

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

EB5 CAPITAL, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et al.,

Defendants.

Case No.: 1:22-cv-1455

**BRIEF OF THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION OR SUMMARY JUDGMENT**

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICUS CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT.....	4
I. USCIS’S DECISION WILL INFLICT SIGNIFICANT HARM ON THE U.S. ECONOMY AND U.S. WORKERS.....	4
A. The EB-5 Regional Center Program Each Year Generates Billions Of Dollars Of Foreign Investment Into The United States And Hundreds Of Thousands Of New Jobs.....	6
B. Additional Benefits From The EB-5 Program Expand The U.S. Economy And Create Even More New Jobs	9
C. The De-Authorization Of Existing Regional Centers Will Significantly Reduce Job Growth For Years To Come	11
II. THE PLAIN TEXT OF THE INTEGRITY ACT MAINTAINS IN EFFECT EXISTING REGIONAL CENTER DESIGNATIONS	12
CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Eldred v. Ashcroft</i> , 537 U.S. 186 (2003).....	17
<i>Hulli v. Mayorkas</i> , 549 F. Supp. 3d 95 (D.D.C. 2021).....	13
<i>NLRB v. SW Gen., Inc.</i> , 137 S. Ct. 929 (2017).....	17
<i>Whitman v. Am. Trucking Assns., Inc.</i> , 531 U.S. 457 (2001).....	16
Statutes	
8 U.S.C. § 1153.....	13, 14, 15, 16
Pub L. No. 116-260, Div. O, § 104.....	16
Pub. L. 102-395, § 610(a).....	13, 14, 16
Pub. L. No. 117-103, Div. BB	13, 16, 17
Other Authorities	
8 C.F.R. § 204.6(e).....	14
136 Cong. Rec. 35615 (Oct. 26, 1990)	5, 9
167 Cong. Rec. S4743 (June 24, 2021)	7
168 Cong. Rec. S1105 (daily ed. Mar. 10, 2022)	16
<i>City of Dallas Regional Center and Civitas Capital Group to Speak at Urban Land Institute Expo on October 18</i> , businesswire (Oct. 11, 2012, 11:30 AM EDT), https://www.businesswire.com/news/home/20121011005970/en/City- of-Dallas-Regional-Center-and-Civitas-Capital-Group-to-Speak-at-Urban- Land-Institute-Expo-on-October-18	8
Congressional Research Service, <i>EB-5 Immigrant Investor Visa</i> (Dec. 16, 2021) (<i>CRS Report</i>), https://crsreports.congress.gov/product/pdf/R/R44475	5, 7, 8

Darrell M. West, *Technology and the Innovation Economy*, Ctr. Tech. Innovation (Oct. 19, 2011), https://www.brookings.edu/wp-content/uploads/2016/06/1019_technology_innovation_west.pdf10

David K. Henry et al., *Estimating the Investment and Job Creation Impact of the EB-5 Program*, Dep’t of Commerce (2017) (*Commerce Study*), https://www.commerce.gov/sites/default/files/migrated/reports/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf6

David Kay, *The Economic Impact and Contribution of the EB-5 Immigration Program 2013*, Invest in the USA (May 2015), https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program_2013_FINAL-web.pdf.....9

Hart Hodges, et al., *Quantitative Assessment of the EB-5 Program*, Western Washington University Center for Economic Business Research (2018), <https://iiusa.org/wp-content/uploads/2020/05/EB-5-Economic-Impact-Report-2014-2015-FINAL.pdf>.....9

James Broughel & Adam Thierer, *Technological Innovation and Economic Growth*, Mercatus Ctr. (Mar. 4, 2019)10

Jeffrey B. Carr & Robert A. Chase, *Assessment of the Economic Value and Job Creation Impacts of Project Capital Investment Activity Under the EB-5 Program*, Econ. & Pol’y Res. (Feb. 28, 2019), <https://iiusa.org/wp-content/uploads/2019/03/Joint-Report-Asessment-of-EB-5-economic-impact.pdf>7

Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, 2 Am. Econ. J.: Macroeconomics 31 (2010)9

S. Rep. No. 101-55 (1989)4

Stuart Anderson, *Immigrants and Billion-Dollar Companies*, Nat’l Found. for Am. Pol’y (Oct. 2018), <https://nfap.com/wp-content/uploads/2019/01/2018-BILLION-DOLLAR-STARTUPS.NFAP-Policy-Brief.2018-1.pdf>.....10

Tina Huang et al., *Most of America’s “Most Promising” AI Startups Have Immigrant Founders*, Ctr. Sec. & Emerging Tech. (Oct. 2020)10

INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.¹

Many of the Chamber's members have a significant interest in the EB-5 visa program. The program produces billions of dollars of capital for the creation of new businesses and expansion of existing businesses, growing the American economy and generating job opportunities for American workers. It also provides a pathway to citizenship for entrepreneurs who are themselves likely to innovate in ways that further contribute to our economic growth.

Virtually all of the foreign capital attracted to our country by the EB-5 program is invested through EB-5 regional centers. These more than six hundred centers allow investors to pool their capital, funding large projects that produce very substantial numbers of new jobs. The regional center program was established as a pilot project in the 1990s and, after multiple renewals, was reauthorized by Congress in March 2022 through enactment of the EB-5 Renewal and Integrity Act.

Notwithstanding Congress's decision to reauthorize the program, U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security,

¹ *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, and its counsel made a monetary contribution to its preparation or submission.

interpreted the Integrity Act to invalidate all existing regional center authorizations and require each center to reapply for a new authorization. That administrative determination—which is challenged in this case—will effectively suspend the regional center program for many years, given the length of time USCIS taken to process applications, and deprive the U.S. economy and American workers of the program’s benefits.

Those adverse consequences would be unfortunate but understandable if the statute compelled this result. But it does not: the Integrity Act’s plain language makes clear that pre-Integrity Act regional center authorizations remain effective. Because USCIS’s determination will inflict significant harm on U.S. businesses and the U.S. economy the Chamber has a strong interest in supporting Plaintiffs’ motion to either enjoin or invalidate that decision.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision by USCIS to require re-authorization of EB-5 regional centers—which effectively places the EB-5 investment program in suspended animation for years, if not decades—will inflict substantial damage on the U.S. economy and is wrong as a matter of law. The Court should therefore either issue a preliminary injunction enabling existing regional centers to continue to operate or enter summary judgment invalidating the agency’s determination.

The EB-5 visa program was established by Congress in 1990 to attract to the United States foreign investment creating additional American jobs—by making immigration visas, and a pathway to citizenship, available to individuals willing to invest large sums in the U.S. economy. The program initially required applicants to invest \$1,000,000—or \$500,000 if the investment targeted a rural area or area of high unemployment. Each such investment must create at least ten new jobs.

The EB-5 program initially encompassed only direct investments in new enterprises. But Congress recognized that allowing multiple applicants to combine their investments would enable the program to support larger projects and bigger companies—and in 1992 it created a pilot program authorizing the pooling of investments through regional centers.

Over time, regional centers became the dominant vehicle for EB-5 investments, because the ability to pool EB-5 investments to fund larger projects was attractive both to private businesses and to states and localities keen to fund development. Indeed, 96% of EB-5 investments in fiscal year 2019 were made via regional centers—and by 2021, USCIS had authorized more than 600 such centers.

Regional centers have created hundreds of thousands of new jobs by attracting many billions of dollars of new investments, and these benefits have been targeted in rural areas and areas of high unemployment. Moreover, EB-5 recipients provide additional economic benefits in the form of their own spending within the United States, which produces new jobs and increased tax revenue. These visa recipients also likely to contribute substantially to the U.S. economy by creating new businesses and contributing important new innovations.

The regional center program was authorized by a temporary statutory provision that was renewed by Congress many times but expired in July 2021. Congress therefore—in March 2022—enacted the EB-5 Reform and Integrity Act, which reauthorized and reformed the regional center program.

USCIS is interpreting the Integrity Act to invalidate the authorizations of the 600 existing regional centers and to require all of them to apply for a new authorization. Given the already-existing backlogs at USCIS, that process will effectively suspend the EB-5 program for many

years—and deprive the U.S. economy and U.S. workers of the program’s very significant benefits.

USCIS’s decision is not just harmful as a matter of policy; it also is wrong as a matter of law. The plain text of the Integrity Act makes clear that pre-Integrity Act authorizations of regional centers remain effective. USCIS’s contrary conclusion rests on the repeal of the already-expired temporary authorization of the program. But that housekeeping action by Congress, deleting a statutory note lacking any legal effect, cannot overcome the plain meaning of the Integrity Act’s operative provisions. USCIS also points to a statement by one Senator, but the Supreme Court has repeatedly refused to place weight on statements by single legislators—and that is especially impermissible when the legislator’s statement contradicts the statute’s plain language.

Of course, regional centers authorized under the pre-Integrity Act regime are obligated to comply, moving forward, with the new compliance measures established by the Integrity Act. But that obligation does not provide any basis for invalidating pre-Integrity Act authorizations, particularly when the statutory text reaffirms the effectiveness of those earlier authorizations.

This Court therefore should grant relief enabling regional centers to continue operating—either by issuing a preliminary injunction against enforcement of the USCIS decision or by granting summary judgment to Plaintiffs.

ARGUMENT

I. USCIS’S DECISION WILL INFLICT SIGNIFICANT HARM ON THE U.S. ECONOMY AND U.S. WORKERS.

Congress established the EB-5 program “to create new employment for U.S. workers and to infuse new capital into the country.” S. Rep. No. 101-55, at 21 (1989). Senator Paul Simon predicted that the program would “generate over \$8 billion annually in new investment in small

and independent U.S. businesses and provide up to 100,000 new jobs for Americans.” 136 Cong. Rec. 35615 (Oct. 26, 1990).

This job-generating program has succeeded beyond all expectations. Multiple studies show that EB-5 investments by themselves produce hundreds of thousands of new jobs. And other economic benefits amplify the program’s impact. Investors’ own spending benefits U.S. businesses and produces additional tax revenue for all levels of government. Moreover, EB-5 visa recipients, because of their prior business success, are likely to make additional contributions to American entrepreneurship and innovation.

The EB-5 program has two avenues for investment—direct investment by visa applicants and pooled investment through EB-5 regional centers. “[T]he Regional Center Program has become the primary pathway for EB-5 investors since 2008 and now accounts for nearly all EB-5 investments”—96% of investors in fiscal year 2019. Congressional Research Service, *EB-5 Immigrant Investor Visa 2 & 3* n.16 (Dec. 16, 2021) (*CRS Report*), <https://crsreports.congress.gov/product/pdf/R/R44475>. It allows investors to pool their resources to invest in larger projects and enables American businesses (sometimes in partnership with states and localities) to fund larger investments in the U.S. economy. This flexibility has driven the success of the regional center model which, in turn, is now critical to the functioning of the EB-5 program.

USCIS’s decision to de-authorize all regional centers and require them to go through a recertification process will eliminate these benefits for years to come, and perhaps permanently as investors choose to invest their capital in other nations. Moreover, the agency’s decision will deprive communities of new investments and deprive American workers of new job opportunities.

A. The EB-5 Regional Center Program Each Year Generates Billions Of Dollars Of Foreign Investment Into The United States And Hundreds Of Thousands Of New Jobs.

Multiple studies of the economic impact of the regional center program all reach the same conclusion: investments through EB-5 regional centers have provided very substantial benefits to the U.S. economy in the form of hundreds of thousands of new jobs.

The Department of Commerce's Economic and Statistics Administration found that investments in fiscal years 2012 and 2013 created approximately 170,000 jobs from the \$5.4 billion invested by EB-5 visa recipients—exceeding the minimum required job creation by 60%. David K. Henry et al., *Estimating the Investment and Job Creation Impact of the EB-5 Program*, Dep't of Commerce 2 (2017) (*Commerce Study*), https://www.commerce.gov/sites/default/files/migrated/reports/estimating-the-investment-and-job-creation-impact-of-the-eb-5-program_0.pdf. Sixteen jobs were created per EB-5 visa recipient. *Id.*

These economic benefits are spread throughout the country. Regional center projects were located in 25 States and the District of Columbia. The top five States in number of projects were California, New York, Florida, Texas, and Alabama; the top five States by amount invested were California, New York, Florida, Maryland, and Nevada. *Id.* at 3. Fourteen states and the District of Columbia had EB-5 and associated investments greater than \$100 million. *Id.* at 15.

A key benefit of the regional center model is that EB-5 investments are paired with capital from other investors to fund large projects that create very substantial numbers of new jobs. The projects assessed in the Commerce Study, for example, involved EB-5 investments of \$5.4 billion that attracted more than double that amount in non-EB-5 investments (\$10.9 billion). *Id.* at 2.

Another study, conducted by a private-sector firm, focused on fiscal years 2014 and 2015 and reached very similar conclusions. See Jeffrey B. Carr & Robert A. Chase, *Assessment of the Economic Value and Job Creation Impacts of Project Capital Investment Activity Under the EB-5 Program*, Econ. & Pol’y Res. (Feb. 28, 2019), <https://iiusa.org/wp-content/uploads/2019/03/Joint-Report-Assessment-of-EB-5-economic-impact.pdf>.

Jobs created through the regional center program during these two fiscal years totaled 355,200—which was “roughly six percent of [all the] private sector job growth in [the] U.S.” during that two-year period. *Id.* at 3. Approximately \$11 billion was invested in regional center projects, which “represent[ed] about 2 percent of all foreign direct investment (FDI) net flows to the U.S. economy during this two-year period.” *Id.* at 11.

Again, the benefits of the program were spread throughout the United States. The study assessed job creation by Census Bureau region, finding more than 100,000 jobs created both the West and South Regions; approximately 90,000 in the Northeast Region; and just short of 50,000 in the Midwest Region. *Id.* at 5.

Senator John Cornyn’s more recent assessment of the program, in connection with congressional consideration of its reauthorization, is consistent with these study results: “EB–5 investments are a major economic driver in Texas. EB–5 projects use merit-based immigration to create thousands of American jobs and bring billions of dollars in investment to major urban areas, like Dallas and Houston, as well as our rural communities across the State.” 167 Cong. Rec. S4743 (June 24, 2021).

The regional center model’s flexibility is one of the key reasons for its success. Regional centers can be private, public, or structured as public-private partnerships. *CRS Report, supra*, at 7. Some centers operate as lending entities that “provide[] loans to those (i.e., U.S. citizens)

seeking funding for business activities, such as new construction or expansions of their operations.” *Id.* Others are created to enable direct investment in a particular project in which EB-5 investors pool their funds to invest in the construction of new developments. *Id.*

For example, the City of Dallas partnered with Civitas Capital Group to create a regional center to fund projects in the city that included the renovation of a 100-year-old building into a boutique hotel. *City of Dallas Regional Center and Civitas Capital Group to Speak at Urban Land Institute Expo on October 18*, businesswire (Oct. 11, 2012, 11:30 AM EDT), <https://www.businesswire.com/news/home/20121011005970/en/City-of-Dallas-Regional-Center-and-Civitas-Capital-Group-to-Speak-at-Urban-Land-Institute-Expo-on-October-18>. A regional center in Arkansas funded a steel recycling and manufacturing plant that created more than five thousand jobs during the construction and start-up of the plant and more than 450 high-paying, permanent operational jobs. Deacon Decl. (ECF 15-2) ¶ 4.

Another important benefit of the EB-5 program is that it steers investments to areas with high unemployment by providing an incentive, in the form of reduced capital requirements, for investments in these Targeted Employment Areas (“TEAs”). *CRS Report, supra*, at 4. TEAs include rural areas (as defined either by the Office of Management and Budget or by the census) or high unemployment areas—where unemployment is at least 150% of the national average. *Id.* Nearly all EB-5 investment, as noted, is in regional centers, and nearly all current regional center investment targets a TEA. *Id.* at 7.

Thus, in addition to producing large investments in the U.S. economy, the program targets those investments in areas where—in Congress’s view—additional jobs are most urgently needed.

B. Additional Benefits From The EB-5 Program Expand The U.S. Economy And Create Even More New Jobs.

The studies just discussed do not capture all of the economic benefits of the EB-5 regional center program.

To begin with, spending by EB-5 immigrants and their families after they arrive in the United States contributes to our country's economic growth. One study estimated direct household spending of approximately \$917 million for fiscal years 2014 and 2015. Hart Hodges, et al., *Quantitative Assessment of the EB-5 Program*, Western Washington University Center for Economic Business Research 43 (2018), <https://iiusa.org/wp-content/uploads/2020/05/EB-5-Economic-Impact-Report-2014-2015-FINAL.pdf>.

Those expenditures supported more than 12,000 jobs and contributed \$2.1 billion to U.S. GDP. *Id.* They added \$168 million to federal tax revenues and \$108 million to state and local tax revenues. *Id.*; see also David Kay, *The Economic Impact and Contribution of the EB-5 Immigration Program 2013*, Invest in the USA 39 (May 2015) (estimate for fiscal year 2013), https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program_2013_FINAL-web.pdf.

In addition, Congress recognized that the EB-5 program would “attract[] talented people” and “entrep[r]eneurs and job-creators into the U.S. economy.” 136 Cong. Rec. 35615 (Oct. 26, 1990) (remarks of Sen. Simon). A robust body of research confirms the very substantial contributions such immigrants make to the U.S. economy.

For example, high achieving immigrants are associated with substantial increases in innovation. A 1% increase in the share of college-educated immigrants in the population is associated with an increase in patents by 9-18%. Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, 2 Am. Econ. J.: Macroeconomics 31, 33

(2010). This innovation is critical to economic growth. James Broughel & Adam Thierer, *Technological Innovation and Economic Growth*, Mercatus Ctr. (Mar. 4, 2019) (“Most economists agree that technological innovation is a key driver of economic growth and human well-being.”); see Darrell M. West, *Technology and the Innovation Economy*, Ctr. Tech. Innovation 1 (Oct. 19, 2011), https://www.brookings.edu/wp-content/uploads/2016/06/1019_technology_innovation_west.pdf (same). The EB-5 program, as its creators intended, attracts immigrants likely to contribute to the next wave of innovation.

Similarly, high-achieving immigrants are not just investors in the U.S. economy; they are often founders of the next generation of market leading firms. For example, immigrants founded over half of start-ups worth over \$1B in 2018. Stuart Anderson, *Immigrants and Billion-Dollar Companies*, Nat’l Found. for Am. Pol’y 1 (Oct. 2018), <https://nfap.com/wp-content/uploads/2019/01/2018-BILLION-DOLLAR-STARTUPS.NFAP-Policy-Brief.2018-1.pdf>. The same is true in the cutting-edge Artificial Intelligence industry. See Tina Huang et al., *Most of America’s “Most Promising” AI Startups Have Immigrant Founders*, Ctr. Sec. & Emerging Tech. 3 (Oct. 2020) (“In AI in particular, experts recognize that a clear immigration pathway for foreign talent is vital to ensure U.S. leadership.”).

A pathway enabling high-achieving immigrants to move to the United States and contribute their talents to the economy thus provides important benefits to America’s long-term economic growth. The EB-5 program attracts these individuals to the U.S. and therefore produces significant economic benefits in addition to those resulting from their initial investments and household expenditures.

C. The De-Authorization Of Existing Regional Centers Will Significantly Reduce Job Growth For Years To Come.

The USCIS's decision at issue in this action will, if permitted to stand, eliminate—for many years to come—the important economic benefits of the EB-5 regional center program. The agency categorically de-authorized all of the more than 600 regional centers. Each regional center must now, according to the agency, file a new Form I-956 seeking re-authorization. Only after USCIS grants this designation may the regional center seek approval of projects for investment.

By requiring all regional centers to obtain re-authorization at the same time, USCIS will be faced with a flood of re-authorization applications. As Plaintiffs explain, it typically has taken at least two years for USCIS to approve a regional center application—and that time is likely to lengthen considerably with hundreds of applications to process. *See* Healy Decl. (ECF 15-3) ¶ 29. Even if some regional centers do not seek recertification, the program's history indicates that the agency will take many years to process the new applications.

In the meantime, the program's stakeholders will suffer very significant, and in many cases irreparable, harm. Potential investors will be unable to petition for visas based on investments in regional center projects. Plaintiffs' affidavits explain that those investments therefore likely will not materialize. As a result, projects that are already partially funded may not be able to move forward, eliminating jobs that otherwise would have been created by the EB-5 program. And new projects will not be funded. While USCIS spends years working through a backlog of applications, American workers will pay the price in terms of forgone job opportunities while their communities lose out on valuable projects that go unfunded.

There is no guarantee that the pre-Integrity Act investment cycle will be recreated when and if USCIS is able to re-authorize regional centers. Some regional centers will likely go out of

business, and the American workers employed by those centers will lose their jobs. Some projects will be cancelled. And many immigrant investors may look to invest their funds elsewhere. Indeed, other nations may decide to capitalize on this lost opportunity to attract investment by expanding their own programs. These economic consequences would be harmful in ordinary times, but they are particularly so now, given the threat of recession facing the U.S. economy.

II. THE PLAIN TEXT OF THE INTEGRITY ACT MAINTAINS IN EFFECT EXISTING REGIONAL CENTER DESIGNATIONS.

Notwithstanding the regional center program's very substantial benefits for the U.S. economy and U.S. workers, USCIS concluded that Congress's decision to reauthorize the program by enacting the Integrity Act in March 2022 had the effect of terminating the agency's approvals of every one of the more than 600 existing regional centers. According to the agency, all regional centers must reapply for designation by USCIS—a process that will take many years given the agency's lengthy backlog.

That interpretation of the statute is wrong. Congress did not, *sub silentio*, cut off billions of dollars in foreign investment and end the creation of new jobs that those investments support. To the contrary, two provisions of the Integrity Act make clear that Congress authorized continued operation of regional centers that had been approved under the pre-Integrity Act program.

First, in reauthorizing the regional center program, the Integrity Act refers to existing regional centers that USCIS had authorized under the prior statutory language, incorporating and continuing those preexisting regional centers' role in the reauthorized program.

The Integrity Act amends Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5), to add a new subparagraph making visas “available . . . to qualified immigrants” who pool their investments with one or more qualified immigrants

participating in a program implementing this paragraph that involves a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment.

8 U.S.C. § 1153(b)(5)(E)(i) (added by Pub. L. No. 117-103, Division BB, § 103(b)(1)). A regional center thus is authorized to participate in the regional center program if it “has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment.”

That statutory text plainly authorizes continued participation by previously-designated regional centers, because it encompasses the designation that these regional centers received under the prior statute governing the regional center program.

That statute was enacted in 1992 as part of an appropriations law, and subsequently extended until July 2021. *See Hulli v. Mayorkas*, 549 F. Supp. 3d 95, 98 (D.D.C. 2021) (explaining that the program was extended “on over thirty occasions since the program was first enacted in 1992”). It directed the Secretary of State and the Attorney General to set aside visas “otherwise available under Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)” for “a pilot program to implement the provisions of such section.” stating that:

Such pilot program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-395, § 610(a).

By incorporating in the Integrity Act the factors that governed pre-Integrity Act designations of regional centers—“a regional center in the United States” that had been designated by the Secretary based on a proposal for “the promotion of economic growth” including both “job creation” and “increased domestic capital investment”—Congress made clear that regional centers designated under that pre-Integrity Act standard continue to qualify as regional centers under the Integrity Act. 8 U.S.C. § 1153(b)(5)(E)(i).

That is the plain meaning, and only reasonable meaning, of the Integrity Act provision, because the centers designated under the pre-Integrity Act standard all satisfy the test set forth in the Integrity Act. They are “regional center[s] in the United States, [that have] been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth” (*id.*) as the Integrity Act requires—because that is the standard that Congress adopted in 1992, that the agency incorporated into its implementing regulation (*see* 8 C.F.R. § 204.6(e)), and that the agency therefore applied in designating those centers prior to passage of the Integrity Act.

Those centers also have been part of a “program implementing this paragraph”—a phrase in the Integrity Act that refers to paragraph (b)(5) of Section 203 of the Immigration and Nationality Act, which is the paragraph that includes the subparagraph (E)(i) definition quoted above. The pre-Integrity Act provision (Section 610(a)) defines the regional center program as “a pilot program to implement the provisions of said section,” referring back to its prior citation of Paragraph 203(b)(5), which makes clear that the pre-Integrity Act program was “a program implementing” Paragraph (b)(5) as the Integrity Act requires.

The Integrity Act’s definition of the regional centers authorized to pool investments by EB-5 visa petitioners thus expressly includes the regional centers designated by the agency under the pre-Integrity Act program.

Second, another part of the Integrity Act provides strong additional support for this conclusion. Under the pre-Integrity Act regime, a regional center obtained government approval of a new investment offering by filing an amendment to its Form I-924. *See* Exhibit N to Plaintiffs’ Mem. of Points and Authorities (ECF No. 15-20) (USCIS instructions explaining that an amendment is appropriate to “[a]dd a new commercial enterprise associated with the regional center”).

The Integrity Act, in 8 U.S.C. § 1153(e)(5)(F)(i), specifies the procedure for obtaining government approval of “each particular investment offering through an associated new commercial enterprise.” It then states, in a provision titled “Effect of approval of a business plan for an investment in a regional center’s commercial enterprise”:

The approval of an application under this subparagraph, *including an approval before the date of enactment of this subparagraph*, shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same offering described in such application, [unless specific exceptions apply relating to fraud, threats to public safety or national security, material change, new evidence, or a material mistake of law or fact].

Id. § 1153(e)(5)(F)(ii) (emphasis added).

The provision’s reference to “an approval before the date of enactment of this subparagraph” can only mean an investment offering that was authorized under the pre-Integrity Act regime. And if such an investment offering can continue to provide the basis for grants of EB-5 visas, that can only be because the pre-Integrity Act regional center is authorized by the Integrity Act to continue to operate as a regional center and, for example, to accept new investments from immigrants.

Moreover, an investor's visa petition can be approved only if his investment is tied to an approved regional center. *See, e.g.*, 8 U.S.C. § 1153(e)(5)(M)(ii) (if regional center is terminated, investor must link his investment to a different, authorized regional center in order to maintain eligibility). The pre-enactment approval language in Subparagraph (e)(5)(F)(ii) therefore can be effective only if pre-Integrity Act authorizations of regional centers remain valid.

USCIS justified its contrary interpretation of the Integrity Act by pointing to the Act's repeal of the appropriations act provision enacted in 1992. *See* Pub L. No. 117-103, Division BB, § 103(a) ("Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is repealed.").

But that appropriations act provision had expired by its own terms on July 1, 2021, when the last extension lapsed. *See* Consolidated Appropriations Act, 2021, Pub L. No. 116-260, Div. O, § 104 (reauthorizing program until that date). The Integrity Act repeal was therefore a housekeeping measure, removing a statutory note that already lacked any legal force.

More fundamentally, as the Supreme Court has recognized in a variety of contexts, Congress "does not" employ "vague terms or ancillary provisions" to make significant changes in the law—"it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001). There accordingly is no basis for construing a housekeeping provision to terminate an ongoing government program just because it removes an already-expired and superseded statutory note, especially in light of the plain contrary language in the Integrity Act's operative provisions.

Finally, Senator Grassley's statement that regional centers "will be expected to seek a new regional center designation" (168 Cong. Rec. S1105 (daily ed. Mar. 10, 2022)) provides no justification for ignoring the statutory text and imposing such a requirement. The Supreme Court

has repeatedly rejected statutory construction arguments based on “scattered statements from individual Members of Congress.” *Eldred v. Ashcroft*, 537 U.S. 186, 209 n.16 (2003); *see also NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017). Certainly one individual legislator’s statement cannot overcome the plain meaning of the statutory text, which expressly reaffirms the validity of the pre-Integrity Act regional center designations.

In sum, the Integrity Act’s text leaves no doubt that Congress intended that regional centers’ pre-Integrity Act approvals would remain in effect.

Those centers, of course, are obligated to comply with any new operating and certification requirements imposed by the Integrity Act—which is why the provisions of the Act relating to regional centers included a delayed effective date. *See* Pub L. No. 117-103, Division BB, § 103(b)(2) (amendment effective “on the date that is 60 days after the date of the enactment of this Act). That delayed effective date contrasts with the effective date for the Integrity Act provisions amending the standards for issuing EB-5 visas, which are effective on the date of enactment. *Id.* § 102(e).

If Congress had intended to require existing regional centers to undergo a reauthorization process, there would have been no reason to delay the effective date of the Act’s provisions relating to regional centers. Congress’s different effective-date determinations therefore provide additional evidence that it intended to grandfather pre-Integrity Act approvals of regional centers.

CONCLUSION

Plaintiffs' motion for a preliminary injunction, or in the alternative for summary judgment, should be granted.

Respectfully submitted.

/s/ Andrew J. Pincus
Andrew J. Pincus (DC Bar No. 370726)
MAYER BROWN LLP
1999 K St. NW
Washington, DC 20006
Telephone: (202) 263-3220
Email: apincus@mayerbrown.com

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief contains 4,719 words and complies with the requirements of Local Civil Rules 5.4 and 7(o).

/s/ Andrew J. Pincus
Andrew J. Pincus

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2022, I caused a copy of the foregoing to be served upon all parties via CM/ECF.

/s/ Andrew J. Pincus
Andrew J. Pincus