AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Statement of the American Immigration Lawyers Association

Submitted to the House Judiciary Committee Hearing on: "The Department of Homeland Security's Proposed Regulations Reforming the Investor Visa Program"

March 8, 2017

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The American Immigration Lawyers Association (AILA) respectfully submits this statement to the House Judiciary Committee. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 14,000 attorney and law professor members and we take this opportunity to lend our expertise in this complex area. AILA is committed to advocacy in furtherance of workable reforms to the EB-5 Regional Center Program (EB-5 Program). Our work is premised on the belief that the EB-5 Program admits immigrants who are valuable to the U.S. economy consistent with a core objective of our immigration laws.

After the EB-5 preference category was created in 1990, legacy INS published comprehensive implementing regulations in 1991. In 1994, legacy INS published final regulations implementing the creation of the regional center pilot program enacted in 1992. In the intervening period of over 20 years, the EB-5 Program has evolved and matured. In the past twelve years, prompted by the dearth of traditional capital during the economic downturn, the EB-5 Program has experienced what may be characterized as explosive growth. EB-5 capital now sits alongside traditional commercial debt and equity as a viable funding source for projects across the United States. EB-5 investment is put to diverse uses, from rescue capital for troubled manufacturing businesses to a key capital portion for multibillion dollar developments.

The EB-5 Program has burgeoned well beyond the bounds of what the original Congressional architects could have imagined in 1990. Our laws and regulations, however, have not kept up with this growth. To allow the EB-5 Program to continue to serve the U.S. economy, we believe EB-5 reform must contain the following elements:

- Reasonable oversight of program participants;
- Protection of good faith investors;
- Expanded visa capacity;
- Long-term EB-5 Program reauthorization;
- Measures to ensure integrity and efficiency in USCIS adjudications ;
- Transition period for current projects, or at minimum, prospective effective date;
- Targeted Employment Area (TEA) reform minimizing harms of disruption;
- Investment amounts adjusted to maintain investor demand; and
- Comprehensively reform the EB-5 Program.

Our vision for this valuable program is one where the EB-5 Program would be efficiently regulated for high quality participation, promote economic growth in both established areas and areas in need of investment, enjoy champions in Congress and communities across America, and be a vibrant and permanent part of our immigration laws.

In our view, the Department of Homeland Security's Notice of Proposed Rulemaking (NPRM) and the Advance Notice of Proposed Rulemaking (ANPRM) both published in January 2017 fall short of the elements of needed reform.

Significantly, the proposed investment requirements in the NPRM would raise the current requirement almost 400 percent. Most EB-5 investments today qualify at the TEA level of $500,000. Under the NPRM, a majority of these projects would cease to qualify at the TEA level and would be required to meet the new non-TEA investment amount of $1.8 million. The Department of Homeland Security states that it cannot measure the impact of this change. It is unclear whether a study can, in fact, be undertaken to measure the impact of this change. However, a change of this scale will chill U.S. investor visa demand to a significant degree. The consequence is diminishment of EB-5 capital into the U.S. economy, stymying a central objective of the EB-5 Program and our immigration laws.

Equally important, the NPRM and the ANPRM bifurcate rather than combine needed reform elements. The NPRM is notable for its reform of TEA and investment amounts; but oversight, investor impacts, and proposals for improved adjudications are relegated to the ANPRM. It is unclear why USCIS bifurcated treatment of these equally weighty areas. EB-5 Program reform should be fashioned comprehensively so that the changes to the program address interconnected

impacts, provide orderly implementation, and minimize transition costs to government and the private sector.

For USCIS to meet the challenges of the EB-5 Program's growth and maturity, Congress must pass comprehensive EB-5 reform legislation. The Department of Homeland Security has indicated to Congress that it needs additional statutory authority to effectively oversee the EB-5 Program. We agree with this view and believe that proposed regulations under current laws, including the NPRM, will fall short.

Additionally, proposing regulations when the EB-5 Program requires reauthorization in less than two months is premature. The EB-5 Program will expire with the current continuing resolution on April 28, 2017. The proposed regulations in the NPRM may, therefore, be superseded by new laws that may be enacted weeks after the comment period closes on April 11, 2017. The timing of the NPRM is out of sync with the legislative process, as the proposed regulations may well be mooted.

For these reasons, we stand with other EB-5 industry organizations in requesting that the NPRM and ANPRM be withdrawn for further consideration. In their stead, comprehensive EB-5 legislation that reforms the current EB-5 Program to ensure it continues to stimulate the U.S. economy by creating jobs and attracting foreign investment is urgently needed. AILA looks forward to working with the House Judiciary Committee to reform and improve the EB-5 Regional Center Program.

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