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## **Statement of the American Immigration Lawyers Association**

### **Submitted to the Senate Judiciary Committee for the Hearing: “The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?”**

**February 2, 2016**

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The American Immigration Lawyers Association (AILA) respectfully submits this statement to the Senate 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.

Since its creation nearly 25 years ago, the EB-5 Regional Center Program (Regional Center Program) has played a vital role in stimulating economic development, investment and job creation throughout the United States. During the recession, EB-5 capital provided a viable financing option when conventional domestic capital was limited and costly. EB-5 capital continues to fuel job creation and investment in the United States. A recent Brookings report shows that the EB-5 program has created over 85,000 full-time jobs since 1990.<sup>1</sup> In fiscal year 2014 alone, the EB-5 investor program brought in at least \$2.5 billion in foreign investment.<sup>2</sup>

EB-5 regional centers have facilitated financing for projects in underserved areas like Pima County, Arizona. For example, the Green Valley Hospital project had encountered challenges securing the \$79 million needed to complete construction of the regional hospital. EB-5 funding provided \$56 million to the project, about 70 percent of the total financing needed. EB-5 capital

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<sup>1</sup> [http://www.brookings.edu/~media/research/files/reports/2014/02/05-eb5/eb5\\_report.pdf](http://www.brookings.edu/~media/research/files/reports/2014/02/05-eb5/eb5_report.pdf)

<sup>2</sup> [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526\\_performance\\_data\\_fy2015\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_performance_data_fy2015_qtr4.pdf)

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made the hospital a reality, creating a health care facility for patients who previously had to travel 30 miles to the nearest hospitals in Tucson.<sup>3</sup>

In Vermont's northeastern region, the loss of manufacturing, lack of infrastructure, and difficulty in obtaining investment capital, resulted in the state's highest unemployment and lowest wage rates in the 1990's. The Jay Peak Ski Resort, one of the single biggest projects in the country ever financed by the EB-5 program at a cost of over \$785 million, helped stimulate and modernize the region's previously flagging economy.<sup>4</sup> In 2015, Vermont's regional center program with Jay Peak as its premier project had well over 1,000 investors and with the jobs they created, has been an important factor in spurring the state's economy.<sup>5</sup>

Created by Congress as a pilot program in 1992, the EB-5 Regional Center Program needs to be reauthorized periodically to ensure its continuation. In December 2015, Congress reauthorized the program through September 30, 2016. As Congress considers legislation to reauthorize the program, AILA recommends the following:

**Regional Center Program Integrity:** AILA supports measures that will enhance Regional Center Program transparency and fraud prevention. These measures must be balanced with provisions ensuring due process protections.

**Indirect Job Creation:** Typically EB-5 commercial enterprises are not operators of job creating businesses but funding vehicles for job creating businesses. Current law and regulations allow job creation to be measured by methods that are well-established in the econometrics field to calculate direct and indirect jobs. These methods are not particular to the Regional Center Program, but rather are commonly used for economic impact modeling by governments and private actors. Indirect job counting should continue to be allowed under any new proposal.

**Targeted Employment Area (TEA):** TEAs were created to encourage investment in rural areas or areas with a high unemployment rate of at least 150% of the national average. Recent proposals have sought to incentivize EB-5 investment in both economically challenged areas and non-distressed urban areas that have driven EB-5 Program's growth in recent years. It is essential that future proposals strike a balance of incentives so that the EB-5 Program can continue to attract foreign capital that in turn creates jobs in the U.S.

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<sup>3</sup> [http://tucson.com/news/business/green-valley-hospital-s-foreign-investors-get-green-cards-in/article\\_7cd4a4cd-dc84-5865-903c-91555b7395d6.html](http://tucson.com/news/business/green-valley-hospital-s-foreign-investors-get-green-cards-in/article_7cd4a4cd-dc84-5865-903c-91555b7395d6.html)

<sup>4</sup> <http://www.americanimmigrationcouncil.org/special-reports/new-american-investors-making-difference-economy>

<sup>5</sup> <http://accd.vermont.gov/sites/accd/files/Project%20Contact%20List%201.13.pdf>

**Visa Backlogs:** The Regional Center Program's success as a job creation and financing vehicle for U.S. projects faces a serious threat from a growing visa backlog. Currently there are approximately 20,000 pending EB-5 petitions that will create a backlog of approximately 6 to 8 years. The number of pending petitions speaks to the success of the EB-5 Program, but investor demand will dwindle when the visa backlog emerges. Reauthorizing legislation for the Regional Center Program should provide a solution that reduces this backlog.

**No Retroactive Application of New Laws:** AILA opposes the retroactive application of any changes that may be made to the Regional Center Program based on the principle of ensuring basic fairness to Program applicants. If a new law with any substantive change were applied retroactively, many existing EB-5 petitions would be denied. Significant harm to thousands of investors and ongoing U.S. projects would result. We encourage Congress to ensure prospective application of any new law reauthorizing the Regional Center Program.

AILA looks forward to working with the Senate Judiciary Committee to reauthorize the EB-5 Regional Center Program and make it even more helpful and beneficial to our economy.