

# S. 1501

To promote and reform foreign capital investment and job creation in  
American communities.

---

IN THE SENATE OF THE UNITED STATES

June 3, 2015

Mr. Leahy (for himself and Mr. Grassley) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To promote and reform foreign capital investment and job creation in  
American communities.

Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,

### SECTION 1. SHORT TITLE.

This Act may be cited as the "American Job Creation and Investment  
Promotion Reform Act of 2015".

### SEC. 2. REAUTHORIZATION OF EB-5 REGIONAL CENTER PROGRAM.

(a) Repeal.--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(8 U.S.C. 1153 note) is repealed.

(b) Authorization.--Section 203(b)(5) of the Immigration and  
Nationality Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end  
the following:

“(E) Regional center program.--

“(i) In general.--Visas under this  
paragraph shall be made available through  
September 30, 2020, to qualified immigrants  
(and the eligible spouse and children of such  
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.

“(ii) Priority.--In processing petitions  
under section 204(a)(1)(H) for classification

under this paragraph, the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under this subparagraph. Notwithstanding subsection (e), immigrant visas made available under this paragraph may be issued to such aliens in an order that takes into account any priority accorded under this clause.

“(iii) Establishment of a regional center.--A regional center shall operate within a defined geographic area, which shall be described in the proposal and be consistent with the purpose of concentrating pooled investment within the defined and limited geographic area. The proposal to establish a regional center shall demonstrate that the pooled investment will have a significant economic impact on such geographic area, and shall include--

“(I) reasonable predictions, supported by economically and statistically valid forecasting tools, concerning the amount of investment that will be pooled, the kinds of commercial enterprises that will receive such investments, verifiable details of the jobs that will be created directly or indirectly as a result of such investments, and other positive economic effects such investments will have; and

“(II) a description of the policies and procedures in place reasonably designed to monitor associated commercial enterprises to ensure compliance with all laws, regulations, and Executive orders of the United States.

“(iv) Indirect job creation.--The Secretary of Homeland Security shall permit aliens seeking admission under this paragraph to satisfy up to 90 percent of the requirements under subparagraph (A)(ii) with jobs that are estimated to be created indirectly through investment under this paragraph in accordance with this subparagraph.

“(v) Compliance.--

“(I) In general.--In determining compliance with subparagraph (A)(ii), the Secretary of Homeland Security shall--

“(aa) permit aliens seeking admission under this paragraph to rely on economically and statistically valid methodologies for determining the number of jobs created by the program, including, consistent with this subparagraph, jobs estimated to have been created indirectly through revenues generated from increased exports, improved

regional productivity, job creation, and increased domestic capital investment resulting from the program; and

``(bb) verify that the jobs described in item (aa) meet the requirements under this subparagraph by using a methodology that has been accepted by the Bureau of Economic Analysis of the Department of Commerce to be economically and statistically valid for such purposes.

``(II) Projects involving capital contribution from non-alien entrepreneurs.--

``(aa) Credit for job creation.--Alien entrepreneurs may accrue credit for job creation based on capital investment provided by non-alien entrepreneurs only for the percentage of total jobs created that is equal to the percentage of total capital investment provided by such non-alien entrepreneurs in the commercial enterprise.

``(bb) Limitation.--The percentage of jobs created for which alien entrepreneurs may accrue credit under item (aa) based on such non-alien entrepreneur capital contribution may not exceed 30 percent of all jobs created even if such contribution exceeds 30 percent.

``(III) Ineligible jobs.--In determining compliance with the job creation requirements under subparagraph (A)(ii), the Secretary may not include jobs estimated to be created under a tenant-occupancy methodology.

``(vi) Amendments.--The Secretary of Homeland Security shall--

``(I) require approved regional centers to give advance notice to the Secretary of significant proposed changes to their organizational structure, ownership, or administration, including the sale or rental of such centers;

``(II) approve or disapprove the changes referred to in subclause (I) before any such proposed changes take effect; and

``(III) approve the changes referred to in subclause (I) only after--

``(aa) notice of any such

proposed changes are made publicly available through a publicly accessible website of U.S. Citizenship and Immigration Services for a period of not fewer than 30 days; and

((bb) the Secretary determines that the regional center would remain compliant with this subparagraph and with subparagraph (H).

((F) Business plans for regional center investments.--

((i) Application for approval of investment in commercial enterprise.--A commercial enterprise associated with a regional center shall file an application with, and obtain approval from, the Secretary of Homeland Security for each particular investment offering through the commercial enterprise to aliens seeking classification under this paragraph, which shall include--

((I) a comprehensive business plan for a specific capital investment project;

((II) a credible economic analysis regarding estimated job creation that is based upon economically and statistically valid methodologies;

((III) documents filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a et seq.);

((IV) investment and offering documents, including subscription, investment, partnership, and operating agreements, private placement memoranda, term sheets, management biographies, the description of the business plan to be provided to potential alien entrepreneurs, and any marketing materials used or prepared for use in connection with the offering by the regional center or any associated commercial enterprise, which shall contain references, as appropriate, to any--

((aa) investment risks associated with the new commercial enterprise and any other business subsequently receiving investment capital from the new commercial enterprise;

((bb) conflicts of interest that currently exist or may arise among the regional center, new commercial enterprise, other business subsequently receiving investment capital from the new commercial enterprise, or the

principals of the  
aforementioned entities;

``(cc) the name and contact  
information of any person that  
has received or the commercial  
enterprise knows will receive  
any fees or transaction-based  
compensation in connection with  
the investment, and a  
description of the services  
performed or to be performed by  
such person which entitle them  
to the fees or transaction-  
based compensation; and

``(dd) any pending  
litigation or bankruptcy or  
adverse judgments during the  
most recent 10-year period  
affecting the regional center,  
new commercial enterprise, any  
other business subsequently  
receiving investment capital  
from the new commercial  
enterprise, or any other  
enterprise in which any  
principal of the aforementioned  
entities held majority  
ownership at the time;

``(V) a description of the policies  
and procedures reasonably designed to  
ensure that the commercial enterprise,  
its agents, employees, and attorneys,  
and any persons in active concert or  
participation with the commercial  
enterprise, comply with the securities  
laws of the United States in connection  
with the offer, purchase, or sale of  
its securities;

``(VI) a certification that the  
commercial enterprise and its agents,  
employees, and attorneys, and any  
persons in active concert or  
participation with the commercial  
enterprise, are in compliance with the  
securities laws of the United States in  
connection with the offer, purchase, or  
sale of its securities; and

``(VII) for a capital investment in  
a targeted employment area, a credible  
economic analysis regarding estimated  
job creation that is likely to occur--

``(aa) if the targeted  
employment area is located  
within a combined statistical  
area or a metropolitan  
statistical area, in the  
combined statistical area or  
metropolitan statistical area;

or

``(bb) if the targeted  
employment area is located  
outside of an area described in  
item (aa), in any county that

is included in the targeted  
employment area and counties  
adjacent to the targeted  
employment area.

“(ii) Effect of approval of business plan for investment in regional center commercial enterprise.--The approval of an application under this subparagraph shall be binding for purposes of the adjudication of subsequent petitions seeking classification under this paragraph by immigrants investing in the same commercial enterprise concerning the same economic activity, and of petitions filed under section 216A, unless the Secretary of Homeland Security determines that there is evidence of fraud, misrepresentation, criminal misuse, a threat to public safety or national security, a material change that affects the approved economic model, other evidence affecting program eligibility that was not disclosed by the petitioner during the approval process, or a material mistake of law or fact in the prior adjudication.

“(iii) Consideration of fraudulent or other criminal activity in establishing eligibility criteria.--

“(I) In general.--The Secretary of Homeland Security shall consider the potential for fraud, misrepresentation, criminal misuse, and threats to public safety or national security in establishing eligibility criteria under this subparagraph.

“(II) Grounds for denial or revocation.--The Secretary shall deny or revoke the approval of any business plan application under this subparagraph with any particular investment or business arrangement that, in the Secretary's unreviewable discretion--

“(aa) presents a threat to public safety or national security; or

“(bb) presents a significant risk of criminal misuse, fraud, or abuse, including arrangements that involve self-dealing or any other inherent conflict of interest between potential alien entrepreneurs and the principals of a regional center or a regional center associated commercial enterprise.

“(iv) Site visits.--The Secretary shall perform at least 1 site visit to each regional center associated commercial enterprise in accordance with section 216A(c)(1)(C).

“(v) Premium processing option.--The Secretary shall establish a process for premium processing of business plan applications under this subparagraph related to investment in a

regional center commercial enterprise, including making available the expeditious execution of a site visit described in clause (iv), which may include an opportunity for the applicant to address and cure any deficiencies identified by the Secretary in the applicant's business plan, investment documents, or statement regarding job creation prior to a final determination. The Secretary shall impose a fee for the use of the process described in this clause sufficient to recover the costs of its administration.

``(vi) Approval of business plan in a targeted employment area.--For a capital investment in a designated targeted employment area, at least 50 percent of the estimated job creation intended to form the basis of the job creation requirement under subparagraph (A)(ii) shall be expected to occur within an area specified in subparagraph (F)(i)(VII). If the estimated job creation in such area is below 50 percent, the total number of jobs created by the capital investment for which alien entrepreneurs may receive credit shall be limited to the number at which 50 percent of the job creation requirement occurs within an area described in clause (i)(VII).

``(G) Regional center annual statements.--

``(i) In general.--Each regional center designated under subparagraph (E) shall annually submit, to the Director of U.S. Citizenship and Immigration Services (referred to in this subparagraph as the `Director'), in a manner prescribed by the Secretary of Homeland Security, a statement, including--

``(I) a certification by the regional center that it remains in compliance with clauses (i) and (ii) of subparagraph (H);

``(II) a certification by the regional center described in subparagraph (I)(ii)(II);

``(III) a certification by the regional center that it is in compliance with subparagraph (K)(iii);

``(IV) a description of any pending litigation or bankruptcy proceedings, or litigation or bankruptcy proceedings resolved during the preceding fiscal year, involving the regional center or an associated commercial enterprise;

``(V) an accounting of all foreign investor money invested in the regional center and its associated commercial enterprises; and

``(VI) for each new commercial enterprise associated with the regional center--

``(aa) an accounting of the aggregate capital invested in the new commercial enterprise by alien entrepreneurs under this paragraph for each capital

investment project being undertaken by the new commercial enterprise;

``(bb) a description of how such capital is being used to execute each capital investment project in the approved business plan or plans;

``(cc) evidence that 100 percent of such capital has been irrevocably committed to each capital investment project;

``(dd) detailed evidence of the progress made toward the completion of each capital investment project;

``(ee) an accounting of the aggregate direct jobs created or preserved;

``(ff) a description of all funds, including administrative, loan monitoring, or loan management fees, in addition to investor capital collected from alien entrepreneurs by any party in relation to the investment or participation in the regional center program described in subparagraph (E), the entities that received such funds, and the purpose for which such funds were collected;

``(gg) any documentation referred to in subparagraph (F)(i)(IV) if there has been a material change during the preceding fiscal year; and

``(hh) a certification by the regional center and associated commercial enterprise that such statements are accurate.

``(ii) Amendment of annual statements.--The Director--

``(I) shall require the regional center to amend or supplement an annual statement required under clause (i) if the Director determines that such statement is deficient; and

``(II) may require the regional center to amend or supplement such annual statement if the Director determines that such an amendment or supplement is appropriate.

``(iii) Sanctions.--

``(I) Effect of violation.--If the Director determines that a regional center or other individual affiliated with a regional center, including an individual affiliated with an associated commercial enterprise, and



any legal representative of such entities, has violated any certification under clause (i) or that the regional center is conducting itself in a manner inconsistent with its designation, including any willful and material deviation by commercial enterprises associated with the regional center from any approved business plan for such commercial enterprises, the Director shall sanction the violating entity or individual under subclause (II).

``(II) Authorized sanctions.--The Director shall establish a graduated set of sanctions based on the severity of the violations referred to in subclause (I), as determined by the Director, including--

``(aa) civil money penalties equal to not more than 10 percent of the total capital invested by alien entrepreneurs in the regional center's associated commercial enterprises, the payment of which shall not in any circumstance utilize any of such alien entrepreneurs' capital investment;

``(bb) temporary suspension from participation in the program described in subparagraph (E), which may be lifted by the Director if the individual or entity cures the alleged violation after being provided such an opportunity by the Director;

``(cc) permanent bar from program participation for 1 or more individuals associated with the regional center or an associated commercial enterprise; and

``(dd) termination of regional center status.

``(H) Bona fides of persons associated with regional centers or regional center associated commercial enterprises.--

``(i) In general.--No person shall be permitted by any regional center or regional center associated commercial enterprise to be directly or indirectly involved with the regional center or commercial enterprise as its principal, representative, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, marketer, promoter, or other similar position of substantive authority for the operations, management or promotion of the regional center or commercial enterprise if--

``(I) the person has been found

liable within the previous 10 years for any criminal or civil violation of any law relating to fraud or deceit, or at any time if such violation involved a civil liability in excess of \$1,000,000, a criminal conviction with a term of imprisonment of more than 1 year or a criminal or civil violation of any law or agency regulation in connection with the offer, purchase, or sale of a security;

``(II) the person is subject to a final order of a State securities commission (or an agency or officer of a State who performs similar functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State who performs similar functions), an appropriate Federal banking agency, the Commodity Futures Trading Commission, or the National Credit Union Administration, which is based on a violation of any law or regulation that--

``(aa) prohibits fraudulent, manipulative, or deceptive conduct; or  
``(bb) bars the person from--

``(AA) association with an entity regulated by such commission, authority, agency, or officer;

``(BB) engaging in the business of securities, insurance, or banking; or

``(CC) engaging in savings association or credit union activities;

``(III) there is reasonable cause to believe that the person is engaged in, has ever been engaged in, or seeks to engage in--

``(aa) any illicit trafficking in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act);

``(bb) any activity relating to espionage, sabotage, or theft of intellectual property;

``(cc) any activity related

to money laundering (as described in section 1956 or 1957 of title 18, United States Code);

((dd) any terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B));

((ee) any activity related to human trafficking or a human rights offense;

((ff) any activity described in section 212(a)(3)(E); or

((gg) the violation of any statute, regulation, or Executive order regarding foreign financial transactions or foreign asset control; or

((IV) the person--

((aa) is, or during the preceding 10 years has been, included on the Department of Justice's List of Currently Disciplined Practitioners; or

((bb) during the preceding 10 years, has received a reprimand or otherwise been publicly disciplined by a bar association of which the person is or was a member.

((ii) Status of regional center principals.--

((I) Lawful status required.--No person may be directly or indirectly involved with a regional center as its principal, administrator, owner, officer, board member, manager, executive, general partner, fiduciary, or other similar position of significant authority for the operations or management of the regional center unless the person is a national of the United States or an individual who has been lawfully admitted for permanent residence.

((II) Foreign governments.--No foreign government entity may be directly or indirectly involved with the ownership or administration of a regional center.

((iii) Information required.--The Secretary shall require such attestations and information, including the submission of fingerprints or other biometrics to the Federal Bureau of Investigation, and shall perform such criminal record checks and other background checks with respect to a regional center or regional center associated commercial enterprise, and persons involved in a regional center or regional center associated commercial enterprise as described in clauses (i) and (ii), to determine whether such regional center

or regional center associated commercial enterprise is in compliance with clauses (i) and (ii). The Secretary may require the information and attestations described in this clause from such regional center or regional center associated commercial enterprise, and any person involved in the regional center or regional center associated commercial enterprise, at any time on or after the date of the enactment of the American Job Creation and Investment Promotion Reform Act of 2015.

“(iv) Termination.--The Secretary, in the Secretary's unreviewable discretion, shall terminate from the program under this paragraph any regional center or regional center associated commercial enterprise if the Secretary determines that--

“(I) the regional center or regional center associated commercial enterprise has violated clause (i);

“(II) the regional center has violated clause (ii);

“(III) the regional center, a regional center associated commercial enterprise, or any person involved with the regional center or regional center associated commercial enterprise fails to provide an attestation or information requested by the Secretary or provides any false attestation or information under clause (iii); or

“(IV) the regional center, a regional center associated commercial enterprise, or any person involved with the regional center or regional center associated commercial enterprise has engaged in fraud, misrepresentation, criminal misuse, or poses a threat to public safety or national security.

“(I) Compliance with securities laws.--

“(i) Jurisdiction.--In view of the objective of promoting investment in the United States, in an action filed by the Securities and Exchange Commission, the purchase or sale of securities offered or sold by any regional center or any party associated with a regional center shall be deemed to have occurred within the territory of the United States for purposes of the securities laws, and subject matter jurisdiction shall also lie within the United States.

“(ii) Regional center certifications required.--

“(I) Initial certification.--The Secretary of Homeland Security shall not approve an application for regional center designation or regional center amendment unless the regional center certifies that the regional center is in compliance with and has policies and procedures reasonably designed to ensure that all parties associated with the regional center remain in

compliance with the securities laws of the United States and of any State in which the regional center operates in connection with the offer, purchase, or sale of securities or the provision of investment advice by the regional center or parties associated with the regional center.

``(II) Reissue.--A regional center shall annually reissue a certification described in subclause (I) in accordance with subparagraph (G). Annual certifications under this subclause shall also certify compliance with clause (iii) by stating that the certifier is in a position to have knowledge of the offers, purchases, and sales of securities or the provision of investment advice by parties associated with the regional center and, to the best of the certifier's knowledge, after reasonable investigation, all such offers, purchases, and sales of securities or the provision of investment advice complied with securities laws of the United States and that records, data, and information related to such offers, purchases, and sales have been maintained.

``(III) Effect of noncompliance.--If a regional center, through its due diligence, discovered during the previous fiscal year that the regional center or any party associated with the regional center was not in compliance with the securities laws of the United States, the certifier shall--

- ``(aa) describe the activities that led to noncompliance;
- ``(bb) describe the actions taken to remedy the noncompliance; and
- ``(cc) certify that the regional center and all parties associated with the regional center are currently in compliance.

``(iii) Oversight required.--Each regional center shall monitor and supervise all offers, purchases, and sales of, and advice relating to, securities made by parties associated with the regional center to ensure compliance with the securities laws of the United States, and maintain records, data, and information relating to all such offers, purchases, sales, and advice during the 5-year period beginning on the date of their creation. Such records, data, and information shall be made available to the Securities and Exchange Commission and to the Secretary upon request.

``(iv) Suspension or termination.--The Secretary, in the Secretary's unreviewable

discretion, shall suspend or terminate the designation of any regional center that does not provide the certification described in clause (ii). In addition to any other authority provided to the Secretary under this paragraph, the Secretary, in the Secretary's unreviewable discretion, may suspend or terminate the designation of any regional center or impose other sanctions against the regional center if the regional center or any parties associated with the regional center--

``(I) are permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction in connection with the offer, purchase, or sale of a security or the provision of investment advice;

``(II) are subject to any final order of the Securities and Exchange Commission that--

``(aa) bars such person from association with an entity regulated by the Securities and Exchange Commission; or

``(bb) constitutes a final order based on violations in connection with the offer, purchase, or sale of, or advice relating to, a security; or

``(III) knowingly submitted or caused to be submitted a certification described in clause (ii) that contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

``(v) Savings provision.--Nothing in this subparagraph may be construed to impair or limit the authority of the Securities and Exchange Commission under the Federal securities laws.

``(vi) Defined term.--In this subparagraph, the term 'parties associated with a regional center' means--

``(I) the regional center;

``(II) any commercial enterprise associated with the regional center;

``(III) the regional center's and associated commercial enterprise's owners, officers, directors, managers, partners, agents, employees, promoters and attorneys; and

``(IV) any person in active concert or participation with the regional center or directly or indirectly controlling, controlled by, or under common control with the regional center.

``(J) EB-5 integrity fund.--

``(i) Establishment.--There is established

in the United States Treasury a special fund, which shall be known as the EB-5 Integrity Fund (referred to in this subparagraph as the `Fund'). Amounts deposited into the Fund shall be available until expended to the Secretary of Homeland Security for the purposes set forth in clause (iii).

``(ii) Fees.--The Secretary of Homeland Security shall collect an annual fee of \$20,000 for the Fund from each regional center designated under subparagraph (E). The first fee under this clause shall be due not later than January 1, 2016, and subsequent fees due not later than January 1 of each year thereafter. Newly designated regional centers shall pay their initial fee for the calendar year following the calendar year during which the regional center was so designated. The Secretary may prescribe regulations, as necessary, to increase the dollar amount specified under this clause to ensure the Secretary's continued ability to carry out the activities specified in clause (iii).

``(iii) Permissible uses of fund.--The Secretary of Homeland Security shall--

``(I) use not less than  $\frac{1}{3}$  of the amounts deposited into the Fund to conduct audits and site visits (announced and unannounced);

``(II) use not less than  $\frac{1}{3}$  of the amounts deposited into the Fund for investigations based outside of the United States, including--

``(aa) monitoring and investigating program-related events and promotional activities; and

``(bb) ensuring an alien entrepreneur's compliance with subparagraph (L);

``(III) use amounts deposited into the Fund--

``(aa) to detect and investigate fraud or other crimes; and

``(bb) to determine whether regional centers, associated commercial enterprises, and alien entrepreneurs (and alien spouses and alien children, if any) comply with applicable immigration laws and regulations;

``(IV) use amounts deposited into the Fund to conduct interviews of the owners, officers, directors, managers, partners, agents, employees, promoters, and attorneys of a regional center and regional center associated commercial enterprise; and

``(V) otherwise use amounts deposited into the Fund as the Secretary determines to be necessary,

including monitoring compliance with the requirements under section 7 of the American Job Creation and Investment Promotion Reform Act of 2015.

“(iv) Failure to pay fee.--The Secretary of Homeland Security shall--

“(I) impose a reasonable penalty if a regional center does not pay the fee required under clause (ii) within 30 days of the date on which such fee is due under clause (ii); and

“(II) terminate the designation of any regional center that does not pay the fee required under clause (ii) before 90 days after the date on which such fee is due under clause (ii).

“(v) Report.--The Secretary shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes how amounts in the Fund were expended during the previous fiscal year.

“(K) Direct and third-party promoters.--

“(i) Rules and standards.--Direct and third-party promoters of a regional center, parties associated with a regional center, or of the investment opportunities of a regional center, shall comply with the rules and standards prescribed by the Secretary of Homeland Security to oversee regional center promotion, including--

“(I) registration with U.S. Citizenship and Immigration Services, which the Secretary shall make publicly available;

“(II) minimum qualifications;

“(III) guidelines for offering investment opportunities and representing the visa process to foreign entrepreneurs; and

“(IV) permissible fee arrangements.

“(ii) Effect of violation.--If the Secretary determines, in the Secretary's unreviewable discretion, that a direct or third-party promoter has violated clause (i), the Secretary shall suspend or permanently bar such individual from participation in the program described in subparagraph (E).

“(iii) Compliance.--Each regional center shall maintain a written agreement between the regional center or regional center associated commercial enterprise and each direct or third-party promoter operating on behalf of such regional center or commercial enterprise that outlines the rules and standards prescribed under clause (i).

“(L) Source of funds.--

“(i) In general.--An alien entrepreneur shall demonstrate that the capital required under subparagraph (A) and any funds used to pay administrative costs and fees associated with the alien's investment were obtained from



a lawful source and through lawful means.

((ii) Required information.--The Secretary of Homeland Security shall require, as applicable, that an alien entrepreneur petition under this paragraph contain--

((I) business and tax records, including--

- ((aa) foreign business registration records;
- ((bb) corporate or partnership tax returns (or any other entity in any form that has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within 7 years, with any taxing jurisdiction in or outside the United States by or on behalf of the alien entrepreneur; and
- ((cc) evidence identifying any other source of capital or administrative fees;

((II) evidence related to monetary judgments against the alien entrepreneur, including certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the alien entrepreneur from any court in or outside the United States; and

((III) the identity of all persons who transfer into the United States, on behalf of the entrepreneur--

- ((aa) any funds that are used to meet the capital requirement under subparagraph (A); and
- ((bb) any funds that are used to pay administrative costs and fees associated with the alien's investment.

((iii) Gift restrictions.--Gifted funds may be counted toward the minimum capital investment requirement under subparagraph (C) only if such funds were gifted to the alien entrepreneur by the alien entrepreneur's spouse, parent, child, sibling, or grandparent and such funds were gifted in good faith and not to circumvent any limitations imposed on permissible sources of capital under this subparagraph. If a significant portion of the capital invested under subparagraph (A) was gifted to the alien entrepreneur, the Secretary shall require the alien entrepreneur's petition

under this paragraph to include records described in subclauses (I) and (II) of clause (ii) from the donor.

“(iv) Loan restrictions.--Capital derived from indebtedness may be counted toward the minimum capital investment requirement under subparagraph (C) only if such capital is--

“(I) secured by assets owned by the alien entrepreneur; and

“(II) issued by a reputable banking or lending institution that is properly chartered or licensed under the laws of any State, territory, country, or applicable jurisdiction, which the Secretary shall determine after consulting with relevant commercial or government databases, such as those of the Department of the Treasury's Office of Foreign Assets Control, Office of Terrorist Financing and Financial Crimes, and Financial Crimes Enforcement Network.

“(M) Treatment of entrepreneurs if regional center terminated.--

“(i) In general.--Upon the termination of a regional center or regional center associated commercial enterprise under this paragraph--

“(I) the conditional permanent residence of an alien who has been admitted to the United States pursuant to section 216A(a)(1) based on an investment in a commercial enterprise associated with the terminated regional center or regional center associated commercial enterprise shall continue to be authorized; and

“(II) the alien shall not accrue any period of unlawful presence under section 212(a)(9) during the 180-day period following such termination unless the Secretary has reason to believe the alien was a knowing participant in the conduct that led to the termination of such regional center or regional center associated commercial enterprise.

“(ii) New regional center or investment.--The conditional permanent resident status of an alien described in clause (i)(I) shall be terminated at the end of the 180-day period described in clause (i)(II) unless--

“(I) in the case of the termination of a regional center--

“(aa) the associated commercial enterprise affiliates with an approved regional center designated to operate within the same geographic area as the commercial enterprise; or

“(bb) such alien invests in another commercial enterprise associated with an

approved regional center; or  
``(II) in the case of the  
termination of a regional center  
associated commercial enterprise, such  
alien invests in another commercial  
enterprise associated with an approved  
regional center.

``(iii) Removal of conditions.--Aliens  
described in subclauses (I)(bb) and (II) of  
clause (ii) shall be eligible to have their  
conditions removed pursuant to section 216A  
beginning on the date that is 2 years after the  
date of the subsequent investment.

``(N) Fraud, criminal misuse, and threats to  
national interests.--

``(i) Denial or revocation.--If the  
Secretary of Homeland Security determines, in  
the Secretary's unreviewable discretion, that  
the approval of a petition, application, or  
benefit described in this paragraph is contrary  
to the national interest of the United States  
for reasons relating to fraud,  
misrepresentation, criminal misuse, or threats  
to public safety or national security, the  
Secretary shall deny or revoke the approval  
of--

``(I) a petition seeking  
classification of an alien as an alien  
entrepreneur under this paragraph;  
``(II) a petition to remove  
conditions under section 216A before  
granting lawful permanent resident  
status or any other petition,  
application, or benefit based upon the  
previous or concurrent filing or  
approval of a petition for  
classification of an alien under this  
paragraph;

``(III) an application for approval  
of a business plan in a regional center  
associate commercial enterprise; or  
``(IV) an application for  
designation as a regional center.

``(ii) Debarment.--If a regional center or  
regional center associated commercial  
enterprise has its designation or participation  
in the program under this paragraph terminated  
for reasons relating to fraud, intentional  
material misrepresentation, criminal misuse, or  
threats to public safety or national security,  
any person associated with such regional center  
or regional center associated commercial  
enterprise, including an alien investor, shall  
be permanently barred from future participation  
in the program if the Secretary of Homeland  
Security, in the Secretary's unreviewable  
discretion, determines that such person was a  
knowing participant in the conduct that led to  
the termination."

(c) Effective Date.--The amendments made by this section--

(1) shall take effect on the date of the enactment of this  
Act; and

(2) shall apply to--

(A) any application to designate a regional center, and any person involved with the regional center, that is pending or approved on or after the date of the enactment of this Act; and

(B) any regional center approved before the date of the enactment of this Act, on or after a delayed effective date that is 1 year after such date of enactment with respect to any person involved in the regional center on or after such delayed effective date, unless otherwise provided in this section.

(d) GAO Report.--Not later than December 31, 2018, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes--

(1) the economic benefits of the regional center program established under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), including the steps taken by U.S. Citizenship and Immigration Services to verify job creation;

(2) the extent to which U.S. Citizenship and Immigration Services ensures compliance by regional center participants;

(3) the extent to which U.S. Citizenship and Immigration Services has maintained records by regional centers and associated commercial enterprises, including annual statements and certifications;

(4) the steps taken by U.S. Citizenship and Immigration Services to verify the source of funds, as required under section 203(b)(5)(L) of the Immigration and Nationality Act, as added by subsection (b);

(5) the extent to which U.S. Citizenship and Immigration Services collaborates with other Federal and law enforcement agencies, particularly to detect illegal activity and threats to national security;

(6) the extent to which U.S. Citizenship and Immigration Services has prevented fraud and abuse in regional center activities, including the designation of a regional center investment in a targeted employment area;

(7) the extent to which U.S. Citizenship and Immigration Services has used its authority to sanction, suspend, bar, or terminate a regional center or individuals affiliated with a regional center;

(8) the steps that have been taken to oversee direct and third-party promoters under section 203(b)(5)(H) of the Immigration and Nationality Act, as added by subsection (b);

(9) the extent to which employees of the Department of Homeland Security have complied with the ethical standards and transparency requirements under section 7; and

(10) an accounting of the expenditure of amounts from the EB-5 Integrity Fund established under section 203(b)(5)(J) of the Immigration and Nationality Act, as added by subsection (b).

(e) Inspector General Report.--Not later than December 31, 2018, the Inspector General of the Intelligence Community, in coordination with the Inspector General of the Department of Homeland Security and after consultation with relevant Federal agencies, including U.S. Immigration and Customs Enforcement, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes--

(1) vulnerabilities within the EB-5 Immigrant Investor Program that may undermine the national security of the United States;

(2) actual or potential use of the EB-5 Immigrant Investor Program to facilitate export of sensitive technology;

- (3) actual or potential use of the EB-5 Immigrant Investor Program to facilitate economic espionage;
- (4) actual or potential use of the EB-5 Immigrant Investor Program by foreign government agents; and
- (5) actual or potential use of the EB-5 Immigrant Investor Program to facilitate terrorist activity, including funding terrorist activity or laundering terrorist funds.

SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

(a) In General.--Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended--

(1) by striking ``Attorney General" each place such term appears (except in subsection (d)(2)(C)) and inserting ``Secretary of Homeland Security";

(2) in subsection (a), by amending paragraph (1) to read as follows:

``(1) Conditional basis for status.--

``(A) In general.--Except as provided in subparagraph (B), an alien entrepreneur, alien spouse, and alien child shall be considered, at the time of obtaining status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

``(B) Exception.--Alien entrepreneurs who meet the requirements under subsection (d)(2)(A)(ii) shall obtain the status of an alien lawfully admitted for permanent residence without a conditional basis upon approval of the petition required under such subsection.";

(3) in subsection (c)--

(A) in the heading, by striking ``of Timely Petition and Interview";

(B) in paragraph (1)--

(i) in the matter preceding subparagraph (A), by striking ``In order" and inserting ``Except as provided in paragraph (3)(D), in order";

(ii) in subparagraph (A), by striking ``, and" and inserting a semicolon;

(iii) in subparagraph (B), by striking ``Service respecting the facts and information described in subsection (d)(1)." and inserting ``Department of Homeland Security respecting the facts and information described in subsection (d)(1); and"; and

(iv) by adding at the end the following:

``(C) the Secretary shall perform a site visit to the job creating entity in which the alien entrepreneur invested capital under section 203(b)(5)(A), which visit may take place at any time after an application for approval of investment in a commercial enterprise is filed under section 203(b)(5)(F)."; and

(C) in paragraph (3)(A), by striking ``the" before ``such filing";

(4) in subsection (d)--

(A) in paragraph (1)(A)(ii), by inserting ``except for alien entrepreneurs described in subsection (d)(2)(A)(ii)," before ``sustained";

(B) in paragraph (2), by amending subparagraph (A) to read as follows:

“(A) 90-day period before second anniversary.--(i) Except as provided in clause (ii) and subparagraph (B), the petition under subsection (c)(1)(A) shall be filed during the 90-day period before the second anniversary of the alien entrepreneur's lawful admission for permanent residence.

“(ii) If the alien entrepreneur has sustained the actions described in paragraph (1)(A)(i) for at least a 24-month period before admission, the alien entrepreneur may file the petition under subsection (c)(1)(A) any time after such period and before admission for permanent residence.”; and

(C) in paragraph (3), by striking “Service” and inserting “Department of Homeland Security”;

(5) by redesignating subsection (f) as subsection (g); and

(6) by inserting after subsection (e) the following:

“(f) Fraud, Misrepresentation, Criminal Misuse, or Threats to the Public Safety or National Security.--If the Secretary of Homeland Security determines, in the Secretary's sole and unreviewable discretion, that the approval of any petition under this section or the conditional permanent resident status granted to an alien entrepreneur under subsection (a) is contrary to the national interest of the United States for reasons relating to fraud, misrepresentation, criminal misuse, or threats to public safety or national security, the Secretary shall--

“(1) notify the alien involved of such determination without being required to disclose the basis for such determination to the extent such disclosure would be contrary to the national interest of the United States; and

“(2) deny such petition or terminate the permanent resident status of the alien involved (and the alien spouse and alien children of such immigrant) as of the date of such determination.”.

(b) Effective Date.--

(1) In general.--Except as provided under paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Exception.--The amendment made by subsection (a)(3)(B)(iv) shall take effect on the date that is 2 years after the date of the enactment of this Act.

#### SEC. 4. EB-5 VISA REFORMS.

(a) Targeted Employment Areas.--

(1) In general.--Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended to read as follows:

“(B) Set-aside for targeted employment areas.--

“(i) In general.--Not fewer than 5,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A), which--

“(I) is investing such capital in a targeted employment area; and

“(II) will create employment in such targeted employment area.

“(ii) Duration of high unemployment area designation.--A designation of a high unemployment area as a targeted employment area shall be valid for the 2-year period beginning on the date of approval of an application filed

under subparagraph (F) or at the time of the investment for aliens not subject to the requirements of subparagraph (F). Such designation may be renewed for additional 2-year periods if the area continues to meet the definition of a high unemployment area. An entrepreneur who has made the required amount of investment in such a targeted employment area during its period of designation shall not be required to increase the amount of investment based upon expiration of the designation."

(b) Adjustment of Minimum EB-5 Investment Amount.--Section 203(b)(5)(C) of such Act (8 U.S.C. 1153(b)(5)(C)) is amended--

(1) by striking clauses (i) and (ii) and inserting the following:

“(i) Minimum investment amounts.--Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,200,000. In the case of an investment in a targeted employment area, the amount of capital required under subparagraph (A) shall be \$800,000.

“(ii) Adjustment of minimum investment amounts.--

“(I) In general.--The Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Commerce, may from time to time prescribe regulations increasing the dollar amounts specified under clause (i).

“(II) Automatic adjustments.--Beginning on January 1, 2020, and on every fifth subsequent January 1--

“(aa) if the Secretary did not increase the minimum amount during the previous 5 fiscal years, the amounts specified in clause (i) shall automatically be adjusted by the amount of the cumulative percentage change in the Consumer Price Index (CPI-U) for the previous 5 fiscal years;

“(bb) if the Secretary increased the minimum amount during the previous 5 fiscal years by an amount that is less than the cumulative percentage change in the CPI-U during the previous 5 fiscal years, the amounts specified in clause (i) shall automatically be adjusted by the amount of such cumulative percentage change for such period minus any increase prescribed by the Secretary by regulations; or

“(cc) if the Secretary increased the minimum amount during the previous 5 fiscal years by an amount that is

greater than the cumulative percentage change in the CPI-U during the previous 5 fiscal years, the amounts specified in clause (i) shall not be increased.

“(iii) Minimum investment amount in a targeted employment area.--The minimum investment amount in a targeted employment area shall be not less than  $\frac{1}{2}$  and not more than  $\frac{3}{4}$  of the investment in a non-targeted area of employment.”; and

(2) in clause (iii) by striking “the Attorney General” and inserting “the Secretary”.

(c) Definitions.--

(1) In general.--Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), as amended by subsections (a) and (b) and by section 2, is further amended by amending subparagraph (D) to read as follows:

“(D) Definitions.--In this paragraph:

“(i) Capital.--The term ‘capital’--

“(I) means all real, personal, or mixed tangible assets owned and controlled by the alien entrepreneur, or held in trust for the benefit of the alien and to which the alien has unrestricted access;

“(II) shall be valued at fair market value in United States dollars, in accordance with Generally Accepted Accounting Principles or other standard accounting practice adopted by the Securities and Exchange Commission, at the time it is invested under this paragraph; and

“(III) shall not include assets acquired, directly or indirectly, by unlawful means, including any cash proceeds of indebtedness secured by such assets.

“(ii) Commercial enterprise associated with a regional center.--The terms ‘commercial enterprise associated with a regional center’ and ‘regional center associated commercial enterprise’ mean any for-profit activity formed for the ongoing conduct of lawful business, including a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity, that associates with a regional center and receives, or is established to receive, capital investment under the regional center program described in subparagraph (E).

“(iii) Full-time employment.--The term ‘full-time employment’ means employment in a position that requires at least 35 hours of service per week for at least a 24-month period.

“(iv) High unemployment area.--The term ‘high unemployment area’ means an area, using the most recent census data available, consisting of a census tract that has an unemployment rate that is at least 150 percent



of the national average unemployment rate.

“(v) Rural area.--The term ‘rural area’ means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

“(vi) Targeted employment area.--

“(I) In general.--The term ‘targeted employment area’ means a high unemployment area, a rural area, or any area within the geographic boundaries of any military installation closed, during the 20-year period immediately preceding the filing of an application under subparagraph (F), based upon a recommendation by the Defense Base Closure and Realignment Commission.

“(II) Eligibility.--Eligibility for designation as a targeted employment area shall be determined by the Secretary of Homeland Security, who shall not be bound by the determination of any other Federal or State governmental or nongovernmental entity.”.

(2) Rulemaking.--The Secretary of Homeland Security, in consultation with the Secretary of Defense, shall issue appropriate regulations to account for the modified definition of targeted employment area in section 203(b)(5)(D)(vi) of the Immigration and Nationality Act, as added by paragraph (1).

(d) Age Determination for Children of Alien Entrepreneurs.--Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended by adding at the end the following:

“(5) Age determination for children of alien entrepreneurs.--An alien admitted under subsection (d) as a lawful permanent resident on a conditional basis as the child of an alien lawfully admitted for permanent residence under subsection (b)(5), whose lawful permanent resident status on a conditional basis is terminated under section 216A, shall continue to be considered a child of the principal alien for the purpose of a subsequent immigrant petition by such alien under subsection (b)(5) if the alien remains unmarried and the subsequent petition is filed by the principal alien not later than 1 year after the termination of conditional lawful permanent resident status. No alien shall be considered a child under this paragraph with respect to more than 1 petition filed after the alien reaches 21 years of age.”.

(e) Enhanced Pay Scale for Certain Federal Employees Administering the EB-5 Program.--The Secretary of Homeland Security may establish, fix the compensation of, and appoint individuals to, designated critical, technical, and professional positions needed to administer sections 203(b)(5) and 216A of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5) and 1186b).

(f) Concurrent Filing of EB-5 Petitions and Applications for Adjustment of Status.--Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended--

(1) in subsection (k), in the matter preceding paragraph (1), by striking “(3)” and inserting “(3), or (5)”; and  
(2) by adding at the end the following:

“(n) If the approval of a petition for classification under section 203(b)(5) would make a visa immediately available to the alien beneficiary, the alien beneficiary’s application for adjustment of

status under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition."

(g) Effective Dates.--

(1) In general.--Except as provided under paragraph (2), the amendments made by this section shall be effective upon the date of the enactment of this Act.

(2) Exceptions.--The amendments made by subsections (b)(1) and (c)(1) shall not apply to--

(A) applications for business plan approval for regional center investments in actual projects that were filed with, or approved by, the Secretary of Homeland Security before the date of the enactment of this Act; and

(B) petitions seeking classification under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) and petitions filed under section 216A of such Act (8 U.S.C. 1186b) by immigrants investing in the same commercial enterprise concerning the same economic activity as contained in an application for business plan approval described in subparagraph (A).

## SEC. 5. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) Filing Order.--Section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) is amended to read as follows:

“(H) An alien desiring to be classified under section 203(b)(5) may file a petition with the Secretary of Homeland Security. An alien petitioning for classification pursuant to section 203(b)(5)(E) may file a petition with the Secretary only after approval of investment in a commercial enterprise under section 203(b)(5)(F).”

(b) Effective Date.--The amendment made by subsection (a)--

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply to any petition for classification pursuant to section 203(b)(5)(E) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)) that is filed with the Secretary of Homeland Security on or after the date of the enactment of this Act.

## SEC. 6. ADJUSTMENT OF FEES TO ACHIEVE EFFICIENT PROCESSING.

(a) Fee Study.--Not later than 30 days after the date of the enactment of this Act, the Director of U.S. Citizenship and Immigration Service shall initiate a study of fees charged in the administration of the program described in section 203(b)(5)(E) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(E)).

(b) Fee Levels.--Notwithstanding section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), and except as provided under subsection (c), the Director shall set fees for services provided pursuant to section 203(b)(5) of such Act at a level sufficient to ensure the full recovery only of the costs of providing such services, including the cost of ensuring that adjudication is completed, on average, not later than--

(1) 120 days after receiving a proposal for the establishment of a regional center described in section 203(b)(5)(E);

(2) 120 days after receiving an application for approval of investment in a commercial enterprise described in section 203(b)(5)(F);

(3) 150 days after receiving a petition from an alien desiring to be classified under section 203(b)(5)(E); and

(4) 180 days after receiving a petition from an alien for removal of conditions described in section 216A(c).

(c) Additional Fees.--Additional fees in excess of the fee levels described in subsection (b) may be charged only to contribute--

(1) in an amount that is equal to the amount paid by all other classes of fee-paying applicants for immigration related benefits, to the coverage or reduction of the costs of processing or adjudicating classes of immigration benefit applications that Congress or, in the case of asylum applications, the Secretary has authorized to be processed or adjudicated at no cost or at a reduced cost to the applicant; and

(2) in an amount that is not greater than 1 percent of the fee for filing a petition under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), to improvements to the information technological systems used by the Secretary to process, adjudicate, and archive applications and petitions under such section, including the conversion to electronic format of documents filed by petitioners and applicants for benefits under such section.

(d) Rule of Construction.--Nothing in this section may be construed to require any modification of fees before the completion of--

(1) the fee study described in subsection (a); and

(2) regulations promulgated by the Secretary of Homeland Security, in accordance with subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly known as the ``Administrative Procedures Act''), to carry out subsection (b).

## SEC. 7. TRANSPARENCY.

(a) In General.--Employees of the Department of Homeland Security, including the Secretary of Homeland Security, the Secretary's counselors, the Assistant Secretary for the Private Sector, the Director of U.S. Citizenship and Immigration Services, counselors to such Director, and the Chief of Immigrant Investor Programs at U.S. Citizenship and Immigration Services, shall act impartially and may not give preferential treatment to any organization or individual in connection with any aspect of the immigrant visa program described in section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b).

(b) Improper Activities.--Activities that constitute preferential treatment under subsection (a) shall include--

(1) working on, or in any way attempting to expedite or otherwise influence, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b), the processing of, an application, petition, or benefit for--

(A) a regional center;

(B) a commercial enterprise associated with a regional center;

(C) a job-creating entity associated with a regional center; or

(D) any person or entity associated with such regional center, commercial enterprise, or job-creating entity; and

(2) meeting or communicating with persons associated with the entities described in paragraph (1), at the request of such persons, in a manner not available to or accorded to all other petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 203(b)(5)(E) of the

Immigration and Nationality Act, as added by section 2(b).

(c) Reporting of Communications.--

(1) Written communication.--Employees of the Department of Homeland Security, including the officials listed in subsection (a), shall include, in the record of proceeding for a case under section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b), actual or electronic copies of all case-specific written communication, including e-mails from government and private accounts, with non-Department persons or entities advocating for regional center proposals or individual petitions pending on or after the date of enactment of this Act.

(2) Oral communication.--If substantive oral communication, including telephonic communication, virtual communication, and in-person meetings, takes place between officials of the Department of Homeland Security and non-Department persons or entities regarding specific cases under section 203(b)(5)(E) of the Immigration and Nationality Act (other than routine communications with other agencies of the Federal Government regarding the case, including communications involving background checks and litigation defense)--

(A) the conversation shall be recorded; or

(B) detailed minutes of the session shall be taken and included in the record of proceeding.

(3) Notification.--

(A) In general.--If the Secretary, in the course of written or oral communication described in this subsection, receives evidence about a specific case from anyone other than an affected party or his or her representative (excluding Federal Government or law enforcement sources), such information may not be made part of the record of proceeding and may not be considered in adjudicative proceedings unless--

(i) the affected party has been given notice of such evidence; and

(ii) if such evidence is derogatory, the affected party has been given an opportunity to respond to the evidence.

(B) Information from law enforcement, intelligence agencies, or confidential sources.--

(i) Law enforcement or intelligence agencies.--Evidence received from law enforcement or intelligence agencies may not be made part of the record of proceeding without the consent of the relevant agency or law enforcement entity.

(ii) Whistleblowers or other confidential sources.--Evidence received from whistleblowers or other confidential sources that is included in the record of proceeding and considered in adjudicative proceedings shall be handled in a manner that does not reveal the identity of the whistleblower or confidential source.

(d) Consideration of Evidence.--

(1) In general.--No case-specific communication with persons or entities that are not part of the Department of Homeland Security may be considered in the adjudication of an application or petition under section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b), unless the communication is included in the record of proceeding of the case.

(2) Waiver.--The Secretary of Homeland Security may waive the requirement under paragraph (1) only in the interests of

national security or for investigative or law enforcement purposes.

(e) Channels of Communication.--

(1) E-mail address or equivalent.--The Director of U.S. Citizenship and Immigration Services shall maintain an e-mail account (or equivalent means of communication) for persons or entities--

(A) with inquiries regarding specific cases under section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b); or

(B) seeking non-case-specific information about the regional center program described in such section.

(2) Communication only through appropriate channels or offices.--

(A) Announcement of appropriate channels of communication.--Not later than 40 days after the date of the enactment of this Act, the Director of U.S. Citizenship and Immigration Services shall announce that the only channels or offices by which petitioners, applicants, and seekers of benefits under the immigrant visa program described in section 203(b)(5)(E) of the Immigration and Nationality Act, or such persons' representatives, may communicate with the Department of Homeland Security regarding specific cases under such section, or non-case-specific information about the regional center program applicable to certain cases under such section, are through--

(i) the e-mail address or equivalent channel described in paragraph (1);

(ii) the U.S. Citizenship and Immigration Services National Customer Service Center, or any successor to that Center; or

(iii) the U.S. Citizenship and Immigration Services Office of Public Engagement, Immigrant Investor Program Office, Stakeholder Engagement Branch, or any successors to those Offices or Branch.

(B) Direction of incoming communications.--

(i) In general.--Employees of the Department of Homeland Security shall direct all persons making inquiries regarding the regional center program applicable to certain cases under section 203(b)(5)(E) of the Immigration and Nationality Act, as added by section 2(b) to the channels of communication or offices listed in subparagraph (A).

(ii) Savings provision.--Nothing in this subparagraph may be construed to prevent Department employees from directing inquiries to the U.S. Citizenship and Immigration Services Ombudsman.

(C) Log.--

(i) In general.--The Director of U.S. Citizenship and Immigration Services shall maintain a written or electronic log of--

(I) all communications described in subparagraph (A), which shall reference the date, time, and subject of the communication, and the identity of the Department official, if any, to whom the inquiry was forwarded;

(II) with respect to written communications described in subsection

(c)(1), the date the communication was received, the identities of the sender and addressee, and the subject of the communication; and

(III) with respect to oral communications described in subsection (c)(2), the date on which the communication occurred, the participants in the conversation or meeting, and the subject of the communication.

(ii) Transparency.--The log of communications described in clause (i) shall be made publicly available in accordance with section 552 of title 5, United States Code (commonly known as the "Freedom of Information Act").

(3) Publication of information.--If, as a result of a communication with an official of the Department of Homeland Security, a person or entity inquiring about a specific case or generally about the regional center program described in section 203(b)(5)(E) of the Immigration and Nationality Act received generally applicable and non-case specific information about program requirements or administration that has not been made publicly available by the Department, the Director of U.S. Citizenship and Immigration Services, not later than 30 days after the communication of such information to such person or entity, shall publish such information on the U.S. Citizenship and Immigration Services website as an update to the relevant Frequently Asked Questions page or by some other comparable mechanism.

(f) Penalty.--

(1) In general.--Any person who violates the prohibition on preferential treatment under this section or intentionally violates the reporting requirements under subsection (c) shall be disciplined in accordance with paragraph (2).

(2) Sanctions.--Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish a graduated set of sanctions based on the severity of the violation referred to in paragraph (1), which may include, in addition to any criminal or civil penalties that may be imposed--

- (A) written reprimand;
- (B) suspension;
- (C) demotion; or
- (D) removal.

(g) Rule of Construction.--Nothing in this section may be construed to modify any law, regulation, or policy regarding the handling or disclosure of classified information.

(h) Effective Date.--The amendments made by this section shall take effect on the date of the enactment of this Act.