Alissa Emmel, Chief February 10, 2023

Immigrant Investor Program Office

U.S. Citizenship & Immigration Services

20 Massachusetts Ave. NW

Washington, DC 20529

**RE:** Questions and Comments for March 20, 2023 EB-5 Stakeholder Engagement

Dear Chief Emmel:

Please accept the below/enclosed comments and questions in anticipation of USCIS’s EB-5 Stakeholder Engagement on March 20, 2023. As an EB-5 stakeholder, I appreciate the opportunity to provide these comments and questions to you and I look forward to a productive engagement in March.

Sincerely,

**TOPIC: EB-5 INVESTMENT PERIOD UNDER THE EB-5 REFORM AND INTEGRITY ACT OF 2022**

**USCIS Engagement Invitation:**

*“Investment Period: USCIS will discuss the requirements for an immigrant investor to sustain their investment if they filed Form I-526, Immigrant Petition by Standalone Investor, before March 15, 2022, and the new requirement under the EB-5 Reform and Integrity Act of 2022 (RIA) that capital must be expect to remain invested for at least two years for those who filed an I-526 or I-526E on or after March 15, 2022.”*

**Question:**

Does USCIS intend to interpret the RIA to adopt an investment duration floor of 2 years?

**Comment:**

We are deeply concerned that USCIS is considering interpreting the RIA to require a substantially shorter investment duration than we believe compelled by the best interpretation of the RIA, Congressional intent, and sound policy.

USCIS’s brief remark on the point during the last stakeholder engagement held on October 19, 2022 and the language used in the invitation for the upcoming March 20, 2023 engagement reprised above suggest that USCIS may interpret the RIA as requiring merely a two year investment period, after which presumably, investors may receive a return of capital irrespective of their conditional residency. To the extent that USCIS is considering this interpretation, we submit that such an interpretation of the RIA is contrary to both the clear intent of Congress and the policy goals of the EB-5 Program. While the RIA states that EB-5 capital is expected to remain invested for “not less than 2 years,” there is no indication anywhere in the RIA suggesting that the referenced 2-year period is independent of the two-year required conditional residency period as is the current written USCIS policy. See 6 USCIS-PM G.5, FN 4 (“Sustainment Policy”).

The Sustainment Policy aligns with regulations at 8 CFR 216.6(a)(4)(iii) which require:

Evidence that the alien sustained the actions described in [paragraph (a)(4)(i)](https://www.ecfr.gov/current/title-8/section-216.6#p-216.6(a)(4)(i)) and [(a)(4)(ii)](https://www.ecfr.gov/current/title-8/section-216.6#p-216.6(a)(4)(ii)) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if 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**. [emphasis added]

There is no indication whatsoever in the RIA’s framework that with six words, “for not less than 2 years” that Congress meant to unwind the long-enshrined principle of requiring investment throughout the two-year conditional residency period.

The policy rationale for rejecting such a view is even more immediate. Virtually all federal programs in the United States that provide investor incentives and benefits require significant investment holding periods. By way of example, to receive the maximum Opportunity Zone benefit, the necessary investment period is ten years; for New Market Tax Credits, the necessary investment period is seven years; for Qualified Small Business Stock treatment at least, a five-year investment is required. Lawful permanent residence in the U.S. is a benefit worthy of a substantial investment of time and funds. Nothing in the RIA suggests that Congress intended to devalue the path to U.S. citizenship by lowering the threshold of investment from the framework imposed pre-RIA. In fact, uncontroversially, all of the RIA advances the idea that upwardly adjusting the value of residency by investment to the United States was long overdue.

As the RIA also puts EB-5 Program integrity and oversight foremost among its underlying Congressional objectives, we are profoundly concerned about the perverse impacts that devaluing EB-5 investment duration will have on the market. We fear that regional centers will respond to investor pressure to create “fast and easy” pathways touting short-term investment timelines uncoupled from the investment's merits. Rather than encouraging high-quality projects and protecting investors as the RIA is intended to do, a two-year investment minimum interpretation will likely flood the EB-5 market with short-term, high-risk projects that do not fulfill the key economic development and job creation goals that are the foundation of the EB-5 Program.

In fact, we regrettably report that the market has already responded to the possibility of a two-year minimum investment. Projects are currently being offered in the market with claims that the sustainment period is now just two years. We also observe that quick returns may neutralize the RIA’s new incentives for rural and infrastructure developments because these projects, on average, require significantly longer hold periods for construction and stabilization.

In summary, it is a poor construction of the RIA to adopt a two-year floor on the EB-5 investment duration. We submit that such an interpretation would stand the thrust of the RIA’s purpose on its head. The RIA is intended to bring an even greater boost to the U.S. economy than the prior iteration of the EB-5 Program and at the same time imposes a higher hurdle to achieve U.S. residency by investment. Adopting a two-year floor on investment would thwart both objectives. We urge USCIS to forego this errant interpretation of the RIA, if it is indeed considering its adoption.