Written Testimony of:

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The Distortion of EB-5 Targeted Employment Areas: Time to End the Abuse

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Committee on the Judiciary

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Chairman Grassley, Ranking Member Leahy and Distinguished Members of the Committee:

Thank you for the opportunity to testify before the Committee today. My name is Daniel J. Healy. I am Chief Executive Officer of Civitas Capital Group, an investment management firm based in Dallas, Texas. I founded Civitas in 2008 to bring the rigor of institutional-quality investment management to the EB-5 marketplace, while at the same time leveraging the unique flexibility of EB-5 immigrant investor capital to catalyze economic development and job creation in underserved areas, especially in my hometown of Dallas. Today, Civitas is a leading manager of EB-5 investments throughout Texas and around the United States, with more than $500 million in assets under management on behalf of more than 1,000 EB-5 immigrant investors from more than 30 countries. I am very pleased that for each of the past two years, Civitas has been named to the *Dallas 100*, a ranking of the fastest-growing private companies in the city.

My professional background is in institutional real estate investment management. In addition to our EB-5 business, Civitas also manages capital for institutions, family offices and other investors, both domestic and foreign, through our Alternative Investments division. Prior to founding Civitas, I was a partner in a boutique real estate investment fund, and prior to that, I was Executive Vice President of the real estate private equity arm of a Dallas-based investment advisory firm with assets under management in excess of $30 billion, where I concurrently served as the Chief Compliance Officer for an affiliated FINRA-registered securities broker-dealer.

I am active in the Dallas business and civic community. I am a member of the Dallas Citizens Council, the Dallas Assembly, and the Dallas Committee on Foreign Relations. In 2013, I was honored to be recognized as Distinguished Young Alumnus by my alma mater, the Cox School of Business at Southern Methodist University.

I am also very active in the EB-5 industry. Since founding Civitas, my colleagues and I have been members of Invest in the USA (IIUSA), the nonprofit trade association representing regional center operators. I served on the IIUSA Board of Directors from 2012 to 2014, and as Chairman of the Best Practices Committee from 2013 to 2015. I continue to serve on that committee, but I testify today in my capacity as CEO of Civitas Capital Group, and not on behalf of IIUSA or any industry group.

Civitas Capital Group: Company Background and Philosophy

I founded Civitas in late 2008, as the frightening global scale of the financial crisis and subsequent recession was just becoming apparent. To their great credit, the professionals at the City of Dallas Office of Economic Development had identified EB-5 as a potentially powerful economic development tool as far back as 2006, and were working on a plan to use EB-5 to attract foreign direct investment to Dallas. Through a competitive RFP process, Civitas was selected to collaborate with the City of Dallas to create the City of Dallas Regional Center (CDRC), an innovative public-private partnership. After more than a year of planning, the CDRC was approved by USCIS in late 2009. Today, this partnership continues to thrive. On behalf of the CDRC, Civitas manages more than $350 million in EB-5 capital invested in more than 20 job-creating Dallas projects across a range of industries, including commercial real estate, business services, hospitality, restaurants and seniors' housing. These investments are designed to align with the City of Dallas' economic development priorities throughout the city, and include several that are located in historically underserved neighborhoods and serve low- to moderate-income citizens. I am pleased to report that the CDRC has been cited by the Brookings Institution, the Urban Land Institute and others as a model for the efficient deployment of EB-5 capital, and as a mechanism to stretch precious municipal economic development resources so they have the greatest possible impact.

Civitas focused exclusively on the partnership with the City of Dallas for more than two years, building a well-known EB-5 brand both in foreign markets and here at home, and quickly emerging as an industry leader. More recently, we have established similar public-private partnerships with the Texas cities of Fort Worth, El Paso and Laredo. Each of these programs has a different economic development focus that is tailored to the needs of each community. In addition, Civitas now owns 20 regional centers covering most of the major markets in the United States, coast to coast.

In the EB-5 space, Civitas is distinguished by consistently identifying and executing investments that:

- Provide low-cost, flexible capital to American businesses and developers of the highest quality;
- Exceed, typically by a substantial margin, the critical job creation requirements under EB-5 program rules;
- Demonstrate a creative approach to and a relentless focus on balancing risk and reward for our investor clients, taking into account both their financial and non-financial (i.e., immigration) goals; and
- Reflect our philosophy of requiring the highest standards of integrity and compliance in everything we do.

With respect to standards and compliance, I commend you, Mr. Chairman, as well as Ranking Member Leahy, for your work to incorporate important integrity enhancements into your EB-5 reform legislation. I also commend my home-state senator, Sen. John Cornyn, as well as Senators Flake, Schumer and Tillis for co-sponsoring the EB-5 Integrity Act of 2015. I strongly support holding EB-5 regional centers to high standards, and have long held Civitas to such standards and encouraged my industry colleagues to do the same. I also strongly support ensuring that USCIS and other applicable regulators have the tools and legislative authority they need to weed out and punish bad actors. I am confident that virtually universal support for such measures exists throughout the EB-5 industry.

Why Am I Here Today?

Mr. Chairman, my goal in testifying today is twofold.

First, I offer three case studies to provide the Committee with concrete examples of how the EB-5 program can, should, and <u>does</u> work today. I am extremely proud of our work and will put my investment, asset management, and compliance teams up against those of any investment adviser in the country, large or small, in the EB-5 space or otherwise.

These examples are important because they lay the groundwork for my second objective: to encourage this Committee to seek true reform of Targeted Employment Area (TEA) policy. In this regard, I would note the following key points:

- ***TEA reform is timely***. The title of this hearing makes plain your view, Mr. Chairman, that TEA designations have been abused. I was encouraged that in the EB-5 hearing this Committee held on February 2, 2016, several Senators urged their colleagues to "mend it, don't end it" with respect to the EB-5 program generally and TEA policy specifically. That hearing made clear to me that, as is the case with various stakeholders in the EB-5 community, Senators on this Committee differ on whether and the degree to which TEA designations have, in fact, been abused. I invest in real estate, which means I am an eternal optimist who is always focused on the best way to get a deal done, and in that spirit, the good news here is that we need not agree or even focus at all on the "abuse" characterization in order to agree on a revised TEA policy that makes sense going forward. The fact that some Senators, clearly including you, Mr. Chairman, find current TEA policy objectionable is certainly reason enough to rethink how TEAs work. Now is the time to do so.

- ***TEA reform is welcomed***. I appear before you today on behalf only of myself and Civitas Capital Group. In that capacity I can tell you without reservation that I support TEA reform. In addition, I am very active in discussions among industry stakeholders about meaningful EB-5 program reforms, and I am confident that there exists a willingness industrywide to work closely with this Committee to enact a broad set of such reforms, including with respect to TEA policy. I believe the industry desires a strong working relationship with this Committee, and that means being responsive to the Committee's concerns. Accordingly, TEA reform is welcomed.

- ***TEA reform can achieve all of your goals <u>and</u> industry consensus***. Mr. Chairman, we have the opportunity to create a new TEA policy that is both supported by the vast majority of industry participants and meets each of the goals you have set forth, from addressing TEA "gerrymandering" to reining in "rubber stamping" by state authorities to creating an incentive for investment in truly distressed American communities.

Mr. Chairman, I respectfully urge you and your colleagues on the Committee to collaborate with industry and other stakeholders to achieve true TEA reform, rather than tinker around the edges. If you are willing to reimagine how TEAs work, let us engage in a substantive policy discussion and do just that.

Civitas EB-5 Case Studies

I offer three case studies of actual Civitas EB-5 investments, each of which illustrates a different aspect of (a) the power of the EB-5 program to facilitate job creation and economic development, and (b) why TEA reform must be achieved in a manner that balances the program's broad job creation mandate with the desire to drive capital to distressed communities, be they urban or rural.

Case Study No. 1: Distressed Urban Mixed Use. As of this writing, my Civitas colleagues and I are in the midst of structuring an EB-5 investment in Dallas of which I am truly proud. Dr. Michael Sorrell is President of Paul Quinn College (www.pqc.edu), a historically black college located in the Highland Hills neighborhood in southern Dallas. He has served as a member of the Civitas Advisory Board since shortly after the firm's founding. I am honored to call Dr. Sorrell a friend.

Mr. Chairman, if you and your colleagues on the Committee are unfamiliar with Dr. Sorrell's work at Paul Quinn College, I urge you to read up on it. It is truly an extraordinary story, one that is getting better every day.

Nine years ago, Dr. Sorrell – then a lawyer with no experience or training in education – was given the thankless task of taking over a failing institution and, everyone assumed, winding it down. Paul Quinn's enrollment had declined precipitously, the school was facing serious financial difficulties, and its accreditation had been unceremoniously yanked. It is no exaggeration to say that many in the community had simply written off the college. Folks generally assumed that Dallas' only historically black institution of higher learning would disappear ignominiously.

It turned out Dr. Sorrell had other plans. He embarked on a turnaround effort that has been nothing short of inspiring. He cleaned up the school's finances, raising fresh capital and eliminating entirely the school's looming debt. He terminated – and this is in Texas, mind you – the school's football program and turned the football field into an organic farm, which now supplies fresh produce not only to the local neighborhood (which qualifies as a food desert), but also to the catering service at AT&T Stadium, home of the Dallas Cowboys. He converted the school into the nation's first urban federal work college, so students gain valuable work experience and, with work credit offsetting tuition, pay an average of just $2,300 out of pocket per year for their degree. Dr. Sorrell also teamed up with famed technology entrepreneur (and Dallas Mavericks owner) Mark Cuban to transition the college to open-source textbooks and other materials, further driving down the cost of attendance for students.

These and other changes Dr. Sorrell implemented – from the business-formal dress code to demolishing dilapidated buildings to a student exchange partnership with Duke University – have resulted in a remarkable renaissance at Paul Quinn. Today, for the first time ever, the school has a waiting list for admission. The future is bright.

It's a great story, but what is the connection to EB-5 and Civitas? Dr. Sorrell's vision is that the Paul Quinn campus – which is comprised of more than 140 acres in Dallas proper, most of which is undeveloped – will soon anchor the revitalization of the long-neglected Highland Hills neighborhood. More so even than the typical college president, Dr. Sorrell must be extremely creative when it comes to the funding required to fulfill this vision. To that end, I have been working with Dr. Sorrell and a well-known, community-minded Dallas developer on a mixed-use project for the Paul Quinn campus that will jumpstart this process.

The project currently is in the predevelopment phase. We anticipate it will have the following components:

- Residential units designed to serve:
    - Paul Quinn students (many of whom are nontraditional students);
    - Faculty and staff;
    - Neighborhood residents, especially single mothers; and
    - Teach for America corps members teaching on the Paul Quinn campus and in nearby Dallas Independent School District public schools;

- Sliding-scale rent affordability guidelines for nonstudent residents, primarily targeting those earning approximately 70% of area median income (AMI), which is approximately $35,000 for an individual;

- Onsite daycare in partnership with an award-winning nonprofit provider;

- Retail space administered by Paul Quinn and leased to student-run and/or student-staffed businesses as part of the school's federal work college curriculum; and

- Space for educational and/or administrative use by Paul Quinn College.

We are in the process of securing as many as seven sources of traditional and nontraditional capital to finance the project's roughly $30 million cost. These capital sources are anticipated to include:

- Traditional senior bank debt provided pursuant to the Community Reinvestment Act;
- Subordinated debt from the GrowSouth Fund, a double-bottom-line investment fund managed by Civitas and focused on southern Dallas revitalization. This fund was created as the Dallas business community's response to Mayor Mike Rawlings' call for increased investment in southern Dallas;
- Subordinated debt from the TREC Community Fund, a double-bottom-line investment fund sponsored by The Real Estate Council which provides nonprofits and for-profit organizations in Dallas County access to capital for commercial real estate projects benefiting low-income families and their communities (recouncil.com/community-fund);
- Equity investment from both the private development partner and Paul Quinn College;

- Grants and/or other financial support from the City of Dallas;
- Philanthropic support from a private foundation for the nonprofit daycare and educational components of the project; and
- EB-5 capital from Civitas and the City of Dallas Regional Center (cdrc.us).

I provide this level of detail about the Paul Quinn project in order to illustrate several points. First, this is what it takes to jumpstart economic development in a neighborhood as distressed as Highland Hills. A project as ambitious as this one requires a tremendous amount of creativity and work by a range of stakeholders in order to come together, and EB-5 is a critical component of its feasibility. If low-cost, flexible EB-5 capital were not part of the picture, then either (a) those dollars would have to be replaced with philanthropic funding, which is much more scarce, or taxpayer dollars in the form of grants or subsidized loans, or (b) the project simply would not be financially feasible.

Second, addressing the specific topic of today's hearing, the Paul Quinn project is an excellent case study that demonstrates the limitations of current TEA policy. The Highland Hills neighborhood is truly distressed, with daunting generational poverty and unemployment to overcome. Paul Quinn is located in Dallas County census tract 114.01, which today suffers from an unemployment rate of 10.3%.[1] EB-5 program regulations require that an area's unemployment rate be at least 150% of the national average in order to qualify as a TEA.[2] Today, the relevant benchmark rate is 9.3%, which is 150% of the 2014 national average unemployment rate of 6.2%.[3] Thus, the Paul Quinn census tract qualifies as a TEA under current law, as every member of the Committee would surely agree is appropriate were they to visit the campus and its surrounding environs.

But while Paul Quinn's TEA qualification today is obvious, it is easy to imagine a scenario where the project's location would not qualify. Consider that Paul Quinn and the University of North Texas-Dallas are the anchors of the 3.5-mile "Education Corridor" along Simpson Stuart Road, with Paul Quinn on the east and UNT-Dallas on the west. This corridor is a key economic development focus for many Dallas civic and business leaders, led by Mayor Mike Rawlings via

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[1] This statistic and all unemployment data cited in this testimony are based on, as applicable, data from the U.S. Census Bureau, U.S. Bureau of Labor Statistics (including the Local Area Unemployment Statistics dataset for relevant years), and/or the American Community Survey. All such data was compiled by Kim Atteberry, Ph.D., principal of Vermilion Consulting, LLC, and an economist with decades of economic development modeling experience, including serving as Chief Economist of the Investment and Economic Analysis Division of U.S. Citizenship and Immigration Services. Dr. Atteberry has completed hundreds of economic studies for Civitas and many other EB-5 regional center operators, which have been evaluated and approved as to methodology and results by USCIS across hundreds, if not thousands, of EB-5-related petitions.

[2] *See* 8 CFR § 204.6: "*Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate."

[3] According to the U.S. Bureau of Labor Statistics (BLS), the national unemployment rate as of this writing is 5.0%. For TEA calculation purposes, however, USCIS requires EB-5 program participants to use the average national unemployment rate for the most recent calendar year. As of this writing, the BLS has not yet released this benchmark rate for 2015; it is expected to be released in approximately three weeks. Accordingly, EB-5 program participants must continue to use the higher 2014 rate until the new data is released.

his signature GrowSouth Initiative.[4] Dr. Sorrell and his counterpart at UNT-Dallas have discussed a number of ideas for pooling their resources to jumpstart Education Corridor development. Suppose that instead of building the proposed project on the Paul Quinn campus, Dr. Sorrell were to team up with UNT-Dallas to develop a joint project along the Education Corridor in census tract 112, roughly equidistant between the two campuses – an idea the two educators have actively considered. Today, this census tract's unemployment rate is 11.1%, so it would qualify, but the situation was very different in 2009, when the country was in the depths of the Great Recession. In that difficult year, the average national unemployment rate was 9.3%, making the 150% TEA unemployment threshold 13.95% – a massive figure. The unemployment rate in Paul Quinn's census tract 114.01 was over 37%, so it easily qualified, but curiously, the rate for nearby census tract 112 was 8.59%, well below the 150% threshold. The wide disparity in unemployment rates between the two tracts did not exist because Highland Hills residents who live just west of the Paul Quinn campus in 2009, at the nadir of the financial crisis, were finding work at a faster rate than their neighbors to the east. Rather, the disparity was the result of the arbitrary locations of census tract boundary lines in a very concentrated area.

This matters for two reasons.

First, because the only current criterion for urban TEA qualification is whether or not a project site meets the 150% unemployment threshold, truly distressed areas like Highland Hills are disadvantaged even further when the national unemployment rate rises significantly, as it did when the economic downturn hit its trough in 2009. Second, if the Paul Quinn project were built along the Education Corridor rather than on the Paul Quinn campus itself – a scenario that many have high hopes will actually come to pass in future phases – it would qualify as a TEA today, but would not have qualified at all back in 2009, amid the worst economic downturn the United States has experienced since the Great Depression.

This perverse outcome cannot be what Congress intended. Indeed, current law is not so rigid as to require the individual census tract in which an EB-5 project is located to meet the 150% unemployment threshold. In fact, the current TEA definition does not mention census tracts or any other geographic unit at all, but rather refers much more broadly to "an area…which has experienced unemployment of at least 150% of the national average rate."[5] The flexibility built into this language amounts to a recognition of the concept of labor mobility, i.e., that the location of a project and the location of the unemployed workers who will benefit from that project are rarely one and the same – as the Paul Quinn project demonstrates. In other words, unemployment

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[4] See, e.g., the discussion of the "Education Corridor" on the website for Mayor Rawlings' GrowSouth Initiative at http://www.dallasgrowsouth.com/education-corridor/. The GrowSouth Initiative is an ambitious economic development plan for southern Dallas in which Civitas is heavily involved. In addition to our EB-5 investment activities, the firm manages the GrowSouth Fund, a private real estate investment fund sponsored by the nonprofit Impact Dallas Capital and formed in response to the Mayor's call for private investment in southern Dallas. The GrowSouth Fund is a double-bottom-line fund which seeks to generate both financial returns for investors and a meaningful social impact.

[5] 8 CFR § 204.6

as a metric is focused on people and is calculated based on where those people live, and people generally do not live in the exact same location where they work.

This is why in practice, Civitas and other EB-5 regional centers hire economists to create qualifying TEAs by averaging the unemployment rates of contiguous census tracts via the well-established, statistically valid "census share" methodology that is used by agencies throughout the federal government, among many others. This practice eliminates the perverse outcome highlighted by the Paul Quinn example above; in the 2009 hypothetical, a TEA could have been created by aggregating census tracts along the Education Corridor, and the location in census tract 112 would have qualified despite the relatively low unemployment rate in that tract itself. This is also why the City of Dallas uses this methodology to draw the largest possible TEA within the city limits, reflecting an explicit policy choice to drive as much capital to the broadest swath of the city as possible, with a particular focus, not surprisingly, on the historically underserved southern sector.

Supporters of this approach point to well-documented commuting patterns that make clear, for example, that the workers who build and staff a large project in Uptown Dallas (or Manhattan, for that matter) generally do not live in the immediate area; rather, they commute from various other neighborhoods, the vast majority of which are considerably less well-off. The other side of the coin, of course – and the reason for today's hearing – is that the practice of aggregating census tracts for TEA purposes has in some cases led to the so-called "gerrymandering" that has caused concern among some Committee members.

In the debate among stakeholders and Members leading up to the recent short-term extension of the regional center program, TEA reform was the thorniest issue. A variety of reform proposals were offered by members of the Committee, industry and others. At the end of that process, a TEA compromise was reached, but the broader negotiations stalled over other issues and the process simply ran out of time, resulting in the short-term clean extension.

I view the short-term extension as an opportunity to roll up our sleeves and get this right. The reality is that the TEA compromise reached this past December – limiting the number of census tracts that can comprise a TEA to twelve, essentially – was workable, but far from ideal. On the plus side, by permitting aggregation of a limited number of census tracts, the compromise would have limited so-called "gerrymandering" significantly, while retaining some ability to account for labor mobility and commuting patterns. On the other hand, the 12-tract compromise approach included a complex, unwieldy collection of criteria and exceptions to those criteria that would have been a bonanza for the lawyers but would strike most normal people as needlessly complicated. It is important to note that the 12-tract compromise would not have eliminated so-called "gerrymandering.". This is because it is safe to assume that as long as TEA status equates to a massive pricing advantage, project sponsors will do anything within the rules to obtain that advantage.

It doesn't have to be this way. Now that the Committee is dedicating the time and energy to discussing TEAs specifically, we have the opportunity to do better. If practitioners retain the ability to combine census tracts, there will always be some degree of the so-called "gerrymandering" that some Committee members wish to rein in. If that is the goal, I suggest we dispense with the focus on census tract aggregation and adopt objective criteria that will (a) eliminate the perceived problem altogether, while (b) taking into account a broad enough set of criteria so the perverse dynamic that can result from focusing solely on unemployment, as illustrated in the Paul Quinn example, is avoided in the future.

Case Study No. 2: Hotel Development in Five Rural Texas Markets. Civitas got started in the EB-5 space with the CDRC, and is perhaps best known for projects in Dallas. However, Civitas has also made significant investments in smaller, rural Texas markets. For example, we have invested in a portfolio of Marriott limited-service hotels located in the west Texas markets of Pecos and Snyder (populations 8,919 and 11,368, respectively) as well as the south Texas markets of Cotulla, Cuero and Pleasanton (populations 3,843, 6,979 and 9,283, respectively).[6] Under current TEA policy, four of these markets automatically qualify for the lower $500,000 investment amount because they are rural, but the fifth – Pleasanton – does not, because it technically lies within the San Antonio Metropolitan Statistical Area (MSA). Under current TEA policy, the fact that Pleasanton is in an "outlying county" is irrelevant. In the EB-5 context, creating this distinction among markets that are all essentially alike economically does not make any sense. Does anyone really believe that Pecos, Snyder, Cotulla and Cuero deserve the advantage of being able to raise EB-5 capital in $500,000 increments, but Pleasanton should be required to raise the same capital in $1MM increments, pricing it out of the EB-5 market? In order to make the Pleasanton location work in today's EB-5 market, we created an unemployment-based TEA using the census share methodology described above. This solution was workable but far from ideal, much like the 12-tract TEA policy compromise described above. But now, Congress has the opportunity to reform TEA policy from the ground up. I respectfully urge the Committee to do so.

Case Study No. 3: Rural Manufacturing. As the EB-5 program has gained popularity, the most prominent EB-5 investments have been large-scale real estate projects in major markets, such as New York City and Los Angeles. Civitas has certainly invested in large developments, in Texas and elsewhere. They are a perfectly legitimate, job-creating use of EB-5 capital. But with the rising awareness of the EB-5 program has come a spate of recent investments in a range of industries beyond real estate development, including health care, manufacturing, transportation/logistics, and energy. Civitas has embraced this trend. In late 2015, Civitas began evaluating an EB-5 loan to partially fund the construction of a manufacturing facility in Orogrande, New Mexico (population: 56). The facility will process garnet, a mineral used as an abrasive in a variety of industrial applications in the marine, manufacturing and oil and gas industries, among others. Currently, the vast majority of garnet used in the United States is imported from India and China. The Orogrande project sponsor believes his domestically produced garnet products will be competitive both on price and quality, and plans to invest more than $20 million of capital alongside Civitas' EB-5 investment in the facility.

If it proceeds, this project will result in the first large-scale economic activity in this tiny unincorporated community between Las Cruces and Alamogordo in years. It is the farthest thing

[6] All population data from American Factfinder American Community Survey 2014 (5-Year Data).

from a typical real estate deal; banks and other traditional capital providers will not finance it until it is fully up and running, creating the chicken-and-egg problem that EB-5 capital is so useful for solving. In short, it is an excellent example of what can be done with EB-5 with a little creativity. In the context of the Committee's consideration of TEA reform, it demonstrates why a manufacturing project in a place like Orogrande, NM, might deserve an extra incentive relative to other markets that qualify as rural, such as Jackson Hole or Aspen. In other words, the distinction that TEA policy should make is not urban vs. rural, but distressed vs. not distressed.

Don't Just Tinker With Existing TEA Policy – Reimagine It.

Mr. Chairman, you have chosen to dedicate your Committee's precious time and resources to the EB-5 program and specifically to TEA reform, and I thank you for that. Since we have this rare opportunity to closely examine TEA policy, I hope Congress and industry stakeholders will engage in an honest, open dialogue, so we can get this right. To that end, I would emphasize the following:

- The Committee has the opportunity to simply end TEA "gerrymandering" altogether, rather than tinkering with it.

- It is possible to adopt a TEA policy that incentivizes investments in Pecos and Orogrande without disadvantaging Dallas and Houston and, for that matter, New York City. I suspect we agree that creating jobs in the large and medium-sized urban markets where the vast majority of Americans live is a good thing. Doing so should not preclude driving EB-5 capital to distressed areas, be they urban or rural.

- We can work together to agree on objective criteria for TEAs that do not require an advanced degree in economics to apply. If your goal is to eliminate inconsistent state and local TEA designations in favor of simple, objective criteria, I stand ready to work with you.

The Solution: Objective, Narrow, Place-Based TEA Criteria

Objective TEA Criteria. Many industry stakeholders believe strongly that if urban TEAs are to be redefined, commuting patterns should be incorporated into the policy. In my view, these stakeholders have a point. Last year, Mr. Chairman, you and Ranking Member Leahy introduced S. 1501, which would have limited urban TEAs to a single census tract. As discussed above, this approach would continue the current reliance on a single metric, i.e., whether a census tract's unemployment rate is equal to or greater than 150% of the national average rate. It would apply that metric to very granular, census-tract-level data, which are susceptible to the unintended consequences illustrated by my actual experience planning the Paul Quinn College project and other Education Corridor initiatives described above. Adopting this approach would be a step backward; current TEA policy may be flawed, but as discussed above, it at least accounts for commuting patterns indirectly. The 12-tract limitation compromise would partially address the issue, but it remains a blunt instrument.

Devising and implementing an urban TEA policy that accounts for complex commuting patterns without the potential to be "gamed" is, in my view, a tall order. It may be possible, but in my opinion, there is another, better way, one that avoids the commuting pattern complexity in favor of a simple and explicitly place-based approach. In this context, TEA eligibility would be the exception, not the rule, and would be reserved for areas that are truly distressed – be they urban or rural – based on objective criteria.

Congress need not come up with anything new to achieve this goal. Rather, Congress can craft a simple, straightforward TEA policy by adopting a tighter version of the longstanding poverty, income, and unemployment criteria enacted by Congress and implemented by the Treasury Department to determine census tract eligibility for New Markets Tax Credits (NMTCs).[7] Specifically, for EB-5 purposes, a TEA could be defined as one of the following:

a. "Priority Urban Investment Area"—A census tract <u>within</u> a Metropolitan Statistical Area (MSA) that has any <u>two</u> of the following characteristics:

    i. Poverty rate greater than 30%; or

    ii. Median family income (MFI) does not exceed 60% of statewide MFI; or

    iii. Unemployment rate at least 1.5 times the national average.

b. "Priority Rural Investment Area"—A census tract <u>outside</u> an MSA that has any <u>one</u> of the following characteristics:

    i. Poverty rate at least 20%; or

    ii. MFI does not exceed 80% of the greater of the statewide MFI or the MSA's median family income.

For urban TEAs, the Priority Urban Investment Area idea builds on the "severely distressed" concept from the NMTC program. For NMTC purposes, a census tract is considered "severely distressed" if it meets any one of the criteria listed in (a) above. For EB-5 TEA purposes, I suggest tightening this to any <u>two</u> of the same criteria. The rationale for this more restrictive requirement is that unlike in the NMTC context, the policy goal in the EB-5 context is to restrict TEA eligibility to the most truly distressed areas in the country, in recognition of the fact that unlike NMTCs, EB-5 capital can be invested anywhere in the United States, regardless of poverty, income and unemployment levels, as long as the EB-5 capital is raised at the upper-tier investment level.

This approach would also provide a meaningful boost for truly distressed rural areas. Note that the proposed thresholds for TEA qualification as a "Priority Rural Investment Area" are lower

[7] *See* 26 U.S. Code § 45D. *See also*, *e.g.*, NMTC 2015 application, "Part II—Community Outcomes" at p. 25. Available at: http://www.novoco.com/new_markets/resource_files/application/2015_nmtc_app_102815.pdf.

than those for urban areas. In addition, a rural census tract need only meet one of the proposed thresholds to qualify, rather than two. The lower thresholds are identical to those used by the Treasury Department in determining rural area eligibility for NMTCs. This is in recognition of the reality that all else being equal, it is more difficult to attract capital – be it foreign or domestic, EB-5 or otherwise – to rural areas.

Importantly, these criteria are objective and easily measured. Adopting them would eliminate the need to create TEAs via census tract aggregation and therefore would eliminate the "gerrymandering" issue altogether.

Of course, the NMTC program is but one of a number of place-based federal programs that include criteria that could serve as a model for TEA policy. I urge the Committee to consider all options in reimaging how TEA policy should work.

Minimum Investment Amounts. Support for raising the minimum investment amounts for both standard and TEA locations is nearly universal. But in my view, in order for the simple, objective TEA criteria above to gain widespread stakeholder support, Mr. Chairman, it is crucial that the associated minimum investment amounts be set at appropriate levels. The reason the TEA issue has been difficult to resolve to date is primarily that under the current system, the 100% price difference between TEA and standard locations (i.e., $500,000 vs. $1 million) creates a financial incentive for foreign investors to invest in TEAs that is nearly impossible to overcome. In order to avoid this in the future, the delta between the minimum investment amounts must be much narrower.

In my view, raising the standard investment amount to $725,000 and the TEA investment amount to $675,000 would achieve the right balance. Specifically, these minimum amounts balance the following factors:

- ***Need to Raise Investment Amounts***. I recognize that as a practical matter, the EB-5 program currently has a single price point – $500,000 – because virtually all EB-5 investments are in qualified TEAs under the current policy. Under the objective criteria recommended above, this would no longer be the case. TEA qualification would be the exception, not the rule, and the two-tier pricing system would be very meaningful. In that context, the proposed increased investment minimums equate to an increase of 45% and 35% for standard and TEA locations, respectively. It is critical for this Committee to understand that increases of this magnitude are very significant. By definition, such increases will shrink the market of prospective foreign investors, and therefore could significantly reduce EB-5 foreign direct investment in the United States. In any other market – health insurance, for example – an overnight 35% or 45% price hike would obviously be a market-shifting event, one that would clearly change behavior. While I understand your impulse, Mr. Chairman, to raise the investment amounts to account for past inflation as a matter of principle, I would again emphasize that my goal in testifying today is to urge the Committee to reimagine TEA policy, not tinker with it. This means considering not just past inflation, but more importantly, the following question: "What is the pricing level that results in the maximum level of job-creating foreign direct investment through EB-5?" After all, the purpose of the program is to create jobs. That is the lens through which the minimum investment amounts should be evaluated. I believe this strongly suggests limiting the magnitude of short-term price increases, especially given that support for automatic indexing to inflation in the future is widespread.

- ***Create Financial Incentive for Rural and Urban Distressed Investments Without Harming Other Markets.*** The delta of $50,000 between the two investment levels creates a significant financial incentive for TEA investment. Investing at the standard level would require an investor to risk 7.4% more capital than would be the case for a project in a TEA location. This financial incentive is significant enough to merit serious consideration by a prospective investor, but unlike the $500,000 (or 100%) delta under the current TEA policy, the incentive is not so strong that it outweighs virtually any other consideration, including project location and sponsor quality.

Conclusion

Mr. Chairman, I urge you to seriously consider this TEA reform proposal. Thank you for your interest in the EB-5 program and the opportunity to appear before the Committee today.