



EB-5 Immigrant Investor Program Stakeholder Engagement

Miami, Florida

July 28, 2016

Nick Colucci's Remarks

Good afternoon, and thank you for attending this engagement and thanks Steve Koch, USCIS Miami deputy district director, for such a warm welcome and reception to the Miami District Office. We have enjoyed our time here in Miami. We have attended meetings with various stakeholder groups and the local offices of federal law enforcement agencies.

Today, I will discuss some of the highlights and challenges related to the EB-5 Program. I'm also going to talk about how, as administrators of the program, USCIS intends to support its continued vitality and integrity, and enhance program transparency. With the EB-5 program, transparency is critical on multiple levels. It's critical to immigrant investors in making life-changing decisions for themselves and their families. It's critical to Americans in forming opinions about the benefits of the EB-5 Program to the U.S. economy. Lastly, it's critical to Congress in determining the future path of EB-5.

In 1990, Congress authorized the EB-5 Program with the intention to stimulate the U.S. economy through job creation and capital investment by foreign investors. The program has existed for more than 25 years; however, these last few years have been particularly noteworthy. The number of investors seeking to participate in the program has soared. And so has the number of regional centers. Just five years ago, there were fewer than 200 regional centers; today, there are nearly 850. Last fiscal year through the first half of this year, more than 21,000 investors submitted Form I-526, Immigrant Petition by Alien Entrepreneur, seeking participation in the EB-5 Program, and we approved nearly 11,900 Form I-526 petitions. Each approved investor represents at least \$500,000 already invested or obligated toward an NCE – a new commercial enterprise – in the United States. So in terms of capital coming into our economy, 11,900 investors at half a million dollars each equals approximately \$5.9 billion in new capital for NCEs. And, we believe, that's a conservative estimate.

As you know, EB-5 investors immigrate as conditional permanent residents. They can file a Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, in approximately two years and are required to establish that they've met program requirements, including the creation of 10 jobs. Over the last year and a half we've approved approximately 2,300 petitions to remove conditions on investors who showed that their investment in a new commercial enterprise created at least that many jobs. In terms of jobs created, we can say that their investments in those NCEs created at a minimum, 23,000 jobs in communities across America.

We have also been criticized – probably by some of you here in this room and on the phone – for not going beyond general “ballpark” estimates like these derived from simple multiplication. And, that is why, acting on a recommendation from the inspector general at DHS, we set out to get a more refined estimate of the capital invested and the jobs created through the program. We arranged with the Department of Commerce to assess the EB-5 Program to determine its size and contribution to the U.S. economy. The Economics and Statistics Administration at Commerce evaluated projects that were ongoing in fiscal years 2012 and 2013. As part of their analysis, they reviewed the economic impact assessments prepared in support of regional center projects. They also reviewed stand-alone projects. I hoped to be able to discuss some of those estimates today, but the report is going through its final stages of review and I know the Department of Commerce looks forward to releasing it soon. I can say that the Department of Commerce's calculations are higher than some of the private EB-5 industry estimates that I've seen. A difference in methodology may help account for this. The Department of Commerce had access to project-level data that private economists usually don't see – including the total amount of capital contributed toward job creation by non-EB-5 sources. I look forward to Commerce's release of the report in the coming weeks. So, those are some of the achievements.

Now I'm going to talk about some of the challenges facing the EB-5 community. First, in several cases, as you know, regional center principals have been implicated in stealing funds from foreign investors. In some cases these funds have allegedly been used to purchase houses and cars, gamble in casinos, pay personal debts, or otherwise spent inappropriately for personal gain. It's not sufficient to spend *some* EB-5 funds on a project – if you attract 100 million dollars in EB-5 capital investment, you can't spend 90 million on the project and put the other 10 million in your pocket. Regional centers exist to promote economic growth consistent with Congress' intent when it created EB-5.

You may have also heard of cases where funds have allegedly been moved between projects without notifying the investors. Sometimes, the improper movement of money can signal the beginnings of a Ponzi-like scheme. This harms not only investors and communities but also, I would add, could jeopardize the very existence of the program.

To uphold the integrity of the program, USCIS is focused on ensuring that regional centers exercise due diligence in the oversight of the capital investment and job-creating projects they

sponsor. As the program has become more popular, the paradigm of regional center relationships has expanded. But let me remind everyone in the EB-5 community that due diligence, monitoring and oversight are the obligations of the designated regional center entity, and central to the integrity of the program. When we become aware of any threats to the integrity of the program, we seek to take corrective action.

We will issue a Notice of Intent to Terminate a regional center if the regional center fails to submit required information or if we believe it no longer serves the purpose of promoting economic growth. We recognize that a regional center may no longer serve the purpose of promoting economic growth for reasons that are innocent, unpredictable and beyond its control. But it's clearly within a regional center's control when it takes actions undermining its investors' ability to comply with EB-5 requirements, or misappropriates funds, or moves funds without investor concurrence, or fails to monitor a project it sponsors. With the regional center designation comes great responsibility and trust. And when that trust is broken, USCIS is committed to holding the responsible individuals and entities accountable.

As in any other financial sector, self-policing is vital to the integrity of the program. But self-policing is not the only recourse to root out bad actors. We will continue to work with the FBI, ICE and our other law enforcement partners, as well as our regulatory colleagues at the SEC to share appropriate information and vigorously pursue cases of malfeasance. We all know that a fair game requires a level playing field. Even with all the recent growth, EB-5 is still a relatively small industry. Everyone knows each other, and competition is tough. As someone who spent a lot of time investigating financial crime, if somebody's up to no good, it's probably not a secret.

As I've mentioned at every engagement since the beginning of my tenure: if you suspect someone is taking advantage of the program, let the USCIS Immigrant Investor Program Office (IPO) know. Go to www.uscis.gov/eb-5 to contact us. We take all tips seriously and will give them the attention they deserve to ensure we are satisfying our mandate to uphold the integrity of the EB-5 Program. In the event you would like to speak to someone by phone, please contact our Fraud Detection and National Security Officer Duty Line at (202) 357-9326.

In the past, Congress has reauthorized the EB-5 Regional Center program on the belief that the program has served the economic interests of the American people. The Regional Center Program is currently authorized through September 30, 2016. However, the bad news about improprieties in the EB-5 Program can overshadow good news about creating jobs and putting capital into our communities that really need it. And that's not just a shame, in some of these cases it's a crime. Before I close, let me update you quickly on a few other matters.

We continue to hire more staff to assist with the more than 25,000 petitions and applications that are pending. Today, we have 142 on board and another 15 or so who have accepted offers. We continue to be on track to meet our goal of 171 staff members by the end of this calendar year. During the first half of this calendar year, more staff and greater efficiencies helped us reduce

pending Form I-526 petitions by 12 percent and Form I-924 regional center applications by 8 percent. But keep in mind that the potential sunset date of the Regional Center Program in September may result in another surge of filings. We now have two auditors on board and plan to conduct audits of regional center activities this year. We also continue to conduct site visits. I'd like to take a minute and explain these two programs in greater detail.

With regards to site visits, *generally* visits will be: *to the job creating entity (JCE)*; conducted by Fraud Detection and National Security field personnel; and unannounced. We are seeking to determine if the project is consistent with what was proposed and is operating as expected. These will be mostly observational in nature, but we may speak with someone onsite – for instance, with respect to the amount of job creation that has taken place. We understand that those with EB-5 knowledge might not be present onsite.

With regards to audits, *generally* these *will be conducted at the regional center* by IPO staff and we anticipate they will be announced in advance. They could last up to a week or more, and officers conducting the audits will follow Generally Accepted Government Auditing Standards and seek to speak with individuals at the regional center. An audit reviews the regional center's compliance with applicable laws and authorities. Again, these are general descriptions of the site visits and audits planned for this year, but exceptions may exist.

We are also updating our forms. We published the new Form I-924 and Form I-924A in the Federal Register as part of the USCIS fee schedule proposal, and the public comment period closed on July 6, 2016. We also published the new Form I-526. The comment period for this proposed revision closes on September 9, 2016.

We have also designated funds to develop a new data system to enhance our ability to analyze and publish EB-5 data. This new system is intended to provide more timely and transparent information to stakeholders. In the coming months, we plan to translate some of our web content into foreign languages. We also intend to continue to work more with the financial industry to alert us to instances of potential fraud.

Finally, we will continue to provide briefings and technical assistance to Congress as we approach the September 30, 2016, reauthorization deadline. We continue to draft new regulations while Congress deliberates the future of EB-5, and we stand ready to provide guidance to the industry on whatever Congress decides.

Again, thank you for attending this engagement. All of us in the EB-5 community have a role to play in ensuring not only the vitality of the program, but also the vigilance needed to maintain it.