

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JEFF FLAKE, ARIZONA
MIKE CRAPO, IDAHO
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
KAMALA D. HARRIS, CALIFORNIA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

June 04, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen:

Since 1990, the United States government has allowed wealthy foreigners to purchase green cards through the controversial EB-5 Immigrant Investor Visa Program. This program allows the world's wealthiest to acquire U.S. citizenship by investing either \$1 million or \$500,000, if the investment will benefit a targeted employment area. Consistently plagued by criminal, national security, and fraud vulnerabilities, this visa category is in desperate need of reform. And for years a bipartisan, bicameral group of legislators routinely encouraged fixes to the program's flaws.¹

When Congress created the immigrant investor visa program, our goal was to spur job growth and economic development in rural and underserved areas. Unfortunately, the EB-5 Regional Center Program has strayed from its original purpose and has become an often illicit funding source for big moneyed interests in the largest cities around the country.

A 2017 report by U.S. Citizenship and Immigration Services' Fraud Detection and National Security Directorate (FDNS) EB-5 Division outlined the agency's ability to identify national security threats posed by the EB-5 program.² National security concerns may exist when an individual or organization has articulable links to terrorist activity, espionage, sabotage, or

¹ Letter from Hon. Charles Grassley, Hon. Bob Goodlatte, and Hon. Patrick Leahy to DHS Sec'y Kirstjen Nielsen (Apr. 5, 2018); letter from Hon. Charles Grassley, Hon. Bob Goodlatte, Hon. John Conyers, Jr., and Hon. Patrick Leahy to Samantha Deshommes, Acting Chief, Regulatory Coordination Divisions, U.S. Citizenship and Immigration Services (Apr. 11, 2017); letter from Hon. Charles Grassley, Hon. Bob Goodlatte, Hon. John Conyers, Jr., and Hon. Patrick Leahy to DHS Sec'y Jeh Johnson (Mar. 2, 2016).

² U.S. Citizenship and Immigration Services (USCIS) National Security Concern Assessment, FDNS EB-5 Division Process Review (May 5, 2017).

illegal transfer of goods, technology, or sensitive information, as defined by the Immigration and Nationality Act.³

After assessing 119 cases from 2011-2015, FDNS EB-5 confirmed 19 cases with national security concerns primarily from China, Iran, and Russia, and another 21 cases that were still being processed, or were no longer being assessed due to litigation or withdrawal. This brings the total number of cases with possible national security concerns to 40 cases. The report also concluded that current vetting by law enforcement data systems may have missed national security concerns, which casts into doubt the accuracy and reliability of the numbers of national security cases discovered. In reality, if the vetting conducted may have missed concerns, then it is unlikely we have an accurate picture of how many national security cases actually existed, or may still exist, depending on the level of improvement in vetting and data collection. At best, this information is at odds with FDNS's judgment that the program "isn't a gateway" for individuals who pose a risk to national security.

While the EB-5 program is vulnerable to national security threats, the FDNS EB-5 review also found that regional centers are susceptible to Ponzi schemes and "other types of financial fraud."⁴ In one case example, a regional center had a foreign born CEO interested in using certain virtually untraceable assets—easy avenues for financial crimes and investor fraud-- to incentivize investment on a project deemed critical infrastructure. FDNS EB-5 discovered that not only did the case example illustrate articulable links to a potential for espionage, sabotage, illegal transfer of goods, technology, or sensitive information, but that a routine background check through law enforcement data bases did not alert FDNS EB-5 to national security or other criminal issues. While some forms have since been amended to collect more usable data points, the forms used at the time of the study did not require an applicant to list critical information which would have prompted additional vetting.

Additionally, there are numerous reports of fraud and abuse in the program. A Forbes article highlighted the EB-5 fraud case of Jay Peak Resort in Vermont, which was accused of securities fraud and misuse of more than \$200 million in investor funds. Fortunately, the SEC filed suit against Jay Peak, alleging the owner, Ariel Quiros, "systematically looted" close to \$80 million from foreign investors. The article further criticized the program explaining, "[f]or many it is a winning proposition, but for others the *EB-5 program has led investors to ponzi schemes, broken promises and missing capital* [emphasis added]."⁵ Quiros recently agreed to pay back the \$81.3 million plus an additional \$1 million as part of a settlement reached between parties.⁶

³ INA 212(a)(3)(A), (B), or (F), 237(a)(4)(A) or (B).

⁴ U.S. Citizenship and Immigration Services (USCIS) National Security Concern Assessment, FDNS EB-5 Division Process Review (May 5, 2017), on file with the Committee.

⁵ Ellen Sheng, *Foreign Investors Defrauded Through U.S. EB-5 Visa Program*, Forbes (Aug. 1, 2016), available at <https://www.forbes.com/sites/ellensheng/2016/08/01/foreign-investors-defrauded-through-u-s-eb-5-visa-program/#499fd43f14ee>;

⁶ Dan D'Ambrosio, *Quiros Reaches \$82 Million Settlement in Jay Peak Fraud*, Burlington Free Press (Feb. 2, 2018), available at <https://www.burlingtonfreepress.com/story/news/2018/02/02/quiros-reaches-82-million-settlement-jay-peak-fraud-case/301137002/>

In March of this year, Australian developer the Majella Group made news when its CEO—after promising to develop a ski resort it purchased in Maine—as recorded admitting that obtaining EB-5 benefits, not developing the resort, was the primary reason it made the purchase.⁷ In a shocking confession, Majella CEO Sebastian Monsour admitted, "[o]pening Saddleback resort is not a primary concern for us. The EB-5 program is the reason we are buying Saddleback." Statements like this highlight the vulnerability of this visa category, and showcase the real priorities—contrary to the intent of the drafters—of many who invest in this program.

These examples are just the tip of the iceberg. And the problems that persist show no signs of disappearing. Since 2016, I have written more than eight times raising concerns with both the previous and current administrations and worked for common sense reforms, with little avail.⁸ Sadly, many members on both sides of the aisle refuse to acknowledge the vulnerability of this “golden visa.” Now that the time for public comment on the Department of Homeland Security’s (DHS) proposed EB-5 modernization regulations has ended, I urge you to publish the new rule as soon as possible.⁹ As the examples in this letter demonstrate and without necessary reforms, more investors are at risk of being defrauded and criminals who wish to exploit the program have largely free rein to do so.

It is past time for your Department to publish the modernization rules. I have received reports that certain industry groups believe the White House will never allow the regulations to go into effect. Please confirm or deny this allegation, provide my office with an update on the status of these rules, and any impediments to their finalization. Please also provide an update to the 2017 FDNS EB-5 Division National Security Assessment, to include a detailed description of all updated form changes and data sets that are 1) collected by your Department, and 2) vetted through law enforcement partners.

Thank you for your attention to this important matter. Should you have any questions, please contact Katherine Nikas or Brad Watts of my Committee staff at (202) 224-5225.

⁷ Jack Foersterling, *Australian Developer Looking to Buy Maine Ski Area for Visa Benefits*, Powder.com (Mar. 21, 2018), available at <https://www.powder.com/stories/news/australian-developer-buys-maine-ski-area-visa-benefits/>.

⁸ Letter from Hon. Charles Grassley, Hon. Bob Goodlatte, and Hon. Patrick Leahy to DHS Sec’y Kirstjen Nielsen, (Apr. 5, 2018); letter from Hon. Charles Grassley, to Sec’y John Kelly and Jay Clayton (May 24, 2017); letter from Hon. Charles Grassley to DHS Sec’y John Kelly (May 10, 2017); letter from Hon. Charles Grassley, to DHS Sec’y John Kelly (Apr. 20, 2017); letter from Hon. Charles Grassley, to USCIS Dir. Leon Rodriguez (Oct. 18, 2016); letter from Hon. Charles Grassley and Hon. Jason Chaffetz to USCIS Dir. Leon Rodriguez (Sept. 19, 2016); letter from Hon. Charles Grassley and Hon. Jason Chaffetz to FBI Dir. James B. Comey (May 11, 2016); letter from Hon. Charles Grassley and Hon. Jason Chaffetz to ICE Assistant Sec’y Sarah R. Saldaña (Mar. 18, 2016).

⁹ DHS, “EB-5 Immigrant Investor Program Modernization” (Jan. 13, 2017), available at <https://www.federalregister.gov/documents/2017/01/13/2017-00447/eb-5-immigrant-investor-program-modernization>

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a prominent "C" and "G".

Charles E. Grassley
Chairman
Committee on the Judiciary

cc:

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary