

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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INVEST IN THE USA,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:24-cv-918-ACR
	)	
U.S. DEPARTMENT OF HOMELAND,	)	
SECURITY, <i>et al.,</i>	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**JOINT STATUS REPORT**

Pursuant to this Court’s Order on January 28, 2025, Plaintiff and Defendants, through undersigned counsel, hereby submit the following joint status report as to their efforts in resolving this matter. The parties have yet to reach an agreement. Plaintiff proposes that the parties file another joint status report in 14 days; Defendants propose filing another joint status report in 30 days.

*Plaintiff’s Position*

1. As discussed with Defendants and the Court, IIUSA would welcome a negotiated resolution of this matter. IIUSA and USCIS likely share material common ground. As a policy matter, IIUSA ultimately wishes for a sustainment rule that would mirror the intent of Congress, as clearly articulated expressed by the co-sponsors of the RIA in their letter to USCIS Chief Emmel dated February 2, 2024. IIUSA believes that, through a proper legal process, USCIS should rescind the existing sustainment period regulation, and replace it with a sustainment period defined by a specific number of years.

2. IIUSA also agrees with USCIS’s position that a sustainment period tied to the period of

conditional residence has become too burdensome for investors. IIUSA thus believes that a settlement agreement wherein USCIS would undertake a new rulemaking to repeal the existing EB-5 sustainment period regulation and replace it with a different sustainment period in the best interests of all involved. However, in IIUSA's view, USCIS has yet to offer a meaningful proposal to achieve that end.

3. IIUSA has proposed to USCIS that this case should be held in abeyance, for a limited period of time, during which USCIS would agree to engage in an expedited notice and comment rulemaking process to announce a new sustainment period regulation. IIUSA has asked USCIS to agree to limited periods of time for issuance of the notice of proposed rulemaking and a forthcoming final rule for the sustainment rule.<sup>1</sup> The abeyance of this litigation would continue so long as USCIS meets those timeframes. To be sure, nothing would compel USCIS to meet those timeframes, but if USCIS failed to meet them, this case would be removed from abeyance and IIUSA would ask the Court to resolve the pending motion.

4. In IIUSA's proposal, the challenged policy guidance would be removed from USCIS's website on the date of the settlement. As for any investors that invested prior to a settlement agreement, IIUSA has proposed to USCIS that those investors receive the benefit of the October 2023 policy. While IIUSA does not believe that this policy is lawful because of the way in which it was adopted, IIUSA has no interest in disrupting the interests of investors who relied in good faith on the USCIS policy. And for investors that invested after the settlement agreement, IIUSA has proposed that those investors should be subject to whatever sustainment rule USCIS

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<sup>1</sup> IIUSA would welcome a targeted rule from USCIS addressing solely the sustainment period, so as to bring resolution to this matter. IIUSA understands that USCIS may wish to issue an omnibus rule addressing other aspects of the EB-5 program. But nothing prohibits USCIS from acting swiftly to address the sole issue in this case, while it takes more time for any number of additional changes it may make to the EB-5 program.

promulgates following the notice-and-comment rulemaking it would undertake.

5. As IIUSA understands it, USCIS has rejected this proposal because it will not agree to timeframes for the issuance of a notice of proposed rulemaking and a final rule. Rather, USCIS wishes for an open-ended abeyance, to allow it to conduct rulemaking over what would likely take several years. In that scenario, however, IIUSA would receive no relief—nothing at all—in connection with bringing this lawsuit. Rulemakings of this ilk often take years, meaning that the market would be left in disarray for a prolonged period of time.

6. IIUSA does not object to an additional period of time for USCIS to propose a response, but IIUSA submits that the Court should order the filing of a new JSR within 14 days. This shorter duration of time will encourage the parties to focus on these issues promptly, helping achieve more expeditious resolution of this matter.

#### *Defendants' Position*

As discussed during the hearing on January 28, 2025, Defendants acknowledge the Court's as well as the parties' interest in U.S. Citizenship and Immigration Services ("USCIS") promulgating regulations to implement the EB-5 Reform and Integrity Act of 2022 ("RIA"). Agency counsel confirmed with undersigned counsel for Defendants that USCIS considers this matter to be a regulatory priority at this time and does not anticipate rule promulgation to take several years. The Fall 2024 Unified Agenda of Regulatory and Deregulatory Actions contained plans for the EB-5 Rule, with a then-proposed Notice of Proposed Rule Making date of April 2025.<sup>2</sup> However, in light of the recent change in administration, USCIS requires additional time for its new leadership to review the proposed regulations, familiarize themselves with this

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<sup>2</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202410&RIN=1615-AC94>

litigation, and assess the appropriate next steps for the regulatory process. At this time, multiple appointed positions at USCIS have yet to be confirmed, including (and most critically) the Director. As a result, more time is needed for the new administration to review this pending litigation and assess regulatory priorities in the short and long term prior to Defendants presenting an estimated timeframe.

To this end, Defendants respectfully request that this Court provide Defendants with an additional 30 days in order to provide another status update.

Respectfully submitted this 27th day of February, 2025:

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2025, a true and correct copy of the foregoing document was electronically filed using CM/ECF, which will provide electronic notice and an electronic link to this document to all attorneys of record.

By: /s/ Alessandra Faso  
ALESSANDRA FASO  
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