**Written Testimony of:**

**Angelique Brunner**

**Founder and President**
**EB5 Capital**
**Bethesda, MD**

**Hearing on:**

***The Department of Homeland Security's Proposed Regulations***

***Reforming the Investor Visa Program***

**United States House of Representatives**
**Committee on the Judiciary**

**March 08, 2017**

Chairman Goodlatte, Ranking Member Conyers and Distinguished members of the committee:

Thank you for the opportunity to testify before the Committee today. My name is Angelique Brunner and I am Founder and President of EB5 Capital, a regional center operator based in Bethesda Maryland. I founded EB5 Capital in 2007 to bring foreign capital to disadvantaged communities to support living-wage job creation, utilizing my institutional investment experience. Founding the company during the economic downturn gave me a unique perspective on U.S. capital markets, their lack of resilience and the importance of a flexible independent source of capital.

Today, EB5 Capital is a leading regional center operator with over $400 million of assets under management on behalf of investors from over 50 countries and investments in five states including the District of Columbia. EB5 Capital's investments have anchored more than $2.4 billion of development that has created more than 23,000 American jobs.

My professional background is in institutional finance and private equity. My capital markets experience has ranged from municipal bonds to venture capital. Prior to entering the EB-5 industry I completed more than $3 billion of debt and equity investments including corporate, municipal and real estate transactions. While my professional background spans the spectrum of finance, my academic background reveals my passion for policy. I received my Bachelor's Degree in Public Policy from Brown University. I also hold a Master's Degree in Public Affairs and a certificate in Urban Planning from Princeton University's Woodrow Wilson School, where I studied under Ben Bernanke, former chairman of the Federal Reserve.

In the Fall of 1999 I moved to Washington D.C. and now live both here and in San Francisco, my hometown. I am active in both business communities and was recently honored in 2016 by the *Washington Business Journal* as a Minority Business Leader and a "Power 100 Playmaker." I have also been honored among Bisnow's "Bay Area Power Women" and the *San Francisco Business Journal*'s "Northern California Real Estate Women of Influence."

I am also very active in the EB-5 industry and national business community. Since founding EB5 Capital, I have been an active member of Invest in the USA (IIUSA) where I currently serve on the Board of Directors. Prior to election to the Board of Directors, I was a founding member of the Best Practices Committee and the founding Chairperson of the Public Policy Committee. Currently, I also serve as Industry Membership Chair and Spokesperson for the EB-5 Investment Coalition (EB-5 IC). Outside of the EB-5 industry, I am an active member of the Real Estate Executive Council (REEC), the Real Estate Roundtable (RER) and the U.S. Chamber of Commerce. In all of my roles, I espouse the importance of domestic reinvestment and living-wage job creation.

**EB5 Capital: Company Background and Mission**

Prior to founding EB5 Capital in 2007, my work in Washington D.C. exposed me to the immense challenges faced by communities and municipalities when attempting to attract businesses and capital to disadvantaged communities. The private sector was rarely interested in the risk profile, even when the District offered tax incentives, municipal bonding support or free land. While serving as Chief Financial Officer for a community-builder and then as an investment manager at the American Communities Fund (ACF), Fannie Mae's billion-dollar work-force housing equity platform, I watched the financial crisis unfold. In the wake of that crisis I started to see projects that had been planned for years, such as City Market at O Street, come close to collapse for lack of bank lending. That is when I discovered EB-5, and immediately saw it as a powerful economic development tool. I currently own five regional centers that cover eleven states.

Today, EB5 Capital manages more than $400 million of investment capital that represent more than 20 projects in five states. Our investments have anchored more than $2.4 billion of development that has created more than 23,000 American jobs.

Our initial focus was Washington D.C., where we have committed over $250 million of investment in transitioning communities that include projects in the convention center corridor, the ballpark, Capitol Riverfront, and most recently NoMa. In the NoMa neighborhood, which defines the area principally north of Massachusetts and bordered by New York Avenue, Union Station and North Capitol, you can see how the Uline Arena project, the site of The Beatles' first U.S. concert and now home to REI, is reshaping the entire neighborhood. The formerly abandoned arena now houses a flagship store for a big-box retailer and is also home to the District's first creative Class A offices. A total of 1,023 jobs are expected to be created.

With Uline Arena as an anchor, additional dynamic mixed-use and residential developments are also being delivered to previously neglected neighborhoods. My company alone has invested nearly $150 Million in NoMa, with an additional $85 million in the pipeline. These EB-5 investments support a total of approximately $900 million of development in NoMa alone.

Just a few weeks ago, I was at the groundbreaking of a new apartment complex we helped to fund on Florida Avenue where a fast-food restaurant once stood. It bridges the NoMa and Union Market neighborhoods and will bring much-needed residential housing to the rapidly growing area. At the groundbreaking, both the Mayor and the developer credited EB-5 financing as being critical to the project's success.

Our expansion outside of Washington includes the entire state of Michigan. In 2015, EB5 Capital was awarded the operations contract for the Michigan State-owned Regional Center by the Michigan Economic Development Corporation (MEDC). We hope to get started soon. We project that we can bring $100 million a year to the state of Michigan for qualified EB-5 projects under the current TEA provisions.

## Why I am Here Today

On January 13, 2017, the Obama Administration's Department of Homeland Security ("DHS") published a notice of proposed rulemaking (82 FR 4738) (the "NPRM"). Comments are due April 11, 2017. The comments are due seventeen days prior to April 28, 2017, the date the program is set to expire if no action is taken by Congress to extend the program.

I would urge the Committee to advise the Administration to cancel the proposed regulations, and allow Congress to complete the legislative reform of the EB-5 Program that your committee has been working on with stakeholders for the past two years. Regulatory changes in support of new legislation could then be revisited after congressional action.

In support of this request, I have included with my testimony a copy of a January 20, 2017 letter to the President of the United States and the Secretary of the Department of Homeland Security, co-signed by the American Immigration Lawyers Association, The U.S. Chamber of Commerce, The EB-5 Investment Coalition, Invest in the USA (IIUSA), the Real Estate Roundtable, and the EB-5 Rural Alliance.

In less than 18 months Congress has dedicated four hearings to the EB-5 industry. We appreciate the time and attention afforded our small program. I would welcome the opportunity for another hearing, focused on the legislation, for a bill markup prior to expiration of the EB-5 program on April 28, 2017. This program needs to be reauthorized in order to continue operation.

It is my firm belief that these proposed immigration rules should not move forward in the regulatory process and they should be withdrawn and revisited after congressional action. Indeed, the best way to reform the program is through the legislative process. The proposed rules will jeopardize the ability of the program to continue to draw foreign direct investment to the U.S.

## Comments on Proposed Regulations

There are two proposed changes that I will focus on, the changes to the Targeted Employment Area definition and the increases to the investment amounts. On their face, both may seem grounded in principled arguments but with further examination, the economic basis of both are subjective and far from a best-practices approach to the reform each is meant to foster.

1. **Proposed TEA Definition** -The Department of Homeland Security (DHS) is proposing that a TEA may consist of an area comprised of census tracts in which the new commercial enterprise is principally doing business, including any and all adjacent tracts, if the weighted average of the unemployment rate for all included tracts is at least 150% of the national average. This proposal misses the mark for a number of reasons.

   a) Single variable definition - Based on the legislative conversations in which stakeholders have been engaged and the various recommendations that date back to 2009, I was hopeful that DHS would apply economic development principles practiced elsewhere in the federal government like those used by HUD. I am not aware of anywhere in the field of economic development where a single variable is used to assess the distress of a geographic area. It is a widely-held best practice to use a basket of variables for measurement.

b) Adjacent census tract limitation - The second challenge with the proposed changes is the "donut approach" wherein economic development will be measured as a circle of sorts, by using only the surrounding and adjacent census tracts instead of a using commuting distance as is currently used when counting jobs for EB-5 projects. Washington D.C. is a typical city, and it's economic development is linear, following a block-by-block path and/or transit lines. Anyone who has lived or worked in the District is familiar with the paths of development extending out from the downtown, the ballpark or the P-Street Whole Foods. A second challenge with the limited adjacent census tract approach is that all limitations based on number of census tracts result in a bias against densely populated urban areas. To illustrate this bias I offer an anecdote of my commute to the hearing from my office, an 8.3 mile drive. If I take a suburban parkway route I transgress 10 census tracts, but if I travel through the District I cover 21 census tracts.

2. **Proposed TEA Investment Amounts** - The Department of Homeland Security (DHS) proposes to increase the investment amounts from their existing levels of $500,000 and $1,000,000, depending on whether the project is TEA based, to $1.35 million and $1.8 million respectively. The change is ostensibly designed to align the investment amounts with inflation. First, I will comment on the impact of the proposed increases, and then on the assumptions applied to index the investment amount.

   a) At this time, the EB-5 program effectively operates as a one-tiered level of investment with ninety-five percent of investments occurring at the level of $500,000. If no changes were made to the proposed TEA definition this would qualify the majority of projects at a level of $1.35 million. Such an increase in the TEA investment amount alone will inevitably shock the marketplace and in my opinion decimate the EB-5 program. The US competes for investors with about 40 other countries. Our ability to attract investors is already compromised because of our complex program requirements, visa capacity issues - with more than 7 year waits for some country residents - and overwhelming processing backlogs. An increase in investment amounts at the magnitude proposed will further drive investors away from US projects.

   b) While the investment tiers of $500,000 and $1 million date back to the beginning of the program, the higher investment amount has never been competitive and the lower TEA investment amount of $500,000 only became competitive in 2008. Using a simple supply and demand framework one can conclude that the price of the investment program only started to match demand in 2008. At all earlier points the price did not match demand and therefore EB-5 use was limited. Using demand data, one can argue that adjustments in price should assume 2008 pricing as a baseline because that is the first point at which the price allowed the market to function. According to the Bureau of Labor Statistics CPI calculations, $500,000 in 2008 dollars is approximately $565,000 in 2017 dollars, which is far less than the proposed $1.3 million adjustment proposed by DHS.

## Conclusion

Mr. Chairman and Members of the Committee, I strongly urge you to advise the current Administration to cancel the regulations proposed by the previous Administration that jeopardize the EB-5 Program's ability to attract job-creating foreign investment to the U.S. I ask that you instead allow Congress to complete its work on legislative reform of the EB-5 Program. Regulatory changes in support of new legislation could then be revisited after congressional action.

**EB5 Capital Project Portfolio**
**Read More at http://www.eb5capital.com/projects/**

| Project | City | State | Developer | EB-5 Investment | Total Project Cost | EB-5 Jobs | Total Jobs |
|---|---|---|---|---|---|---|---|
| Sugarbush Ski Resort | Warren | VT | Summit Ventures | $20,000,000 | $60,000,000 | 400 | |
| City Market at O Street Group 1 | Washington | DC | Roadside Development | $5,000,000 | $332,500,000 | 2,176 | 3,384 |
| Marriott Marquis | Washington | DC | Capstone Development | $5,000,000 | $537,000,000 | 3,419 | 3,419 |
| City Market at O Street Group 2 | Washington | DC | Roadside Development | $12,500,000 | - | - | - |
| DC Hilton Hotels | Washington | DC | Baywood Hotels | $39,000,000 | $60,952,910 | 1,224 | 1,224 |
| San Jose Marriott Hotels | San Jose | CA | Huntington Hotel Group | $35,000,000 | $80,000,000 | 1,238 | 1,238 |
| Kensington Place of Redwood City | Redwood City | CA | Fountain Square | $6,500,000 | $21,000,000 | 182 | 282 |
| Riverfront at the Navy Yard | Washington | DC | MRP Realty | $17,000,000 | $119,000,000 | 803 | 853 |
| Columbia Place | Washington | DC | Capstone Development | $40,500,000 | $190,000,000 | 2,542 | 3,296 |
| The Coliseum | Washington | DC | Douglas Development Corp | $18,000,000 | $122,000,000 | 447 | 1,023 |
| 1000 F | Washington | DC | Douglas Development Corp | $9,000,000 | $84,500,000 | 232 | 515 |
| Proper Hotel | Los Angeles | CA | Kor Group | $34,000,000 | $93,400,000 | 1011 | 1268 |
| The Highline | Washington | DC | Level 2 Development / Clark Enterprises | $27,500,000 | $107,400,000 | 762 | 762 |
| Portland Hilton Canopy | Portland | OR | Buccini/Pollin Group | $15,500,000 | $44,000,000 | 440 | 738 |
| 225 North Calvert | Baltimore | MD | Monument Realty | $20,000,000 | $84,000,000 | 526 | 936 |
| Goleta Hilton Garden Inn | Goleta | CA | Huntington Hotel Group | $5,500,000 | $43,100,000 | 349 | 500 |
| 300 M | Washington | DC | Wilkes Company | $31,000,000 | $154,000,000 | 1,241 | 1,241 |
| Temecula Hilton Home2 Suites | Temecula | CA | Huntington Hotel Group | $8,500,000 | $22,600,000 | 224 | 316 |
| LA-Agoura Hills Marriott Hotels | Agoura Hills | CA | Huntington Hotel Group | $20,500,000 | $55,125,000 | 538 | 765 |
| 1401 Penn | Washington | DC | CASRiegler / NRG | $17,000,000 | $74,800,000 | 474 | 685 |
| 331 N | Washington | DC | Foulger-Pratt | $34,000,000 | $136,200,000 | 951 | 951 |
| | | | | **$421,000,000** | **$2,421,577,910** | **19179** | **23396** |

Updated March 7, 2017

February 24, 2017

The Honorable John F. Kelly
Secretary of Homeland Security
Washington, D.C. 20528

Re: Notice of Proposed Rulemaking regarding EB-5 Program

Dear Secretary Kelly:

We congratulate and welcome you to your post as Secretary of Homeland Security.

We are a consortium of stakeholders comprised of U.S. enterprises utilizing the EB-5 visa program and representatives of such enterprises and investors. As you know, the EB-5 program allows foreign investors to obtain conditional residency by contributing capital to U.S. job-creating projects. On January 13, 2017, the Department of Homeland Security ("DHS") published a notice of proposed rulemaking to significantly raise the required investment levels (82 FR 4738) (the "NPRM"). Comments are due April 11, 2017.

Before your confirmation, we wrote to President Trump requesting withdrawal of these "midnight rules" proposed by the last Administration. (Please see attached letter dated January 20, 2017). At this juncture, our groups believe that proposed immigration rules should not advance in the regulatory process unless they are drafted under your, and the White House's, imprimatur. Accordingly, we re-state our request to withdraw the January 13 NPRM from the prior Administration.

Every signatory to this letter understands that the EB-5 Regional Center Program is not perfect; we all agree that this program needs to be reformed. Furthermore, all of the above-signed organizations agree that the best way to reform the program is through the legislative process. This is not to say that the agency in charge of administering the program has no role in providing more clarity to delineate proper stakeholder behavior through the regulatory process. Nevertheless, the agency should not be moving forward with proposed rules that will jeopardize the ability of the program to continue to draw foreign direct investment to the U.S. The issue of raising minimum investment levels alone will undermine the program's functionality. The levels suggested in the NPRM are substantially higher than what has been discussed in Congress and there's no transition period for stakeholders to adjust their business practices. This type of shock will be detrimental to the EB-5 program's future viability.

The Obama Administration bifurcated the EB-5 rulemaking process by issuing the aforementioned NPRM that seeks to address arguably the most controversial issues associated with the program, as well as issuing an Advance NPRM that seeks public comment on several very important issues before the agency addressed those issues in a proposed rule. This was unfortunate because in order for a lasting solution to be reached on EB-5 reform, all of these important issues which are interconnected must be addressed together; the agency's attempt to separate some issues from others is not helpful towards achieving meaningful reforms. The agency should be addressing all of the issues in the NPRM and the ANPRM together.

Fortunately, the agency has the ability to rectify this problem. Our collective request for DHS is to withdraw the NPRM and amend the Advanced NPRM to include the issues addressed in the NPRM, namely the designation of Targeted Employment Areas and minimum investment levels, as issues for public comment. In doing so, the agency should also extend the comment period for the ANPRM 60 days to June 10, 2017, given the agency's express desire for comments supported by the data. Our organizations wish to provide the agency with reliable estimates as to the likely impacts of its proposal; in order to do so, the comment period needs to be significantly longer than it currently is. This collaborative approach would not only better inform the agency of stakeholder concerns and how to best improve the integrity and operability of the program, it will also be enlightening for the many members of Congress who are in a position to make real lasting changes to the EB-5 Regional Center Program.

As you know, the Regional Center Program needs to be reauthorized by April 28, 2017. We all remain optimistic that a legislative solution that addresses these issues can be achieved. If such a compromise is reached, the Department of Homeland Security can avoid using valuable agency resources on a regulatory effort that covers issues that will be addressed by Congress.

For these reasons, we respectfully request that that the NPRM be withdrawn. To that end, we also urge the agency to amend its Advanced NPRM on EB-5 to fold the issues discussed in the NPRM into the ANPRM and extend the ANPRM's comment date to June 10, 2017. We thank you in advance for your consideration and look forward to working with you on EB-5 program enhancements.

January 20, 2017

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

A week before your inauguration, the Department of Homeland Security proposed a rule that would drastically change the EB-5 investment program. With draft EB-5 reform legislation in the works and your administration having taken office, we believe this proposed regulation is simply unripe for comment. **Accordingly, we urge you and your designees to withdraw this EB-5 "midnight rule" proposed by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) on January 13 (see 82 Federal Register 4738).**

In particular, USCIS is proposing to **dramatically increase the financial burdens placed** on EB-5 investors. The proposed rule would raise these amounts to levels that far exceed those that have been proposed and are under consideration by Congress. Substantial increases like these, unaccompanied by any transition period, will shock the program and chill EB-5 investment into U.S. companies indefinitely. We are concerned that such a change could put our country at a serious disadvantage in the highly competitive global marketplace to compete for foreign resources and bring them to our shores.

The U.S. Department of Commerce recently released a report citing significant economic and job creation benefits from the EB-5 program. The Commerce Department concluded that EB-5 investors provided $5.8 billion in capital to invest in 562 projects located in the United States. Using data from FY12-FY13, these projects were expected to create an estimated 174,039 jobs for American workers.

USCIS stated that it could not fully consider the economic impacts of its proposed burdensome requirements, and how they might hinder the job benefits estimated by the Commerce

Department.  Given the uncertainties on this critical point, this proposed rule should be withdrawn to provide more time to study these impacts.  Given that new legislation in the works for over 18 months may supersede these regulations, USCIS's proposal is premature.

Moreover, Congress must reauthorize the EB-5 "regional center" program before it lapses on April 28, 2017.  This will be one of the first key legislative deadlines your administration must address.  Collecting comments now on USCIS's rushed proposed rule puts the cart before the horse.

EB-5 can also help unleash the vast potential for private investment capital to co-invest with public funds to modernize our nation's crumbling infrastructure—opportunities beyond the scope of USCIS's untimely proposal.  We look forward to working with your administration, and to continuing our discussions on Capitol Hill regarding legislative reform, to create American jobs and re-authorize EB-5 in a manner that safeguards national security, deters investor fraud, and allows projects in diverse locations to fairly access EB-5 capital.

Thank you for considering our request to withdraw USCIS's proposed EB-5 rule.  We look forward to working with you and your team and to creating American jobs.