UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civitas Massachusetts Regional Center, LLC; **Civitas Walpole Mezzanine Fund, LP;** **Civitas SoCal Regional Center, LLC;** **Civitas NorCal Regional Center, LLC;** **Civitas Denver Regional Center, LLC;** **City of Dallas Regional Center;** **Civitas New York Regional Center, LLC;** **Civitas Las Vegas Regional Center, LLC;** **Civitas Texas Regional Center;** **Civitas Huntington Beach Hotel Fund, LP;** **Civitas Arts Center Fund, LP;** **Civitas Maple Fund, LP;** **Civitas EB-5 Fund 21, LP;** **Civitas Phoenix Fund, LP;** **Civitas Spectrum Fund, LP;** **Civitas Strand Fund, LP;** **Civitas Tradition Fund, LP;** **Civitas Trinity Fund, LP;** **Civitas Printhouse Mezzanine Fund, LP;** **Civitas Hunt Central Mezzanine Fund, LP;** **Civitas Hunt Equity Fund, LP;** **Civitas TCR Downtown Equity, LP;** **Civitas Meritage Commons Fund, LP;** **Civitas GT Mezzanine Fund, LP;** **Civitas Race Street Fund, LP;**	Civ. No. **PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGEMENT**

Civitas Hudson Exchange Fund, LP;

Civitas Galleria Mezzanine Fund, LP;

Civitas Race Street Equity Fund, LP;

Civitas ST Investors, LP

Plaintiffs,

v.

Alejandro MAYORKAS, Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20016;

Tracy RENAUD, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529;

SARAH KENDALL, Chief
Immigrant Investor Program Office
U.S. Citizenship and Immigration Services
131 M Street, NE
Washington, DC 20529;

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,
20 Massachusetts Ave., NW
Washington, DC 20529

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through the undersigned attorneys, commence this action against the above-named Defendants and state as follows:

1. Plaintiffs are 8 USCIS designated regional centers and 22 New Commercial Enterprises ("NCEs") formed to raise money from foreign investors seeking visas through the EB-5 visa program and deploy that money into job-creating enterprises in the United States that create at least 10 jobs per investor and allow the investors to qualify for their visas.

2. Under the EB-5 program, the NCEs must deploy investor capital into a job-creating enterprise ("JCE") to meet the program requirements of placing the invested funds at risk for the purposes of generating a return and creating jobs. However, due to long visa wait times and various USCIS policies and adjudication delays, the original use of the money by the JCEs is often completed, and the money returned to the NCEs, before the investors are eligible to receive a return of their capital. The result is that the NCEs must redeploy that capital in order to satisfy the USCIS requirement that the investment be sustained, at risk, until the end of the investor's conditional residence period, which does not begin to run until the investor enters the U.S. with an EB-5 visa or adjusts status from another nonimmigrant status to conditional permanent resident.

3. The regional centers, and the NCEs, have an obligation to redeploy the funds in a manner that both satisfies the EB-5 program requirements and limits the investment risks for the investors.

4. Plaintiffs and other industry stakeholders have been imploring USCIS for years to clarify its policy on redeployment and specify what constitutes a permissible redeployment. However, those requests went unanswered for many years.

5. The NCEs in this case received a return of the EB-5 capital from the JCEs after the job-creating projects had been completed. The regional centers, acting to fulfil their

obligations to the investors, redeployed the investor capital into multiple projects, including projects within and outside of the geographic territory of the regional centers.

6. Subsequently, USCIS issued new policy guidance ("2020 Policy") on redeployment which, among other things, retroactively prohibits the redeployment of capital outside of the geographic territory of the regional center.

7. This new policy has the effect of a legislative rule, binding on all petitions filed with USCIS on, before, or after the date of publication, yet it was published without notice and comment rulemaking.

8. The new policy jeopardizes the standing, reputation and financial viability of the Plaintiffs and stands to cost approximately 188 investors and their families their eligibility for permanent resident status in the U.S. It also stands to subject the Plaintiffs, and potentially the projects receiving the redeployed funds, to litigation from the investors, who have now had their funds invested, at risk, for many years with the expectation of getting green cards which, according to Defendants' new policy, they are now ineligible to receive.

9. The new redeployment policy is arbitrary and capricious because it does not take into account the commercial realities in managing large amounts of EB-5 funds and creates rules that may, in many cases, be impossible to follow. The new policy was also published in violation of the notice and comment rulemaking requirements of the Administrative Procedure Act, and should be permanently enjoined. Further, the policy was adopted under the leadership of Kenneth Cuccinelli, who was not lawfully appointed to be Acting Director of USCIS, and therefore has no force and effect under the law.

I. PARTIES

10. Plaintiff Civitas Massachusetts Regional Center, LLC, is a USCIS-designated regional center that has raised money from eight (8) foreign investors who invested $4.0 million through the EB-5 program into development projects in Walpole, Massachusetts that created jobs for US workers.

11. Plaintiff Civitas Walpole Mezzanine Fund, LP, is an NCE sponsored by Civitas Massachusetts Regional Center formed to raise $4.0 million from eight (8) EB-5 investors and to loan that money to a Walpole, Massachusetts multi-family project.

12. Plaintiff Civitas SoCal Regional Center, LLC, is a USCIS-designated regional center that has raised money from twenty-nine (29) foreign investors who invested $14.5 million through the EB-5 program into development projects that created jobs for US workers.

13. Plaintiff Civitas NorCal Regional Center, LLC, is a USCIS-designated regional center that has raised money from forty (40) foreign investors who have raised $20.0 million through the EB-5 program into development projects that created jobs for US workers.

14. Plaintiff Civitas Denver Regional Center, LLC, is a USCIS-designated regional center that has raised money from ten (10) foreign investors who invested $5.0 million through the EB-5 program into development projects that created jobs for US workers.

15. Plaintiff City of Dallas Regional Center, is a USCIS-designated regional center that has raised money from seven hundred thirteen (713) EB-5 investors who have invested $356.5 million through the EB-5 program into development projects that created jobs for US workers.

16. Plaintiff Civitas New York Regional Center, LLC, is a USCIS-designated regional center that has raised money from one hundred five (105) foreign investors who invested $52.5

million through the EB-5 program into development projects that created jobs for US workers.

17. Plaintiff Civitas Las Vegas Regional Center, LLC, is a USCIS-designated regional center that has raised money from thirty (30) foreign investors who invested $15.0 million through the EB-5 program into development projects that created jobs for US workers.

18. Plaintiff Civitas Texas Regional Center is a USCIS-designated regional center that has raised money from three hundred eighty-four (384) foreign investors who invested $192.0 million through the EB-5 program into development projects that created jobs for US workers.

19. Plaintiff Civitas Huntington Beach Hotel Fund, LP, is an NCE sponsored by Civitas SoCal Regional Center formed to raise $14.5 million of capital from twenty-nine (29) EB-5 investors and to loan that money to an Orange County, California hotel development.

20. Plaintiff Civitas Arts Center Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $65.0 million of capital from one hundred thirty (130) EB-5 investors and to loan that money for a downtown Dallas, Texas office development

21. Plaintiff Civitas Maple Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $11.5 million of capital from twenty-three (23) EB-5 investors and to invest that money as equity proceeds into a Dallas, Texas multi-family development.

22. Plaintiff Civitas EB-5 Fund 21, LP, is an NCE sponsored by City of Dallas Regional Center to raise $9.0 million of capital from eighteen (18) EB-5 investors and to loan that money for a Dallas, Texas multi-family development.

23. Plaintiff Civitas Phoenix Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $8.0 million of capital from sixteen (16) EB-5 investors and to loan that money to a Dallas, Texas restaurant company to expand its operations.

24. Plaintiff Civitas Spectrum Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $10.0 million of capital from twenty (20) EB-5 investors and to loan that money to a Dallas, Texas multi-family development.

25. Plaintiff Civitas Strand Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $20.0 million of capital from forty (40) EB-5 investors and to loan that money to a Dallas, Texas multi-family development.

26. Plaintiff Civitas Tradition Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $27.0 million of capital from fifty-four (54) EB-5 investors and to loan that money to a Dallas, Texas senior living facility development.

27. Plaintiff Civitas Trinity Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $4.5 million of capital from nine (9) EB-5 investors and to invest that money as equity proceeds into a Dallas, Texas multi-family development.

28. Plaintiff Civitas Printhouse Mezzanine Fund, LP, is an NCE sponsored by Civitas New York Regional Center formed to raise $5.5 million from eleven (11) EB-5 investors and to loan that money to a New Rochelle, New York multi-family development.

29. Plaintiff Civitas Hunt Central Mezzanine Fund, LP, is an NCE sponsored by Civitas Las Vegas Regional Center formed to raise $7.5 million from fifteen (15) EB-5 investors and to loan that money to a Las Vegas, Nevada multi-family development.

30. Plaintiff Civitas Hunt Equity Fund, LP, is an NCE sponsored by Civitas Las Vegas Regional Center formed to raise $5.0 million from ten (10) EB-5 investors and to invest that money as equity proceeds into a Las Vegas, Nevada multi-family development.

31. Plaintiff Civitas TCR Downtown Equity, LP, is an NCE sponsored by Civitas Texas Regional Center formed to raise $7.0 million from fourteen (14) EB-5 investors and to invest that money as equity proceeds into a Houston, Texas multi-family development.

32. Plaintiff Civitas Meritage Commons Fund, LP, is an NCE sponsored by Civitas NorCal Regional Center formed to raise $20.0 million of EB-5 capital from forty (40) EB-5 investors and to loan that money to a Napa County, California hotel development.

33. Plaintiff Civitas GT Mezzanine Fund, LP, is an NCE sponsored by Civitas Denver Regional Center formed to raise $10 million of EB-5 capital from 20 EB-5 investors and to loan that money to a Denver, Colorado multi-family development.

34. Plaintiff Civitas Race Street Fund, LP, is an NCE sponsored by Civitas Texas Regional Center formed to raise $7.5 million of EB-5 capital from fifteen (15) EB-5 investors and to loan that money to a Fort Worth, Texas multi-family development.

35. Plaintiff Civitas Hudson Exchange Fund, LP, is an NCE sponsored by Civitas New York Regional Center formed to raise $33.0 million of EB-5 capital from sixty-six (66) EB-5 investors and to loan that money to a Jersey City, New Jersey multi-family development.

36. Plaintiff Civitas Galleria Mezzanine Fund, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $13.5 million of EB-5 capital from twenty-seven (27) EB-5 investors and to loan that money to a Dallas, Texas multi-family development.

37. Plaintiff Civitas Race Street Equity Fund, LP, is an NCE sponsored by Civitas Texas Regional Center formed to raise $7.5 million of EB-5 capital from fifteen (15) EB-5

investors and to invest that money as equity proceeds into a Fort Worth, Texas multi-family development.

38. Plaintiff Civitas ST Investors, LP, is an NCE sponsored by City of Dallas Regional Center formed to raise $3.0 million of EB-5 capital from six (6) EB-5 investors and to invest that money as equity proceeds into a Dallas, Texas multi-family development.

39. Defendant, David Pekoske, is the Acting Secretary of the United States Department of Homeland Security, with responsibility for the administration of applicable laws and statutes governing immigration and naturalization. Defendant Pekoske is generally charged with enforcement of the Immigration and Nationality Act ("INA"), and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security. More specifically, he is responsible for the adjudication of petitions for alien entrepreneurs. This suit is brought against Defendant Pekoske in his official capacity.

40. Defendant, Tracy Renaud, is the Senior Official Performing the Duties of the Director, USCIS, and is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. These functions include: adjudication of immigrant visa petitions and applications for adjustment of status; adjudication of naturalization petitions; adjudication of asylum and refugee applications; adjudications performed at the service centers, and all other adjudications performed by the USCIS. USCIS is the component of DHS responsible for adjudicating Form I-526 Petitions by Alien Entrepreneurs. Defendant Renaud is sued in her official capacity.

41. Defendant, Sarah Kendall, is the Chief of USCIS's Immigrant Investor Program Office ("IPO"), which is directly charged with responsibility for processing applications and petitions under the EB-5 program, and specifically applications to amend regional center designations and petitions for alien entrepreneurs. Defendant Kendall is sued in her official capacity.

42. Defendant, United States Citizenship and Immigration Services ("USCIS"), is an agency of the federal government within the Department of Homeland Security and is responsible for the administration of the laws and statutes governing immigration and naturalization.

II. Jurisdiction

43. Jurisdiction in this case is proper under 28 U.S.C. § 1331, 5 U.S.C. §§ 701 and 702 et. seq., and 28 U.S.C. § 2201 et. seq. Relief is requested pursuant to said statutes. Specifically, this Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, which provides that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Further, the Declaratory Judgment Act, 28 U.S.C. §2201, provides that: "[i]n a case of actual controversy within its jurisdiction… any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." Review is also warranted, and relief sought under the Administrative Procedure Act, 5 U.S.C. §§ 701, 702 et seq., and § 706(1), pursuant to 28 U.S.C. §1331 (federal question jurisdiction).

II. VENUE

44. Venue properly lies within the District of Massachusetts pursuant to 28 U.S.C. §1391(e), in that two of the Plaintiffs do business in Massachusetts and $3.5 million of EB-5 funds that are the subject of this Complaint were invested in Massachusetts.

III. EXHAUSTION OF REMEDIES

45. Plaintiffs have exhausted their administrative remedies. No avenue exists for Plaintiffs to challenge the 2020 Policy before the agency.

IV. BACKGROUND ON THE EB-5 PROGRAM

46. In 1990, Congress amended the Immigration and Nationality Act of 1965 ("INA"), allocating, inter alia, 10,000 immigrant visas per year to foreign nationals seeking Lawful Permanent Resident ("LPR") status on the basis of their capital investments in the United States. *See generally* Immigration Act of 1990, Pub. L. No. 101-649, § 121(b)(5), 104 Stat. 4978 (1990) (codified at 8 U.S.C. § 1153(b)(5)). Pursuant to the so-called "Immigrant Investor Program," foreign nationals may be eligible for an employment-based, fifth preference ("EB-5") immigrant visa if they have invested, or are actively in the process of investing, $1 million (or $500,000 in a high unemployment or rural area)[1] in a qualifying New Commercial Enterprise ("NCE"), and that investment results in the creation of at least ten jobs for U.S. workers. *See* 8 U.S.C. §§1153(b)(5)(A)-(D); *see also* 8 C.F.R §§204.6(a)-(j). The EB-5 regulations further provide that, in order to qualify as an "investment" in the EB-5 Program, foreign nationals must actually place their capital "at risk" for the purpose of generating a return, and that the mere intent to invest is not

[1] Those amounts were increased on November 21, 2019 pursuant to amendments to the implementing regulations to $1.8 million or $900,000 if the investment is in a TEA.

sufficient. *See* 8 C.F.R. § 204.6(j)(2). The purpose of this program was to promote foreign direct investment into, and job creation within, the U.S.

47. In 1993, Congress created the Immigrant Investor Pilot Program ("Pilot Program") through the enactment of various provisions of section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act. *See* Pub. L. No. 102-395, § 601, 106 Stat. 1828, 1874 (1992). The Pilot Program allows foreign investors who invest in NCEs affiliated with USCIS designated regional centers to meet the 10-jobs-per-investor requirement by counting indirect jobs—*i.e.*, jobs that are created outside of the NCE. Further, in addition to not being restricted to only counting employees of the NCE, investors under the Pilot Program are allowed to use any valid statistical forecasting model to demonstrate job creation. *See* §§601(a)-(c) of Pub. L. No. 102-395; *see also* 8 C.F.R. §§204.6(e), (j)(4)(iii), (m)(7)(ii). The intent of these reforms was, again, to incentivize and promote foreign investment into, and job creation within, the U.S.

48. The ability to count indirect jobs and use an economic model allows EB-5 funds to be used for types of development projects that would not ordinarily qualify under the non-regional center program, due to its requirement of counting only employees of the NCE. Another result of the Pilot Program is that regional centers can aggregate investments from a large number of EB-5 investors in order to finance larger scale projects.

49. A regional center is an entity approved by USCIS to affiliate with an NCE and sponsor it for the purposes of the EB-5 program, so that the NCE's investors can benefit from indirect job creation.

50. In the typical regional center investment, investors invest in an NCE, and that NCE uses the proceeds of the investment to make a loan or investment into a JCE. The JCE in turn

may be the ultimate developer or project owner, or may be an upstream entity with an ownership interest or other affiliation with the ultimate developer or project owner.

51. Regional centers are a statutory creation, and are the entities responsible for promoting foreign investment and job creation under the EB-5 statutes and regulations.

52. Consistent with their statutory purpose, EB-5 regional center projects have generated more than $30 billion in direct capital investment into the U.S. and created more than 785,000 American jobs.

53. In the typical regional center investment, investors invest in an NCE, and that NCE uses the proceeds of the investment to make a loan or investment into a JCE. The JCE in turn may be the ultimate developer or project owner, or may be an upstream entity with an ownership interest or other affiliation with the ultimate developer or project owner.

54. In order to become an LPR of the United States, a foreign national must initially file with USCIS a Form I-526, Immigrant Petition by Alien Entrepreneur, which, if approved, makes the foreign national eligible to receive an employment-based, fifth preference immigrant visa. *See generally* 8 U.S.C. §1153(b)(5). Upon approval of the I-526 Petition, the foreign national must file a Form I-485, Application to Register Permanent Residence or Adjust Status (if he or she is located in the United States), or a Form DS-260, Application for Immigrant Visa and Alien Registration (if he or she is located outside the United States). *See generally* 8 U.S.C. §1201 (provisions relating to the issuance of entry documents); 8 U.S.C. §1255 (provisions relating to adjustment of status). Upon adjustment of status or admission on an EB-5 immigrant visa, the foreign national is granted two years of conditional permanent resident status, provided that the foreign national is not otherwise ineligible for admission into the United States. *See generally* 8 U.S.C. §1182 (provisions

relating to excludable aliens). Finally, in the 90-day period immediately preceding the second anniversary of the investor being granted conditional resident status, the foreign national must file a Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status. If the foreign national has fulfilled the EB-5 requirements—*i.e.*, has invested, sustained the investment at risk, and the investment has resulted in the creation of at least ten jobs for U.S workers—then the conditions will be removed and the foreign national will become a lawful permanent resident. *See generally* 8 U.S.C. § 1186b (provisions relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children).

55. The INA limits both the overall number of EB-5 visas available in any year, and the number available to aliens born in any one country. The cap includes the spouses and children of EB-5 investors who immigrate with them. While the overall number is typically around 10,000, the per-country cap- which only takes effect if the overall quota is reached- is set at 7% of the number of total available EB-5 visas. In most years, the per-country cap has been around 697-699 visas per country. However, for nationals of China, the per-country cap was reduced by the provisions of the Chinese Student Protection Act of 1992, Pub. Law 102-44, 106 Stat. 1969 (Oct. 9, 1992), which reduces the number of EB-5 visa available to natives of China under the per-country cap by up to 700. All the numbers from the Chinese Student Protection Act of 1992 had been recouped by the end of FY 2020, and numbers are no longer deducted from the quota for China, however there is still a cumulative effect as a result of the reduction in numbers for many years.

56. The result is there has been a backlog in the EB-5 quota for China for several years, and more recently for India and Vietnam. There are significantly more applicants than

available numbers, and the estimated wait for a Chinese national who files an EB-5 petition today is 15 to 18 years.

57. An alien's place in line for a visa is determined by his or her "priority date," the date on which he or she filed his or her I-526 petition with USCIS.

58. When an I-526 petition is denied or revoked, the petitioner ordinarily loses that priority date and must make a new EB-5 investment (at the current minimum investment levels) and file a new I-526 petition.

59. To complicate matters further, an EB-5 investor's children are only able to immigrate with him or her until they turn 21. In calculating the age of a child, the time USCIS spent processing the petition is subtracted from the child's age at the time a visa becomes available. If the calculated age is 21 or more, the child is ineligible to immigrate with his or her parent.

60. USCIS has created a requirement that the investors' investments must be redeployed by the NCE into another project or projects once the JCE's project has been completed and the necessary jobs have been created, in order to meet USCIS' requirement that the investment be sustained at risk for two years following attainment of conditional permanent resident status. The practical effect in many cases is that this USCIS-created requirement may require redeployment into many projects for many years.

V. FACTUAL ALLEGATIONS RELATING TO PLAINTIFFS

61. Civitas owns and manages 9 regional centers throughout the United States. All but one of these regional centers are Plaintiffs in this Complaint and have redeployed EB-5 funds in various projects, including projects outside the geographical area of each regional center,

consistent with USCIS policy in effect at the time of such redeployments. Others of these regional centers have an imminent need to redeploy EB-5 funds.

62. 22 NCEs sponsored by Civitas regional centers, all of which are Plaintiffs in this Complaint, have had investors redeploy into a subsequent investment or have an imminent need to redeploy EB-5 funds.

63. Plaintiff Civitas SoCal Regional Center, LLC, was approved for a geographic territory which includes Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties in California.

64. Civitas SoCal Regional Center, LLC, is the sponsor of Civitas Huntington Beach Hotel Fund, LP, an NCE formed to raise $14.5 million from twenty-nine (29) EB-5 investors and loan that money to an Orange County, California hotel development. The project created 2,117 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

65. On November 14, 2017, the borrower repaid the loan to Plaintiff Civitas Huntington Beach Hotel Fund, LP.

66. In order to meet the USCIS sustainment requirement, on various dates between July 2018 and April 2020, Plaintiff Civitas Huntington Beach Hotel Fund, LP redeployed $12 million of capital from 24 EB-5 investors into multi-family investments encompassing several locations outside of the geographic area of the regional center.

67. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Arts Center Fund, LP, which is an NCE formed to raise $65.0 million capital from one hundred thirty (130) EB-5 investors for a downtown Dallas office development.

68. Plaintiff Civitas Arts Center Fund, LP loaned the EB-5 money to the developer of the Dallas office development. The project created 2,095 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

69. On December 24, 2019, the borrower repaid the loan to Plaintiff Civitas Arts Center Fund, LP.

70. Consistent with USCIS policy in effect at the time, on February 28, 2020, Plaintiff Civitas Arts Center Fund, LP redeployed $2 million of EB-5 capital into multi-family investment properties encompassing several locations throughout the Greater Dallas area. However, the properties are not located within the City of Dallas Regional Center geography.

71. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Maple Fund, LP, which is an NCE formed to raise $11.5 million of capital from twenty-three (23) EB-5 investors for a Dallas multi-family development.

72. Plaintiff Civitas Maple Fund, LP invested the EB-5 money as equity proceeds with the developer of the Dallas multi-family development. The project created 308 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

73. In the third quarter of 2015, the property was sold, and the sales proceeds were returned to Plaintiff Civitas Maple Fund, LP.

74. Consistent with USCIS policy in effect at the time, on various dates between 2013 and 2017, Plaintiff Civitas Maple Fund, LP redeployed $10 million of EB-5 capital into multi-family investment properties and other projects, most of which are not located in the City of Dallas Regional Center geography.

75. Plaintiff City of Dallas Regional Center is the sponsor of Civitas EB-5 Fund 21, LP, which is an NCE formed to raise capital for a Dallas, Texas multi-family development.

76. Plaintiff Civitas EB-5 Fund 21, LP loaned the EB-5 money to the developer of the Dallas multi-family development. The project created 135 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

77. On July 25, 2018, the borrower repaid the loan to Plaintiff Civitas EB-5 Fund 21, LP.

78. Consistent with USCIS policy in effect at the time, on July 30, 2019, Plaintiff Civitas EB-5 Fund 21, LP redeployed $8 million of EB-5 capital into projects in Phoenix, Arizona.

79. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Phoenix Fund, LP, which is an NCE formed to raise $8.0 million of capital from sixteen (16) EB-5 investors for a Dallas, Texas restaurant company to expand its operations.

80. Plaintiff Civitas Phoenix Fund, LP loaned the EB-5 money to the developer of the Dallas, Texas restaurant company. The project created 274 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

81. On May 26, 2015, the borrower repaid the loan to Plaintiff Civitas Phoenix Fund, LP.

82. Consistent with USCIS policy in effect at the time, on or around December 10, 2015, Plaintiff Phoenix Fund, LP redeployed $1 million of EB-5 capital into a project outside of the geographic boundaries of the regional center.

83. Plaintiff City of Dallas Regional Center was approved for a geographic territory which includes only areas within the Dallas city limits.

84. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Spectrum Fund, LP, which is an NCE formed to raise $10.0 million of EB-5 capital from twenty (20) EB-5 investors for a Dallas, Texas multi-family development.

85. Plaintiff Civitas Spectrum Fund, LP loaned the EB-5 money to the developer of the Dallas, Texas multi-family development. The project created 340 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

86. In early 2020, the borrower repaid a portion of the loan to Plaintiff Civitas Spectrum Fund, LP.

87. Consistent with USCIS policy in effect at the time, on April 27, 2020, Plaintiff Civitas Spectrum Fund, LP redeployed the EB-5 capital into a project outside of the geographic boundaries of the regional center.

88. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Strand Fund, LP, which is an NCE formed to raise $ 20.0 million of EB-5 capital from forty (40) EB-5 investors for a Dallas, Texas multi-family development.

89. Plaintiff Civitas Strand Fund, LP loaned the EB-5 money to the developer of the Dallas, Texas multi-family development. The project created 723 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

90. On February 15, 2019, the borrower repaid the loan to Plaintiff Civitas Strand Fund, LP.

91. Consistent with USCIS policy in effect at the time, on various dates between July 2019 and January 2020, Plaintiff Civitas Strand Fund, LP redeployed $13.5 million of EB-5 capital into 3 projects in Arizona, Maryland and San Antonio, Texas.

92. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Tradition Fund, LP, which is an NCE formed to raise $27.0 million of capital from fifty-four (54) EB-5 investors for a Dallas, Texas senior living facility development.

93. Plaintiff Civitas Tradition Fund, LP loaned the EB-5 money to the developer of the Dallas, Texas senior living facility development. The project created 870 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

94. On January 25, 2017, the borrower repaid the loan to Plaintiff Civitas Tradition Fund, LP.

95. Consistent with USCIS policy in effect at the time, in 2017, Plaintiff Civitas Tradition Fund, LP redeployed $24.5 million of EB-5 capital into various projects, including projects in Massachusetts, Arizona, and Houston

96. Plaintiff City of Dallas Regional Center is the sponsor of Civitas Trinity Fund, LP, which is an NCE formed to raise $4.5 million of capital from nine (9) EB-5 investors for a Dallas, Texas multi-family development.

97. Plaintiff Civitas Trinity Fund, LP invested the EB-5 money as equity proceeds with the developer of the Dallas, Texas multi-family development. The project created 177 jobs, which is more than sufficient for all of the EB-5 investors to obtain permanent resident status.

98. On June 12, 2015, the property was sold, and the proceeds were repaid to Plaintiff Civitas Trinity Fund, LP.

99. Consistent with USCIS policy in effect at the time, in 2015 and 2016, Plaintiff Civitas Tradition Fund, LP redeployed $2 million of EB-5 capital into projects outside of the geographic boundaries of the regional center.

100. Civitas New York Regional Center, LLC, was approved for a geographic territory which includes Fairfield, Connecticut; Litchfield, Connecticut; New Haven, Connecticut; Bergen, New Jersey; Essex, New Jersey; Hudson, New Jersey; Morris, New Jersey; Passaic, New Jersey; Sussex, New Jersey; Union, New Jersey; Bronx, New York; Dutchess, New York;

Kings, New York; Nassau, New York; New York, New York; Orange, New York; Putnam, New York; Queens, New York; Rockland, New York; Staten Island, New York; Suffolk, New York; Ulster, New York; Westchester, New York.

101. Civitas New York Regional Center, LLC is the sponsor of Civitas Printhouse Mezzanine Fund, LP, an NCE formed to raise $5.5 million from eleven (11) EB-5 investors and loan that money to a New York multi-family development. The project created 153 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

102. On December 26, 2019, the borrower repaid the loan to Plaintiff Civitas Printhouse Mezzanine Fund, LP.

103. In order to meet the USCIS sustainment requirement, Plaintiff Civitas Printhouse Mezzanine Fund, LP redeployed $4 million of EB-5 capital on February 28, 2020 and June 10, 2020, into multi-family investment properties outside of the geographic area of the regional center.

104. Plaintiff Civitas Massachusetts Regional Center, LLC, was approved for a geographic territory which includes the entire State of Massachusetts.

105. Plaintiff Civitas Massachusetts Regional Center, LLC, is the sponsor of Civitas Walpole Mezzanine Fund, LP, an NCE formed to raise $4.0 million from eight (8) EB-5 investors and loan that money to a Boston multi-family project. The project created 191 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

106. On November 21, 2019, the borrower repaid the loan to Plaintiff Civitas Walpole Mezzanine Fund, LP.

107. In order to meet the USCIS sustainment requirement, Plaintiff Civitas Walpole Mezzanine Fund, LP, on February 28, 2020 and March 1, 2020, redeployed $3.5 million of EB-5 capital on behalf of 7 EB-5 investors into qualifying investment projects encompassing several locations outside of the geographic area of the regional center.

108. Civitas Las Vegas Regional Center, LLC was approved for a geographic territory which includes Coconino, Maricopa, Mohave, Pima, Pinal, and Yavapai Counties in Arizona, and Clark County in Nevada.

109. Civitas Las Vegas Regional Center, LLC is the sponsor of Civitas Hunt Central Mezzanine Fund, LP, an NCE formed to raise $7.5 million from fifteen (15) EB-5 investors and loan that money to a multi-family development in Nevada, and Civitas Hunt Equity Fund, LP, an NCE formed to raise $5.0 million from ten (10) EB-5 investors and invest that money as equity proceeds into the same multi-family development in Nevada. The project created 346 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

110. In January 2020, the property was sold, and the borrower repaid the 2 NCEs.

111. In order to meet the USCIS sustainment requirement, between February and June 2020, the 2 NCEs redeployed $12.5 million of EB-5 capital into multi-family investments encompassing several locations outside of the geographic area of the regional center.

112. Civitas Texas Regional Center was approved for a geographic territory which includes Atascosa, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Collin, Colorado, Comal, Coryell, Dallas, Denton, DeWitt, Ellis, Falls, Fayette, Fort Bend, Freestone, Galveston, Gonzales, Grimes, Guadalupe, Harris, Hays, Hill, Johnson, Karnes, Kaufman, La Salle, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, McLennan, McMullen, Milam,

Montgomery, Navarro, Robertson, Rockwall, Tarrant, Travis, Walker, Waller, Washington, Williamson, and Wilson Counties in Texas.

113. Civitas Texas Regional Center is the sponsor of Civitas TCR Downtown Equity, LP, an NCE formed to raise $7.0 million from fourteen (14) EB-5 investors and invest that money as equity proceeds into a Houston, Texas multi-family development. The project created 837 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

114. On August 28, 2018, the project was sold, and the proceeds were repaid to Plaintiff Civitas TCR Downtown Equity, LP. In order to meet the USCIS sustainment requirement, on July 30, 2019, Plaintiff Civitas TCR Downtown Equity, LP redeployed $500,000 of EB-5 capital into a hotel project in Washington, DC.

115. Civitas NorCal Regional Center, LLC was approved for a geographic territory which includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, and Sonoma Counties in California.

116. Civitas NorCal Regional Center, LLC is the sponsor of Civitas Meritage Commons Fund, LP, an NCE formed to raise $20 million of EB-5 capital from forty (40) EB-5 investors and loan that money to a Napa County, California hotel development. The project created 1,168 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

117. On December 21, 2020, the borrower repaid the loan to Plaintiff Civitas Meritage Commons Fund, LP.

118. In order to meet the USCIS sustainment requirement, Plaintiff Civitas Meritage Commons Fund, LP will need to redeploy the $20 million of EB-5 capital into another project. The decision on redeployment must be made imminently.

119. Civitas Denver Regional Center, LLC was approved for a geographic territory which includes Adams, Arapahoe, Denver, Douglas, and Jefferson Counties in Colorado.

120. Civitas Denver Regional Center, LLC is the sponsor of Civitas GT Mezzanine Fund, LP, an NCE formed to raise $10 million of EB-5 capital from 20 EB-5 investors and loan that money to a Denver, Colorado multi-family development. The project created over555 jobs, which is more than the sufficient number of jobs to enable all of the EB-5 investors to obtain permanent resident status.

121. In 2021, the borrower is expected to repay the loan to Plaintiff Civitas GT Mezzanine Fund, LP.

122. In order to meet the USCIS sustainment requirement, Plaintiff Civitas GT Mezzanine Fund, LP will need to redeploy $10 million of EB-5 capital into another project. The decision on redeployment must be made imminently.

123. In each redeployment referenced above, a consent solicitation was sent to investors requesting that they consent to redeploy their proceeds from the loan repayment. A number of options were given, including redeployment opportunities outside of the regional center territory. The options were negotiated by the NCE manager based on then-existing market conditions, its reasonable belief that all required jobs had been created by the original project based on an independent economist's report and time constraints imposed by the "commercially reasonable" time period provided in the policy promulgated by the USCIS (as this time period was undefined by USCIS, out of an abundance of caution, timing was

a factor to select projects where closing would also be able to occur quickly). Investors' funds were then reinvested into the option they so elected.

124. Plaintiffs have an obligation to act to preserve the immigration interests of their investors, and protect their financial interests.

125. Plaintiff regional centers that will need to redeploy EB-5 funds during 2021 include Civitas New York Regional Center, LLC ($33 million), Civitas NorCal Regional Center, LLC ($18.5 million), City of Dallas Regional Center ($15 million), Civitas Denver Regional Center, LLC ($10 million) and Civitas Texas Regional Center ($11.5 million).

126. Plaintiff NCEs that will need to redeploy EB-5 funds during 2021 are Civitas Hudson Exchange Fund, LP ($33 million), Civitas Meritage Fund, LP ($18.5 million), Civitas Galleria Mezzanine Fund, LP ($13.5 million), Civitas GT Mezzanine Fund, LP ($10 million), Civitas Race Street Fund, LP ($7.5 million), Civitas Race Street Equity Fund, LP ($4 million) and Civitas ST Investors, LP ($1.5 million.)

VI. FACTUAL ALLEGATIONS RELATING TO USCIS POLICY

127. On July 24, 2020, Defendants, for the first time ever, published a policy stating that any redeployment of EB-5 funds must occur within the regional center and the regional center's approved geographic territory ("2020 Policy").

128. This policy explicitly applies to any I-526 or I-829 petitions filed before or after the new policy and pending on or after the date of publication.

129. Combined, Plaintiffs have 188 investors whose money had previously been redeployed outside of the regional centers' geographic territory, who have or will have an I-526 or I-829 pending on or after July 24, 2020.

130. Countless other regional centers, NCEs and investors are in a similar position.

131. Those investors now face the denial or revocation of their I-526 petitions and denial of their I-829 petitions and loss of their green cards as a result of this new policy.

132. Plaintiffs face reputational harm, potential investor lawsuits, and significant problems finding future redeployments that comply with this new policy as a result of Defendants' change in policy. They also face possible termination from the program as a result of non-compliance with USCIS policy. Termination of the regional center, according to another USCIS policy, requires the denial or revocation of the I-526 petitions of all investors affiliated with the terminated regional center, unless those investors have already become conditional residents. As such, the potential harm to Plaintiffs extends to Plaintiff regional centers, Plaintiff NCEs and their investors.

USCIS Redeployment Policy

133. The concept of redeployment arises nowhere in the EB-5 statute or regulations.

134. Defendants claim that the redeployment policy arises out of the requirement that an investor sustain his or her investment at risk throughout the conditional residence period.

135. Although the regulation at 8 C.F.R. § 216.6 does not, anywhere, mention the word "risk," Defendants interpret the requirements of this section to mean the investor must not only sustain his or her investment, but the investment must be at risk for the duration of the conditional residence period.

136. The conditional residence period does not begin to run until an investor becomes a conditional resident- either by entering the U.S. with an EB-5 visa, or adjusting status in the U.S. from a valid nonimmigrant status.

137. In either case, a visa number must be available to the investor before he or she can become a conditional resident.

138. Due to long visa backlogs, many years may pass between the time an investor files an I-526 petition and the time he or she becomes a conditional resident.

139. Prior to the development of the EB-5 visa backlogs, it was generally anticipated that an investor would invest and complete the EB-5 process in 4 to 5 years. USCIS would process an I-526 petition in 12-18 months, it would take another 6 months to complete the immigrant visa process, after which the investor and his or her family members had 6 months to use their visas to enter the U.S. Once they entered the U.S., the 2-year conditional residence period would start. The investor would file an I-829 petition 21-24 months later, and USCIS would take a year or so to adjudicate the I-829 petition. Depending largely on government processing times, the investor could anticipate being through the conditional residence period 4 to 5 years after investing.

140. For this reason, and for commercial reasons, most EB-5 investments were structured as having 5-year terms, often with one or two one-year extensions possible.

141. For a number of years, the EB-5 industry not only did not think redeployment was necessary, and there was an open question as to whether or not it was even allowed. See https://www.uscis.gov/sites/default/files/document/foia/USCIS_Cissna_IIUSA_Meeting_and_Statistical_Analysis_Charts.pdf (last visited February 5, 2021).

142. Starting on or about 2014, it became evident to many in the EB-5 industry that the 5-year time frame was not going to apply to most EB-5 investors both because of visa quota backlogs and because of USCIS adjudication delays.

143. Although all acknowledged that the regulations require an investor to sustain his or her investment throughout the conditional residence period, there was not consensus on whether the investment needed to be sustained at risk.

144. Defendant USCIS has, intermittently, held quarterly or other stakeholder engagement events at which the public is able to submit questions and issues.

145. The sustainment requirement, at-risk requirement, and, subsequently, redeployment requirement were topics that were brought to Defendants' attention consistently since 2014.

146. Defendants' first official statement regarding the sustainment period and redeployment came in an August 7, 2015 Draft Policy Memorandum circulated by Defendants (under prior leadership) for comment.

147. This memo clearly indicated that Defendants believed the investment had to be sustained, at risk, for the conditional residence period, and that it had to be sustained in the same NCE.

148. This memo also, for the first time, provided that an investor could redeploy his or her capital to another commercial activity once the original business plan had been completed and the necessary jobs created. No other limitations or criteria were specified for a redeployment.

149. Unfortunately, this draft memo was never issued as a final memo.

150. Despite ever increasing calls from the industry to publish guidance on their redeployment policy, Defendants issued no other guidance on the issue until June 14, 2017.

151. On June 14, 2017, USCIS issued a "Policy Alert," notifying the public of changes to the Policy Manual relating to the sustainment requirement and redeployment. This was the policy in effect at the time Plaintiffs had to complete transactions to redeploy the money on behalf of their EB-5 investors.

152. The Policy Alert stated that an investor must sustain his or her capital at risk throughout the conditional residence period, and further deployments of capital would be allowed under certain circumstances to fulfill this requirement.

153. The Policy Manual at that time provided:

> **At-Risk Requirement Before the Job Creation Requirement is Satisfied**
>
> The full amount of capital must be used to undertake business activity that results in the creation of jobs. Before the job creation requirement is met, the following at-risk requirements apply:
>
> • The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
> • There must be a risk of loss and a chance for gain;
> • Business activity must actually be undertaken; and
> • The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.
>
> **At-Risk Requirement After the Job Creation Requirement is Satisfied**
>
> Once the job creation requirement has been met, the capital is properly at risk if it is used in a manner related to engagement in commerce (in other words, the exchange of goods or services) consistent with the scope of the new commercial enterprise's ongoing business. After the job creation requirement is met, the following at-risk requirements apply:
>
> • The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
> •There must be a risk of loss and a chance for gain; and
> • Business activity must actually be undertaken.
>
> For example, if the scope of a new commercial enterprise was to loan pooled investments to a job creating entity for the construction of a residential building, the new commercial enterprise, upon repayment of a loan that resulted in the required job creation, may further deploy the repaid capital into one or more similar loans to other entities. Similarly, the new commercial enterprise may also further deploy the repaid capital into certain new issue municipal bonds, such as for infrastructure spending, as long as investments into such bonds are within the scope of the new commercial enterprise in existence at the time the petitioner filed the Immigrant Petition by Alien Investor (Form I-526).

> Officers must determine whether further deployment has taken place, or will take place, within a commercially reasonable time and within the scope of the new commercial enterprise's ongoing business.
>
> Chap 2(A)(2) (2019 version).

154. Chapter 4(c) of the Policy Manual stated, with regard to investors who have not yet obtained conditional residence:

> If the new commercial enterprise undertakes the commercial activities presented in the initially filed business plan and creates the required number of jobs, the new commercial enterprise may further deploy the capital into another activity. The activity must be within the scope of the new commercial enterprise and further deployment must be within a commercially reasonable period of time. Further deployment of this nature will not cause the petition to be denied or revoked under certain circumstances.
>
> In all cases where further deployment is envisioned, officers review the evidence submitted with the petition to determine whether the petitioner has presented sufficient evidence to demonstrate continuing eligibility with the capital at risk requirement. The investor must show that the capital is, and will remain, at risk of loss and gain and is and will be used in a manner related to engagement in commerce within the scope of the new commercial enterprise's business. Further deployment of capital that occurs before the immigrant investor becomes a conditional permanent resident must be adequately described in the Form I-526 record.
>
> If the organizational documents for a new commercial enterprise contain a liquidation provision, that does not otherwise constitute an impermissible debt arrangement, the documents may generally be amended to remove such a provision in order to allow the new commercial enterprise to continue to operate through the regional center immigrant investor's period of conditional permanent residence. Such an amendment would generally not be considered a material change because facts related to the immigrant investor's Form I-526 eligibility would not change.

155. For investors who have already obtained conditional residence, Chapter 5(c) of the Policy Manual provided even more flexibility:

> An immigrant investor may proceed with the petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the initial Form I-526 immigrant petition, the requirements for the removal of conditions have been satisfied. USCIS does not deny petitions to remove conditions based solely on the failure to adhere to the business plan contained in the Form I-526 immigrant petition. An immigrant investor may pursue alternative business opportunities within an industry category not previously approved for the regional center. Therefore, during the conditional residence period, an investment may be further deployed in a manner not contemplated in the initial Form I-526, as long as the further deployment otherwise satisfies the requirement to sustain the capital at risk. In addition, further deployment may be an option during the conditional residence period in various circumstances. For example, further deployment may be possible in cases where the requisite jobs were created by the investment in accordance with the business plan, as well as in cases where the requisite jobs were not created in accordance with the original business plan, and even if further deployment had not been contemplated at the time of the Form I-526 filing. . . .
>
> While USCIS allows this flexibility in Form I-829 filings, nothing in this policy relieves an immigrant investor from the requirements for removal of conditions. Therefore, even in the event of a change in course, an immigrant investor must always be able to demonstrate that:
> • The required funds were placed at risk throughout the period of the petitioner's conditional permanent residence in the United States;
> • The required amount of capital was made available to the business or businesses most closely responsible for creating jobs (unless the job creation requirement has already been satisfied);
> • This at-risk investment was sustained throughout the period of the petitioner's conditional permanent residence in the United States; and
> • The investor created (or maintained, if applicable), or can be expected to create within a reasonable period of time, the requisite number of jobs.

156. The geographic territory of the regional center was not even mentioned. In fact, no restriction on the geographic location for redeployment was outlined by USICS in the draft guidance, the final June 2017 Policy Manual update nor in the IPO's public comments to stakeholders on numerous occasions.

157. The statute, regulations and precedent decisions define a regional center geography requirement for initial deployment based on the job creation requirement. They do not

specify a geography requirement for further deployment after the job creation requirement has been satisfied.

158. In the case of redeployment, when the job requirement has already been met and no further job-creating entity is required, the location of the commercial activity is of no importance and is not subject to any geographical limitations pursuant to statute, regulation or precedent.

159. Since USCIS concurs that redeployment is unrelated to job creation, the geography of the regional center is not relevant as long as all required jobs were created.

160. Under the 2017 Policy Manual, the redeployment is contemplated only as a way to meet the capital at risk requirement, and "officers review the evidence submitted with the petition to determine whether the petitioner has presented sufficient evidence to demonstrate continuing eligibility with the capital at risk requirement." 2017 Chap. 4(C).

161. Indeed, once the money has been deployed into the initial job-creating activity and created the jobs, the 2017 Policy Manual provides "the capital is properly at risk if it is used in a manner related to engagement in commerce (in other words, the exchange of goods or services) consistent with the scope of the new commercial enterprise's ongoing business."

162. The 2017 Policy Manual lists only three requirements for such a redeployment: 1) the investor "must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;" 2) there "must be a risk of loss and a chance for gain;" and 3) "business activity must actually be undertaken." 2017 Chap. 2(A)(2).

163. Prior to the fulfillment of the job creation requirement, the 2017 Policy adds an additional eligibility criterion: "The full amount of the investment must be made available to the

business(es) most closely responsible for creating the employment **upon which the petition is based**." *Id*., (emphasis added).

164. In the case of a regional center investment, that business- the job-creating entity on which the I-526 petition was based- will always be located within the regional center's territory.

165. So, while the 2017 Policy required the *initial* investment to be within the regional center territory, and to be within the businesses disclosed in the I-526 petition that will create the necessary jobs, a redeployment that occurs *after* the initial investment has been made, the necessary jobs created, and the money returned to the NCE need only satisfy the at-risk requirement because **all the other eligibility criteria and goals of the program have already been satisfied**.

166. The 2017 Policy was the only available guidance from 2017 until July 2020.

167. Although USCIS termed the 2020 Policy a "clarification," it established several new rules, the most significant and problematic of which was that redeployment must be within the territory of the regional center.

168. There is no statutory or regulatory basis to deny immigration benefits to EB5 investors whose NCEs deploy capital outside the regional center's geographic scope after the requisite jobs have been created.

169. The issue of redeployment was raised numerous times in a USCIS Stakeholder Engagement on November 19, 2018.

170. Specifically, the issue of whether the redeployment must occur within the geographic territory of the original regional center was raised multiple times. When asked specifically whether a redeployment needed to be within the scope of the approved regional center, IPO Director Sarah Kendall stated:

> "Once the job requirement has been met, the following requirements continue to apply: (1) The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on that capital, (2) Both a risk of loss and chance for gain must be present for the investment, (3) Business activity must be actually undertaken."

It is significant that one of the requirements was not that the redeployment must be within the geographic area of the regional center.

171. When Jan Lyons, USCIS Chief Economist, was asked to clarify whether a redeployment needs to be within the regional center territory, his response was "My esteemed counsel is waving her hands frantically at me saying that that's an issue we need to look at, so I apologize if I added to the confusion." (Beginning at 42:30).[2]

172. This comment led to the following exchange:

Attorney: "Can we have confirmation that that element is not part of the current policy and that you are not looking for a redeployment to be within the same geographic scope as the original [undecipherable]".

USCIS: "We're not saying that, Carolyn, but we will, um, take it back and make sure we are clear on this and when we can, we will update on our website."

Attorney: "I can report that this is a critical issue that folks need guidance on now, respectfully."

173. A follow up question was asked by another attorney: "I haven't seen anything in the Policy Memo that points to the redeployment having to be within the geography of the regional

[2] Recording at https://www.dropbox.com/s/rx9gol7tcsxe2cd/uscis%20stakeholders%20meeting%202018%201119.mp3?dl=0 (last visited December 28, 2020). Published at: https://blog.lucidtext.com/2018/11/19/11-19-stakeholder-meeting-with-uscis-redemption-redeployment/ (last visited December 28, 2020)

center or within the geography of the new commercial enterprise. Can you point me to such language or explain the rationale?" (Beginning at 49:50)

Jan Lyons: "we are actually looking into that now. I think there is confusion on our part. We will take that question and, uh, figure it out and get back to you."

174. As shown by the preceding paragraphs, no requirement that a redeployment be within the territory of the regional center existed in any regulation or policy material, it was not a settled policy at USCIS, and the very idea that there might be such a policy in the future took the public by surprise.

175. When asked directly during this call, USCIS refused to state that such a policy existed, and was unable to provide any authority for it.

176. USCIS' repeated statements that it had not yet developed its policy led the EB-5 industry to believe that there were no restrictions from a geographic perspective as to where the investment needed to be further deployed and that any new requirement would be prospective only.

177. The call ended with the following exchange:

Attorney: "So can I make one further comment? So a lot of these redeployment deals, they're going on now, right. So we would like USCIS to apply whatever policy it comes up with prospectively and not retrospectively. Because we're redeploying now, because we have no choice. We don't want all of our investors to later get denied because we guessed wrong about what we thought you were ultimately going to come out with. To the extent that we're redeploying before you come out with a policy, we would greatly appreciate if you don't, you know, later deny all of our investors for not meeting the policy that hadn't been promulgated yet." (Beginning at 59:25).

USCIS: "So, duly noted. No promises, but duly noted."

178. The state of the redeployment policy, as demonstrated through this Stakeholder Engagement, was accurately and succinctly summed up in a popular EB-5 Blog:[3]

> IPO has not publicly clarified its policy on further deployment because IPO itself is not sure how to interpret the policy at this time. IPO has not agreed or decided such basics as whether further deployment needs to be in the same geographic area as the original deployment (within the original regional center geographic area or not), whether it needs to be in the same form as the initial deployment (e.g. whether preferred equity must be followed by preferred equity, or could be followed by a loan), whether the redeployment must be in the same type of project (e.g. whether initial deployment in hotel must be followed by another hotel investment), whether the redeployment must be new money in a project or could replace existing financing, what about municipal bonds makes them an option, and when, and how the sustainment rules apply in case of bankruptcy after the job creation requirement was met. IPO at least clarified on this call that these answers do not yet exist – that they're all points that they still "need to look into," and about which they have yet to agree internally.

179. As of November 19, 2018, and in reality, much earlier, Defendants were on notice that their policy was unclear, that it lacked a requirement that a redeployment occur within the territory of a regional center, and that regional centers and new commercial enterprises were already in the process of redeploying capital.

180. Further, stakeholders had explicitly asked USCIS to not apply any future policy retroactively.

181. On July 24, 2020, without notice or warning or compliance with APA requirements, USCIS published a new policy relating to redeployment, effective immediately, and applying to all I-526 and I-829 petitions filed on or after, and pending on or after, the date of publication.

[3] *See* https://blog.lucidtext.com/2018/11/19/11-19-stakeholder-meeting-with-uscis-redemption-redeployment/ (last visited December 28, 2020)

182. The July 24, 2020 Policy Alert announcing the changes does not seek comments from the public nor provide any means of submitting such comments.

183. Chapter 2(A)(2) of the new version of the 2020 Policy provides:

> Deployment of Capital
>
> Before the job creation requirement is met, a new commercial enterprise may deploy capital directly or through any financial instrument so long as applicable requirements are satisfied, including the following:
>
> •The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
>
> •There must be a risk of loss and a chance for gain;
>
> •Business activity must actually be undertaken;
>
> •The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based; and
>
> •A sufficient relationship to commercial activity (namely, engagement in commerce, that is, the exchange of goods or services) exists such that the enterprise is and remains commercial.
>
> The purchase of financial instruments traded on secondary markets generally does not satisfy these requirements because such secondary market purchases generally:
>
> •Are not related to the actual undertaking of business activity;
>
> •Do not make capital available to the job-creating business; and
>
> •Represent an activity that is solely or primarily financial rather than commercial in nature.
>
> *Further Deployment After the Job Creation Requirement is Satisfied*
>
> Once the job creation requirement has been met and the investment capital is returned or otherwise available to the new commercial enterprise, the new commercial enterprise may further deploy such capital within a reasonable amount of time in order to satisfy applicable requirements for continued eligibility. The capital may be further deployed, as described above, into any commercial activity that is consistent with the purpose of

> the new commercial enterprise to engage in the "ongoing conduct of lawful business," including as may be evidenced in any amendments to the offering documents made to describe the further deployment into such activities.
>
> Consistent with precedent case decisions and existing regulatory requirements, further deployment must continue to meet all applicable eligibility requirements within the framework of the initial bases of eligibility, including the same new commercial enterprise and regional center. In addition, because a regional center has "jurisdiction over a limited geographic area," further deployment must occur within the regional center's geographic area, including any amendments to its geographic area approved before the further deployment. The further deployment, however, does not need to remain with the same (or any) job creating entity or in a targeted employment area.
>
> For example, if a new commercial enterprise associated with a regional center loaned pooled investment capital to a job-creating entity that created sufficient jobs through the construction of a residential building in a targeted employment area, the new commercial enterprise, upon repayment of the loan that resulted in the required job creation, may generally further deploy the repaid capital anywhere within the regional center's geographic area (regardless of whether it would qualify as a targeted employment area) into any commercial activity that satisfies applicable requirements such as one or more similar loans to other entities. (emphasis added)

184. The 2020 Policy contains a number of new substantive rules.

185. Under the 2020 Policy, redeployment for the first time is no longer just a means of satisfying the at-risk requirement after the investment has completed its original purpose and been returned to the NCE.

186. The 2020 Policy requires a redeployment to "continue to meet all applicable eligibility requirements within the framework of the initial bases of eligibility, including the same new commercial enterprise and regional center." 2020 Chap 2(A)(2).

187. For the first time, the 2020 Policy requires that the redeployment must be within the geographic territory of the regional center. It also states that the redeployment "does not

need to remain with the same (or any) job creating entity or in a targeted employment area" and that the redeployment must occur within one year. *Id.*

188. The 2020 Policy is binding on all USCIS adjudicators, and has the force of law within the agency. Since it amended the Policy Manual, it is a codification of the official policy of USCIS, which "is to be followed by all USCIS officers in the performance of their duties."

189. Although USCIS termed the 2020 Policy a "clarification", it established several new rules, the most significant and problematic of which was that redeployment must be within the territory of the regional center. There is no statutory or regulatory basis to deny immigration benefits to EB5 investors whose NCEs deploy capital outside the regional center's geographic scope after the requisite jobs have been created.

190. Having created a redeployment requirement not found in the statute and regulations, and a sustainment period much longer than ever envisioned by Congress, Defendants would now place limits on redeployment that substantially limit redeployment options and create more risk for investors, and – even worse – apply those limits retroactively to investors, regional centers, and new commercial enterprises that redeployed in a good faith attempt to comply with a redeployment policy already created out of whole cloth by the agency.

191. By requiring a redeployment to be within the territory of the regional center, and applying this policy retroactively, Defendants have not only raised the financial risks for investors, but have arbitrarily, and dramatically, raised the immigration risks of this program for investors.

192. Defendants have changed the rules in the middle of the game to make it much more likely that investors will fail to make it to the finish line and reap the immigration benefits which

motivated them to invest in the first place – notwithstanding the fact that they have met all program requirements and fulfilled the purposes of the program.

A Regional Center or NCE has no meaningful way to have a redeployment opportunity adjudicated.

193. A regional center is not a party to an investor's I-526 or I-829 petition.

194. A regional center may not submit documents in support of an investor's petition, or communicate with USCIS about that petition.

195. Only the investor or his or her attorney may submit documents or communicate with USCIS about the petition.

196. A New Commercial Enterprise is similarly not a party to an I-526 or I-829 petition.

197. Other investors in the same NCE are not a party to an investor's I-526 or I-829 petition.

198. Although the regional center or NCE will prepare a package of documents to be used by the investors in support of their petitions, or in response to any requests for evidence issued in conjunction with the NCE or regional center portion of those petitions, each investor must individually file the documents.

199. A regional center may file an application to amend its designation (I-924) to include an approved project with USCIS. Once approved, USCIS' policy is to give deference to the approval in adjudicating subsequent investor petitions related to the same project.

200. The USCIS filing fee for an I-924 petition is currently $17,795.

201. The current processing time listed on the USCIS website for an I-924 petition is 25 to 62 months.

202. The 2020 Policy requires a redeployment to occur within one year of the money coming back to the NCE.

203. It would take a regional center much longer to have an amendment adjudicated than the 2020 Policy allows for a redeployment, leaving a regional center with no choice but to redeploy first and hope the approval comes later.

204. It is usually not possible to identify a redeployment opportunity two or more years in advance.

205. This makes the testing of a redeployment plan through the I-924 process basically impossible.

206. There is no mechanism for an NCE (or the manager of an NCE) to seek an adjudication of a redeployment opportunity.

207. Regional centers that redeployed outside of their territory in good faith prior to the 2020 Policy not only face liability from the investors whose money was redeployed, but possible termination by USCIS and liability from other investors who are adversely affected by the termination.

Business Realities Involved in Redeployment

208. The NCE Plaintiffs owe a duty to their investors to responsibly manage their investments.

209. The investors, unsurprisingly, have an expectation of getting their investment money back at some point.

210. Although a return of capital cannot be guaranteed under the EB-5 regulations, and the money must be placed at risk, the investors expect Plaintiffs to make prudent choices and minimize investment risks.

211. By signing up for the EB-5 program, investors did not contemplate that their investments might be subject to the same risks as a spin at the roulette wheel. They have the same expectations that non-EB-5 investors would have.

212. The evaluation, sourcing, negotiating and closing of redeployment opportunities are difficult and lengthy processes

213. The successful redeployment of an EB-5 investment requires, among other things, the sourcing of a real estate development project or any other investment in need of funding; performing due diligence on both the developer and project; evaluating critical financial aspects of each project (e.g., loan to value, loan to cost, debt service coverage ratios) to determine the viability of the project from a financial, commercial and legal standpoint; and negotiating and finalizing complex transactional documents, which often involve multiple parties, including the borrower and other lenders or investors for the project.

214. Restricting redeployment to the geographical territory of the regional center could unfairly force redeployment into unwise investments in geographic areas where investment opportunities do not become available within a commercially reasonable period of time.

215. Some regional center geographic scopes are so narrow that they may only encompass an existing project or a single MSA; and it is quite possible that there would be no suitable investments for redeployment within that geographic scope.

216. In many cases, it is difficult or even impossible for the NCE or regional center to find another quality and EB-5-compliant investment opportunity within 12 months and within the limited geographic scope without putting the EB-5 investor funds into an unduly risky investment or locking the funds up for an unreasonably long time because it was the only investment available.

217. Additionally, NCEs that have very few investors will find it very difficult to find suitable redeployment opportunities within the geographic scope of the regional center simply

because the amount of EB-5 funds is not substantial enough to garner commercial interest. On the flip side, NCEs that have many investors will likely have a difficult time redeploying tens of millions of dollars if restricted to investing only within the geographic scope of the regional center.

218. The 2020 Policy discourages original investments into tertiary markets, rural areas or infrastructure outside of major urban areas, where redeployment opportunities will naturally be scarcer. This is detrimental to the economic impact goals of the EB-5 program.

219. As a result, it has become increasingly more difficult and time-consuming to source viable real estate development projects into which EB-5 investments can be redeployed.

220. Plaintiffs' redeployment process is a complicated, multi-step process. As part of Plaintiffs' standard business practice, Plaintiffs solicit the consent of the EB-5 investors to redeploy the proceeds of a loan or investment that have been repaid in a manner consistent with USCIS guidelines and policies. This only happens after it is confirmed that the EB-5 loan/investment is actually paid off. Typically, Plaintiffs provide four (4) or more potential redeployment projects from which the investors may choose for the redeployment of their capital, understanding that different investors have different investment objectives (e.g., risk appetite and timeline). These solicitations include all relevant and material information necessary for the investor to make his or her investment decision, consistent with all applicable securities and other laws and regulations and require a minimum of twenty (20) business' days for investors to make their choice in accordance with U.S. securities laws. Once the immigrant investors make their choices for redeployment of their investments, the Plaintiffs are able to finally

determine the amount of money to be funded into each new redeployment project. It is virtually impossible to secure new redeployment projects if the loan/investment amount cannot be communicated to the borrower until after all the consents are received from the immigrant investors.

221. Because the investors may not have contemplated the need to redeploy the money at the time they originally invested, or because their circumstances and goals may have changed, some investors elect not to have their funds redeployed.

222. Although Plaintiffs may begin the process of identifying redeployment opportunities in advance, until the initial investment is paid back to the NCE and the investors submit their consents, Plaintiffs simply cannot know how much money is actually available for redeployment.

223. Potential borrowers cannot make a commitment to borrow the EB-5 funds, or even negotiate in earnest, until the actual amount of money to be lent is known.

224. Plaintiffs conduct detailed due diligence on each redeployment opportunity, which takes time and also disqualifies many projects from consideration.

225. Consistent with USCIS policy guidance available at the time, Plaintiffs chose projects that were in the best investment interests of the investors without regard to geographic area.

226. Once the initial investment has been repaid, the investors have submitted their consents, a redeployment opportunity has been identified, and due diligence completed, the final negotiations and drafting of the complex transactional documents begins.

227. The documentation and closing stage can take several months.

228. Had regional centers waited for the 2020 guidance before redeploying, investors would have had their immigration processes jeopardized for failure to comply with an undefined "commercially reasonable time" standard.

229. Ultimately, to complete this process in accordance with Plaintiffs' duties to their investors is very difficult to do within one year.

230. If Plaintiffs are subjected to the 2020 Policy, and in particular the geographic limitations, it will likely become impossible to meet the one-year time frame without unacceptably increasing the financial risks of the redeployment.

Impacts of the 2020 Policy

231. The 2020 Policy announcing the changes to the Policy Manual states that "USCIS considered potential impacts to petitioners and determined that such impacts, if any, would be minimal."

232. By their own words, Defendants did not consider impacts to regional centers, NCEs, JCEs, entities that already have or have contracted to receive redeployment funds, or anyone else.

233. The "minimal impacts" of the policy to petitioners include the potential denials or revocations of the I-526 and I-829 petitions of hundreds or thousands of investors (and their family members) who have invested, in good faith, for the purpose of obtaining a green card, and whose money was redeployed under the 2017 guidance in a redeployment opportunity that does not qualify under the 2020 Policy.

234. Denial of an I-829 petition leads to the loss of a green card and possible deportation for an investor and his or her family members, which is clearly not a "minimal impact."

235. The 2020 Policy substantially limits the pool of possible redeployment options available to an NCE.

236. Because redeployment must occur within one year, an NCE may simply not be able to comply, with investors having their petitions denied or revoked as a result.

237. By placing geographic limits on redeployment, investors may have to accept a redeployment opportunity that is substantially more risky than their original investment or risk denial of their petitions.

238. The 2020 Policy places regional centers and NCEs in an untenable position, in which they have to choose between their duty to responsibly manage the investors' investments and their duty to help the investors obtain the immigration benefits that motivated them to make the investments in the first place.

239. Investors in an NCE may not agree on which interest is more important- limiting investment risk or limiting immigration risk.

240. NCEs, their managers, and regional centers face potential lawsuits and liability from investors. This potential is substantially increased by the 2020 Policy.

241. Redeployment transactions that have already occurred cannot be undone.

242. Money that has been redeployed is illiquid because it is in use by the current project. Not only is the project depending on the money, but the other investors and lenders to the project are also relying on the availability of the redeployment money to ensure the project is fully funded and completed.

243. If the redeployment money is recalled, or the transaction is cancelled, and Plaintiffs fail to lend or invest the redeployment money as promised, projects can be left unfinished, or

under-capitalized, resulting in bankruptcies and lawsuits involving numerous parties and hundreds of millions of dollars.

244. Certainly, if Plaintiffs tried to undo a redeployment, they would likely be sued by their investors or by the other parties to the transactions.

245. Even if these transactions could be undone, it is not clear that taking the money back and redeploying it in accordance with the 2020 Policy would preserve investor eligibility to have their I-526 and I-829 petitions approved because the money was not continuously deployed in accordance with USCIS policy.

246. The 2020 Policy places limits on the types of activities that can receive redeployment funds and the financial instruments that can be used. This creates additional limitations on available redeployments and increases uncertainty as to what redeployments are allowable.

Violation of Federal Vacancies Reform Act and Executive Order 13892

247. The publication of the 2020 Policy was a "function" and/or "duty" performed by, and overseen by, Kenneth Cuccinelli, as Acting Director of USCIS and constitutes an action taken to administer immigration policies by Mr. Cuccinelli. 6 U.S.C.§ 271(a)(3)(B) and 6 U.S.C.§ 271(a)(3)(D).

248. The 2020 Policy is an official expression of USCIS policy, binding on USCIS adjudicators.

249. The 2020 Policy implemented a new policy within USICS.

250. The Director of USCIS is charged by Congress with establishing national immigration policies.

251. The establishment and publication of an agency policy is an agency action. In this case, it is an agency action undertaken at the direction and authority of the USCIS Director.

252. Mr. Cuccinelli was not lawfully appointed as the Acting Director of USCIS pursuant to the Federal Vacancies Reform Act of 1998 (Vacancies Act), 5 U.S.C. § 3348(d)(1). See e.g., L.M-M v. Cuccinelli, Civil Action No. 19-2676 (RDM) (D.D.C. 03/2020).

253. A number of courts have also found that Chad Wolf, who was acting in the capacity of Acting Secretary of DHS at the time the policy was established, was not lawfully appointed as Acting DHS Secretary.

254. The 2020 Policy violates Executive Order 13892, which states that "regulated parties must know in advance the rules by which the Federal Government will judge their actions." The Executive Order requires that agencies provide "prior public notices" of any legal standards the agency will be applying and warns that "the agency may not treat non-compliance with a standard of conduct announced solely in a guidance document as itself a violation of statutes and regulations." It continues: "when an agency makes a determination that has legal consequence for a person, it may only apply standards of conduct that have been publicly stated in a manner that would not cause unfair surprise. An agency must avoid unfair surprise not only when it imposes penalty but also whenever it adjudges past conduct to have violated the law."

Standing

255. Plaintiffs have standing to bring this action.

256. Plaintiffs are regulated parties under the EB-5 statute and regulations.

257. Plaintiffs are regional centers and NCEs that have redeployed investor funds in compliance with the statute, regulations and 2017 Policy, but not in compliance with the 2020 Policy.

258. The 2020 Policy sets rules and policies governing the conduct of regional centers and NCEs, such as Plaintiffs.

259. The 2020 Policy directly impacts how regional centers and NCEs conduct their day-to-day business, and heavily influences business decisions by these entities.

260. Regional centers have a duty to oversee and monitor investment activity and job creation, and ensure that their NCEs use the EB-5 capital in a manner that complies with the EB-5 regulations.

261. A regional center can be terminated by USCIS if one of its NCEs fails to deploy EB-5 capital in accordance with the 2020 Policy.

262. Termination terminates the regional center's ability to conduct business and generate income and subjects the regional center to liability.

263. If a regional center is terminated, USCIS policy requires the denial of all pending investor I-526 petitions and the revocation of all approved I-526 petitions of investors who have not yet become conditional residents for investors affiliated with the regional center.

264. Regional Centers are clearly within the zone of interests of parties whose conduct is regulated and governed by the 2020 Policy.

265. NCEs are the entities designated by the regulations to be the recipients of the EB-5 investments and tasked with direct or indirect job creation. Their conduct is regulated by the 2020 Policy.

266. USCIS decisions, and in particular the 2020 Policy, have a substantial impact on their businesses and activities.

267. An NCE may succeed or fail as a result of a USCIS determination that its activities are either compliant or not compliant with the EB-5 regulations and policy.

268. An NCE's actions in complying with Defendants' policies may subject it or its managers to liability.

269. NCEs are clearly within the zone of interest of parties whose conduct is regulated and governed by the 2020 Policy.

270. Both regional centers and NCEs are obligated to operate to ensure the immigration success of their investors.

271. Plaintiffs will be harmed if investors are denied in many ways. First, Plaintiffs have a record of 100% approval of all EB-5 investments at the project level, and will suffer severe reputational damage if significant number of investors are denied because of the redeployment issue. Second, USCIS has a pattern and practice of seeking to terminate regional centers that take actions that harm EB-5 investors within those regional centers. Third, it is likely that denied investors, whose money has already been used in the investment project, will file suit against Plaintiffs if they do not get the immigration benefits that were the basis for their investments.

Ripeness

272. Plaintiffs have the imminent need to redeploy other funds, and face imminent harms from the implementation of the 2020 Policy.

273. Plaintiffs have redeployed EB-5 funds, in good faith compliance with the existing 2017 Policy. However, those redeployments do not comply with the 2020 Policy.

274. Plaintiffs' investors face the denial or revocation of their I-526 and I-829 petitions.

275. As described above, a regional center is not a party to an investor's I-526 or I-829 petition. Although an I-924 amendment application provides a theoretical avenue for a regional center to request adjudication of a potential redeployment opportunity, the reality is there is no way for Plaintiff to obtain such an adjudication in advance

276. There is no process or venue for an NCE to communicate or interact directly with USCIS.

277. Investors who previously consented to a redeployment because they believed the redeployment would further their immigration goals now believe their immigration process is in jeopardy and can be expected to want their money back.

278. Plaintiffs cannot undo the redeployment transactions without breaching contracts and creating massive potential for litigation and bankruptcy. Undoing a redeployment is at best extremely complex and at worse impossible. First, it is necessary to identify replacement capital. Second, it is necessary to identify an actual project. Third, it is necessary to undertake high level negotiations. Fourth, it is necessary to make a formal exchange offer, which includes full securities documentation.

279. Plaintiffs are facing increased expenditure of costs, effort and time communicating with panicked or unhappy investors as a result of the 2020 Policy.

280. Plaintiffs may be subject to lawsuits by investors for redeploying in a manner that, according to the 2020 Policy, will result in the denial of investor petitions or loss of investor green cards.

281. Plaintiffs need to make business decisions on a daily basis that are impacted by the 2020 Policy.

282. Plaintiffs must seek or forego opportunities based on the 2020 Policy, or make decisions about how to manage investor money based on the Policy.

283. The choices they make, and the implications and consequences of those choices, would be different- often dramatically so- if the 2020 Policy were not in effect than they would if the 2020 Policy were in effect.

284. Plaintiffs cannot wait months or years for an investor I-526 or I-829 to be denied as a result of the 2020 Policy to challenge the policy.

285. Even if they could, Plaintiffs are not a party to those petitions, and would not be able to challenge them before USCIS.

286. Plaintiffs are likely to suffer reputational harm that could prevent them from attracting investors in the future.

287. The entire EB-5 Program is likely to suffer irreparable reputational harm if potential investors see the program as inherently risky and unpredictable because the U.S. government is likely to change the rules years after they invest in ways that cause them to become ineligible long after their investments. Harm to the attractiveness of the Program to potential foreign investors impacts Plaintiffs' ability to attract investors and conduct future business.

288. Plaintiffs need to be able to plan presently for present and future redeployments.

289. The 2020 Policy would cause significant shifts in the way Plaintiffs do business if upheld.

290. The harms and potential harms of the 2020 Policy to Plaintiffs are imminent and unavoidable.

VII. CLAIMS

1) The implementation of the 2020 Policy without Notice and Comment Rulemaking Violates the A.P.A.

291. Paragraphs 1 through 290 are repeated and incorporated herein.

292. Defendants' implementation of the 2020 Policy without notice and comment rulemaking pursuant to § 553 of the A.P.A. was unlawful, and must be held unlawful and set aside pursuant to 5 U.S.C. § 706(2)(D).

293. Defendants' publication of the 2020 Policy is a final action because it is the consummation of the agency's decision-making processes from which legal consequences flow.

294. The 2020 Policy reflects a legislative policy judgment, not interpretive guidance. The 2020 Policy does not engage in "interpretation" of any underlying statute or regulation. It does not quote statutory or regulatory text or explain how the policy it reflects is the correct interpretation of the legal text compared with prior policy that did not contain a geographic restriction on redeployment.

295. The 2020 Policy allows for no discretion in its enforcement. Adjudicators must follow the requirements, with no choice.

296. The 2020 Policy is binding on all USCIS employees and adjudicators, and sets forth policy with present and retroactive binding effect.

297. Although not a regulation or a statute, because it is binding on the agency and is determinative of agency adjudications, it has the force of law for the regulated public.

298. Defendants did not publish advance notice of this rule in the Federal Register, did not provide reasoned responses to public comments, did not undertake the required Regulatory Flexibility Act analysis, and did not comply with the litany of requirements imposed by the APA.

299. Defendants did not publish advance notice of the Policy anywhere.

300. Defendants have not sought comments from the public or provided a means for the regulated public to provide input, and have deprived Plaintiffs and the public of the opportunity to provide information, facts and data on the impacts of the rule.

301. The 2020 Policy states a new policy that is a matter of great importance to the class of individuals and companies it regulates.

302. None of the statutory exceptions to the requirement of notice and comment rulemaking is applicable to this Policy. See 5 U.S.C. § 553(b).

303. As a result, the 2020 Policy must be set aside.

2) The 2020 Policy is Impermissibly Retroactive and Violates Due Process

304. Paragraphs 1 through 290 are repeated and incorporated herein.

305. The 2020 Policy applies to petitions filed on or after and pending on or after the date of publication (July 24, 2020).

306. The 2020 Policy regulates conduct occurring both before and after the date of publication.

307. USCIS' new geographic restrictions on capital redeployment represented an abrupt departure from well-established practice. Conduct that was lawful and compliant under the 2017 policy is no longer complaint under the 2020 Policy.

308. USCIS and its top leadership participated in multiple stakeholder calls and other meetings during with they were informed by many in the EB5 industry and on multiple occasions that the industry has been redeploying capital for over three years in compliance with the guidance provided on June 14, 2017 and that any new and more restrictive interpretation would wreak havoc on the industry and investors.

309. Given the significant visa backlog, long adjudication times and the ambiguous requirement that redeployment occur within a "commercially reasonable time" (which was not defined), regional centers were forced to move forward with implementing redeployment programs based on the existing guidance or lack thereof.

310. Plaintiffs, in good faith and in compliance with the 2017 guidance, redeployed approximately $94 million dollars in investor funds in order to allow the investors to continue to maintain eligibility under the EB-5 regulations.

311. Plaintiffs now face potential liability, increased costs, and other harms because actions they believed were fully compliant at the time they took them have been rendered retroactively non-compliant by the 2020 Policy.

312. Plaintiffs are U.S. entities, with full due process rights under the Constitution.

313. The retroactive imposition of the 2020 Policy affects their ability to conduct business and their contractual relations with other parties.

314. USCIS has no compelling statutory interest that renders it necessary to apply this policy that will harm large numbers of regional centers, NCEs and immigrant investors retroactively.

315. A retroactive change to existing guidance interferes with existing contractual relationships, funding commitments and well-established redeployment programs.

3) The 2020 Policy is Arbitrary and Capricious.

316. Paragraphs 1 through 290 are repeated and incorporated herein.

317. The Court is authorized to set aside the 2020 Policy as arbitrary and capricious. See 5 U.S.C. § 706(2)(A).

318. Defendants have arbitrarily created a system in which investor capital must be redeployed, even long after job creation goals of the program have been satisfied or even before investors have become conditional residents, and created a regime in which investors must face significantly greater investment risks than a prudent non-EB-5 investor might ordinarily accept.

319. According to Defendants' own Policy Alert, Defendants allegedly considered the impacts of the 2020 Policy to investors, but not to Plaintiffs and other parties whose activities are governed by or affected by the Policy. For example, attempting to undo a redeployment

or redeployment contract could cause downstream entities to have cash shortfalls and be unable to meet contractual commitments to lenders and partners. Investor lawsuits to prevent a redeployment could have similar results. This policy can affect a multitude of entities throughout the development cycle, including banks, contractors, vendors, workers, and others.

320. Although Defendants claim to have considered the impacts on petitioners and found them "minimal," the imposition of the 2020 Policy on pending petitions will, if the policy is followed, require Defendants to deny or revoke a large number of investor petitions.

321. In fact, implementation of the redeployment guidance will affect an estimated $14.8 billion of EB5 capital and the EB5 eligibility of more than 50,000 investors. The 2020 Policy impacts at least 17,468 investors who filed form I-526 petitions and 10,373 investors who filed form I-829 petitions that were pending with USCIS as of December 31, 2019. It also affects 24,005 investors who have had their I-526 petitions approved but had not yet obtained conditional permanent resident status as of April 20, 2020.

322. Investors have, in many cases, invested their life savings through the EB-5 program for a chance to immigrate to the U.S.

323. They have placed their money at risk for many years in pursuit of this goal.

324. If their petitions are denied or revoked, after risking their money and losing the use of their money for many years, the effects are not "minimal" to the investors and their families.

325. Similarly, if their sponsoring regional center is terminated for non-compliance with the policy, all the regional center's investors- including those in unrelated NCEs- stand to have their I-526 petitions denied or revoked pursuant to USCIS policy.

326. If the investors and their family members who have become conditional residents lose their green cards as a result of the denial of their I-829 petitions under the 2020 Policy, the impacts are singularly life-changing, including deportation from the United States.

327. Defendants appear to have given no consideration whatsoever to the commercial realities of redeploying large sums of money in a short time, and the effects their policy has on such a redeployment.

328. Defendants have created requirements and responsibilities of Plaintiffs to oversee and monitor the use of investor capital and use it in ways that comply with the regulations, but have then made such compliance significantly more difficult or impossible.

329. Defendants have clearly not considered the duties owed by Plaintiffs (and other regional centers or NCEs) to investors to prudently manage their money.

330. The 2020 Policy is a reversal of course on an established policy, and provided in the guise of a "clarification" with no acknowledgement or explanation for the deviation from the prior course of action.

4) The 2020 Policy is violative of the APA and the Federal Vacancies Reform Act because Mr. Wolf and Mr. Cuccinelli lacked authority to establish the 2020 Policy

331. Paragraphs 1 through 290 are repeated and incorporated herein.

332. The APA empowers the Court to "hold unlawful and set aside" any agency action that is "not in accordance with law," 5 U.S.C. § 706(2)(A), "in excess of statutory . . . authority," 5 U.S.C. § 706(2)(C), or "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

333. 5 U.S.C. §§ 3345-3349 and 6 U.S.C. § 113(g) limit which individuals may serve as acting officials within DHS and USCIS, and the amount of time they may do so.

334. Neither Mr. Wolf nor Mr. Cuccinelli were lawfully appointed, and therefore were acting in violation of 5 U.S.C. §§ 3345-3349 and 6 U.S.C. § 113(g) when they established and published the 2020 Policy.

335. They therefore lacked the statutory authority to establish or institute policies or rules at USCIS.

336. As a result, the 2020 Policy must be vacated.

5) The 2020 Policy is violative of Executive Order 13892

337. Paragraphs 1 through 290 are repeated and incorporated herein.

338. The 2020 Policy must be vacated as it constitutes a violation of the "prior public notice" requirement of Executive Order 13892.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Enters a Declaratory Judgment that Defendants' imposition of the 2020 Policy was unlawful, and arbitrary and capricious;
2. Issues an order holding the Policy unlawful and setting it aside;
3. Enjoins Defendants from applying the 2020 Policy to petitions pending on or before the date of publication of the Policy; and
4. Grants such other and further relief as this Court deems appropriate under the circumstances.

Respectfully submitted,

/s/ Jesse M. Bless
Jesse M. Bless
American Immigration Lawyers Association
Director of Litigation
1331 G. Street NW, Suite 300
Washington, DC 20005

Tel.: (202) 507-7600
Fax: (202) 783-7853
E-mail: JBless@aila.org

/s/ H. Ronald Klasko

H, Ronald Klasko
Klasko Immigration Law Partners
1601 Market Street, Suite 2600
Philadelphia, PA 19103
(215) 825-8600
(215) 825-8699 (fax)
rklasko@klaskolaw.com
(*Pro Hac Vice* Admission Pending)

Counsel for Plaintiff