IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EB5 CAPITAL,
6106 MacArthur Blvd.
Suite 104
Bethesda, MD 20816,

CANAM ENTERPRISES, LP,
48 Wall Street – 24th Floor
New York, NY 10005,

CIVITAS CAPITAL MANAGEMENT, LLC,
1722 Routh Street
Suite 800
Dallas, TX 75201,

GOLDEN GATE GLOBAL,
One Sansome St.
Suite 2080
San Francisco, CA 94104,

PINE STATE REGIONAL CENTER, LLC,
200 River Market Ave.
Suite 400
Little Rock, AR 72201,

and,

INVEST IN THE USA,
655 15th St. NW
Suite 800
Washington, DC 20005,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
3801 Nebraska Ave. NW
Washington, DC 20016,

Civ. No. 1:22-cv-1455

ALEJANDRO MAYORKAS,
in his official capacity as Secretary of the Department of Homeland Security,
3801 Nebraska Ave. NW
Washington, DC 20016,

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,
5900 Capital Gateway Dr. #2040
Camp Springs, MD 20746,

UR M. JADDOU,
in her official capacity as Director of the United States Citizenship & Immigration Services,
5900 Capital Gateway Dr. #2040
Camp Springs, MD 20746,

Defendants.

COMPLAINT

Plaintiffs EB5 Capital, CanAm Enterprises, LP, Civitas Capital Management, LLC, Golden Gate Global, Pine State Regional Center, LLC, and Invest in the USA (collectively, "Plaintiffs") bring this complaint against the United States Department of Homeland Security ("DHS"), Alejandro Mayorkas, the United States Citizenship and Immigration Services ("USCIS"), and Ur M. Jaddou, and allege as follows:

INTRODUCTION

1. This is an action pursuant to the Administrative Procedure Act challenging a rule issued through a website post by USCIS that categorically decimated an entire industry—threatening the very existence of hundreds of small businesses and billions of dollars of investment capital devoted to the creation of hundreds of thousands of American jobs. The agency's action was not authorized by the statute's text, and its promulgation without any reasoning via a website post does violence to fundamental principles of administrative law. It must be set aside.

2. In the early 1990s, Congress enacted the EB-5 program to attract foreign investment capital into the United States, particularly into rural areas and areas with high unemployment. The

incentives are straightforward: if a foreign national invests a certain amount of capital and creates a certain number of jobs in the United States, the investor could receive an employment-based visa (an EB-5 visa), which offers a pathway to lawful permanent residency in the United States. Since its inception, the EB-5 program has attracted over a hundred billion dollars in foreign capital and created hundreds of thousands of American jobs.

3. Shortly after Congress created the EB-5 visa category, it developed a Regional Center Program (or "Program") to implement the EB-5 provision. In essence, the Regional Center Program streamlined the ability of foreign investors to satisfy the EB-5 statutory requirements for a visa, further incentivizing foreign investors to invest in job-creating enterprises in the United States. Rather than needing to directly invest capital in a business that directly created jobs (and thus having to manage the day-to-day operations and administrative tasks of the enterprise), investors using the Regional Center Program could instead invest their capital into a regional center, which pooled investments and deployed them into larger projects that created more jobs. This structure allows investors to meet the EB-5 requirements while still delivering the benefits Congress envisioned: economic progress and job creation in the United States.

4. Although initially enacted as a pilot program, the Regional Center Program has become a well-established—indeed the nearly exclusive—means of obtaining an EB-5 visa. In the 1993 Appropriations Bill, Congress set aside a small number of visas for a few years exclusively to applicants under the Regional Center Program. Over the years, Congress reauthorized that set-aside provision dozens of times. Throughout that time, USCIS codified extensive regulations governing the Program and oversaw regional center operations. The Program's popularity grew significantly in the 2000s, and now more than 95% of EB-5 visas go to regional center investors. The set-aside provision thus became superfluous—almost all EB-5 visas for many years have gone to regional center investors.

5. At present, more than 600 regional centers—thriving small and medium-size businesses—have become officially "designated" by USCIS as eligible to receive EB-5 investment, compliant with the Program's requirements. These entities have spent thousands upon

thousands of hours in achieving these designations, and they have spent millions to obtain the certifications. Annually, and as recently as December 2021, these regional centers have filed annual statements with USCIS to confirm their compliance with all legal requirements. In reliance on these designations, thousands of foreign investors have invested billions into regional centers.

6. Congress's most recent reauthorization of the set-aside provision expired on July 1, 2021. This created a lapse in set-aside authorization.

7. On March 15, 2022, as part of the Consolidated Appropriations Act, 2022, Congress enacted the EB-5 Reform and Integrity Act of 2022 (the "Integrity Act"). Recognizing the longstanding predominance of the Regional Center Program in the EB-5 visa category, Congress codified the Program in the Immigration and Nationality Act ("INA") and the United States Code, making visas available through the Regional Center Program through September 2027.

8. The Integrity Act maintained the Regional Center Program materially intact from the predecessor statute, but it included additional anti-fraud measures. The Act includes additional reporting and compliance requirements for regional centers, and it gives the Secretary of Homeland Security the authority to impose certain sanctions if regional centers do not comply with the new measures. By all accounts, however, Congress intended USCIS and regional centers to immediately get back to work. As Senator Cornyn put it, Congress provided for a "60-day implementation period … to allow USCIS to begin processing EB-5 petitions and applications that have been on hold since the lapse" and, "[f]ollowing that initial period, *existing regional centers* will be able to *immediately get back to work* driving investment into the U.S. and facilitating the creation of jobs across the country." 168 Cong. Rec. S1220 (daily ed. Mar. 16, 2022) (emphasis added).

9. With a click of the mouse, however, USCIS eviscerated the Regional Center Program via a website post. USCIS announced by means of an "alert" on its website that all existing approved regional centers—over 600 of them—were categorically decertified. Rather than the Integrity Act serving its straightforward purpose—a "reauthorization" of the preexisting

Regional Center Program—USCIS instead determined that Congress created a *wholly new* program, one which must start over from scratch. According to USCIS, then, all existing regional centers, which already have billions of dollars in invested capital, ongoing development projects, and investors awaiting adjudication of their visa petitions, must effectively pause all revenue-generating operations (while still maintaining regulatory obligations to existing investors) indefinitely until USCIS approves their new applications. At current processing rates, it will take well over a decade for more than 600 programs to become re-designated.

10. Plaintiffs own and operate dozens of regional centers that were approved by USCIS prior to the agency's website announcement. They have raised billions in foreign investment capital and developed hundreds of projects in the United States responsible for hundreds of thousands of jobs. USCIS's action, however, puts their very existence at risk. They cannot recruit new investors (and receive the administrative fees necessary to support the regional centers' overhead) until they receive approval from USCIS, but historically (even without a backlog of hundreds of applications at once), that application process takes several years and costs hundreds of thousands of dollars. Plaintiffs are needlessly bleeding economically because USCIS, in a website posting without any reasoned explanation, unilaterally decided it would prefer to cancel all existing regional center designations, forcing hundreds of programs to apply anew. This indefinite pause is unsustainable.

11. The agency's action is unlawful for a host of reasons. *First*, USCIS's action is contrary to the statute's plain text. For several reasons, the statutory text compels the conclusion that preexisting regional center designations granted by USCIS continue to hold force. While the Act added new anti-fraud measures, Congress made clear that these provisions sit on top of the preexisting regulatory structure. USCIS's contrary decision—holding that all the hundreds of existing regional centers have been decertified overnight—renders multiple statutory provisions contained in the Integrity Act unintelligible. Nor does USCIS's conclusion make any sense: Congress enacted the Integrity Act expressly to *shore up* the Regional Center Program and *enhance* the Program's oversight—not to destroy it and presently remove any regulation of the

billions of dollars of EB-5 capital already invested. Congress specifically took action to "*reauthorize*" the existing program, not to create a new, nearly identical one. It defies the statutory text—and the manifest congressional purpose—for USCIS to implement the Integrity Act in a manner that leads to the destruction of the regional center program. The statute's plain text and purpose thus render the agency's action unlawful.

12. *Second*, even if there were any statutory gap for USCIS to fill—here, to be clear, the statutory text admits of no such gap—USCIS's action is wholly arbitrary and capricious. It violates the most foundational precepts of administrative law for an agency to implement a statute in a manner that defeats the very purpose for which Congress passed the law in the first place. Moreover, USCIS failed to consider important aspects of the problem or less burdensome alternatives, including the statutory provisions that intended for USCIS to simply layer additional anti-fraud measures on top of the existing regulatory approvals. And the agency gutted enormous reliance interests. The cursory action does not so much as acknowledge the full aspects of the problem, the alternative mechanisms that USCIS had at its disposal, or the reliance interests at stake. An agency's enormously consequential behavior—here, toppling a multi-billion-dollar industry—cannot be accomplished by such an unreasoned Internet posting.

13. *Third*, USCIS's action is a legislative rule that did not adhere to procedural requirements. It declared prior legal actions (USCIS's designation of hundreds of regional centers) to be null and void, directing that all these entities, if they wish to resume operations as regional centers, must begin new, costly, and time-intensive legal proceedings to become redesignated. There can thus be no serious disagreement that the USCIS action at issue here had direct and immediate legal consequences. But this action was taken without following any of the procedures required by the Administrative Procedure Act ("APA"). Indeed, it is a fundamental principle of administrative law that an agency may not take such a consequential action without undertaking notice-and-comment rulemaking. USCIS certainly may not spring such a legislative rule upon the regulated public by a mere posting to its website.

14. In sum, this is a textbook example of unlawful agency action. The agency's action threatens innovative and economically significant projects, frustrates foreign investment in the United States, and precludes the creation of thousands of American jobs. The law does not permit agency action that directly contravenes statutory text or congressional intent, nor does it permit agency decisionmaking without reasoned analysis. USCIS's unilateral decision to decimate the EB-5 program must be set aside.

PARTIES

15. Plaintiff USA EB5 Immigration, LLC, d/b/a EB5 Capital, owns and operates regional centers that serve 14 states. Since its founding in 2008, it has about thirty completed and current projects and has raised over $800 million. It has a 100% project approval rate from USCIS. It is headquartered in Bethesda, Maryland.

16. Plaintiff CanAm Enterprises, LP owns and operates seven regional centers. In its thirty-five years of experience, it has raised over $3 billion in EB-5 funds for 63 projects from more than 5,800 EB-5 investors. It has more than 5,000 I-526 petition approvals, and more than 2,500 I-829 petition approvals have been issued to its EB-5 investors. It has a 100% project approval rate from USCIS. It is headquartered in New York, NY.

17. Plaintiff Civitas Capital Management, LLC owns and operates several regional centers, including the Civitas Texas Regional Center. Since its founding in 2009, it has raised more than $700 million in EB-5 investments. It has a 100% project approval rate from USCIS. It is headquartered in Dallas, Texas.

18. Plaintiff Golden State Renaissance Ventures, LLC d/b/a Golden Gate Global owns and operates several regional centers. Since its founding in 2011, it has raised over $650 million in EB-5 funds, which account for over 22,000 jobs created. It has a 100% project approval rate by USCIS. It is headquartered in San Francisco, California.

19. Plaintiff Pine State Regional Center, LLC was designated by USCIS as an EB-5 regional center in 2014. With a focus on rural manufacturing EB-5 projects, Pine State provides

financing to highly impactful job-creating projects, deploying over $100 million of foreign investor capital to date. It is headquartered in Little Rock, Arkansas.

20. Plaintiff Invest in the USA ("IIUSA") is the national membership-based 501(c)(6) non-profit trade association for the EB-5 Regional Center Program. IIUSA represents over a hundred regional center members serving forty-seven states and territories. Its mission is to advocate for EB-5 stakeholders, including its regional center members, to foster U.S. economic development and domestic job creation. It is headquartered in Washington, D.C.

21. Defendant United States Department of Homeland Security is the agency charged with administering the EB-5 Program. Its principal office is at 3801 Nebraska Ave. NW, Washington, DC 20016.

22. Defendant Alejandro Mayorkas is the Secretary of the Department of Homeland Security. He is sued in his official capacity only.

23. Defendant United States Citizenship and Immigration Services is an agency of the United States government within the Department of Homeland Security. The Secretary of the Department of Homeland Security has delegated to USCIS the authority to adjudicate applications for certain immigration benefits, including administration of the EB-5 and Regional Center Programs.

24. Defendant Ur M. Jaddou is the Director of the United States Citizenship and Immigration Services. She is sued in her official capacity only.

JURISDICTION AND VENUE

25. Plaintiffs bring this suit under the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

26. This case arises under the laws of the United States. The court's jurisdiction is thus invoked under 28 U.S.C. § 1331.

27. Venue is proper in this district under 28 U.S.C. § 1391(e) because at least one defendant resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district, and plaintiff IIUSA resides in this district.

FACTUAL ALLEGATIONS

A. EB-5 statutory background

28. As part of the Immigration Act of 1990, Congress established the EB-5 immigrant investor visa program. *See* Pub. L. No. 101-649, § 121(a) (Nov. 29, 1990) (*codified at* 8 U.S.C. § 1153(b)(5)). Congress allocates up to 7.1% of employment-based visas to the EB-5 category for "employment creation" immigrants who invest in new commercial enterprises ("NCEs") within the United States that create American jobs. *See* 8 U.S.C. § 1153(b)(5)(A). The EB-5 visa category thus provides a pathway for foreign investors to become lawful permanent residents in the United States after investing in America.

29. There are two requirements to obtain a visa under the EB-5 program. First, the investor must invest a required amount of capital. *See* 8 U.S.C. § 1153(b)(5)(A)(i). Second, the investment must "benefit the United States economy" and "create" at least ten American jobs. *Id.* § 1153(b)(5)(A)(ii).

30. An investor who receives an EB-5 visa is granted a conditional residence status. *See* Pub. L. No. 101-649, § 121(b) (Nov. 29, 1990). After two years, if he or she has satisfied the visa requirements (i.e., sustained the requisite capital at risk and created the requisite jobs), the investor may apply to remove the conditionality and receive lawful permanent residency. *Id.*

31. Congress envisioned the EB-5 program as a means of stimulating investment and economic growth in rural areas and areas with high unemployment. The statute sets aside a certain portion of visas exclusively for investors who invest in and create jobs in these "targeted employment areas." *See* 8 U.S.C. § 1153(b)(5)(B). The requisite qualifying investment capital is lowered if investing in a "targeted employment area." *Id.* § 1153(b)(5)(C).

32. The purpose of the program was "to provide new employment for U.S. workers and to infuse new capital into the country." S. Rept. 101-55, at 21. In its original form, the statute contemplated direct investment and job creation by foreign "entrepreneurs." *See* Pub. L. No. 101-649, § 121(b) (Nov. 29, 1990).

B. The Regional Center Program

33. In 1992, Congress set aside a portion of EB-5 visas solely for a more expansive method of job-creation: the Regional Center Program.

34. In an appropriations bill, Congress outlined in general terms a new program "to implement" the EB-5 visa provisions. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, § 610(a) (Oct. 6, 1992) ("1993 Appropriations Bill"). The legislature "set aside 300 visas annually for five years" for a "pilot program" involving "a regional center in the United States for the promotion of economic growth … job creation, and increased domestic capital investment." *Id.* § 610(a)-(b).

35. The Regional Center Program created more economically impactful mechanisms for investors to satisfy the statutory requirements for an EB-5 visa. Under the Program, an economic entity (such as a partnership or limited liability corporation) could receive regional center designation from USCIS to pool investments from multiple foreign investors and U.S. citizens to fund a broad range of job-creating projects. This model eases the transaction costs of foreign investment incentivized by the EB-5 program (as investors do not have to be involved in the day-to-day management of a project), and it enables larger-scale economic projects that typically create more U.S. jobs.

36. Although initially a "pilot" program, the Regional Center Program was codified extensively in the Code of Federal Regulations, and Congress reauthorized the visa set-aside provision dozens of times.

37. The program works as follows: To receive regional center designation from USCIS, the entity must submit a proposal that clearly describes its focus on a certain geographic region and how it would promote economic growth and job creation in that region. *See* 8 C.F.R. § 204.6(m)(3). The proposal must describe in detail the amount and source of capital it has received and use economically or statistically valid forecasting tools to estimate, in verifiable detail, the job-creation impacts of its investment projects. *Id.*

38. Once approved, a regional center pools investment capital to fund an NCE. There are several different models: the NCE could be a lending entity that provides loans for certain business activities, such as new construction; it could be an equity stake in a project company; or it could be a direct investment into a development project—such as a hotel, convention center, or retail or residential development.

39. The investor's visa petition must demonstrate that sufficient capital is invested in an approved regional center project and that the investment will indirectly create at least ten jobs under the methodologies set forth in the regional center's application. 8 C.F.R. § 204.6(j), (m). The regional center must maintain approval throughout the duration of the investor's path to lawful permanent residency. *See id.* § 204.6(m)(9).

40. If all goes well, investors receive a green card (i.e., lawful permanent residency) in addition to some return on their investment capital. The regional center would also receive some portion of the investment return, if any.

41. The Regional Center Program grew substantially during the 2000s. In Fiscal Year 2007, there were only 11 approved regional centers. *See* Congressional Research Service, *EB-5 Immigrant Investor Visa*, (Dec. 16, 2021), *available at:* https://perma.cc/W2XP-VS33, at 7. By the end of 2020, there were 674. *Id.* In recent years, the Regional Center Program accounted for over 95% of all EB-5 visas.

42. Each year, approved regional centers must provide annual certifications, known as a Form I-924A, to maintain their designation from USCIS. The agency collects a $3,035 filing fee for each annual statement. USCIS carefully reviews these annual certifications to ensure Program compliance, but that review does not interrupt regional center operations: project applications and investor petitions can still be filed during the agency's review. The agency may terminate a regional center's designation if it fails to submit required information or fails to demonstrate that it continues to promote economic growth. Between 2008 and 2020, USCIS terminated 532 regional centers from participation. *See* Congressional Research Service, *EB-5 Immigrant Investor Visa*, (Dec. 16, 2021), *available at:* https://perma.cc/W2XP-VS33, at 9.

43. Foreign investors have deployed billions of dollars of capital in the United States and created hundreds of thousands of American jobs through the Regional Center Program. A study by the Department of Commerce in 2017 found that in just two years, $16.7 billion of EB-5 capital was invested, generating over 170,000 jobs. David K. Henry et al., U.S. Department of Commerce, Office of the Chief Economist, *Estimating the Investment and Job Creation Impact of the EB-5 Program* (2017), *available at:* https://perma.cc/N4HR-NK8Z.

44. Congress has reauthorized the regional center set-aside provision over thirty times. On July 1, 2021, the most recent set-aside provision expired. This statutory sunset, and the lapse it created, was not unusual. For instance, there was a 36-day lapse between December 22, 2018, and January 26, 2019. *See generally Hulli v. Mayorkas*, 549 F. Supp. 3d 95, 103 (D.D.C. 2021) (describing "Congress's long history of reauthorizing the Regional Center Program").

45. Beginning July 1, 2021, USCIS stopped accepting EB-5 visa applications from the Regional Center Program until the program was reauthorized. The agency still required approved regional centers to submit their annual certifications and payments by the end of the year, even though Congress had yet to reauthorize the set-aside provision for visas under the Regional Center Program.

C. Congress reauthorizes and strengthens the Regional Center Program

46. On March 15, 2022, as part of the FY 2022 Consolidated Appropriations Act, the President signed into law the EB-5 Reform and Integrity Act of 2022 ("Integrity Act"). *See* Pub. L. No. 117-103, div. BB.

47. The Integrity Act memorializes the Regional Center Program, codifying it specifically in the Immigration and Nationality Act and the United States Code. The Act repeals the initial pilot program (Integrity Act § 103(a)) and authorizes the Regional Center Program through September 30, 2027. *See* Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)).

48. To resolve any uncertainty as to continuity of the Program and future lapses in authorization, Congress included a grandfathering provision that requires USCIS to continue to adjudicate petitions filed prior to September 30, 2026. *See* Integrity Act § 108.

49. The Integrity Act enhances oversight over regional centers. The Act, for example, requires regional centers to describe how they will monitor NCEs, disclose the identities of persons involved in the regional center, and certify that those individuals do not have a history of criminal or fraudulent activity as described in the statute. *See* Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(iii)).

50. The Act requires regional centers to undergo a USCIS audit every five years, maintain certain securities documentation, and adhere to certain compliance obligations. *Id.* (adding 8 U.S.C. § 1153(b)(5)(E)(v), (vii)).

51. The Act requires regional centers to file an application containing a comprehensive business plan, an economic analysis addressing job creation, any Securities and Exchange Commission documents, any documents provided to investors, a compliance plan, and a certification of compliance, before making any new investments or sponsoring any new projects. *Id.* (adding 8 U.S.C. § 1153(b)(5)(F)).

52. The Act imposes sanctions for a regional center's noncompliance, which may result in the center's termination, fines, or debarment of individuals. *Id.* (adding 8 U.S.C. § 1153(b)(5)(G)(iii)).

53. Besides these new anti-fraud measures, the reauthorized Regional Center Program codified by Congress in the Integrity Act remains materially unchanged. The regional centers still serve the same purpose that they always have: They facilitate investors' ability to satisfy the EB-5 statutory requirements by allowing indirect investment, with continuing incentives to invest into rural and other targeted employment areas. *See id.* (adding 8 U.S.C. § 1153(b)(5)(E)-(S)).

54. Congress made clear that implementation of the new anti-fraud measures was not intended to disrupt the EB-5 program. It provided a 60-day window for the Act to go into effect, in order to allow USCIS time to plan how it will implement the new measures. *See* Integrity Act

§ 103(b)(2). Nonetheless, Congress wanted USCIS to immediately resume adjudication of pending petitions from regional center investors. "The Secretary of Homeland Security shall continue to adjudicate petitions and benefits … during the implementation of this Act and the amendments made by this Act." *See id.* § 105(c). And business plans approved prior to the date of enactment remain binding for purposes of adjudication of subsequent EB-5 visa petitions. *See id.* § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(F)(ii)).

D. USCIS categorically strips all regional centers of their authorization in a website post

55. Following enactment of the Integrity Act, USCIS posted an "alert" on the EB-5 Immigrant Investor Program page on its website. The announcement categorically determined that "regional centers previously designated … are no longer authorized." The agency remarked, in turn, that the Integrity Act "requires all entities seeking regional center designation to provide a proposal in compliance with the new program requirements." USCIS, *EB-5 Immigrant Investor Program*, https://perma.cc/M46J-LWSD (visited May 17, 2022); *see* Ex. A.

56. Plaintiffs owned and operated approved, designated regional centers in good standing prior to USCIS's announcement. This putative action by USCIS—which suggests that they are no longer designated regional centers and must expend substantial time, money, and effort to become designated again—immediately injures plaintiffs.

57. The announcement clarified that no process then existed in which a regional center could apply for authorization. USCIS stated it was "not accepting Form I-924, Application For Regional Center Designation Under the Immigrant Investor Program, for this purpose." *Id.* Instead, regional centers must wait for USCIS to "provide further guidance to entities desiring to be designated as regional centers under the new program." *Id.*

58. On May 13, 2022, USCIS released a new Form I-956, Application for Regional Center Designation. The filing fee is $17,795, meaning that just from preexisting regional centers reapplying for designation, USCIS stands to collect over $11 million in filing fees alone.

1. The agency's announcement guts the Regional Center Program

59. The drastic consequences of USCIS's announcement cannot be overstated. In essence, the agency's website post decertified every existing regional center—over six hundred of them, with tens of billions of dollars already invested in existing ventures. The agency's action forces all these existing approved regional centers, including Plaintiffs', to start from scratch, creating an enormous backlog and grinding to a halt investments, job creation, and immigration through the EB-5 pathway. This proposition is effectively a death knell for the Regional Center Program.

60. As of October 25, 2021, there were 632 approved regional centers in operation. USCIS, *Approved EB-5 Immigrant Investor Regional Centers*, https://perma.cc/NDR3-WPY4 (visited May 21, 2022).

61. USCIS has a long history of prolonged adjudications. Prior to its announcement, USCIS typically took at least two years, and sometimes up to nine years, to certify the designation application of a *single* regional center. For instance, in FY2021, the median processing time for an I-924 regional center application was 22.1 months, and in that same year, only 14 new applications were submitted. *See* Ex. B. Those prolonged processing times will necessarily increase exponentially if USCIS is flooded with over *six hundred* applications at once. The instantaneous backlog USCIS has created is untenable.

62. Indeed, it appears that, in the prior fiscal year, USCIS approved approximately 39 I-924 applications requesting regional center designation. In the two fiscal years before that, USCIS approved 24 each year. And at the end of FY 2021, USCIS had 138 pending I-924 applications it had yet to adjudicate (and which it will never adjudicate pursuant to its categorical action, despite collecting $17,795 in fees for each one). Even if USCIS could reach a sustained approval rate of 40 applications per year, it would take more than *15 years* for USCIS to re-designate the more than 600 regional centers that currently exist—a preposterous position, given that this law sunsets in 2027.

63. USCIS also has a history of flouting legal timelines for its adjudications in the EB-5 program. Although USCIS is required by regulation to adjudicate a Form I-829 Petition by Investor to Remove Conditions on Permanent Resident Status within 90 days (8 C.F.R. § 216.6(c)), this fiscal year, the median time it has taken USCIS is *41.5 months* (Ex. B).

64. Rather than allow investments and projects to continue while USCIS administratively implements the revised accountability measures, USCIS's announcement puts the entire statutory scheme in jeopardy by making investors and projects wait, for a span of many years, while USCIS administratively implements the statute and engages in a lengthy process of reauthorizing hundreds of regional centers that—until the USCIS action at issue—were already authorized.

65. The Integrity Act made visas available under the Regional Center Program through only September 30, 2027. *See* Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)). Given the historical pace of USCIS's approval of regional center applications, the enormous backlog created by its announcement, and the administrative logistics of designing a new process entirely (all problems of USCIS's own making), it is likely that USCIS's "new" Regional Center Program will barely get off the ground by the time it expires. At that point, it will be too late for investors to obtain the immigration benefits at the heart of this program and American jobs will be needlessly lost.

66. As USCIS apparently sees it at present, without any approved regional centers, investors cannot pursue an EB-5 visa under the Regional Center Program. Yet Congress has allocated up to 7.1% of the total employment-based visas available to the EB-5 pathway, or about 10,000 visas annually. *See* 8 U.S.C. § 1153(b)(5). Historically, roughly 96% of all EB-5 visas went to investors under the Regional Center Program. *See* Congressional Research Service, *EB-5 Immigrant Investor Visa*, (Dec. 16, 2021), *available at:* https://perma.cc/W2XP-VS33, at 7. USCIS's announcement will therefore waste tens of thousands of EB-5 visas allocated by Congress.

67. USCIS's announcement has had devastating effects on regional centers, including the ones operated by Plaintiffs. It puts at risk the sustainability of the industry and, consequently, billions of dollars of invested capital in the United States, along with the thousands of American jobs that investment was specifically designed to create.

68. Regional centers obtain revenue from two primary sources: (1) a portion of the return on investment from the investor's deployed capital and (2) a one-time administrative fee from new investors. Many regional centers require new investors and new projects to be able to continue operations.

69. USCIS's categorical deauthorization prevents regional centers from obtaining new qualifying investments under the Regional Center Program. Without any new investors over an extended period, regional centers cannot commit to new project deals, nor will they receive any administrative fees to cover overhead expenses.

70. Even after USCIS's categorical deauthorization, regional centers still have substantial ongoing costs. They have investors with pending visa petitions before USCIS with capital at risk. They must therefore maintain obligations to existing investors and support their own payroll notwithstanding USCIS's announcement.

71. USCIS's action places regional centers in an untenable financial and operational situation. These entities will somehow have to continue operations without any revenue or growth and with ongoing costs. This financial bleeding is unsustainable. They will be forced to lay off workers and halt ongoing projects—if, indeed, they are able to survive at all.

72. Making matters worse, USCIS's announcement created substantial and unforeseen uncertainty for the industry and investors. The agency failed to set forth any plan or guaranteed timeline for recertification of regional centers. As a result, regional centers have been forced to delay or cancel construction projects, and some investors have sought to withdraw their investments, losing faith in the government's promise to approve their visa petitions.

73. The uncertainty created by USCIS's announcement will have long-lasting effects. The arbitrariness of the agency's action has damaged the reliability of the Regional Center

Program's reputation, hampering regional centers' ability to recruit new investors in the future. Without consistency, predictability, or assurances that the government will continue the Regional Center Program unabated, the decision to pursue an EB-5 visa is difficult to justify for many prospective investors.

74. The consequences of USCIS's action directly threaten American jobs and economic development. Most directly, the agency-created lapse in regional center authorization endangers ongoing development projects, which are inherently vulnerable to delays without a predictable flow of capital. For instance, construction bids for contractors last for at most a few months, and building permits last for at most a year. Bank financing letters of intent last for thirty days and require 100% of the equity committed upfront. All of these deadlines will come to pass, and thus halt ongoing construction projects, before USCIS gets around to reauthorizing regional centers. Regional center investments have spurred economic development and accounted for hundreds of thousands of new jobs, all of which are needlessly jeopardized by USCIS's action.

75. Regional centers, including those operated by Plaintiffs, are exposed to substantial risk as a result of USCIS's action. Without designation from USCIS, regional centers risk violation of initial representations and warranties provided to lenders and investors. If regional centers take outside funding, they risk a USCIS determination that they deviated from the already-approved business plan submitted by the regional center, which pending visa petitions must rely upon. And without new investors (which cannot be obtained without designation from USCIS), regional centers cannot keep projects, and their operations, afloat.

76. All the while, regional centers will have to needlessly divert their dwindling resources away from growing their businesses, paying investors, and developing new projects, into investing substantial additional sums to receive designation from USCIS all over again. Plaintiffs, and all other existing approved regional centers, already invested millions of dollars to receive this designation the first time.

77. Put simply, the agency's decision threatens the very existence of Plaintiffs' businesses and the Regional Center Program.

2. USCIS's action is contrary to the statute's plain text

78. The Integrity Act forecloses USCIS's categorical deauthorization of regional centers. Congress intended to reinvigorate the Regional Center Program, not destroy it. The statutory text cannot be construed to endorse the *per se* deauthorization of existing regional centers, nor to leave USCIS with any discretion to take this kind of categorical action. Rather, as it pertains to existing regional centers, the statutory text simply adds new anti-fraud and compliance measures to which they must adhere.

79. In multiple ways, the statutory text makes plain that Congress contemplated—and decided—that preexisting regional centers should not have to begin their certification processes anew, wasting the enormous resources and time (both from the private entities and the government administrative agencies) that had resulted in the more than 600 approved regional centers. The statute thus did not strip regional centers of their designation.

80. *First*, as the Act defined a "regional center"—and specifies the individuals eligible for an EB-5 visa—preexisting regional center designations survive enactment of the Integrity Act.

81. That is, the Act makes visas available to "qualified immigrants participating in a program implementing this paragraph that involves a regional center in the United States, which has been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment." Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)). Preexisting approved regional centers already satisfy that definition.

82. As a threshold matter, existing approved regional centers are participating "in a program implementing this *paragraph*." Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)) (emphasis added). The "paragraph" at issue is 8 U.S.C. 1153(b)(5), or the general EB-5 visa category—not the *sub*paragraph added by the Integrity Act that codifies and strengthens the Regional Center Program. Thus, the pilot program under which existing regional centers received their designation was "a program implementing this paragraph." *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993,

Pub. L. No. 102-395, § 610(a) (Oct. 6, 1992) ("Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to *implement the provisions* of such section.") (emphasis added).

83. Existing regional centers also have already been "designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment." Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)). That definitional language tracks the statutory language in the pilot program. *Compare id.*, *with* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, § 610(a) (Oct. 6, 1992) ("for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment"). For all practical purposes, existing regional centers were designated using the same criteria set forth in the Integrity Act for new regional centers. Indeed, Plaintiffs' I-924 approval notices largely track this same language, confirming they were approved to "promote economic growth." And as recently as last year, regional centers had to submit an I-924A to demonstrate to USCIS that they were still satisfying those requirements. 8 C.F.R. § 204.6(m)(6)(i)(B).

84. Nowhere in the text of the statute did Congress expressly state that existing regional centers, which satisfy those definitional requirements, were deauthorized or defunct, or that they had to start the regulatory process anew.

85. Because Congress defined "regional center" with purposeful breadth to encapsulate regional centers already approved by USCIS in its codified Regional Center Program—indeed, Congress specifically made visas available to investors who had invested in such existing regional centers—it plainly intended for those existing regional centers to sustain their operations without interruption by USCIS.

86. It is of no relevant consequence that Section 103(a) repealed the pilot program enacted in the 1993 Appropriations Bill. *See* Integrity Act § 103(a).

87. As a legal matter, that statutory provision only had the effect of requiring USCIS to "set aside visas" allocated to EB-5 to investors qualifying through investment in a regional center specifically, rather than through a direct, job-creating entrepreneurial venture. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, § 610 (Oct. 6, 1992). The repealed statute itself, therefore, did not create or authorize regional centers as a legal matter. *Id.* Thus, its subsequent repeal has no bearing on the authorization of regional centers already approved by USCIS, nor does it change the fact that existing regional centers "ha[ve] been designated by the Secretary … on the basis of a proposal for the promotion of economic growth." Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(i)).

88. As a factual matter, the most recent reauthorization of that particular statutory provision had already expired prior to Congress's enactment of the Integrity Act (and thus the repeal). *See* Div. O, Title I, Sec. 104 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (2020) (reauthorizing the pilot program in Section 610 of the Departments of Commerce Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, until July 1, 2021). Notwithstanding that expiration (and consistent with the preceding paragraph), regional centers continued to operate and maintain their designation from USCIS—the agency even required them to submit their annual I-924A certification and fees.

89. Thus, the repeal in Section 103(a) has no bearing as to whether existing regional centers remain certified. Instead, it serves an organizational purpose. The subsequent paragraph, Section 103(b), states that the reformed Regional Center Program will now be memorialized in the INA, and thus the U.S. Code. *See id.* § 103(b) ("Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end the following: …."). The expired statutory provision, by contrast, had never been codified.

90. *Second*, the grandfathering provisions in the Integrity Act confirm that regional center designations must survive the Act's passage.

91. The Integrity Act requires USCIS to continue adjudicating pending petitions filed by investors who have put their capital at risk in existing projects run by existing regional centers. *See* Integrity Act § 105(c). That only makes sense if Congress believed that those existing regional centers would continue to exist—otherwise those investors would not just potentially lose any accountability for their investments and the protections afforded by USCIS's oversight over regional centers, but also be ineligible for a visa altogether. An investor's capital must be at risk and tied to an approved regional center for his visa to be approved, and for the conditional status of his permanent residency to ultimately be removed. *See* 8 C.F.R. 204.6(m)(9); *see also* Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(M)(ii)) (in the case of a regional center terminated for non-compliance, providing good-faith investors 180 days to reassociate their investment with a different approved regional center to continue to pursue their immigration benefits). Congress knew this (indeed it reiterated the requirement in the Integrity Act) and specifically provided that previously approved business plans, including those approved "before the date of the enactment of this subparagraph, shall be binding for purposes of the adjudication" of those investors' visa petitions. *Id.* § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(F)(ii)). Congress clearly intended to facilitate the resolution of the pending petitions of existing investors. That is only possible if existing approved regional centers maintained their authorization upon enactment of the Integrity Act.

92. *Third*, the Act explicitly recognizes, and treats as "binding," approved I-924s (regional center applications) under the pilot program.

93. As just explained, the Act determined that approved business plans would continue to be binding as to future adjudications. Specifically, the Act states: "The approval of an application under this subparagraph, including an approval before the date of the enactment of this subparagraph, shall be binding …." *Id.* § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(F)(ii)). Prior to the Integrity Act, a business plan "application" was an amendment to Form I-924, the application for a regional center. The Act declares that "an approval before the date of the enactment of this subparagraph"—the subparagraph being "(F) Business Plans for Regional Center Investments"—

is nonetheless "approval of an application under this subparagraph." *Id.* But the subparagraph did not exist before the Integrity Act was enacted. The only way this text makes sense is if the Integrity Act supplemented the existing Regional Center Program and recognized that previously approved designations would continue to bind. This text is incomprehensible if, as USCIS apparently contends, the Integrity Act *eliminated* all approved regional centers and sought to start over. That is, this sentence can only be understood to recognize that existing approved Form I-924s (the applications for regional centers)—those approved "before the date of the enactment of [the Integrity Act]"—continue to have legal effect and qualify as "approval[s] of an application under [the Integrity Act]." *Id.*

94. *Fourth*, the enforcement mechanisms make clear that the Integrity Act's enhancement provisions are designed to impact existing, approved regional centers prospectively. They are not designed, as USCIS would have it, to require cancellation of all preexisting regional centers, with new applications to file.

95. The Integrity Act requires the Secretary to "terminate the designation of a regional center" that fails to comply with any of the new anti-fraud and compliance measures instituted by the Act. *See, e.g.*, Integrity Act § 103(b)(1) (termination for failing to consent to audit or for failing to comply with redeployment of funds provision, among many other requirements). The Act therefore establishes a process by which USCIS may *individually* deauthorize existing regional centers for failure to comply with the Act's new requirements moving forward. Nowhere does Congress mention categorically stripping hundreds of regional centers that *do* comply of their designation.

96. *Fifth*, Section 103 is entitled "*Reauthorization* and Reform of the Regional Center Program." (emphasis added). Congress's choice of the term "reauthorization" demonstrates it did not intend to start anew, and that it did not characterize its enhanced anti-fraud measures as a new program entirely but instead a "reform" of the already existing program.

97. *Sixth*, it is evident from the text that, in adopting the Integrity Act, Congress intended to fully revive the Regional Center Program, rendering it functional and operable, on May

14, 2022. The Act's amendments pertaining to additional or modified requirements for investors' visa petitions went into effect on the date of the Act's enactment: March 15, 2022. *See* Integrity Act §§ 102(e), 103(c)(2), 104(b)(1), 105(b). But the portions of the Act that impose additional anti-fraud and compliance requirements on regional centers state that those additional requirements "shall take effect on the date that is 60 days after the date of the enactment of this Act." Integrity Act § 103(b)(2). The import of this lag in effective date is to give both existing regional centers and USCIS a reasonable period of time to implement the additional requirements, which would then become enforceable at the end of that transition period. Or as Senator Cornyn put it, the "60-day implementation period … allow[s] USCIS to begin processing EB-5 petitions and applications that have been on hold since the lapse" and "[f]ollowing that initial period, *existing regional centers* will be able to *immediately get back to work* driving investment into the U.S. and facilitating the creation of jobs across the country." 168 Cong. Rec. S1220 (daily ed. Mar. 16, 2022) (emphasis added). Had Congress intended to simply start all over from scratch, there would have been no need to specify an alternative effective date for the heightened anti-fraud measures imposed on regional centers, because none would be approved at all until USCIS implemented the new anti-fraud measures in a new application process. USCIS's action, however, stalls the program entirely for an inordinate amount of time, preventing investments, wasting annually allocated visas, and costing jobs. Congress carefully designed the Integrity Act to avoid precisely these consequences and to ensure a smooth transition, but USCIS's action nullifies that design.

98. The Act provided a mechanism, moreover, for regional centers to bring their operations and reporting into compliance with the Integrity Act without losing their designations. Regional centers may amend their proposals to report "changes to [their] organizational structure, ownership, or administration," to report new "individuals not previously subject to the requirements under [the Integrity Act]," and to report "any information, documents, or other aspects of the investment offering described in [a business plan]." Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(vi), (F)(iii)). By all accounts, any additional certification information

regional centers must submit under the Integrity Act falls within those categories. *Id.* (adding 8 U.S.C. § 1153(b)(5)(E)(iii), (F)(i)). Consistent with Congress's expeditious intent and delayed effective date for the anti-fraud requirements, that same provision requires USCIS to continue to "adjudicate" business plans and investors' visa petitions even before USCIS adjudicates the amendment. Integrity Act § 103(b)(1) (adding 8 U.S.C. § 1153(b)(5)(E)(vi)).

99. Indeed, several co-sponsors of the Integrity Act wrote to the agency to explain that "requiring all regional centers to go through a process to be redesignated is not required under the [Act]." Letter from Senator John Cornyn, et al., to Secretary Alejandro Mayorkas (May 9, 2022), https://perma.cc/2F23-YZZD. "Instead, the agency currently has the authority and the tools to confirm compliance with the new integrity measures without the need for a full-scale redesignation of existing regional centers," which include the ability to "file an amendment application" and an "annual compliance certification." *Id.*

100. The swiftness with which Congress intended to fully reinvigorate the Regional Center Program is also evidenced in its express permission for investors to file their visa petitions before USCIS adjudicates a regional center's business plan or amendment for a project. Under the Act, as soon as "a regional center has filed an application for approval of an investment," that is, a business plan for a particular project, the investor "may file a petition" for an EB-5 visa. Integrity Act § 105(a). But a regional center cannot file any business plan until it receives designation from USCIS. It contravenes this expeditious intent to conclude that Congress also intended those same visa petitions to await filing for an extended period of time, well after the Act's effective date, while regional centers await designation from USCIS all over again.

101. Putting this all together, the statutory text makes apparent that Congress did not categorically deauthorize over six hundred regional centers. Indeed, if that had been the intent of Congress, it would have said so explicitly, as Congress does not "hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001). Rather than inferentially creating a sea change—stripping more than 600 entities of their valuable certifications, earned at

the investment of great time and money—the statute expressly requires their continued designation, while USCIS implements the statute's new anti-fraud requirements.

102. In all, the statute flatly *precludes* USCIS from taking the action it took here—deauthorizing hundreds of programs, overnight, through a posting to a website. At the very least, the statute certainly does not unambiguously require this result.

3. USCIS did not follow the requisite APA procedures

103. Even if USCIS's categorical deauthorization were not entirely foreclosed by the statute itself, it was nonetheless an unlawful agency action because the agency did not comply with the procedures that the APA imposes on such substantive action.

104. USCIS's action is a "legislative rule" because it has the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). The announcement categorically stripped the approval of all existing regional centers. This decision plainly "affect[ed] individual rights and obligations" (*id.* (quoting *Morton v. Ruiz*, 415 U.S. 199, 232 (1974))), as regional centers cannot recruit new investors or invest in new projects if they are not certified by USCIS.

105. More, USCIS has taken the position that, as a result of this action, the hundreds of existing regional centers must initiate *new* legal proceedings—they must apply again for regional center designation by filing a new USCIS Form I-956, titled "Application for Regional Center Designation." Because the USCIS determination obligates entities to file new applications, it is necessarily a "legislative rule" because it has legal force. Indeed, it declares that the results of prior legal proceedings—that is, previously approved regional center designations—are now void.

106. USCIS issued this rule without publishing a notice of proposed rulemaking in the Federal Register or allowing the public an opportunity to comment, as is required under the APA. 5 U.S.C. § 553(b). It is therefore unlawful and must be set aside.

107. In addition, an agency must account for the "serious reliance interests" that have built up around its "longstanding policies" when it takes any action—legislative rule or not. *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020). USCIS provided no account or

consideration of the serious reliance interests of either regional centers or individual investors under the government's longstanding Regional Center Program.

108. Here, there are enormous investment-backed reliance interests at stake in the existing regional center designations: Those entities have invested millions of dollars and thousands of hours into achieving these hard-earned designations over periods spanning years. Indeed, the more than 600 designations at the time of the USCIS action are the product of decades worth of time and monetary investment in reliance on continuing regional center designation. On the basis of these longstanding policies, investors have committed billions of dollars to fund projects across America, creating hundreds of thousands of jobs. In these circumstances, the "serious reliance interests" are far too great to simply disregard when an agency fashions the rules that will prospectively govern.

109. Moreover, for an agency action to surpass the arbitrary and capricious standard, the agency must consider the costs, as well as the benefits, of that action. As then-Judge Kavanaugh explained, "reasoned decisionmaking requires assessing whether a proposed action would do more good than harm." *Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 732 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) (collecting authorities). USCIS, however, did not engage in any reasoned analysis at all. It has never calculated how long it will take hundreds of new regional centers to apply anew for designation, how long it will take for USCIS to adjudicate these new applications, and how much this will all cost. Nor has USCIS so much as contemplated the enormous effect its action would have on this significant visa program, which Congress expressly intended to continue, as a valuable component to the national welfare.

110. USCIS did not follow any of these procedural requirements. It merely posted its decision, without explanation, on its website.

111. Had USCIS properly complied with the APA's procedural requirements, it likely would not have taken an action contrary to law and would have instead chosen a less arbitrary and wasteful approach in applying the Integrity Act. Instead, USCIS's unilateral action needlessly

wastes administrative resources, duplicates efforts, and jeopardizes American jobs—all while exceeding the agency's statutory authorization.

112. And, at bottom, the agency reached an ultimately arbitrary and capricious conclusion: It implemented a statute designed to reauthorize, indeed *save* the EB-5 program (which, when Congress acted, had already lapsed), as a stealth effort to in fact destroy the program wholesale. That is not a reasonable conclusion to draw from Congress's careful action, designed to ensure that the EB-5 program continues to create hundreds of thousands of jobs in the years ahead.

CLAIMS FOR RELIEF

Count I
Administrative Procedure Act:
Agency action in excess of statutory authority

113. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

114. The APA authorizes courts to set aside agency action that is "not in accordance with law" or "in excess of statutory … authority." 5 U.S.C. § 706(2).

115. "[I]t is 'axiomatic' that 'administrative agencies may act only pursuant to authority delegated to them by Congress.' … If 'Congress has spoken directly to the precise question at issue' and 'the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" *Air All. Houston v. EPA*, 906 F.3d 1049, 1060 (D.C. Cir. 2018) (quoting *Clean Air Council*, 862 F.3d at 9; *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-843 (1984)). Thus, agency action that contravenes the statute must be set aside.

116. The statutory text is plain that in reauthorizing the Regional Center Program in the Integrity Act, Congress did not *per se* deauthorize approved regional centers. To the contrary, the Act reflects an unambiguous intent that approved regional centers sustain their operations so that USCIS could smoothly implement the Integrity Act and reinvigorate the Program immediately.

117. Because USCIS acted contrary to the statutory text, its action was in excess of statutory authority.

Count II
Administrative Procedure Act:
Arbitrary and capricious agency action

118. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

119. The APA authorizes courts to set aside agency action that is arbitrary and capricious. 5 U.S.C. § 706(2).

120. USCIS's action has the practical effect of eviscerating the Regional Center Program. That was *not* Congress's intent. Congress meant to reinvigorate the Program.

121. Moreover, the agency's action has the effect of undermining one of the central features of the Integrity Act: to strengthen reporting, oversight, and the ability to individually sanction regional centers for failure to comply with the Act's enhanced anti-fraud measures. Congress could not have possibly intended to take all existing controls off billions of dollars of existing Regional Center Program investments by terminating the designation (and thus the reporting obligations) of the only entities responsible for oversight of that investment.

122. USCIS's action thus implements the statute in a way that destroys the very purpose of the law. That is necessarily arbitrary and capricious. This alone renders USCIS's action illegal.

123. In taking this destructive action, USCIS did not consider the administrative burden it created, or the practical consequences of such burden. By needlessly creating a backlog of over 600 regional center applications, USCIS indefinitely stalled the Regional Center Program, halting billions of dollars in economic development and jeopardizing hundreds of thousands of American jobs. The agency therefore failed to consider an "important aspect of the problem." *Motor Vehicle Manufacturers Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

124. USCIS's action will cause the first few regional centers they approve (necessarily an arbitrary selection given the hundreds applying at once) to receive a windfall of new investors,

as they will be the only regional centers capable of providing a pathway for investors to obtain a visa. Meanwhile, longstanding regional centers with a proven track record of ably navigating federal law and generating returns on investment will be left waiting for approval, hoping to receive authorization before the program expires again. This arbitrary result is unjustifiable and was never contemplated in the statutory scheme.

125. There are numerous more efficient alternatives USCIS had at its disposal to implement the Integrity Act without categorically decertifying every existing regional center. Approved regional centers have already invested millions of dollars to secure designation from USCIS, and in fact, each year they have been required to submit Forms I-924A with updated information to maintain continued approval. USCIS could have quite simply required existing regional centers to supplement their disclosures with the new information required under the Integrity Act. Or USCIS could have required regional centers to submit amendments to their existing Form I-924s. Instead, the agency is needlessly wasting both the government's and regional centers' resources by having regional centers start over from scratch.

126. By taking a wasteful approach without considering the important destructive consequences of its action on the Regional Center Program—and the resulting economic costs—the agency acted arbitrarily and capriciously. *See Michigan v. EPA*, 576 U.S. 743, 753 (2015).

127. An agency must also account for a party's "serious reliance interests" on its "longstanding policies" when it issues a rule. *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020). "It would be arbitrary and capricious to ignore such matters." *Id.*

128. USCIS categorically decertified approved regional centers without providing any analysis or account of the serious reliance interests by both regional centers and investors under the government's three-decade-old Regional Center Program.

129. For a rule to surpass the arbitrary and capricious standard, the agency must also engage in a reasoned cost-benefit analysis and at least consider each "important aspect of the problem" (*State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43). USCIS, however, did not engage in any reasoned analysis at all. It merely posted its decision on its website.

Count III
Administrative Procedure Act:
Failure to comply with the APA's rulemaking procedures

130. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

131. USCIS's action is a "legislative rule" subject to the APA's procedural requirements because it has the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). USCIS's announcement "affect[ed] individual rights and obligations." *Id.* (quoting *Morton v. Ruiz*, 415 U.S. 199, 232 (1974)). The agency categorically determined that all existing regional centers lost their designation, meaning they could no longer recruit new investors or certify for existing investors the requisite job creation for a visa. The announcement effectively halted, indefinitely and without any warning, their ability to function as a business.

132. Moreover, it obligates any regional center that wishes to continue to do business to file a wholly new legal proceeding, by applying for designation anew via a USCIS Form I-956. Thus, USCIS's action voids existing legal certifications and directs that, if any entity wishes to be treated as a regional center prospectively, it must file a new application with the agency.

133. The APA requires an agency to provide public notice of proposed legislative rules and an opportunity for comment, unless the agency "for good cause" finds that notice and comment "are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b).

134. Notice and comment rulemaking is therefore required for legislative rules in all but the most exceptional circumstances. *See New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980). This procedure "ensure[s] the agency has all pertinent information before it when making a decision." *Mendoza v. Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014) (citation omitted).

135. USCIS did not publish a notice of proposed rulemaking in the Federal Register prior to its *per se* deauthorization of all regional centers. Nor did it give the public an opportunity to comment on its action.

136. There was no good cause for bypassing notice and comment. Delay here would have merely maintained the status quo and allowed USCIS time to thoughtfully implement the Integrity Act.

137. Had USCIS properly complied with the APA's procedural requirements, it likely would not have taken such a wasteful action contrary to law.

138. Therefore, USCIS's action was issued "without observance of procedure required by law" and must be "set aside." 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and that the Court:

(a.) Set aside USCIS's categorical deauthorization of preexisting approved regional centers and enjoin Defendants from *per se* deauthorizing regional centers approved prior to passage of the Integrity Act;

(b.) Declare that the Integrity Act does not permit USCIS to categorically deauthorize preexisting approved regional centers and that USCIS's determination was arbitrary and capricious;

(c.) Award Plaintiffs attorney's fees and costs; and

(d.) Award Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: May 24, 2022

Respectfully submitted,

/s/ *Paul W. Hughes*

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**pro hac vice motion forthcoming*