

Written Testimony of

Daniel J. Healy

**Chief Executive Officer
Civitas Capital Group**

**Hearing on
The Investor Visa Program: Key to Creating American Jobs**

**Before the
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
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Mr. Chairman and Distinguished Members of the Committee:

Thank you for the opportunity to testify today. My name is Daniel J. Healy. I am the Chief Executive Officer of Civitas Capital Group, a boutique asset management firm based in Dallas, Texas. My testimony begins with a brief summary of my background and that of my firm. Next, I discuss the vital importance of permanently reauthorizing the EB-5 Regional Center program, an engine of American job creation, drawing primarily upon my experience managing the City of Dallas Regional Center on behalf of the City of Dallas, Texas. Finally, I conclude with recommendations for improvement of the program and my thoughts on recent initiatives announced by U.S. Citizenship and Immigration Services (USCIS).

Company Background

Civitas Capital Group's lines of business include management of investment funds under the EB-5 Regional Center program, as well as alternative investments and private wealth management. In addition, we are in the process of acquiring a FINRA-member securities broker-dealer.

Prior to founding Civitas in 2008, I held a senior executive position with the real estate private equity arm of the San Antonio insurance firm Southwest Business Corporation. I also held a senior position with a Dallas-based investment advisor with approximately \$23 billion in assets under management as of this writing. My roles at these firms involved management of commercial real estate investments and portfolios on behalf of both institutional and high-net-worth individual investors, as well as investor relations, general financial management and other duties. I have negotiated, documented, executed and managed dozens of real estate investments, including senior debt, equity and structured transactions totaling several hundred million dollars. I am experienced with real estate and private equity fund structuring and management. In addition, I have served as Chief Compliance Officer of a securities broker-dealer. I currently maintain FINRA Series 7, 24, 28 and 63 securities registrations.

The EB-5 Regional Center Program: Creating American Jobs
Case Study: The City of Dallas Regional Center

Mr. Chairman, jobs are at the top of the agenda here in Washington and at kitchen tables across this nation. This being the case, my message today could not be more timely: the EB-5 Regional Center program is an extremely effective catalyst for job creation, and Congress should act swiftly to permanently reauthorize it.

The EB-5 Regional Center program came to my attention in 2008, at the outset of what has become a global credit crisis of historic proportions. For many commercial real estate projects, on which I was focused at the time, traditional sources of financing – commercial banks, credit companies and other lenders, especially – refused to lend or simply disappeared altogether. As the credit crisis developed into a full-blown recession, illiquidity worsened and many projects were shelved or even abandoned midstream. While Texas has fared better in the downturn than much of the rest of the United States, there is no question that the state has been hard-hit by the sluggish economy and that both business and project financing dried up, a situation that has improved little in the last three years. It was in this context that I began to explore the EB-5 program with the City of Dallas.

I am pleased to report that as a result of a collaborative effort between Civitas and the City, Civitas Capital Management, LLC, is the manager of the City of Dallas Regional Center (CDRC), a unique public-private partnership. Forward-thinking leaders at the City of Dallas envisioned creating a Regional Center to facilitate economic development, but they recognized that investment management is best left to the private sector. Civitas collaborated with the City to design a Regional Center that reflects the pro-business, pro-growth culture that has made Dallas a magnet for employers and families alike.

USCIS approved the City of Dallas Regional Center in late 2009, and we identified our first project in February 2010. In the short time since then – just 17 months – the CDRC has committed to six high-quality investments totaling \$91 million. These investments will require 182 foreign nationals to invest \$500,000 apiece, and will be required by EB-5 rules to create a minimum of 1,820 new jobs. In practice, the job creation associated with each of these investments exceeds this minimum number by a wide margin; Civitas's internal underwriting typically requires job creation of at least 120% of the legal requirement.

In this short period, the CDRC has provided low-cost, flexible capital for projects across a range of industries, including \$15 million for a call center, \$5.5 million for a boutique hotel, and \$8.5 million to help the oldest chain of Tex-Mex restaurants in the country open four new locations.

At its core, the EB-5 program is about jobs, and I am very pleased to report that the first four CDRC investments, which total \$37 million and will be funded by 74 foreign investors, are forecasted to create a total of 1,499 new jobs in Dallas. This exceeds the minimum EB-5 job creation requirement of 740 new jobs by more than 50%. Our fifth and sixth investments, which are in the early stages and total \$54 million, are expected to create a substantial number – more than 1,500 – of additional direct and indirect jobs. I am particularly proud of one of these, and would like to highlight it for the Committee as an example of exactly what the EB-5 program makes possible in these difficult economic times.

Civitas and the CDRC recently committed to loan \$9 million to an experienced senior housing operator for the purpose of establishing two affordable assisted living facilities in Dallas. Both of these facilities will be located in areas of Dallas which have long been underserved. As Members on the Committee are certainly aware, the aging of the Baby Boom generation has resulted in quite an increase in demand for assisted living and other seniors' housing facilities

across the country, and Dallas is no exception. However, in Dallas, as in many other cities, development in this sector has largely been limited to higher-end facilities targeted toward residents who are insured or have the means to pay privately. There are very few, if any, options for middle- and lower-income Dallas residents who wish to stay in Dallas, let alone stay in their neighborhood near family and friends.

That is where the CDRC's most recent project comes in: these two facilities are smaller, designed to attract residents from their immediate areas, rather than competing to attract people from all over the Dallas-Ft. Worth area, as is typical. The low cost of the CDRC's EB-5 financing, combined with the operator's innovative financial structure, is a crucial factor in making these projects financially feasible, and the City of Dallas is stepping up with a \$1.5 million bridge loan to help facilitate development of the first project. In addition to this being a solid and conservative financial investment for the CDRC's EB-5 investors, Dallas wins by both creating jobs within the City and facilitating the development of housing for its older middle- and lower-income residents, so they are not forced to leave the City in order to receive the care they need. I am very proud of this outcome, and I look forward to a great many similar lasting and positive impacts on my hometown in the future.

Civitas has more than \$150 million in additional EB-5 investments in the pipeline for the CDRC, and is expanding its EB-5 activities to new markets, including Houston, San Antonio and Austin. We are also working closely with the City of Amarillo on their ambitious downtown redevelopment plan, which will include a 300-room hotel and a minor league baseball stadium, at a cost of \$120 million. Without \$40 million in EB-5 capital, this project would be impossible in today's credit markets, and Amarillo would lose a rare opportunity to create more than 1,000 jobs while revitalizing its downtown economy.

Civitas Capital's experience with the EB-5 Regional Center program – in particular, the CDRC's rapid growth and facilitation of projects that would be impossible absent EB-5 capital, and our rapid growth and expansion into new markets – clearly demonstrates not just the great potential of the EB-5 Regional Center program to have a positive impact on job creation and economic growth in the United States, but also what the program is accomplishing *right now*.

Building on Success: Permanent Reauthorization

Members concerned that the EB-5 program has been underutilized in the past should rest easy – those days are over. Civitas is hardly alone in grasping the huge potential of the EB-5 program to facilitate economic activity and create jobs. When I began evaluating the EB-5 program in 2008, there were perhaps 35 Regional Centers; of those, only a handful were active. Today, there are 180 in 36 states¹ – almost a sixfold increase in just three years. There are success stories like the CDRC's all over the United States. Among the most notable is Jay Peak Resort in Vermont, represented at the hearing today by my friend Bill Stenger. Jay Peak has been a singularly important job creation engine in its community for years.

¹ See <http://www.uscis.gov/eb-5centers> for a comprehensive list of Regional Centers.

According to USCIS, just 332 investors applied to participate in the EB-5 program in fiscal 2005.² By contrast, I-526³ petitions are on track to total more than 3,200 in fiscal 2011 – nearly a tenfold increase.⁴ The pace of new applications has accelerated dramatically since fiscal 2009, with year-over-year growth averaging 77%. With 180 regional centers competing for investors and more coming online every day, it is clear that the annual allocation of 10,000 EB-5 visas will soon become a constraint on the program’s ability to create more jobs for U.S. workers and bolster local economic development.

This is especially true when one takes into account that each petition submitted by an EB-5 investor requires, based on USCIS data for fiscal 2009, three EB-5 visas: one for each of the primary investor and two dependents.⁵ In fact, my firm’s investors alone are likely to require between 500 and 800 EB-5 visas over the next twelve months – i.e., 5% to 8% of the total annual allocation of 10,000. Thus, I strongly urge Congress to resist any proposal to reallocate EB-5 visas to any other category. Doing so would slow the program’s great momentum just when USCIS is in the process of streamlining the adjudication process in order to truly unleash this program’s potential to create American jobs. This would be counterproductive, to say the least.

These statistics and my own experience with the CDRC demonstrate the EB-5 program’s vast job creation potential. With unemployment above 9%, Congress should see the value this government program delivers across the nation. That is why I strongly urge Congress to act on permanent reauthorization quickly. Even with a full year until the expiration date, I can testify to many personal experiences with prospective investors who are already hesitant to apply because the program may sunset before their petition is approved.

To illustrate this uncertainty, consider this example: My team recently identified a \$45 million EB-5 investment opportunity in California—a new market for us. But when I add up the eight to ten months it currently takes to establish a new Regional Center⁶, four months to recruit 90 investors, and six to seven months for investor petition processing, the total time required to close is up to twenty-one months – well beyond the program’s currently scheduled sunset date of September 30, 2012. It is important to understand that the EB-5 process is arduous, time-consuming and expensive, both for investors and Regional Center operators. Civitas will invest a great deal of time and money on this effort, and even more importantly, will ask investors to risk millions of dollars. With each passing day, the uncertainty surrounding the program’s reauthorization increases, making EB-5 capital more difficult to raise and therefore hampering the job-creation goal of the program. Without permanent reauthorization, my opportunity to

² U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

³ Form I-526 is the initial petition that a foreign investor must submit to USCIS for approval to participate in the EB-5 program.

⁴ U.S. Citizenship and Immigration Services, *EB-5 Immigrant Investor Program Stakeholder Meeting*, June 30, 2011, pg. 8.

⁵ Office of the Citizenship and Immigration Services Ombudsman, *Annual Report 2010*, June 30, 2010, pg. 26, figure 14. This table shows that in fiscal 2009, 3,663 EB-5 visas were issued, of which 35.2% were issued to “principals” – i.e., investors – and 64.8% were issued to “derivatives,” i.e., their dependents.

⁶ As of the date of this hearing, USCIS is currently adjudicating new Regional Center applications that were filed in November 2010. Further, the difficulty with processing times is not limited to applications for new Regional Centers. For example, consular processing for an EB-5 visa at the U.S. Consulate in Guangzhou, China, currently takes nine months. Since I-526 processing currently takes six to seven months, the total time required for a typical Chinese investor is, again, approximately sixteen months – again, well beyond the sunset date – even for an investor in a Regional Center that is approved today.

create hundreds of desperately needed jobs in California – and many similar opportunities across the country – will likely slip away.

I recognize that as a general matter, permanently authorizing any government program may not be palatable to some Members. The concern that public programs may take on a life of their own, leading to endless taxpayer expenditures if they are not regularly reviewed, is a valid one. However, in the case of the EB-5 program, I feel strongly that this concern is misplaced. It is important to keep in mind that the EB-5 program is, like all immigration benefits, required by law to be fully self-funding.⁷ In fact, the Congressional Budget Office has scored the EB-5 program as revenue neutral. Both regional center operators like Civitas and individual EB-5 investors pay substantial fees to USCIS, which fully cover the cost of administering the program. As these costs rise, so do the fees,⁸ as is appropriate. Therefore, the EB-5 program costs taxpayers nothing, as Congress intended.⁹ Accordingly, in terms of maintaining fiscal discipline, permanent reauthorization is quite appropriate. Of course, Congress always retains its ability to hold hearings, modify the Regional Center program or even abolish it altogether should it choose to do so. This means that, effectively, “permanent” reauthorization of the Regional Center program is actually no more than the removal of an automatic expiration provision in the current law that frustrates the policy goal of the program – i.e., job creation.

Other Key Issues

In her recently issued annual report¹⁰ to Congress, Citizenship and Immigration Services Ombudsman January Contreras highlighted several key issues facing the EB-5 Regional Center program, as well as the status of legislative and agency administrative efforts to resolve these issues. I urge Members to review this important report and give careful consideration to the Ombudsman’s recommendations in the section entitled “Revisiting the Immigrant Investor Visa Program.” I would like to take this opportunity to provide the Committee with my thoughts on certain issues addressed by the Ombudsman, as well as a few other areas of particular importance.

1. ***USCIS Processing Times.*** Easily the most challenging aspect of deploying capital via the EB-5 Regional Center program is the length of time it takes for USCIS to process

⁷ See Section 286(m) of the Immigration and Nationality Act of 1990, 8 U.S.C. §1356(m), which provides in pertinent part that “fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”

⁸ When these fees rise, the increases can be substantial. For example, in November 2010, USCIS raised the fee for processing EB-5-related adjudications. The fee for an application to establish a Regional Center (Form I-924) was increased from \$0 to \$6,230. The fee for processing Form I-526 was raised from \$1,435 to \$1,500, a 4.5% increase. and the fee for processing Form I-829, an individual investor’s application to remove green card conditions, was increased from \$2,850 to \$3,750, a 31.6% increase.

⁹ The EB-5 program’s fiscal impact is actually quite positive, rather than neutral, when one takes into account the fact that EB-5 investors and their dependents become U.S. taxpayers, and their worldwide income becomes subject to taxation. Thus, because all of the costs of the program are covered by the aforementioned fees paid by program participants, there is no question that in addition to creating a great many jobs for U.S. workers, the EB-5 program is a net benefit to the public purse. Based on my personal experience, I can assure the Committee that the income and non-EB-5 investment activity of a majority of Civitas’s EB-5 investors will result in substantial tax revenue for the United States.

¹⁰ Citizenship and Immigration Services Ombudsman, *Annual Report 2011*, June 29, 2011.

both Regional Center applications (Form I-924) as well as individual investor petitions (Form I-526). As of today, each of these is taking approximately six months, assuming no “request for evidence” (RFE) is issued. I applaud Director Mayorkas’s recent announcement that USCIS is hiring a large number of adjudicators, economists and other personnel in order to expand the agency’s capacity and bring processing times down. Even more encouraging was the Director’s announcement that “premium processing” – by which Regional Center operators and individual EB-5 applicants will be permitted to pay an extra fee for expedited adjudication of petitions – will soon be available. While I recognize that the agency needs time to recruit staff and implement internal procedures in order to provide premium processing, I urge the agency to publicly announce a date by which premium processing will be available. This will allow Civitas and every other Regional Center operator the ability to plan for the future much more effectively.

2. ***Enhanced Communication with Adjudicators.*** Director Mayorkas has also announced that petitioners will soon be able to communicate directly with adjudicators via e-mail, so that adjudicators will have the ability to resolve questions about petitions without issuing an RFE. I commend the Director for implementing this common-sense procedure, which will be an important step toward making the adjudication process more transparent, collaborative, cost-effective and ultimately, productive. Best of all, allowing e-mail communication between adjudicators and petitioners requires little, if any, new infrastructure, and can therefore be implemented quickly. I urge USCIS to move forward with this smart initiative immediately.
3. ***Meaningful Pre-filing Engagement for Regional Centers.*** Often referred to as the “exemplar” process, this refers to the ability of a Regional Center manager such as Civitas to obtain pre-approval for a project business plan prior to coordinating my investors’ submission of hundreds of individual petitions. It is vitally important that this process be streamlined and that decisions by USCIS be final and not subject to reinterpretation by USCIS in the context of an individual investor’s I-526 petition. I have personal experience with relying on an approved exemplar petition – which cost \$6,230 to submit and took eight months to adjudicate – only to have investors receive RFEs on issues that should have been addressed at the exemplar stage. This process must be reformed, standardized and streamlined so that it serves its intended purpose: eliminating uncertainty for Regional Centers and individual investors with respect to a particular project’s compliance with EB-5 requirements, leaving only factors related to the individual investor to be adjudicated at the I-526 stage.

Resolution of these key issues will increase transparency and reduce both cost and uncertainty, dramatically enhancing my ability to create U.S. jobs through the City of Dallas Regional Center and in new markets around the country.

Conclusion

I would like to conclude by acknowledging the good work of the men and women of the United States Citizenship and Immigration Services. I applaud the agency’s recent efforts to streamline EB-5 adjudications. Director Mayorkas is hosting a meeting shortly after this hearing to share

progress on a number of initiatives within USCIS, which I am looking forward to attending. Opportunities to interact with the Director and the agency are extremely important, and I would like to thank Director Mayorkas for taking the time to meet with me and other stakeholders. I am confident that working together, the EB-5 Regional Center program will continue to improve, grow and create jobs for many, many Americans, now and for many years to come.

Mr. Chairman, thank you again for the opportunity to appear before you and your colleagues today. Thank you also for your support of the EB-5 Regional Center program and for pushing its reauthorization forward during these challenging times. I hope you have found my testimony useful and informative, and I am pleased to answer your questions.