Mr. Healy, has Civitas completed any truly rural projects? And how easy was it to get investors, as compared to projects in downtown, urban areas?

HEALY:

Thank you for the question, Senator. '

The answer is yes. We have completed or are in the process of several projects in rural areas of Texas, markets like Cotulla and Snyder and Cuero, towns with populations of 10,000 or less.

LEAHY:

We have to ask Senator Cornyn where those places --

CORNYN:

You're going to have to explain where those are, Mr. Healy.

(LAUGHTER)

(UNKNOWN)

Go ahead, Mr. Chairman.

CORNYN:

They're all suburbs of Dallas.

(UNKNOWN)

Hardly.

HEALY:

No. So, the -- and to the second part of your question, we did not -- to be candid, we did not find it particularly difficult to attract capital to those projects. The reason for that is that they're good projects. My experience in marketing -- and by the way, we have about \$500 million in assets under management in about 30 projects, so our average investment is in EB-5 terms relatively small.

And that -- what that's meant for us is that we have to have -- find ways to market those products and make sure that investors overseas understand why they should invest in a small hotel in Cotulla instead of a gigantic one in Manhattan. And that's a matter of just competing.

LEAHY:

Thank you. Thank you, Mr. Chairman.

GRASSLEY:

Senator Cornyn.

CORNYN:

Thank you, Mr. Chairman. I appreciate the fact that this is the second hearing we've had on the EB-5 program this year. And I think it's shed a lot of important light on the benefits of the program, and also on the need for some reforms.

Since 2008, the program's generated \$13 billion in foreign direct investment and created thousands of jobs. And in Texas, as we've heard, the EB-5 investments account for hundreds of millions of dollars of economic growth each year, and support thousands of jobs.

We've been able to effectively use, as Mr. Healy said, the EB-5 programs to finance projects in urban areas and rural areas. And my state, Mr. Chairman, as you know, is both urban and rural. So I'm certainly sympathetic with your interest in trying to make sure that money is invested in urban and rural areas as well.

But I am particularly glad that it seems that there's a growing consensus that the goal is to amend it but not end it, in terms of the program itself. And I think part of that is the EB-5 Integrity Act legislation that Senator Flake and I and Senator Schumer and Senator Tillis have joined in, and there seems to be broad consensus in those integrity measures that would improve the program.

But I'm -- the EB-5 program represents only about seven percent of employment-based visas granted each year. It's relatively small in terms of -- compared to the 140,000 of employment-based visas issued each year. And just -- Mr. Healy, you might help me understand and -- there seems to be a suggestion, and maybe I'm over-reading this, that rural investments are inherently virtuous, whereas urban investments are not.

And I would just -- you know, it comes to mind you maybe have a ski resort or a vineyard in Napa Valley. Those would qualify, perhaps, as rural, but they're not necessarily inherently virtuous as compared to an urban investment, are they?

HEALY:

So, my experience bears that out. I'm in the middle of an investment right now in Napa Valley that will qualify as rural. It's one of the most successful hotels in California. So it -- the distinction in my mind and the goal of the proposal that I've made in my written testimony is to make the distinction between distressed and not distressed, as opposed to urban and rural.

CORNYN:

So I hope we don't get into this dichotomy between rural and urban, and urban's bad and rural's good.

HEALY:

Yes.

CORNYN:

I hope we will be more nuanced in the approach, and I've heard some of those suggestions here today. But I'm just thinking -- as I was thinking about this testimony today, I was thinking about Loving County, Texas. Loving County, Texas, is east of Wink, north of Pecos, and south of Carlsbad, New Mexico. It has 82 people in the county. Eighty-two people. More cows than people.

If the federal government were somehow to write criteria that would only allow EB-5 investments as long as it was -- that investment would go in Loving County, Texas, would it attract any investment at all? I mean, you made the point earlier, it's got to be the project itself -- it really needs to command the capital, as opposed to some mandate by Congress. Would you agree?

HEALY:

I would agree. We actually are working on a project fairly nearby there, in Orogrande, New Mexico, population 56. And I will tell you that -- Chairman Grassley asked me how difficult it was to raise the capital in rural projects. This one was a little tough. You know, getting people to understand a mining project in a very tiny community like this, it's not easy. But we got that done. It can be done. The reason is the same. It was a good project, and we helped investors understand it.

Now, we weren't trying to raise a billion dollars or \$100 million or even \$10 million. You know, we were trying to raise a relatively modest amount of money for something that's very important

in Orogrande. But if all -- if the system is set up such that investments are incentivized to be only in places like Orogrande, then it's going to be counter-productive.

In my view, we should not pit job creation everywhere against job creation in distressed areas. Both are possible and both should be encouraged.

CORNYN:

Well, and just to conclude on this, the EB-5 program has been around since 1990, but it has been rarely used before the financial crisis of 2008, correct?

HEALY:

That's correct.

CORNYN:

And in fact the 10,000 employment-based visas back in the early 90s -- only about 300 or so visas were actually used, because people had access to capital from other sources. But it's been this result of the financial crisis and the tightening of lending criteria and other things which have made the EB-5 program more attractive in terms of garnering investment capital. Isn't that right?

HEALY:

That's correct. I founded my firm around -- in the wake of the financial crisis, specifically because I learned of EB-5 capital when my industry, commercial real estate investment, experienced near-total illiquidity and you -- you know, it didn't matter if you were Warren Buffett. You weren't getting any money for a real estate deal. And we discovered this, at the time, little-known program and jumped on it.

CORNYN:

Thank you, Mr. Chairman.

SCHUMER:

Thank you, Mr. Chairman. I want to thank you and the Ranking Member for holding hearings on your efforts to improve EB-5. And as everyone knows, I've been working on reforming the program for years, dating back to Comprehensive Immigration Reform. In that bill,

Comprehensive Immigration Reform, we were very serious on EB-5. We cracked down on bad actors, increased the investment threshold.

This time around, from day one, I've been for reform and in fact all of the reform measure that Senator Grassley put in his bill, I think Senator Cornyn, Senator Flake, myself, all of those who - I don't know if Senator Tillis did, too, but he's shaking his head yes, so I imagine, yes. All of us want to do those reforms.

That's not the issue here, and it is a straw man to say, "Oh, some people are against reform." Reform should happen. And in fact, we could pass the reform measures right now, because Senator Flake has introduced a bill, which I'm on the bill. So is Senator Cornyn, so is Senator Tillis. So, yes, my notes say that -- to get the reform part done right now. We'll be all for it. It'll sail through the Senate like a knife through butter.

And Mr. Chairman, if we can't come to an agreement on the other stuff, we should do that anyway. We shouldn't let reform be held hostage to a dispute over where the money should go.

That's the issue, Targeted Employment Areas. OK. And I -- we tried to come up with an agreement. And we couldn't, but not for lack of trying. I think Senator Cornyn and I who worked very hard on this as allies, are very aware that rural areas need help. Although, remember, no poverty in the rural areas. Fancy ski resort not included in your changes. Fancy resort in some rural area not included in changes.

So, if we're caring about poverty here, which I do, what's good for the goose is good for the gander. And to say, you know, "I want to help rural areas." New York's the third largest rural population. But we've got to do it in a fair way.

The idea of the program is to help poor people. And because of the anomaly of cities, poor people don't live right next door to the project. The choice with them, and I would disagree with one of the witnesses who said, "Oh, we want to put the projects only in poor people areas," it won't happen. It's not how cities are structured. So there will be no jobs for poor people in urban areas, or making some changes that make sense.

In New York City -- I wish we had the map that Goodlatte had. Do we still have that? OK. He showed a census tract on the Lower East Side of Manhattan. He said the buildings here -- there's the census tract. Yes. Who do you think works in that building? The very people in the census tract are poor people.

How did -- where do you think people in the South Bronx, the poorest Congressional district in the country, work? They don't work in their district, in their census tract. They get on the subway and they go to an office tower. And they either clean it or serve food or do administrative work. Where do the middle class people get jobs? Same thing.

Our office towers are our factories. And just as we don't say that only the poorest parts of Iowa should get EB-5, everyone in Iowa should get EB-5, as long as poor people are felt. We should do the same thing for our urban areas. And it's not just New York City. We won't have help in

Buffalo or Rochester or Syracuse, hardly the most booming areas. They're doing better, thank God.

So, we have to have a compromise here. And I have to say that some of my colleagues were not willing to compromise. Some were. We were even -- Senator Cornyn and Senator Flake and I offered a rural set-aside so your rural areas -- this argument, rural areas can't compete with the wealthier urban areas. We were willing to set a set-aside so rural areas would get some. We were willing to do the same for Senator [sic] Conyers' provision. Things should be built in the areas.

I understand urban redevelopment. I've worked very hard. CRA does a great job at that. But, the idea that because you don't live in the same census tract or the adjoining census tract, the project's no good and it's not going to help the poor is bunk. It's an argument, it's a self-serving argument to see all of the money go to some parts of the country and not to others. I won't stand for it. And we'll be back where we were last time.

So what I would say -- my time is about to expire. In the -- I want a compromise. And we don't have to get everything, and we don't even have to keep it as it is, and certainly (inaudible) reforms. My last thing I'd like to do and say to my dear friend, Senator Grassley, is the Beatles. We can work it out.

(LAUGHTER)

So let's try to put together a compromise that can make everyone happy. No one will get everything, but we can get something done that we'd all be proud of. And that's the pitch I wanted to make here today.

GRASSLEY:

All right. It seems to me that you would want to improve the Bronx and Harlem. And you say no one will build there. You want to make them commute. Wouldn't it be better to use this project to help build up those areas that you say nobody will build there? Wouldn't you -- don't you think it'll improve those . . .

SCHUMER:

No. It just -- it's not how -- in all due respect, my dear friend Chuck, . . .

GRASSLEY:

OK.

SCHUMER:

. . . it's not how cities work. It's like saying the only EB-5 money you could get is for wheat. But you have to locate it in the corn fields of Iowa. Wouldn't you say, "Well, wheat doesn't grow there."

"Well, maybe if we had a program it would." No, it wouldn't.

GRASSLEY:

OK. Well . . .

SCHUMER:

I know you don't grow much wheat there, but I didn't know the right analogy.

GRASSLEY:

Sorghums.

Senator Tillis.

TILLIS:

Well, Senator Schumer invoking the Beatles and then that following exchange reminds me of that song by War, "Why Can't We Be Friends?"

They -- I have a -- I come from an interesting state. As a result of the last census which, for the first time in North Carolina's history, been designated an urban state, 51 percent urban, 49 percent rural. We're the ninth largest state in the nation, one of the fastest growing. We're also the ninth largest agriculture output.

So I have a state that has a lot of rural areas and growing urban areas, so I've -- I want to make sure that we get this right. It was the Congressman from Nevada who talked about, this is a car that needs a new set of tires. I think that that's a good analogy. We've used blood transfusions, everything else. But I want to thank Senator Flake for his bill. I am co-sponsor of the bill because I think it at least provides some foundational reforms that make a lot of sense.

The -- I had a question, Mr. Joseph, for you first. You mentioned a backlog of investor petitions. One thing that I'm curious about is what the nature of that backlog looks like. And to what extent does it demonstrate a backlog that would begin to show more activity in some of the areas that

we're concerned with, in some of the rural areas? And anyone else who'd want to respond to the question.

JOSEPH:

Thank you (inaudible) for the question.

So, the backlog getting very long and it very concerning for how long it can continue to extend itself until it affects the amount of demand that we're seeing from foreign investors. The EB-5 program competes with several programs around the world for the same class of investor. And it's -- and people who have been successful in their own countries and want to bring those talents and their capital here to the U.S.

We have 22,000 investors waiting for their initial applications to be adjudicated. And that was as of January of this calendar year, so that number is likely higher now. In addition to the line that's already there for actual visas, we have a line that's getting close to a decade long for investors. And it's another symptom of a system that needs to be addressed. And capacity needs to be addressed as part of efforts to reform this program so it can have the economic impact that we, I think, all share the goal that it can have.

TILLIS:

Mr. Friedland, the word is that the vast majority of the EB-5 activity is located in roughly three areas of the country, New York, California, and southern Florida.

Have -- has there -- are you aware of any research that would say, but for EB-5, that economic activity wouldn't have occurred, or, you know, give me some sense of, you know, how -- first off, what's the rational basis for being that way other than the program's allowed it to be that way. What can we learn from how these areas have clustered? And I guess to a certain extent Texas, but mainly in those three geographic areas.

FRIEDLAND:

As far as

TILLIS:

Hit your button. Cool.

FRIEDLAND:

Thank you. As far as the clustering of projects in those areas attracting the capital, there are other areas as well. San Francisco, Seattle. But as far as the cities attracting the capital, that's where the largest projects are located. The biggest developers are there. They are able to afford the -- and have the equity necessary to build the large projects. And there are a number of instances where the projects have been fully funded without EB-5 capital. And because USCIS rules permit those -- the jobs to be credited to the EB-5 capital, the EB-5 capital can come in to replace the capital, the other capital as well.

TILLIS:

Which is what I was getting to.

Mr. Whipple, I served in the state legislature before I came here. And I know that you served in Iowa, or you were in Iowa. The states have a lot of attention, particularly those states that have large rural populations with unemployment and poverty problems. We have a series of layers and layers of economic incentives that are biased to the rural areas already.

To what extent should some of our attention be to better engage the states in terms of collectively making it more -- or maybe there's -- if there's evidence that already supports this, but making it more attractive for some people who may be thinking about an urban center to move out into some of the outer rings, based on other things that they may be able to pull together to make their projects work?

WHIPPLE:

I think it's important to engage the states, your state economic development agencies and commerce departments, to do an analysis of what's going to work in any given state.

The perspective that I have from Iowa is that commercial real estate development isn't the sweet spot for us. Luxury hotels, not the sweet spot. Tourist destinations, not the sweet spot. So we're focused on large industrial projects, manufacturing, advanced manufacturing, bio-processing. And the investors in this program seem to better understand commercial real estate development or seem to prefer those projects than they do fertilizer plants or bio-processing.

So, I think you need to understand the natural advantages in any given state, and where that state's trying to grow, and what its objectives are.

TILLIS:

Thank you. Thank you, Mr. Chair.

GRASSLEY:

Senator Klobuchar.

KLOBUCHAR:

Thank you very much, Mr. Chairman. Thank you, all of you. We've had a lot of attendance here, so that's good.

Before turning to EB-5, I just want to mention one other program that is often mentioned in conjunction with it, and that's the Conrad 30 program which allows doctors who are trained in the U.S. to remain in the country after completing their training if they practice in under-served areas, such as rural communities. And the program was set to expire last year.

With the help of Chairman Grassley and Ranking Member Leahy we were able to include an extension through September 30th of this year. We have a bill to improve it (ph), and I hope we can reach some kind of compromise to get that done. It's a different -- a completely different program, but it's an example of something that's been very important in the rural areas where we don't have enough doctors. And these are doctors that have been trained in our country.

Mr. Whipple, the EB-5 program brings investment into areas of the United States for the purpose of stimulating job creation, and the Targeted Employment Area designation is intended to encourage investment where it is often more difficult to attract traditional financing. That's, of course, rural and high unemployment, as we've been discussing here.

Are we seeing TEA-designated investments going to areas we would traditionally consider to be rural or high unemployment? And currently what percentages of projects are on rural TEAs, and what percentage in high employment (ph) TEAs?

WHIPPLE:

So, the perspective in Iowa, and then I really can only speak for the Iowa regional center. I don't track the national trends on rural versus urban. Perhaps Mr. Friedland would be able to speak to that.

But we see some interest in Iowa for very small projects, for retail businesses, for strip malls, even. They tend to be too small for a program that's this complex in its overhead with immigration and securities, and a lot of compliance. So, from an economy of scale perspective, it really works better on bigger projects. And a lot -- as you know, from Minnesota. A lot of projects in rural areas aren't large.

But I would also say that, even in Iowa, we see projects coming up from our commercial centers. And they aren't large commercial centers like Dallas or New York, but in Ames and Iowa City, we have interest from folks who have immigrated to Iowa. They'd like to be able to use the program. But even they're not going to rural areas of the state, like Fremont County, . . .

KLOBUCHAR:

OK.

WHIPPLE:

. . . to try to take -- to bring those projects there.

KLOBUCHAR:

Does anyone have the -- thank you for that perspective. Does anyone have the percentages, or . . .

FRIEDLAND:

No data is available. The individual states do not release that data and it is impossible to draw any conclusions about that.

KLOBUCHAR:

So do you think that we could do a better -- oh, did you want to answer, Mr. Joseph?

JOSEPH:

Well, there is diversity in the tons of projects that we see, whether it's location or industry sector. But it doesn't preclude us being able to do better here. And I think the point that

KLOBUCHAR:

Going -- go ahead.

JOSEPH:

Oh, please, please.

KLOBUCHAR:

Well (ph), along that way do you think we could track job creation better as well in addition to the diversity of the location?

JOSEPH:

That -- we would welcome a more robust reporting of economic impact from the federal government on this program. But we've taken it upon ourselves to do the same thing by using information that we glean from Freedom of Information Act requests, collecting information about projects around the country, getting feedback from our members. And we've conducted peer-reviewed economic impact studies and are in the process of doing the same thing for some more recent data.

But it really showed that this program does have a diverse stakeholder community, and it's reflected in our membership. And it's why compromise and a comprehensive approach is so important to get this program working in the years ahead.

KLOBUCHAR:

Thank you. I agree.

Now, both -- our legislation proposed by Chairman Grassley, Leahy, and also of the legislation proposed by Senators Flake and Schumer, Cornyn and Tillis, creates some additional screening and oversight to make sure that applicants are not abusing the system or a threat to national security.

How prevalent are fraud and national security problems in the program? Do you have any data on that, as that has been raised as -- Mr. Joseph.

JOSEPH:

And so, while we don't have specific data on that, we have seen a far more robust interagency collaboration among USCIS and other regulators and law enforcement entities that have improved and made -- have deterred any additional fraud cases from coming to bear.

But it's -- we don't have statistics, but it's important that we get the legislative part of it correct, as well as encouraging and supporting the right regulatory and oversight responsibilities among the right agencies, too. It's a complex program that touches on a lot of different agency jurisdictions.

KLOBUCHAR:

But no one has objections to these proposals, in the two bills on this particular issue. OK.

All right. Thank you very much.

GRASSLEY:

Senator Flake.

FLAKE:

Thank you, Mr. Chairman. Thank you for your testimony here. And I share the view that's been expressed here, that we can find the compromise here and keep this program going.

Mr. Healy, you touched on commuting patterns in your testimony. How have they been relevant to your work?

HEALY:

They're very relevant, Senator. We've -- in Dallas, you know, we've done -- I'll give you an example. We've invested in an assisted living facility that's in a pretty nice part of town. But I can tell you that the workers who staff that facility do not live in the area. They commute. You know, I think probably most of the staff members who are in this room commuted through 30 or 40 census tracts to get here from the suburbs, you know, if that's where they live.

Commuting patterns are a very, you know, legitimate, reasonable thing to take into account with TEA policy.

FLAKE:

Yes.

HEALY:

Now, I think there's a way to do that, but in the proposal that I've made here, I've suggested something different. But I think there's no reason why you couldn't.

FLAKE:

In your testimony, you mentioned a couple of cases, case studies. One of them was an EB-5 investment in Dallas, surrounding Paul Quinn College. Could that have happened without EB-5?

HEALY:

The answer to that question is maybe. Paul Quinn College is located in one of the toughest areas of southern Dallas. It's a food desert. It's a transportation desert. We've been working on this for some time. This is a historically black college that was on the brink of failure nine years ago, before their very dynamic current president took over and turned it around in a very remarkable manner.

And now this project is the first phase of his vision to make the college campus the anchor for the revitalization of the entire Highland Hills area.

FLAKE:

Yes.

HEALY:

We've cobbled together seven sources of capital to finance this, some traditional bank debt, most non-traditional. We have a double bottom line investment fund that I manage, as well as other philanthropic capital for the non-profit components.

The EB-5 capital, though, is the most flexible. It's the grease that makes it happen. Now, if it just went away, am I going to abandon this project? No. We're going to find a way. The way is probably going to either include philanthropy, which is very, very scarce, or tax dollars which, in contrast to EB-5, you know, costs taxpayers nothing.

FLAKE:

Right. Those taxpayer dollars are scarce, let me tell you right now.

Mr. Joseph, in your testimony, you mentioned that, quote, "economists look at surrounding communities when they calculate the economic impact of a business or economic development of a project. For example, although a construction worker is employed at -- in a project in one area, they're likely to live in a different census tract than which -- than that that they were employed."

What are your feelings on this? Do you agree that this should be taken into account, the so-called commuter patterns, when defining a TEA?

JOSEPH:

That's a -- thank you for the question. So, commuting patterns are part of a discipline in -- academic discipline on regional economic development. And in the current TEA policy, the Bureau of Labor Statistics provides guidance on how to aggregate certain census tracts or other geographic subdivisions into regional economies, and commuting patterns being one thing that connects those things. There are other things that come into the equation, but it's essentially inputs into the economic activity that is measured in how you define what kind of . . .

FLAKE:

So, how important an input is that?

JOSEPH:

It's one of many, and it's an important one. But it's part of, I think, a menu of important considerations. And I think we've heard some other ones here today that, you know, are an important part of the discussion and how we get to TEA policy (inaudible).

FLAKE:

All right. Let me just ask, does IIUSA support an increase in the EB-5 visa cap?

JOSEPH:

Yes, sir, we do.

FLAKE:

OK. Thank you, Mr. Chairman.

GRASSLEY:

Senator Blumenthal.

BLUMENTHAL:

Thank you, Mr. Chairman. And thank you all for being here today.

I believe, as I've stated before, that this program is in need of constructive change, but should not be ended. In fact, mend it but not end it. So I'd like to know, from each of you, what you think the most important, say, one to three changes are to improve this program. Mr. Healy?

HEALY:

The most important changes that we need to make are, I think, first addressing the topic of today's hearing.

We need to get TEA policy right. I think we need objective criteria that are easily understood, that cannot be gamed, so that we can move past that conversation. Because the really important thing here is making sure that the program is maximized in its effectiveness at attracting capital and creating jobs in this country. That means getting the investment levels right, as I've discussed in my written testimony. And it also means addressing the capacity problem that we have.

The reason that there's a backlog is that this policy is working. We are attracting billions of dollars of capital that does not cost taxpayers a dime. Where that money goes is very important, and we should have that discussion.

BLUMENTHAL:

And should those rules be legislated or applied administratively, in your view?

HEALY:

I think some of them will need to be legislated.

BLUMENTHAL:

Thank you.

WHIPPLE:

Senator, if I had to choose three, I would urge to create a reservation in the number of visas for investors who invest in rural projects. For a state that has vast tracts of rural areas, that's really important to us.

I would also urge you to take a look at the way the TEAs are designated and managed, either by moving the designation up to the federal level, or by putting curbs on it that place some rules for the road, if you will, at the state level for your state commerce and economic development agencies.

And then I'd also like to encourage you to take a look at putting an emphasis on real infrastructure and industrial projects so that some of the capital goes to improvements like that, rather than just having EB-5 be a commercial real estate development tool.

BLUMENTHAL:

Mr. Joseph.

JOSEPH:

Yes. So, getting the incentive policies correct, which is TEAs and its related policy issues, minimum investment amount and -- or otherwise right is extremely important to the capacity issue so this program can continue to deliver capital for job creation around the country is very important.

And then the rhythm (ph) and how these reforms are implemented and to make sure that there is a reasonable effort to minimize any interruption of the ongoing economic development and job creation activity while new reforms are put in place. And all of this is to lead to a long-term reauthorization, which is the certainty that is really needed for this program to be able to have business planning around it, and the resulting economic impact that we're all seeking.

BLUMENTHAL:

Thank you. Mr. Friedland.

FRIEDLAND:

Thank you. I agree with the others.

What I want to clarify is with respect to the commuter traffic patterns. I agree that the job -- that reflects where the jobs are coming from. My issue is whether, when you have a limited incentive, whether you would want to allocate it based on that, because the result -- the logical extension of that is that you would end up with a single investment level. So there's no point in having a TEA.

As far as the minimum investment amount, I think the key is the spread between the TEA amount and the non-TEA amount. I -- the spread currently is \$500,000, but reality is zero. If you applied simple inflation, you get -- it would increase from \$500,000 to about \$900,000, and from \$1 million to \$1.8 million. I think that is clearly too wide a spread, and the \$500,000 spread is -- might be too wide.

Because it's -- what -- the delicate balance is achieving a level that's going to incentivize investment in the areas that you wish to incentivize, and make sure that the program doesn't

revert to the state that it was prior to 2010 when it was underutilized. So it's a -- that is a challenge.

And lastly, the visa reserve is obviously a critical aspect of this. And the -- when you just determine which projects or locations deserve that priority, you have to be -- I would suggest that you need to be careful to consider whether that runs counter to the TEA, or whether you have a consistent position. Because it would be a shame to create an incentive to direct investment to certain areas on the one hand, and then on the other hand a visa priority which undermines that.

BLUMENTHAL:

My time has expired. This topic is somewhat complicated, but the responses that you've just given, very helpful and insightful answers to my questions, suggest to me that reform is possible without completely trashing this program, that we can sustain it but improve it. And that the suggested improvements are in fact eminently feasible and practical to achieve without a lot of the political maelstrom that often characterizes efforts to move forward in the United States Senate.

So I want to thank you for being here today. If we can get this right, it will be a way to, in fact, produce investment cost-free to American taxpayers, investment in jobs and economic growth that particularly benefits my part of the country. When I say my, I mean the -- Connecticut and the Northeast, but many other parts as well. So thanks for your constructive contribution today.

Thank you, Mr. Chairman.

GRASSLEY:

Thank you, Senator Blumenthal. I'm not going to keep you forever. I'd like to ask a couple more questions.

I'll go back to Mr. Friedland. EB-5 investors are allowed to take credit for jobs their investments did not create. In 2013 Homeland Security Inspector General concluded that agency regulations allow investors, quote, "to take credit for jobs created with U.S. funds, making it impossible for the agency to determine whether foreign funds actually created U.S. jobs," end of quote.

The Inspector General described how in one case it reviewed the regional center and was able to claim 100 percent of the projected job growth from a project to apply towards its foreign investors, even though the foreign investor investment was limited to only 18 percent of the total investment in the project.

In 2015, the Government Accountability Office agreed that the agency's practice of allowing EB-5 investors to claim all jobs created by the project, funded by both EB-5 and non-EB-5 money, quote, "can inflate the job creation benefit of immigrant investments."

Do you agree with me that we should terminate this practice or at least put a cap on the percentage of jobs estimated to be created by non-EB-5 funds in order to meet the job creation requirement?

FRIEDLAND:

I don't believe the statute addresses how the jobs are to be counted. I believe that, when the program was underutilized, USCIS promulgated rules that would stimulate and promote the program. And as a result, they allowed 100 percent of the jobs to count, even if EB-5 capital accounts for less than that. Back then, the program was underutilized. Now that it is at a high capacity, that might be examined. I think it's difficult to demonstrate whether or not the EB-5 capital is the driving force, as Mr. Healy said.

As far as EB-5 capital being the grease to move the wheels, mezzanine financing which is providing for a portion of the capital to be allocated by EB-5, is what -- is a common technique in conventional real estate financing.

But as far as the jobs being counted, that does -- that is providing a higher percentage than that provided by the EB-5 capital. Nevertheless, that is what is -- has caused the program to prosper.

GRASSLEY:

Thank you.

Mr. Joseph, as you know, the bill that Senator Leahy and I introduced last year -- that was S. 1501, includes extensive reforms designed to improve integrity. These include expanded regional center reporting requirements, background checks on regional center officials, and new authority to deny petitions and regional center applications for fraud, criminal activity, or threats to national security. A lot of those provisions, with some modifications, were just copied from our bill and introduced last December by Senators Flake, Schumer, and Cornyn, as 2415.

It -- is it enough to address just EB-5 program integrity without addressing Targeted Employment Area reform, as the Flake-Schumer-Cornyn bill does?

JOSEPH:

Thank you, Mr. Chairman.

First, we're very appreciative of any and all efforts to improve program integrity in EB-5 and, you know, our members put a lot of risk on the line and expect the industry to operate at high ethical standards. And that's something that we support.

But there are some other issues, whether it be TEAs and its related policy matters, capacity or otherwise, that really require our collective energy to find a solution. And so, we would urge this Committee and Congress to take a comprehensive approach to making this program work for the next 20 years or so, since it's been in existence.

GRASSLEY:

Mr. Healy, in my opening statement, I criticized a regional center for gerrymandering and using 190 census tracts to steer EB-5 money to a hotel in an affluent part of Laredo. Do you agree that the Laredo project is in a gerrymandered TEA?

HEALY:

Mr. Chairman, thank you for the question. I appreciate the opportunity to address what I think is a very misunderstood effort here.

Laredo, Texas, is located in . . .

GRASSLEY:

In other words, you disagree with me. You go ahead and answer, but I -- you disagree with my . . .

HEALY:

No. No, actually, I don't.

GRASSLEY:

OK.

HEALY:

I don't. But I want to -- I think it's important . . .

GRASSLEY:

You're (inaudible).

HEALY:

. . . because it actually highlights a point that Mr. Whipple made, which is that unemployment is not the only measure of distress.

Laredo, Texas, is located in Webb County which is among the poorest counties in the United States. Average household income in Webb County is \$28,000. Twenty-eight thousand. Now, to -- we work with the City of Laredo to try to attract foreign direct investment through EB-5 to Laredo. And you're not going to get me to apologize for doing whatever I need to do within the rules to attract capital to a county with a household income of \$28,000.

So I think that that reveals not a problem with Laredo, a problem with -- but a problem with how TEAs work.

GRASSLEY:

Thank you for that answer. That will be my last question. We may have some questions asked in writing, not only from me but other people. But before we adjourn the meeting, not for the -- for the panel, but I'd like to include a number of letters in support of reforms of Targeted Employment Areas.

We have a letter in support from a New York investment group which supports limiting TEAs to a single census tract. We have a letter from a company that is a joint effort between Texas oil and gas interests and Iowa agriculture. This company is hoping to utilize EB- 5 dollars for the development of methanol. It encourages Congress to expand the program to other sectors, such as manufacturing.

We have a letter from Bluegrass International Fund, Kentucky, who -- which supports the Grassley-Leahy proposal to carve out 2,000 visa for rural areas. We have a letter a developer of senior assisted living facilities, supporting limited census tracts to actual project site census tracts, and any tract contiguous thereto. This Texas- based organization explains how rural areas face marketing challenges in China.

We have a regional center in Washington State who says, without significant revisions by Congress, the program will die. The operations suggest overhauling the visa allocations so that they're equally distributed between TEAs and non-TEAs. We have a letter from a regional center in North Dakota and Minnesota for -- urging Congress to bring back the program to its original intent. This Midwest regional center says marketing agents prefer large coastal projects because they're easier to sell abroad.

And obviously I now ask unanimous consent that the letters from various stakeholders are submitted into the record.

I thank our witnesses, both Congressmen as well as our citizens today who have testified. I think this dialog on this part of the program must continue. I know that there will be disagreements after today's hearing, but I hope we can find a way forward on this issue as we look to reauthorize.

If the program is to continue we need reforms in the area we discussed today, but also on broader management of it. We need to make sure that every dollar can be sourced, that investors are protected, that jobs are truly created, that national security vulnerabilities are eliminated. There are serious implications if we allow this program to go unchecked and unchanged.

The hearing record will be open for one week for members' statements and questions to witnesses, as I already suggested to you.

Thank you for coming. And the hearing is adjourned. Thank you all very much.