Question#:	1
Topic:	EB-5 Cities
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, you mentioned that the top states for EB-5 projects were California, New York, Florida, and Texas. Would you please also provide a list of the top ten U.S. cities that are the recipients of EB-5 investment money, and the amount of EB-5 investments made in such cities? If you are not able to provide such a list please explain why and whether USCIS will begin to track the data.

Response: USCIS is not able to provide such a list as it does not currently maintain data with this level of specificity. USCIS is actively pursuing a technical solution that will enable us to track EB-5 projects and investment capital based on geographical areas.

Question#:	2
Topic:	EB-5 Regional Centers
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: How many regional centers of the total number that existed in FY14 and FY15 were active centers that continued to receive EB-5 investment funds? Please provide a list of regional centers that were active and a list of regional centers that were inactive in FY14 and FY15.

Response: USCIS is conducting this analysis and will provide this information in a separate response once complete.

Question: For each regional center that existed in FY13, FY14, and FY15, please provide the following:

The number of I-526 petitions that were submitted;

The number of I-526 petitions that were approved;

The number of I-526 petitions that were denied;

The number of I-829 petitions that were submitted;

The number of I-829 petitions that were approved; and

The number of I-829 petitions that were denied.

Response: USCIS is working to gather the requested data and will provide this information in a separate response as soon as these reports are complete.

Question#:	3
Topic:	Summarized Regional Center Data
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: USCIS stated in September 2011 that it "plans to publish summarized [Regional Center] data in order to be responsive to requests for this information." The 2011 announcement specifically stated that such information would be released to "external stakeholders." Has that information been released, and how often? Has there been a change to this policy?

Response: There has been no change in USCIS policy seeking to publish summarized data regarding regional centers for external stakeholders. While USCIS has not yet published summarized regional center data, USCIS is making plans to revise its current webpage to support a database application that would allow for such search functions and is contemplating the inclusion of more details regarding designated and terminated regional centers in its website. In the interim, USCIS posts two web pages that list EB-5 regional centers that have been designated or terminated. The lists were created to enhance the transparency and visibility of regional centers, their respective operating locations throughout the United States, and whether they continue to be designated participants in the EB-5 program. The lists were most recently updated on June 6, 2016 and May 31, 2016, respectively. Additionally, USCIS has partnered with the U.S. Securities and Exchange Commission to provide guidance to investors seeking to do business with EB-5 regional centers. USCIS continues to look for ways to increase stakeholder awareness of regional centers and their respective projects in the EB-5 program.

Question#:	4
Topic:	Average Age
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What is the average age of the principal foreign investors who file an I-526 petition?

Answer: In FY 15, at the time of filing the Form I-526 petition, the average age of a Form I-526 petitioner (investor) was 38.

Question#:	5
Topic:	Regional Center Ownership
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Of the approximate 725-plus approved Regional Centers, how many of those Regional Centers have the same or common ownership? For each such Regional Center, provide the name of the owner and the locations of their approved Regional Centers.

Response: USCIS is conducting this analysis and will provide this information in a separate response once complete.

Question#:	6
Topic:	Jobs Created and Foreign Capital Invested
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: At the hearing, you cited total numbers of jobs created and foreign direct capital invested over the course of the EB-5 program. Please break down by Regional Center, how much capital has been invested in each operating Regional Center over Fiscal years 2010 through 2015, and how many corresponding jobs were created by each such Regional Center during that same period of fiscal years.

Response: USCIS is conducting this analysis and will provide a separate response as soon as it is completed.

Question#:	7
Topic:	Enhance Reporting and Auditing Processes
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You said in your testimony that USCIS needed additional authority to "enhance reporting and auditing processes." During the hearing, I asked you why more authority was needed and you said you would report back to me after conferring with counsel. Please provide the agency's rationale as to why existing law does not suffice in requiring regional centers to disclose or be more transparent about their businesses and their practices.

Response: Generally, legislative reforms that support Secretary Johnson's recommendations, which include ways to enhance reporting and auditing, would create greater efficiencies, streamline USCIS' efforts to safeguard national security and integrity, and ensure the EB-5 program continues to realize its goal of stimulating the U.S. economy through job creation and capital investment by foreign investors. Through proposed revisions to the Form I-924 and Form I-924A, the development of the random site visit pilot program and a program to conduct interviews of Form I-829 petitioners, USCIS is attempting to expand information collection. More explicit legal authority would be desirable to streamline efforts to compel disclosure of more information about regional center businesses and practices and insulate such efforts from legal challenge.

Question#:	8
Topic:	New Forms
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You said in your testimony that USCIS is working on new forms that will require "greater disclosures" from the regional centers. Will the information required to be disclosed by regional centers in the new forms include information on pending litigation, use of fees collected from investors, and an accounting of funds received and spent by the regional center? If not, why not?

Response: USCIS cannot comment with specificity on forms that have not yet been published for notice and comment; however, generally, the proposed form revisions will include several enhancements and USCIS will consider all comments provided as a result of the published notice in finalizing the forms. USCIS will inform the Committee when the proposed rule is published and will provide information on how to submit comments.

Question#:	9
Topic:	Forms Recommended Changes
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In a December 2012 memo to DHS Secretary Napolitano, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), recommended changes to the EB-5 forms (I-526, I-829, I-924 and l-924A). HSI expressed the view in the 2012 memo that current forms do not collect enough information to determine the validity of either the regional centers, the alien investors, or the source of the investor's funds. According to the memo, ICE/HSI submitted to USCIS a series of recommended questions to be included on the aforementioned forms to address these deficiencies in the information collected.

What were the changes to the EB-5 forms that ICE/HSI recommended to USCIS?

Response: Although USCIS is unable to locate written record of the 2012 input from ICE regarding form changes, USCIS has consulted with ICE/HSI, along with other federal partners, including the Department of State and the Securities and Exchange Commission, regarding the proposed form revisions that are currently in process. USCIS values the input its federal partners have provided into the process. Form I-924 and I-924A revisions are currently published and pending public comment. The remaining EB-5-related forms have not yet been published for public comment and USCIS cannot provide details regarding those form revisions. As noted, however, USCIS worked closely with ICE/HSI on the Form I-924 and I-924 revisions and is working closely with ICE/HSI on the remaining form revisions.

Question: Will those recommended changes be made to the forms in the course of the form amendments currently being considered by USCIS? If not, why not?

Response: Although USCIS is unable to locate written record of the 2012 input from ICE regarding form changes, USCIS has consulted with ICE/HSI, along with other federal partners, including the Department of State and the Securities and Exchange Commission, regarding the proposed form revisions that are currently in process. Form I-924 and I-924A revisions have been published and pending public comment. The remaining EB-5-related forms have not yet been published for public comment and USCIS cannot provide details regarding those form revisions. As noted, however, USCIS worked closely with ICE/HSI on the Form I-924 and I-924A revisions and is working closely with ICE/HSI on the remaining form revisions.

Question#:	10
Topic:	Criminal and Security Concerns
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You mentioned in your testimony that it would be helpful if your agency had more authority to terminate regional centers for criminal or security concerns.

If you had that authority, would you have terminated more centers in the last few years?

Response: USCIS believes it could have been easier to terminate certain regional centers if USCIS had express authority to terminate regional centers for criminal or security concerns. Some regional center principals or affiliates have been investigated or continue to be investigated by law enforcement authorities for fraud and other criminal offenses. Terminating such regional centers based specifically on criminal or security concerns in accordance with express statutory authority would result in a more streamlined process to issue a decision with clear legal support.

Question: How many would be terminated if you had this authority today?

Response: USCIS cannot accurately provide a specific estimate without knowing how the authority would be written.

Question#:	11
Topic:	Termination of Regional Centers
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing you said that in those cases where fraud or national security concerns are present in the regional center, USCIS has sought and is "currently seeking" termination of those regional centers. You added that, in light of that, "nothing right now is stopping [USCIS] from doing [its] job." Does that mean that you do not, in fact, need additional authority to terminate regional centers for criminal or security concerns?

Response: The proposed new authorities would greatly assist USCIS in more efficiently and effectively protecting the integrity of the program. USCIS feels confident that the changes it has made have greatly improved its capabilities in this area, but with appropriate congressional action as requested by the Secretary, USCIS' decisions would have more clear legal support and would be more insulated from legal challenges. As such, USCIS seeks express authority to terminate regional centers, within its discretion, for fraud and national security concerns that extends beyond a regional center no longer serving the purpose of promoting economic growth or providing required information as specified in existing regulations.

Question#:	12
Topic:	Funds Gifted or Loaned
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, I asked you to discuss the trends you see in funds from investors - e.g. whether they are gifted or loaned to them. You replied that the agency is seeing a lot of cases where the alien will obtain investment capital by taking out another mortgage.

What percentage of cases involve money that has been loaned to the investor?

Response: USCIS Immigrant Investor Program Office (IPO) does not track the percentage of cases involving gifted funds or loan proceeds used as investment capital.

Question: What percentage of cases involve money that has been gifted to the investor?

Response: IPO does not track this data.

Question#:	13
Topic:	Verifying the Source of Funds
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When you say that USCIS "verifies" the source of funds provided by a prospective EB-5 immigrant, do you mean to say that USCIS only confirms that the source of the money is what the alien claims it to be (e.g. proceeds from the sale of a house or money obtained from a bank after placing a mortgage on a home)?

Response: No. In determining whether the petitioner has demonstrated that the source of funds was lawful, USCIS will inquire beyond the initial source of funds; for example, evidence of how a petitioner was able to purchase a house that was then sold for the EB-5 investment would be considered.

Question#:	14
Topic:	Lawfulness of the Source of Funds
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does USCIS also seek to verify, for every prospective EB-5 immigrant, the lawfulness of the source of funds - i.e. verify that the ultimate source of the money is not criminal or other unlawful activity?

Response: Yes. Based on a preponderance of evidence standard, USCIS looks at all relevant evidence to determine the origin of the funds and the path used for transferring it to the investor, and the path from the investor to the new commercial enterprise that serves as the basis for the investor's EB-5 investment, to determine whether such funds were obtained through lawful means.

Question: If USCIS does not seek to verify the lawfulness of the source of funds for every prospective EB-5 immigrant, under what circumstances does USCIS undertake such an investigation?

Response: As mentioned above in response to questions 13 and 14, USCIS looks at all relevant evidence to determine the origin of the funds, in order to determine whether such funds were obtained through lawful means by a preponderance of the evidence. When the evidence presented by a prospective immigrant is questionable or is consistent with a known pattern with a high rate of fraud, USCIS will proactively investigate the claim regarding the direct or indirect source of funds invested. This may include additional investigation by our Fraud Detection and National Security EB-5 team (FDNS EB-5) and/or overseas verification request, as explained at greater length in the response to the next question.

Question#:	15
Topic:	Verification Methods
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During your testimony you discussed a number of "tools" USCIS had to determine the lawfulness of the funds offered by EB-5 immigrants. You mentioned a day of training that USCIS adjudicators receive and personnel with foreign language ability (presumably Chinese language ability) who perform research on the economies where the EB-5 money is coming from. Please describe in full all of the methods USCIS uses to verify, and to determine the lawfulness/non-criminality, of the source of funds provided by EB-5 immigrants.

Response: In determining whether a petitioner has demonstrated that the source of his or her investment was derived from lawful means, USCIS adjudicators review a variety of information provided by the petitioner, including but not limited to: bank records; financial statements; property documents; investment agreements; and the tax records of the investor. If the investment capital was obtained from the proceeds of a loan to the petitioner, then USCIS officers will review the assets securing the loan in order to ensure that those assets are actually owned by the petitioner. USCIS will also consider relevant evidence concerning lenders that have loaned the funds to a petitioner and donors that have gifted the funds to a petitioner.

If there are any questions about the credibility of the petitioner's evidence and/or the lawfulness of the source of funds, the USCIS adjudicator is able to refer the petition to the FDNS EB-5 team. FDNS staff conduct research in a wide array of federal systems and open-source databases based on the specific claimed source of EB-5 investment funds to determine the lawfulness of the funds. These systems and open sources include, but are not limited to:

1. All available USCIS systems;
2. Other U.S. government systems including the U.S. Department of State Consular Consolidated Database (CCD), Student and Exchange Visitor Information System (SEVIS), Financial Crimes Enforcement Network (FinCEN), ATS-P (Automated Targeting Systems-Passenger) and TECS (formerly the Treasury Enforcement Communication System);
3. Commercially available data sets from various independent information providers;
4. Open source research using web search engines;
5. Foreign government official database sites and open source database sites in Chinese languages, such as:
    a. State Administration for Industry and Commerce of the People's Republic of China database (SAIC) at http://gsxt.saic.gov.cn. SAIC is

Question#:	15
Topic:	Verification Methods
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

the Chinese government agency in charge of company and business registration. The site provides information such as administrative penalty decisions, violations, unlawful activities, illegal income, fines and asset forfeiture. The FDNS EB-5 team searches this database to obtain and verify the following information:

i. Registration number
ii. Date of Establishment
iii. Registered Address
iv. Legal representative
v. Registered capital
vi. Entity type
vii. Registration status
viii. Shareholders names, investment date, ownership percentage
ix. Annual Reports

b. Hong Kong Special Administrative Region - Company Registry: http://www.cr.gov.hk/tc/home/index.htm. This contains all registration information for Hong Kong companies and business. FDNS EB-5 searches this site to obtain and verify the same types of information as for mainland Chinese companies;

6. Open source research in Chinese, such as web search engines: Chinese Google, Baidu, Sohu, etc., as well as specific sites such as:
   a. http://www.whatchina.com/html/smp.asp?q=13801666262 – Chinese site used to check and verify telephone number, IP location area, and Chinese national identification n number;
   b. http://www.315zw.com/fapiao – Chinese site provide for checking or verifying invoices, state tax and local tax payment receipts; and
   c. http://baike.baidu.com/view/849798.htm -- to receive information on Chinese income tax regulation and calculation method; and
7. Chinese leading real estate websites such as http://www.fang.com/ for the fair market value of property. The usual query criteria are location (province, city, community, etc.), type, size, year built and number of rooms, etc.

When these avenues have been exhausted, FDNS may prepare and submit an overseas verification request to USCIS overseas offices to facilitate site visits and further verifications with government entities, as well as with private business entities and individuals.

Question#:	16
Topic:	Restrictions on the Source of Funds
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, I asked you if the law prohibits limiting any type or source of funds. I then asked whether USCIS is contemplating any restrictions at all on the source of funds that may be used in EB-5 investments. In response to these questions, you stated: "Right now, we ensure that the source of funds is legitimate." Given that the law does not prohibit USCIS from limiting any type of source of funds for EB-5 investments, is the agency contemplating any restrictions at all on the source of funds that may be used in EB-5 investments? If not, why not?

Response: USCIS believes that current procedures enable USCIS to adequately ensure that the source of funds is legitimate without needing to impose a blanket restriction on certain sources of funds.

Question#:	17
Topic:	Burden of Proof
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You stated in your testimony that "[t]he burden of proof is on the petitioner to prove that the source of funds is legitimate." But doesn't USCIS then make the determination as to whether the burden of proof has been satisfied?

Response: Yes, USCIS makes adjudicative determinations on the lawful source of funds invested into EB-5 commercial enterprises based on the preponderance of the evidence standard. USCIS places the burden of proof on the petitioner to provide sufficient evidence to support their investment claims, which USCIS officers then evaluate to determine if the preponderance standard has been met.

Question#:	18
Topic:	Recycled Capital
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I am hearing that EB-5 capital is perhaps being recycled - i.e., once petitioners have the conditions removed from their lawful permanent resident status they are cashing out their investments and perhaps gifting the money to new petitioners.

Does USCIS track whether investment funds that have been withdrawn by aliens after obtaining permanent lawful resident alien status are sent back to the alien's country of origin (e.g. China) so that they can be recycled into the EB-5 program by a different investor?

Response: USCIS scrutinizes each EB-5 petition to ensure that the invested funds are actually at risk as required by law. USCIS does not monitor the movement of capital by persons who successfully remove the conditions on their lawful permanent resident status. This includes the movement of capital from such persons to other investors potentially seeking permanent residence through the EB-5 program. However, each petitioner's investment is evaluated to ensure that the source of funds is lawful.

Question: Please explain whether the agency is noticing a trend in "recycling" of investment dollars.

Response: USCIS is unfamiliar with a trend in "recycling" of investment dollars; however, so long as the EB-5 investment capital comes from lawful means, any source of capital would be deemed acceptable.

Question#:	19
Topic:	Anshoo R. Sethi I
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, Sen. Feinstein asked about the case of Anshoo R. Sethi, described on pages 2 and 3 of the written testimony of Mr. Stephen Cohen, the witness for the Securities and Exchange Commission (SEC) at the hearing. Sen. Feinstein asked you about whether USCIS was able to identify or verify the source of the funds from the 250 investors that were used by the regional center in that case. You said that USCIS did not approve any of the petitions in that case, but, as Sen. Feinstein noted, that doesn't answer her question. I have some questions regarding this case:

In the Sethi case, were the petitions denied because USCIS was unable to confirm that the source of funds was lawful/non-criminal, or were the petitions denied for some other reason, e.g. because of the fraud perpetrated by Mr. Sethi?

Response: The source of the individual investor's funds is unrelated to fraud perpetrated by regional centers and their agents at the investors' expense. When such issues arise, the relevant inquiry is how the investors' funds have been spent, and not the source of the funds. That said, as part of adjudication process, USCIS considers whether each investor has demonstrated by a preponderance of the evidence that the source of his or her investment was lawful. In this particular case, it was not necessary to reach that issue because the petitioners were unable to demonstrate eligibility, and their petitions therefore were denied, for other reasons.

Question#:	20
Topic:	Anshoo R. Sethi II
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In the Sethi case, did USCIS make any attempt to verify, or to determine the lawfulness/non-criminality, of the source of funds offered by the prospective EB-5 immigrants investing in the regional center? If so, what conclusions did USCIS reach?

Response: It was not necessary to reach the issue of source of funds in these cases because the petitioners were unable to demonstrate eligibility on other grounds, and their petitions therefore were denied. However, should the investors seek to invest in a subsequent regional center, USCIS would examine whether the source of funds for such investment was lawful.

Question#:	21
Topic:	Anshoo R. Sethi III
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In the Sethi case, what happened to the petitioners?

Response: USCIS denied all of the I-526 petitions related to this project.

Question: How many were issued a Notice to Appear?

Response: USCIS will issue a Notice to Appear when it denies a petition or application for an immigrant or nonimmigrant who is in the United States and no longer has legal basis for remaining in the United States. Since the approval or denial of a Form I-526 does not affect the status of the individual petitioner, the issuance of an NTA is not a normal part of the denial of a Form I-526.

Question: How many of the petitioners in the Sethi case eventually obtained conditional lawful permanent resident status based on investment in a different regional center?

Response: Since none of the petitions related to the project were approved, none of the petitioners obtained permanent residency based on an investment in the "A Chicago Convention Center, LLC" project. USCIS does not keep statistics on denied petitioners who file new petitions based on investments in other regional center projects.

Question#:	22
Topic:	Rejected TEA Designations
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: It has been widely reported that EB-5 regional centers have "gerrymandered" the boundaries of the Targeted Employment Area to include, at one end, the affluent census tract in which the investment project is located, and at the other end, perhaps many miles away, a census tract with high unemployment. In 2015, the Wall Street Journal estimated that at least 80% of EB-5 capital is going to gerrymandered projects.

Unfortunately, USCIS has chosen to defer to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area. This deference is not required by the law and appears to be based only on reluctance by the agency to question or challenge designations of high unemployment areas made by states, regardless of how such designations undermine the whole purpose of the EB-5 program.

During the hearing, you repeatedly stated that USCIS regulations and a 2013 EB-5 policy memo require USCIS to defer to the states on the designation of an area as a TEA, but that USCIS does look at the methodologies used by the states to check that they do indeed use the 150% unemployment rate. For each fiscal year in the last five years, how many times as USCIS rejected a TEA designation?

Response: USCIS adjudicates TEA determinations for each Form I-526 filed, as the determination is based on the timing of the petitioner's investment or the filing date of the Form I-526, whichever is later. USCIS does not maintain data on which eligibility grounds for each Form I-526 were not met, so USCIS is unable to specifically account for the number of rejected TEA designations per fiscal year.

Question#:	23
Topic:	Improving TEA Designations
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You repeatedly stated during the hearing that USCIS is working on regulatory guidance that would improve "consistency" in state TEA designations. Explain how improving consistency in TEA designations would stop gerrymandering.

Response: Currently, a state may designate an area as a targeted employment area if the area has experienced a rate of unemployment that is 150% above the national average. Historically, USCIS has not issued guidance regarding the geographic boundaries of TEAs and the agency has deferred to state determinations of these boundaries. USCIS is currently reviewing policy and regulatory options regarding ways to improve the TEA designation process, including the parameters of the geographic boundaries of a TEA.

Question: Why can't USCIS simply hire employees that would better oversee the TEA designation process? Isn't it best for USCIS to make the final ruling on such designations?

Response: USCIS is currently reviewing policy and regulatory options regarding ways to improve the TEA designation process.

Question#:	24
Topic:	Interpretation of TEA
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that regional centers where there are fraud or national security concerns are, in the absence of explicit authority to terminate for those reasons, being terminated for failure to "benefit the United States economy" and/or for failure to meet the job-creation requirement. Why couldn't USCIS apply an equally robust interpretation of the definition of a TEA (INA 203(b)(5)(B)(ii)) to deny designations of TEAs that have been clearly gerrymandered in a manner that frustrates the intent of Congress to direct investment and job-creation to rural areas and areas suffering from high unemployment?

Response: USCIS is currently reviewing policy and regulatory options regarding ways to improve the TEA designation process.

Question#:	25
Topic:	Gerrymandering
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does USCIS think it's appropriate for a project to be built with EB-5 money in the most affluent area of New York City - e.g. on 5th Avenue - simply because the regional center was able to get low income and high unemployment areas in Harlem included within the boundaries of the gerrymandered TEA? I'm not asking whether such a practice is legal, but whether the agency thinks it's appropriate.

Response: Although this practice is allowed under current USCIS policy, USCIS is currently reviewing policy and regulatory options regarding the TEA designation process.

Question#:	26
Topic:	Interagency Working Group
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Department has, in the past, worked with other government agencies to discuss national security concerns related to the EB-5 program. An interagency group, if one existed, could work to detect fraud upfront. It can do that by developing guidance and processes to improve background checks on individuals affiliated with regional centers, enhancing screening of foreign investors using government-wide databases and intelligence, and preventing the approval of regional centers that may pose a risk to the integrity of the program. For example, USCIS adjudicators should be required to vet that the names of EB-5 investors against the Office of Foreign Assets Control and Financial Crimes Enforcement Network databases to ensure that investments are legitimate. Interagency cooperation among USCIS, SEC, and the FBI along with other intelligence gathering agencies is critical to prevent fraud and criminal activity.

Are you aware of any interagency working group, including any involvement of the National Security Staff, that works together to improve the EB-5 program?

Response: Through an earlier interagency working group, USCIS was able to establish relationships that have enabled the agency to better protect the program. That working group resulted in USCIS gaining access to FinCEN and assisted the agency in establishing close working relationships with the SEC, FBI, ICE HSI, the State Department and others. Today regular communication and collaboration between these parties no longer requires the existence of a working group, as such interagency cooperation has become a routine facet of the EB-5 program. Communication between USCIS and these partners is a regular part of our everyday work.

Question: Are there any plans to form such a working group?

Response: No, as stated above the contacts have been established and the daily communication between the relevant parties does not require the formation of a new working group.

Question: In response to a recommendation from the DHS Office of the Inspector General in 2013, USCIS agreed to develop and implement, by June 2014, "an [EB-5] interagency collaboration plan outlining liaison and collaboration roles and responsibilities among key Federal partners," including collaboration with the Department of Commerce and the Securities and Exchange Commission. Was this ever done?

Question#:	26
Topic:	Interagency Working Group
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: USCIS is an active partner with a number of departments and agencies that support the EB-5 program's mission, including the Department of Commerce and the U.S. Securities and Exchange Commission. USCIS has worked diligently to address the recommendations made by the DHS OIG, and as a result of its efforts, in October 2015 the DHS OIG closed Recommendation #2, regarding collaboration with other agencies.

Question: Does USCIS require adjudicators to vet the names of EB-5 investors against the Office of Foreign Assets Control and Financial Crimes Enforcement Network databases to ensure that investments are legitimate? If not, why not?

Response: If the evidence of record and/or USCIS automated systems required background checks indicate that further investigation is required, the officer will refer the case to the IPO FDNS Division for more intensive review, which includes vetting the investor against the Office of Foreign Assets Control and Financial Crimes Enforcement Network (FinCEN) databases.

USCIS currently is limited to accessing FinCEN-held data at the platform location, but is in the process of finalizing a Memorandum of Understanding to gain remote access to this information, which will allow USCIS to expand its use of this valuable tool.

Question#:	27
Topic:	Interviews
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: USCIS has the authority (which it can waive) to conduct interviews of immigrant investors within 90 days after such investors submit petitions to remove the conditional status of their permanent residency (Form I-829). The GAO noted in its 2015 report on the EB-5 program that the USCIS Immigrant Investor Program office has never exercised this interview authority and does not conduct interviews at the I-829 stage. The GAO stated, "Conducting interviews at this stage to gather additional corroborating or contextual information could help establish whether an immigrant investor is a victim of or complicit in fraud --- a concern shared by both ICE [Homeland Security Investigations] and SEC officials, who noted that gathering additional information and context about individual investors could help to inform investigative work." In-person interviews are essential to protecting against fraud and abuse, and Congress has encouraged such interviews be conducted before visas or benefits are obtained. The department must immediately do more interviews of foreign investors, especially before giving them a green card or removing their conditions.

Will your office immediately start interviewing EB-5 investors in connection with their petition for removal of conditions on permanent residency? If not, why not?

Response: USCIS is in the process of rolling out a program to conduct interviews of Form I-829 petitioners. As part of this program, USCIS will interview petitioners both for cause and as part of a random sampling of pending cases. USCIS plans to further review the program after implementation to determine if a broader range of I-829 petitioners should also be interviewed.

Question: And if so, is there any reason why, given the heightened concern about fraud, the failure to actually create 10 jobs, and national security threats in the EB-5 program, USCIS would not interview all aliens at the I-829 stage?

Response: USCIS is in the process of rolling out a program to conduct interviews of Form I-829 petitioners. As part of this program, USCIS will interview petitioners both for cause and as part of a random sampling of pending cases. USCIS plans to further review the program after implementation to determine if a broader range of I-829 petitioners should also be interviewed.

Question: If the reason why USCIS will not conduct interviews of all aliens at the I-829 stage is lack of resources, why couldn't EB-5 petition fees be increased to cover the cost?

Question#:	27
Topic:	Interviews
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: As discussed in the previous response, after initially piloting the interviewing of some Form I-829 petitioners, USCIS plans to further review the program to determine if a broader range of I-829 petitioners should also be interviewed and, as appropriate, the resources required to do so.

Question#:	28
Topic:	OIG Report
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In December 2013, the DHS Office of the Inspector General (OIG) published a report on the EB-5 regional center program. USCIS concurred with three of the four recommendations:

USCIS agreed to update regulations to provide greater clarity regarding the requirements for establishing eligibility under the program and stated that a revised rule would be drafted for interagency clearance within 9 months of the publication of the report (i.e. by September 2014). I do not believe such a regulation has ever been published.

USCIS agreed to develop and implement, by June 2014, an [EB-5] interagency collaboration plan outlining liaison and collaboration roles and responsibilities among key Federal partners," including collaboration with the Department of Commerce and the Securities and Exchange Commission. It is not clear if this was ever done.

USCIS agreed to "establish[, by June 2014,] quality assurance steps to promote [EB-5] program integrity and ensure regulatory compliance." It is not clear if this was ever done.

USCIS should implement the Inspector General recommendations with which it concurred as expeditiously as possible.

When will USCIS implement, in full, the recommendations made by the Inspector General in 2013 and with which the agency concurred?

Response: Since the OIG audit, USCIS has made significant efforts to update the EB-5 regulation, as proposed by OIG. USCIS established an internal working group in FY 2014 to draft potential regulatory changes and held a listening session with stakeholders. In FY 2015, however, these regulatory changes were set aside in anticipation of reform legislation, which would have necessitated different regulatory action. As reform legislation has not been passed, USCIS is renewing its efforts to update the EB-5 regulation, as described above. USCIS notes that the second and third recommendations noted above, regarding interagency collaboration and establishing quality assurance steps, were closed by DHS OIG in October 2015. USCIS anticipates closing in the coming weeks a fourth OIG recommendation from this report, related to the Department of Commerce conducting a valuation study of the EB-5 program.

Question#:	29
Topic:	Parole of EB-5 Petitioners
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I am aware of proposals by members of the immigration bar to parole into the United States alien investors with approved EB-5 petitions. This is being proposed so that the investors would not have to wait in their home country for the several years it may take for an immigrant visa to become available, now that there is a backlog of EB-5 visas for Chinese nationals. However, such a use of parole, like the Administration's other uses of parole to evade Congressional caps or established visa programs, would violate the law.

Can you commit to me that the Department of Homeland Security will not parole alien investors with approved EB-5 petitions into the country in order to afford relief from immigrant visa backlogs?

Response: USCIS is not currently considering any specific proposals to provide investors with approved EB-5 petitions subject to visa oversubscription the opportunity to parole, beyond what is already available under existing law and policy.

Question#:	30
Topic:	Job Creation
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: EB-5 investors are allowed to take credit for jobs their investments did not create. In 2013, the Inspector General concluded that USCIS regulations allow foreign investors "to take credit for jobs created with U.S. funds, making it impossible for USCIS to determine whether the foreign funds actually created U.S. jobs.

Consequently, the foreign investors are able to gain eligibility for permanent resident status without proof of U.S. job creation." The Inspector General described how, in one case it reviewed, the regional center was able to claim 100 percent of the projected job growth from the project to apply toward its foreign investors even though the foreign investment was limited to only 18 percent of the total investment in the project.
In 2015, the Government Accountability Office (GAO) agreed that the agency's practice of allowing EB-5 investors to claim all jobs created by projects funded by both EB-5 and non-EB-5 money "can inflate the job creation benefit of the immigrant investment."

You testified that, "based on the number of approvals of Form I-829 to remove conditions on permanent residence since October 1, 2012, it is estimated that an aggregate total of an estimated 35,140 jobs have been created for U.S. workers through foreign investment via the EB-5 program." You further testified that "USCIS is working to refine data systems to better collect program performance data."

How many of those 35,140 jobs are direct jobs versus indirect jobs?

Response: USCIS does not retain data on job creation broken down by whether the jobs created were direct or indirect. USCIS is actively pursuing additional data collection through revised forms and enhanced systems to be able to report on more job creation data. USCIS notes that the EB-5 regional center statute specifically requires that USCIS permit investors associated with regional centers to use indirect jobs to meet the requirement that 10 jobs be created, so it is not necessary that such investors have created any direct jobs in order to be eligible for permanent residency.

Question: How many direct jobs were created in Fiscal Year 2014 and in Fiscal Year 2015?

Response: USCIS does not retain data on job creation broken down by whether the jobs created were direct or indirect. USCIS is actively pursuing additional data collection through revised forms and enhanced systems to be able to report on more job creation data. USCIS notes that the EB-5 regional center statute specifically requires that USCIS permit investors associated with regional centers to use indirect jobs to meet the

Question#:	30
Topic:	Job Creation
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

requirement that 10 jobs be created, so it is not necessary that such investors have created any direct jobs in order to be eligible for permanent residency.

Question: If you are unable to measure the number of direct jobs that have been created for any period, please explain:

Why this is the case; and

What further refinement of data systems would be required to capture such data, and whether USCIS plans to make such changes.

Response: USCIS does not retain data on job creation broken down by whether the jobs created were direct or indirect. USCIS is actively pursuing additional data collection through revised forms and enhanced systems to be able to report on more job creation data. USCIS notes that the EB-5 regional center statute specifically requires that USCIS permit investors associated with regional centers to use indirect jobs to meet the requirement that 10 jobs be created, so it is not necessary that such investors have created any direct jobs in order to be eligible for permanent residency.

Question#:	31
Topic:	Accounting
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Regarding the USCIS policy allowing investors to count all the jobs created by a project towards the job-creation requirement, even when EB-5 money accounts only for a fraction of total investment, you said during the hearing that the agency made a "policy choice" to allow such counting of jobs - despite the finding by the GAO that doing so "can inflate the job creation benefit of the immigrant investment" - because (i) some projects may not take place "but for" EB-5 funding; and (ii) in a number of industries, the required number of jobs could not be created based on EB-5 investment alone.

It is simply not the case that most EB-5 projects would not exist if not for the foreign investment. In fact, as the Wall Street Journal reports:

Many of such projects could easily have been financed on the private market, according to New York University Stern School of Business scholar-in-residence Gary Friedland . . . . 'It's a profit enhancement," he said. "The original argument was more of a 'but for' argument," in which EB-5 was meant to spur projects that wouldn't otherwise have happened. "That focus has been lost."

As Michael Ashner, chief executive of Winthrop Realty Trust, notes, "It's lower-cost capital with favorable terms. That's why people do it." The influential immigration lawyers' portal ILW.com estimates that "currently the bulk of the EB-5 investment (85%) is taking place in the 'Extra Profits' category of projects where only a small sliver of EB-5 capital is used to lower the overall cost of capital." ILW.com avers that the remaining 15% is distributed evenly between the category of projects that would not be built but for EB-5 capital, "hands-on" investments and pooled direct investments.

And, as to the concern that certain industries would be unable to create 10 jobs per investor based solely on an investment of $500,000, this merely illustrates that $500,000 is a woefully inadequate investment amount. In order to achieve the EB-5 program's goal that each investor create 10 jobs, USCIS needs to raise the investment amount to a level that will actually create 10 jobs. Once the agency does that, there should no longer be any need to adhere to the "policy choice" to allow all jobs estimated to be created by a project to count towards the EB-5 job creation requirement, even if EB-5 money represents only a fraction of the total investment.

In light of the foregoing, I ask again:

Why not terminate the policy allowing investors to count all the jobs created by a project

Question#:	31
Topic:	Accounting
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

towards the job-creation requirement, even when EB-5 money accounts only for a fraction of total investment?

Response: USCIS adheres to existing regulation (8 C.F.R. § 204.6(g)(2)), which states that when a new commercial enterprise has both EB-5 and non-EB-5 owners, "The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic."

In addition, USCIS believes the existing regulatory framework promotes the use of non-EB-5 funding, which adds a layer of additional independent vetting and, in turn, adds to the credibility of the proposal overall, particularly in terms of the project's long-term success. It may also help to limit the potential for fraud and misuse of investor funds.

Question: Will the agency consider putting a cap on the percentage of jobs estimated to be created by non-EB-5 funds in order to meet the job creation requirement?

Response: USCIS is currently reviewing policy and regulatory options regarding ways to improve the EB-5 program and will take this suggestion under consideration.

Question#:	32
Topic:	Tenant-Occupancy Projects
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, I asked you if USCIS would consider prohibiting tenant-occupancy projects. You did not answer my question. Instead, you talked about how USCIS reviews tenant occupancy cases based on a preponderance of the evidence standard and how the burden is on the petitioner to show that the jobs are new jobs, and not just relocated jobs. None of that, however, touches on the fundamental, irremediable problems with the tenant-occupancy model that I understand were raised by USCIS' own economists in 2011, including:

It is a general economic principle that the demand for labor precedes the decision about where to house that labor. In other words, the decision by a business to hire more people is not, as a general rule, driven by whether there is office or retail space available in which to put the new staff. Thus, it makes no sense to credit to the entity refurbishing a dilapidated office building the job creation resulting from a company that opens an office into that building. Jobs created by tenant businesses should be attributed to those businesses (the "tenants"), not the EB-5 developer that constructed or manages the property.

The tenancy occupancy methodology contradicts long-standing economic job estimation methodologies. Regional and local economic development authorities have historically conducted employment surveys in which the jobs are accounted for in all firms within its jurisdiction. Under these methodologies, the employees of the tenant must be attributed to the tenant and not the EB-5 investor group or there will be a double-counting of jobs.

And so I ask again:

In light of the foregoing - in particular, the assessment in 2011 by USCIS economists that the application of the tenancy-occupancy methodology is not a reasonable methodology for estimating job creation - will USCIS consider terminating the use of the tenant-occupancy model to estimate EB-5 job creation?

Response: USCIS believes the current policy regarding tenant occupancy, as reflected in its memo issued on December 20, 2012, "Guidance Memorandum on Operational Guidance for EB-5 Cases Involving Tenant-Occupancy (GM-602-0001)," has sufficiently addressed the concerns mentioned above. USCIS consulted with the Department of Commerce in the development of its current policy, and since the issuance of the memo, the number of tenant-occupancy cases has decreased significantly and the quality of filings has increased.

Question#:	32
Topic:	Tenant-Occupancy Projects
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please confirm that in late 2011 USCIS economists concluded that the application of the tenancy-occupancy methodology is not a reasonable methodology for estimating the total employment impact attributable to EB-5 capital utilized for commercial property acquisition and renovation when, subsequent to construction, the properties will be leased to unrelated businesses.

Please explain who made the decision to overrule the USCIS economists and permit the tenant-occupancy model to continue to be used.

Response: As discussed above, USCIS consulted with the Department of Commerce in the development of its current policy, as reflected in its memo issued on December 20, 2012, "Guidance Memorandum on Operational Guidance for EB-5 Cases Involving Tenant-Occupancy (GM-602-0001)."

Question#:	33
Topic:	Visa Set-Asides
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Immigration and Nationality Act provides that "[n]ot less than 3,000 of the [EB-5] visas made available . . . in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise . . . which will create employment in a targeted employment area."

However, it is not clear under current practice that the 3,000 set-aside visas are actually reserved exclusively for investments in TEAs. If visas reserved for investments in TEAs in a particular fiscal year are allowed to roll-over to the general EB-5 visa pool at the end of the fiscal year, then they are not truly reserved exclusively for TEAs.

Savvy investors will simply continue to invest in projects in affluent areas, content in the knowledge that few visas will be utilized for investments in rural and depressed urban areas and that the 3,000 reserved visas will become available to all at the end of the fiscal year.

In order to create a true incentive to invest in rural and depressed urban areas, will you establish by regulation that the 3,000 visas set aside each fiscal year for investments in TEAs remain perpetually available only for such investments?

Response: Because the vast majority of visa numbers are already used by aliens investing in TEAs, (much more than the 3,000 set aside by the INA), DHS does not have any plans to establish by regulation that the 3,000 visas set aside each fiscal year for investments in TEAs remain perpetually available only for such investments.

Question: According to section 203(b)(5)(B) of the INA, the 3,000 visa set-aside for targeted employment areas are to be reserved for immigrants who "invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area." The statute is clear that the jobs created must be "in" the targeted employment area in order to qualify for one of the 3,000 visas.

Can you provide 100 percent assurance that all visas provided from the 3,000 set-aside are creating jobs "in" those targeted employment areas? If not, please explain.

Response: USCIS believes that focusing on the location of where the new commercial enterprise or job-creating entity is principally doing business is a reasonable indicator in determining the location of where jobs are being created, and is also permissible under the regional center statute allowing petitioners to use reasonable methodologies to comply with job creation requirements. Therefore, USCIS requires investors seeking the

Question#:	33
Topic:	Visa Set-Asides
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

targeted employment area discount to show that the investment is being made in a new commercial enterprise or job-creating entity that is principally doing business in a targeted employment area. Under USCIS policy, a new commercial enterprise or job-creating entity is "principally doing business" in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be deemed to be "principally doing business" in the location that is most significantly related to the job creation. Factors to be considered in making this determination may include, but are not limited to, (1) the location of any jobs directly created by the new commercial enterprise; (2) the location of any expenditure of capital related to the creation of jobs; (3) where the new commercial enterprise conducts its day-to-day operation; and (4) where the new commercial enterprise maintains its assets that are utilized in the creation of jobs. *See generally Matter of Izummi*, 22 I&N Dec. 169, 173 (Assoc. Comm'r 1998) (discussing the location of relevant businesses in connection with targeted employment areas).

Question: Please also fully explain how the job-creating methodologies relied upon by petitioners provide accurate data to the agency regarding where the jobs created are actually located. If the methodologies used cannot fully predict the number of jobs created in certain locations, do you agree that the set-aside should only be used for projects that can accurately predict that the jobs are created "in" the targeted employment area?

Response: Most investors rely on input-output models, which do not have the capacity to determine the location of jobs created. However, as stated above, USCIS believes that focusing on the location of where the new commercial enterprise or job-creating entity is principally doing business is a reasonable indicator in determining the location of where jobs are being created.

Question#:	34
Topic:	Site Visits
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing I asked you: "Will USCIS commit to performing a site visit of every EB-5 project site, at least once during the two-year period between approval of the first I-526 petition and the date on which such alien's petition for removal of conditions is adjudicated?" You answered that "USCIS is planning to institute a random site visit program", to be started sometime this fiscal year, and is also in process of developing an audit program.

Why can't the site visits begin immediately?

Response: USCIS currently conducts site visits when the nature of articulable fraud concerns suggest that a site visit could provide beneficial evidence. The random site visit pilot will commence as soon as USCIS' policy and training to support it have been completed, which USCIS anticipates will be in this fiscal year.

Question: Will the site visits be announced or unannounced, or combination of both?

Response: While USCIS has not finalized procedures for the random site visit program, USCIS site visits are typically unannounced.

Question: Will USCIS commit to performing a site visit of every EB-5 project site, at least once during the two-year period between approval of the first I-526 petition and the date on which such alien's petition for removal of conditions is adjudicated?

Response: After the completion of a pilot of random site visits, USCIS will assess the results and use this to inform the appropriate site visit policy.

Question: If USCIS does not plan to visit every site, please explain why. If the reason why no plans are being made to visit every project is based on lack of resources, please explain why EB-5 petition fees couldn't be increased to cover the cost?

Response: After the completion of a pilot of random site visits, USCIS will assess the results and use this to inform the appropriate site visit policy.

Question#:	35
Topic:	Investment Amount Low Unemployment Areas
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Immigration and Nationality Act provides that the investment level for an investment "made in a part of a metropolitan statistical area that at the time of the investment -

is not a targeted employment area, and

is an area with an unemployment rate significantly below the national average unemployment rate,"

may be set by the Secretary of Homeland Security in an amount that is up to three times greater than the base investment amount, which is currently $1 million. The clear policy purpose of this authority is to make it more expensive to invest in EB-5 projects located in low unemployment areas.

Will you exercise your statutory authority to increase the investment amount for projects located in areas with low unemployment rates in order to further incentivize investments in rural and depressed urban areas?

Response: USCIS is currently reviewing the minimum investment amounts, but must do so in consultation with the Departments of State and Labor as part of any proposed regulatory change to the investment amount per the statute.

Question#:	36
Topic:	Escrow
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Do USCIS regulations or policy allow EB-5 petitioners to count time that their investment funds were held in escrow, rather than actually deployed in the investment project and creating jobs, towards the two-year period during which the investment must have been sustained? If so, why?

Response: USCIS policy provides that an investor's money may be held in escrow until the investor has obtained conditional lawful permanent resident status as a way of demonstrating that the investor is actively in the process of making investment as required by INA 203(b)(5) by making a present commitment to invest the minimum required amount of capital as provided by the regulatory interpretation of the statutory requirement at 8 C.F.R. § 204.6(j)(2). Under 8 C.F.R. § 216.6(a)(4)(ii)-(iii), implementing the statutory requirements of INA 216A(d)(1)(A), an EB-5 investor applying for removal of conditions must show that that he or she "invested or was actively in the process of investing the requisite capital" and that "he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence." Accordingly, investors who opt to utilize escrow accounts to demonstrate that they are actively in the process of investing may satisfy the regulatory and statutory requirements in order for their conditions to be removed.

Question#:	37
Topic:	Limited Partner
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Isn't it true that virtually every I-526 petition associated with a Regional Center is a passive investment with the immigrant investor holding the position of a Limited Partner?

Response: Yes, the vast majority of petitioners are investors who hold the position of a limited partner of a new commercial enterprise organized as a limited partnership as expressly permitted by INA 203(b)(5)(A).

Question: Does USCIS believe that these "Limited Partner" investors are actually involved in any managerial aspect of the project?

If so, specifically what management role does USCIS believe these investors play in their investment projects?

If not, has USCIS considered changing the relevant regulations to force regional centers to require more involvement from investors?

Response: INA § 203(b)(5)(A) specifically provides that a "new commercial enterprise" may include a limited partnership. USCIS regulations, at 8 C.F.R. § 204.6(j)(5)(iii), provides that a petitioner "will be considered sufficiently engaged in the management of the new commercial enterprise… if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act . . . ."

Although these rights, powers, and duties are limited, that is the nature of limited partners in a limited partnership as expressly provided for by statute. Accordingly, USCIS's regulatory interpretation requiring a level of engagement commensurate with what is reasonably permitted of investors in a typical limited partnership is reasonable.

Question: Has USCIS considered changing the relevant regulations (e.g. 8 CFR 204.6(j)(5)) to account for similarly passive investments made by investors in Limited Liability Companies (LLCs)? The relevant regulations reference only limited or general partnerships.

Response: USCIS is currently reviewing policy and regulatory options regarding ways to improve the EB-5 program and will take this suggestion under consideration.

Question#:	38
Topic:	Site Visits
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does USCIS ever conduct site visits to determine whether investors are actually fulfilling their limited partnership obligations?

Response: Site visits would not be an appropriate tool to verify whether investors are fulfilling their limited partnership obligations, as those obligations do not require a person be physically present at a specific location.

Question#:	39
Topic:	Amend or Update the Definition of "New"
Hearing:	The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When Congress created the EB-5 program in 1990, it intended that foreign investments would "benefit the United States economy and create full-time employment." The law states that the visa is available to "qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise." The Executive Branch, through regulation, defined a "new" commercial enterprise as one "established after November 29, 1990." 8 CFR 204.6(e). It also included in the definition of "new," not just the creation of a new business, but also, under certain circumstances, the restructuring or expansion of an existing business. 8 CFR 204.6(h).

Congress explicitly included the word "new" in the statute to underscore that investments should boost the economy by establishing new businesses, not simply provide an avenue for people to immigrate by passively contributing capital to an already-existing business. The plain meaning of the term "new commercial enterprise" reflects Congressional intent to limit the benefits of the program to those investing in truly new businesses.

Will the agency, in its upcoming proposed regulations, amend or update the definition of "new"? If so, would a change to the definition ensure that the visas are being issued only to those who "infuse new capital into the country" by the creation of truly new businesses, and not to those who are merely investing in an already-existing business? If not, why not?

Response: USCIS is currently reviewing policy and regulatory options regarding ways to improve the EB-5 program and will take this suggestion under consideration.