



March 2023

# IMMIGRANT INVESTOR PROGRAM

## Opportunities Exist to Improve Fraud and National Security Risk Monitoring

# GAO Highlights

Highlights of [GAO-23-106452](#), a report to congressional requesters

## Why GAO Did This Study

The EB-5 Immigrant Investor Program enables foreign investors and their eligible family members to obtain lawful permanent resident status and a path to citizenship. Program participants must choose one of two options: (1) invest a minimum of \$800,000 in a business that creates at least 10 jobs, or (2) pool their investment with one or more other qualified immigrants in larger development projects under the EB-5 Regional Center Program.

GAO was asked to review the EB-5 program. This report addresses, among other things: (1) characteristics of EB-5 investors, (2) the extent USCIS collects data to monitor fraud and national security concerns in the EB-5 program, and (3) USCIS efforts to assess and address overall EB-5 fraud and national security risks. GAO analyzed data from fiscal years 2016 through 2021; reviewed USCIS procedures and fraud and national security assessments; and interviewed agency officials and a non-generalizable sample of 15 of about 90 USCIS staff responsible for adjudicating and investigating EB-5 petitions.

This report is a public version of a sensitive report issued in December 2022.

## What GAO Recommends

GAO is recommending that USCIS (1) systematically collect and track data on the different types of fraud in the EB-5 program; and (2) develop a process to collect and assess the reasons for denying petitions and applications and terminating EB-5 Regional Centers. DHS concurred with the recommendations.

View [GAO-23-106452](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov).

March 2023

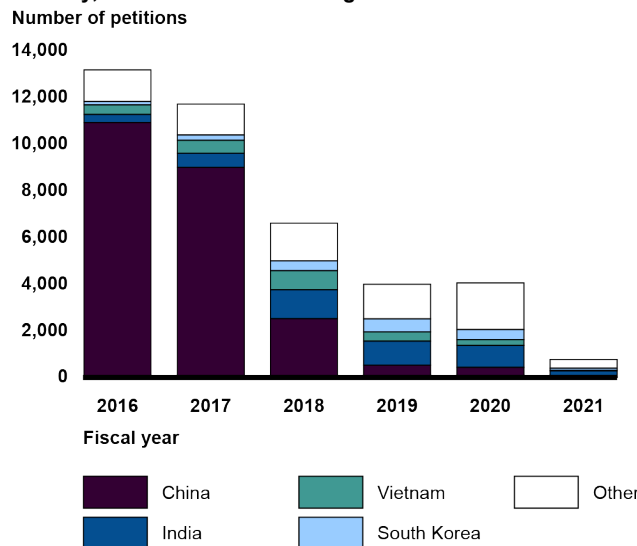
# IMMIGRANT INVESTOR PROGRAM

## Opportunities Exist to Improve Fraud and National Security Risk Monitoring

### What GAO Found

The employment-based fifth preference (EB-5) visa category was created in 1990 to encourage foreign investors to provide capital and promote job creation in the U.S. In return, investors and eligible family members obtain a path to citizenship. U.S. Citizenship and Immigration Services (USCIS) administers the program and investigates any fraud and national security concerns. EB-5 participation declined sharply from fiscal years 2016 through 2021, primarily due to fewer Chinese investors. During this time period, Regional Centers accounted for about 93 percent of all EB-5 petitions. These centers included major real estate development projects.

**EB-5 Initial Investor Petitions U.S. Citizenship and Immigration Services Received, by Investor Country, Fiscal Years 2016 through 2021**



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-23-106452

USCIS collects some data on EB-5 fraud and national security concerns that it investigates. However, it does not have readily-available data about the types and characteristics of fraud unique to the program, such as those related to schemes to defraud investors. Systematically collecting and tracking this information would help USCIS better monitor, assess, and respond to evolving fraud trends and risks. Further, the EB-5 Reform and Integrity Act of 2022 gives USCIS new denial and termination authorities to address fraud and national security concerns. However, USCIS does not collect data on the reasons for (1) denying EB-5 petitions and applications, and (2) terminating Regional Centers. Developing a process to collect and assess these reasons would provide USCIS with valuable insight into program risks.

USCIS conducted at least one fraud or national security risk assessment on an aspect of the EB-5 program each fiscal year since 2016. In addition, USCIS has undertaken several initiatives to address overall program fraud and national security risks. These include conducting compliance reviews; increased trainings on fraud and national security indicators; and additional screening for investors linked to companies or countries of concern.

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## Abbreviations

CFIUS	Committee on Foreign Investment in the United States
DHS	Department of Homeland Security
DOJ	Department of Justice
EB-5	Employment-based Fifth-preference
FDNS	Fraud Detection and National Security Directorate
FDNS-DS	Fraud Detection and National Security Directorate Data System
FBI	Federal Bureau of Investigation
ICE HSI	U.S. Immigration and Customs Enforcement Homeland Security Investigations
IPO	Immigrant Investor Program Office
SEC	U.S. Securities and Exchange Commission
State	U.S. Department of State
Treasury	Department of the Treasury
USCIS	U.S. Citizenship and Immigration Services

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March 28, 2023

### Congressional Requesters

The Immigration Act of 1990 established the employment-based fifth-preference (EB-5) visa category to promote job creation and encourage capital investment in the U.S. It enables foreign investors and their eligible family members to obtain lawful permanent resident status in the U.S. with a path to citizenship.<sup>1</sup> In March 2022, the EB-5 Reform and Integrity Act of 2022 (EB-5 Reform Act) extensively amended the EB-5 statutory framework.<sup>2</sup> As amended, immigrant investors must place \$1.05 million—or \$800,000 in a rural area, an area with high unemployment, or an infrastructure project—in a new commercial enterprise.<sup>3</sup> The investment must create full-time employment for at least 10 U.S. citizens or other employment-authorized noncitizens.<sup>4</sup> Upon demonstrating initial eligibility, immigrant investors and their family members who receive an EB-5 visa will obtain conditional green cards to live and work in the U.S. Two years after their admission, they become eligible to have conditions

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<sup>1</sup>Pub. L. No. 101-649, title I, subtitle B, pt. 2, § 121, 104 Stat. 4978, 4989-94 (classified as amended at 8 U.S.C. §§ 1153(b)(5), 1186b). The accompanying report of the Senate Judiciary Committee states that the EB-5 visa category “is intended to create new employment for U.S. workers and to infuse new capital into the country, not to provide immigrant visas to wealthy individuals.” See S. Rep. No. 101-55, at 21 (1989).

<sup>2</sup>Pub. L. No. 117-103, div. BB, 136 Stat. 49, 1070-1109 (classified at 8 U.S.C. §§ 1153(b)(5), 1186b).

<sup>3</sup>The minimum investment amounts will automatically adjust beginning on January 1, 2027, and every 5 years thereafter, for petitions filed on or after the effective date of each adjustment. 8 U.S.C. § 1153(b)(5)(C). A new commercial enterprise is “any for-profit activity formed for the ongoing conduct of lawful business,” established after November 29, 1990. Rural areas and areas with high unemployment are referred to as targeted employment areas.

<sup>4</sup>For a troubled business, the investment must preserve full-time employment for at least 10 U.S. citizens or other employment-authorized noncitizens.

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removed.<sup>5</sup> Approximately 10,000 EB-5 visas are made available to qualified immigrant investors and their families per fiscal year.<sup>6</sup>

Under the EB-5 Regional Center Program, first enacted as a pilot in 1992, immigrant investors may pool investments with one or more other qualified immigrants in Regional Centers.<sup>7</sup> Use of the Regional Center Program grew substantially in the late 2000s as the program increased in popularity as a viable source of low-interest funding for major real estate development projects. Such projects included the Barclays Center—a multipurpose indoor arena in Brooklyn, New York—and the Marriott Convention Center Hotel in Washington, D.C. In fiscal year 2019, the Regional Center Program accounted for nearly all EB-5 visas (96 percent).

Within the Department of Homeland Security’s (DHS) U.S. Citizenship and Immigration Services (USCIS), the Immigrant Investor Program Office (IPO) administers the EB-5 program. The office adjudicates applications and petitions while working to ensure that program participants comply with requirements. USCIS’s Fraud Detection and National Security (FDNS) Directorate is charged with preventing, detecting, and responding to allegations of fraud and national security concerns in the program.

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<sup>5</sup>8 U.S.C. §§ 1153(b)(5), 1186b. A petition to remove the conditional basis of permanent resident status must generally be filed during the 90-day period preceding the second anniversary of admission; and if all eligibility criteria are satisfied, conditions will be removed effective on the second anniversary. As of March 2022, an investor who is still actively in the process of creating the requisite employment and will create such employment before the third anniversary of their admission, may obtain a 1-year extension of conditional status. The 1989 Senate Report stated that this conditional status is intended “to encourage all aliens receiving visas... to continue their new commercial enterprise so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained.” S. Rep. No. 101-55, at 22.

<sup>6</sup>Visas are available for EB-5 in a number not exceeding 7.1 percent of the worldwide level of employment-based immigrants. 8 U.S.C. §§ 1151(d), 1153(b)(5)(A).

<sup>7</sup>Regional Centers are economic units which DHS designates for the promotion of economic growth, including prospective job creation and increased domestic capital investment.

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In 2015 and 2016, we issued two reports related to fraud and national security issues within the EB-5 program.<sup>8</sup> USCIS took a number of steps to address the recommendations we made in those reports.<sup>9</sup> However, the program continues to be subject to fraud and national security concerns. For example, in 2019, the U.S. Attorney's Office in Vermont brought fraud charges against individuals associated with one Regional Center project for conspiring in a multi-year wire fraud scheme to defraud immigrant investors.<sup>10</sup> Additionally, DHS and others have expressed concern that totalitarian parties, such as the Chinese Communist Party, may attempt to exploit the EB-5 program to steal intellectual property and gain influence in American companies.<sup>11</sup> As discussed later in this report, USCIS recently garnered additional tools through the EB-5 Reform Act to address some fraud and national security concerns.

You asked us to review the EB-5 program and USCIS's efforts to identify and address fraud and national security concerns in the program. This report addresses the following questions:

- (1) What were the characteristics of investors and investments in the EB-5 program from fiscal years 2016 through 2021?

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<sup>8</sup>See GAO, *Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*, [GAO-15-696](#), (Washington, D.C.: Aug. 12, 2015) and GAO, *Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts*, [GAO-16-828](#), (Washington, D.C.: Sept. 13, 2016).

<sup>9</sup>In [GAO-15-696](#) we made four recommendations, including that the Director of USCIS plan and conduct regular future fraud risk assessments of the EB-5 program. USCIS implemented three of the four recommendations on conducting risk assessments, expanding information collection, and tracking and reporting data. It did not implement our recommendation pertaining to studying program costs. USCIS implemented our one recommendation in [GAO-16-828](#) that it develop a fraud risk profile for the EB-5 program.

<sup>10</sup>From 2012 to 2016, the defendants obtained over \$80 million from over 160 immigrant investors associated with the Jay Peak Biomedical Research Park in Vermont. The U.S. Attorney's Office alleged that the defendants designed the project so that they could siphon millions of dollars in investor funds for themselves. As of April 2022, three of the four defendants pleaded guilty and were sentenced to 18 to 60 months in a federal prison; one remained at large.

<sup>11</sup>See U.S. Department of Homeland Security, Office of Strategy, Policy, and Plans, *DHS Strategic Action Plan to Counter the Threat Posed by the People's Republic of China*, (Washington, D.C.: January 2021).



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- (2) What do data from USCIS and other federal agencies show about fraud and national security concerns in the EB-5 program, and to what extent does USCIS collect data to monitor those issues?
- (3) To what extent has USCIS assessed and addressed overall fraud and national security risks in the EB-5 program since 2016?

This report is a public version of a sensitive report that we issued in December 2022.<sup>12</sup> DHS deemed some of the information in our December report to be sensitive, which must be protected from public disclosure. Therefore, this report omits sensitive information related to specific numbers of fraud requests for assistance, leads, and cases, and national security concerns. It also omits some details about fraud and national security risk assessments. Although this report omits this information, it addresses the same objectives as the sensitive report and uses the same methodology.

To address the first question, we analyzed data from USCIS and the Department of State (State) on EB-5 petitions and visa applications adjudicated from fiscal years 2016 through 2021.<sup>13</sup> We reviewed and analyzed the data to obtain descriptive statistics on EB-5 investor and family member petitions and applications received by country, as well as the number of approvals and denials USCIS and State made, by country. To describe investment characteristics, including information on investment industries, categories, and locations, we analyzed available data collected on EB-5 petitions from fiscal years 2016 through 2021.<sup>14</sup>

To assess the reliability of the data we received, we (1) performed electronic testing for missing information, outliers, and obvious errors; (2) reviewed relevant documentation; and (3) interviewed USCIS and State officials who maintain the data. We determined that the data on investors were sufficiently reliable for the purposes of our objectives, including providing summary statistics on EB-5 adjudications, outcomes, and the

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<sup>12</sup>GAO, *Immigrant Investor Program: Opportunities Exist to Improve Fraud and National Security Risk Monitoring*, GAO-23-105389SU, (Washington, D.C.: Dec. 6, 2022).

<sup>13</sup>Specifically, we obtained summary-level data from USCIS's Computer Linked Adjudication Information Management System, a case management system used across USCIS. We also received summary-level data from State's Immigrant Visa Allocation Management System. We selected this time frame because it encompassed the most recent years of complete data between our last report on the EB-5 program in 2016 and the time we conducted our work for this report. See [GAO-16-828](#).

<sup>14</sup>We obtained investment data from USCIS's Investor File Adjudication Case Tracker.

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characteristics of those applying for an EB-5 visa. We found that data on the country of birth were unknown for some records. In these instances, we report the amount of unknown records and present minimums.<sup>15</sup> For investment data, we found that USCIS does not systematically record electronic information on all of the investment information it collects on its forms. We determined that while the data on investments are incomplete, the available data were sufficiently reliable to generally describe investment categories and the geographic locations of the investments.

To address our second question, we obtained and analyzed USCIS summary-level case management data from USCIS's Fraud Detection and National Security Directorate Data System (FDNS-DS) on EB-5-related investigation activities from fiscal years 2016 through 2021, the most recent complete fiscal years at the time of our review. We used these data to describe the volume and characteristics of requests for assistance, leads, and cases, related to fraud and national security concerns in the EB-5 program.<sup>16</sup> We assessed the reliability of FDNS-DS data by interviewing FDNS officials, reviewing relevant agency documentation, and testing the data for completeness and consistency, among other actions. We determined the data were sufficiently reliable for the purposes of describing the number and characteristics of FDNS's EB-5-related case management data. We found that data on the country of birth were unknown for some records. In these instances, we report the amount of unknown records and present minimums.

We also obtained and analyzed summary-level data on EB-5-related referrals, investigations, and cases from the U.S. Securities and Exchange Commission (SEC), DHS's Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI), and the Department of Justice's (DOJ) Federal Bureau of Investigation (FBI) during the same time period, as these agencies also investigate EB-5-

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<sup>15</sup>This applies to selected information in the body of this report where unknowns made up more than 10 percent of the data.

<sup>16</sup>A request for assistance is an internal or external request to FDNS for data, research, or other activity about potential fraud, national security, or public safety concerns.

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related fraud and national security concerns.<sup>17</sup> Additionally, we reviewed and analyzed State data on EB-5 visa refusal reasons to determine the number that pertained to fraud and national security. To assess the reliability of these data, we reviewed available system documentation, and interviewed officials from SEC, ICE HSI, and State to discuss the mechanisms in place to ensure data quality. We also tested the data to assess the extent of any missing variables or inconsistencies. We found the data sufficiently reliable to provide general information on the number of EB-5-related investigations or actions conducted by these agencies.

We also reviewed IPO and FDNS standard operating procedures, USCIS's Consolidated Handbook of Adjudication Procedures, FDNS-DS user guidance, national security concern guidance, fraud and national security assessments, as well as other relevant documentation. We analyzed 234 publicly available USCIS Regional Center termination notices from fiscal years 2016 through 2021 to determine the reason for termination and whether fraud was an underlying reason for termination.<sup>18</sup> We also interviewed IPO and FDNS officials to understand EB-5 fraud and national security-related data collection practices. We evaluated the extent to which these practices were consistent with leading practices described in GAO's *A Framework for Managing Fraud Risks in Federal Programs* (Fraud Risk Framework) for assessing and monitoring fraud risks and identifying potential control deficiencies.<sup>19</sup>

To address our third question, we reviewed EB-5 program fraud and national security risk assessments USCIS conducted since fiscal year

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<sup>17</sup>Agencies utilize different terms to identify referrals and investigations in their internal systems. The SEC provided EB-5-related data from their tips, complaints, and referrals system which included summary data by fiscal year as well as the number of EB-5 referrals to other law enforcement agencies, and any civil cases conducted by SEC. ICE HSI provided data available on open cases based on leads and referrals received from FDNS and other agencies that resulted in opened investigations. The FBI provided testimonial evidence regarding the number of EB-5 cases it investigated during this time period, due to the small number of cases.

<sup>18</sup>From fiscal years 2016 through 2021, IPO terminated 481 Regional Centers. Of these, 234 termination notices were publicly available at the time of our review. IPO officials told us that they publish final Regional Center Termination Notices on USCIS's website once they go through a Freedom of Information Act review process. These officials noted that unpublished notices are either in the process of going through a Freedom of Information Act review or were being appealed by the terminated Regional Center.

<sup>19</sup>GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: Jul. 28, 2015).

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2016, the year in which we issued our last report on the EB-5 program. We also reviewed relevant documentation related to USCIS efforts to address fraud and national security risks during this time, such as training slides and standard operating procedures for conducting compliance reviews. We interviewed agency officials from USCIS, State, SEC, and DOJ, the Department of the Treasury (Treasury), as well as representatives from two industry associations, to discuss efforts to assess and address fraud and national security risks in the EB-5 program.<sup>20</sup> We further interviewed a non-generalizable sample of 15 USCIS staff responsible for adjudicating EB-5 petitions and investigating fraud and national security concerns within the program to obtain information on their observations, their roles in the process, and any challenges.<sup>21</sup> We selected these staff to include those with a range of experience with petitions at different phases of the EB-5 process. While these interviews are not generalizable to all EB-5 staff, they provide valuable perspectives on experiences with fraud and national security issues, including challenges identifying and mitigating these issues.

We conducted this performance audit from September 2021 to December 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We subsequently worked from December 2022 to March 2023 to prepare this public version of the original sensitive report. This public version was also prepared in accordance with these standards.

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<sup>20</sup>The two associations we interviewed were Invest in the U.S.A, the non-profit trade association for the Regional Center Program, and the American Immigration Lawyers Association, which represents attorneys and law professors who practice and teach immigration law. We selected these associations because of their experience with the EB-5 program and the Regional Center Program.

<sup>21</sup>Specifically, we interviewed 15 staff out of about 90 who review, adjudicate, and investigate EB-5 petitions. The 15 staff included five adjudicators, six economists, two Immigration Officers, and two Intelligence Research Specialists. The total number of IPO staff may vary based on attrition and hiring.

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## Background

### EB-5 Program

Immigrant investors have two options or pathways for applying for visas under the EB-5 program. The original EB-5 pathway, as amended by the EB-5 Reform Act, continues to require direct job creation and is permanently authorized. Alternatively, the Regional Center Program is for immigrant investors who pool investments with one or more other qualified immigrants in Regional Centers. Investors in Regional Centers may satisfy up to 90 percent of their job creation requirement through jobs that they estimate are indirectly created outside of the Regional Center, and its associated commercial enterprises or job-creating entities.<sup>22</sup>

Prior to enactment of the EB-5 Reform Act, the Regional Center Program was reauthorized periodically until it expired on June 30, 2021.<sup>23</sup> Subsequently, on March 15, 2022, the EB-5 Reform Act repealed the Regional Center Program's authorizing legislation and enacted new statutory provisions for the Regional Center Program, under which visas are available through September 30, 2027.<sup>24</sup> Table 1 highlights key

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<sup>22</sup>Regional Center investors in construction activity may satisfy only up to 75 percent of the job creation requirement through estimation of indirect jobs. 8 U.S.C. § 1153(b)(5)(E)(iv).

<sup>23</sup>See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, tit. VI, § 610, 106 Stat. 1828, 1874 (1992) (classified, as amended, at 8 U.S.C. § 1153 note). The final reauthorization took place on December 27, 2020 with the enactment of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. O, title I, § 104, 134 Stat. 1182, 2148 (2020). When the Regional Center Program expired on June 30, 2021, USCIS held pending Regional Center affiliated petitions and applications until Congress reauthorized such visas to be issued.

<sup>24</sup>See Pub. L. No. 117-103, div. BB, 136 Stat. at 1070-1109 (classified at 8 U.S.C. §§ 1153(b)(5), 1186b). There has been litigation regarding USCIS's implementation of the new Regional Center Program statutory provisions. *EB5 Capital, et al. v. DHS*, No. 22-cv-1455 (D.D.C. May 24, 2022); *Behring Regional Ctr. LLC v. Mayorkas*, No. 22-cv-02487 (N.D. Cal. Apr. 22, 2022). In June 2022, a California federal district court issued a nationwide preliminary injunction preventing USCIS from requiring the more than 600 regional centers designated under the prior statutory framework to reapply for designation under new criteria. *Behring Regional Ctr. LLC v. Mayorkas*, No. 22-cv-02487, Order Granting Plaintiff's Motion for a Preliminary Injunction Doc. 63 (N.D. Cal. June 24, 2022). In September 2022, the California federal district court approved the parties' stipulation of settlement, which, among other things, allows previously approved Regional Centers to retain approval and requires them to submit Form I-956 as an amendment. Additionally, under the settlement, previously approved Regional Centers may immediately file project applications and USCIS is required to accept investor petitions. Going forward, the settlement provides that previously approved Regional Centers sponsoring new projects or new investors must comply with all of the EB-5 Reform Act requirements.

differences between the original EB-5 pathway and the Regional Center Program.

**Table 1: Key Differences in EB-5 Immigrant Investor Program Visa Pathways**

Original EB-5 Visa Pathway	Regional Center Program
Investors must create 10 full-time jobs for U.S. citizens, nationals, permanent residents, or other employment-authorized immigrants. Employment must be direct and verifiable (i.e., employees working for the commercial enterprise, such as a restaurant).	Requirement is the same. However, investors may satisfy up to 90 percent of their job creation requirement by estimating indirect jobs (i.e., jobs estimated based on economic models or other methodologies). <sup>a</sup>
Investors tend to be involved in the day to day operation of the enterprise in which they invest.	Investors tend not to be involved in the day to day operations (i.e., a pooled investor in a convention center or ski resort project) in the Regional Center or any of its associated commercial enterprises or job-creating entities.
Visas remain available in the number permitted by statute each year without expiration.	Visas only remain available in the number permitted by statute until a date certain. Most recent authorization makes visas available through September 30, 2027.

Source: GAO analysis of U.S. Citizenship and Immigration Services documentation. | GAO-23-106452

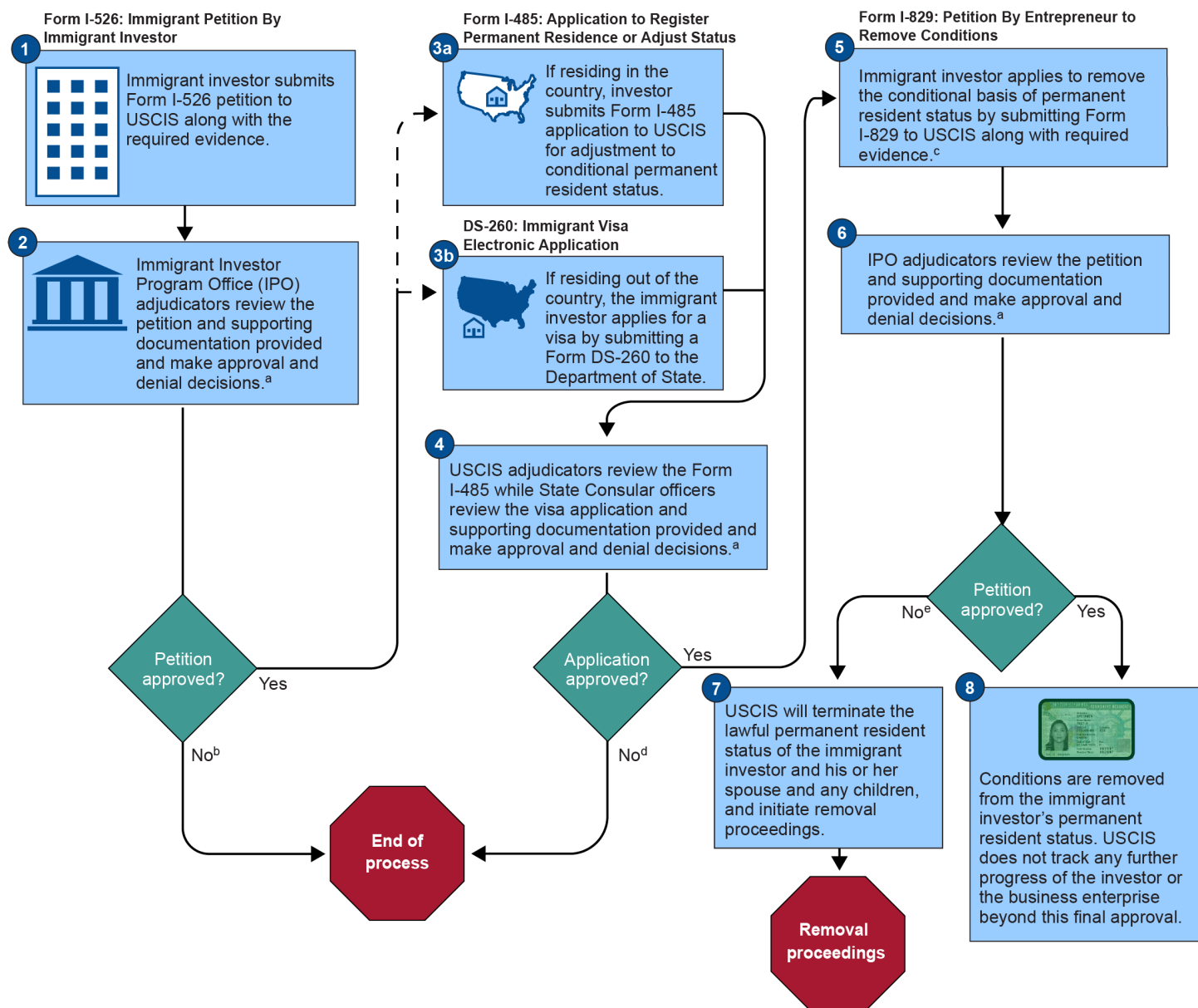
<sup>a</sup>Regional Center investors in construction activity may satisfy only up to 75 percent of the job creation requirement through estimating indirect jobs. 8 U.S.C. § 1153(b)(5)(E)(iv).

Immigrant investors seeking to participate in the EB-5 program must submit an initial immigrant investor petition (Form I-526) and supporting documentation to USCIS, such as a prospective business plan for their investment.<sup>25</sup> If approved, investors already in the U.S. submit Form I-485 to USCIS—an application for adjustment to conditional permanent resident status. Investors seeking entry from abroad are to submit Form DS-260 to State to apply for a visa. If approved, this would authorize them to travel to a port of entry to apply for admission to the U.S. as a conditional permanent resident. During the 90-day period preceding the second anniversary of obtaining conditional permanent resident status, immigrant investors may petition to remove the conditional basis of their status (Form I-829). Throughout this report, Forms I-526 and I-829 are referred to as petitions, while Forms I-485 and DS-260 are referred to as applications.

<sup>25</sup>As part of EB-5 Reform Act implementation efforts, beginning July 12, 2022, USCIS directed investors choosing the original standalone EB-5 pathway to continue to apply to the program using Form I-526, while those investors associated with a Regional Center are to file a new petition—Form I-526E. We do not include information on Form I-526E in this report because our audit work pre-dates its establishment.

Figure 1 shows the petition and application review process as of July 1, 2022.

**Figure 1: U.S. Citizenship and Immigration Services (USCIS) EB-5 Immigrant Investor Program Investor Petition and Application Process, as of July 1, 2022**



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-23-106452

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Note: As part of EB-5 Reform Act implementation efforts, beginning July 12, 2022, USCIS directed investors applying through the original standalone EB-5 pathway to use Form I-526, while those investors associated with a Regional Center are to file a new petition—Form I-526E. Form I-526E is not included in this figure. However, the process is similar to the Form I-526 process. Additionally, as a result of the 2022 EB-5 Reform Act, concurrent filing of Forms I-526 and I-485 is now available.

<sup>a</sup>USCIS adjudicators may request additional supporting documents, if needed. See 8 C.F.R. § 103.2(b)(8).

<sup>b</sup>If the immigrant investor's Form I-526 petition is denied, the investor may appeal, or file a motion to reopen or reconsider the unfavorable decision by filing Form I-290B, Notice of Appeal or Motion, in accordance with Form I-290B filing instructions. See 8 C.F.R. §§ 103.3, 103.5. The appeal of an unfavorable decision on a Form I-526 petition is to be forwarded to the Administrative Appeals Office at USCIS headquarters for review. Administrative Appeals Office adjudicators use the same criteria when reviewing immigrant investor petitions as those used by the Immigrant Investor Program Office (IPO) adjudicators. The Administrative Appeals Office unit may sustain, dismiss, or remand the case to the IPO, or reject the appeal as filed improperly; for example, where the appeal is untimely. If the appeal is dismissed, there are no further administrative appeal rights within USCIS. The only remaining appeal option for the immigrant investor is through the U.S. court system. If the appeal is remanded, the Administrative Appeals Office directs the IPO to review the case again consistent with its decision. The remanded case would be reviewed again following the same procedures as if it had been initially received.

<sup>c</sup>If immigrant investors do not timely file a petition to remove the conditional basis of permanent residence, their conditional permanent resident status automatically terminates and removal proceedings are to be initiated. See 8 C.F.R. § 216.6(a)(5).

<sup>d</sup>Consular officers may return the I-526 petition to USCIS, in which case USCIS may commence revocation proceedings pursuant to 8 U.S.C. § 1155; 8 C.F.R. § 205.2. Where approval of the petition is revoked, the immigrant investor may appeal to the Administrative Appeals Office. With respect to USCIS's denial of a Form I-485 application, the immigrant investor may file a motion to reopen or reconsider the decision. See 8 C.F.R. § 103.5.

<sup>e</sup>According to 8 C.F.R. § 216.6(d)(2), denial of a Form I-829 petition may not be appealed. However, the immigrant investor may file a motion to reopen or reconsider the decision by filing a Form I-290B, Notice of Appeal or Motion, or seek review of the decision in removal proceedings. See 8 C.F.R. §§ 103.5, 216.6(d)(2).

EB-5 investors submitting I-526 or I-829 petitions and I-485 applications to USCIS must demonstrate eligibility by a preponderance of evidence. USCIS may deny or revoke approval of a petition or application upon determining that the individual is, or was, not eligible for approval.<sup>26</sup> The preponderance of evidence standard requires petitioners or applicants to establish that it is more likely than not (i.e., probably true) that they meet

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<sup>26</sup>See 8 C.F.R. pts. 103 (subpt. A), 205. Under 8 C.F.R. § 103.2(b)(18), USCIS also has the authority to withhold adjudication of a visa petition or other application if it determines that there is an ongoing investigation involving eligibility, in connection with the benefit request, and disclosure of information to the applicant or petitioner concerning the adjudication would prejudice the investigation.



all EB-5 program requirements.<sup>27</sup> See table 2 for petitioner and project specific requirements of the I-526 and I-829 petitions.

**Table 2: USCIS Form I-526 and Form I-829 Approval Requirements**

USCIS Petition Type	Petitioner Requirements	Project Requirements
I-526	<ul style="list-style-type: none"> <li>Required amount of capital has been invested, or is in the process of being invested, in the new commercial enterprise.</li> <li>Invested capital was obtained through lawful means.</li> </ul>	<ul style="list-style-type: none"> <li>Establishment of a new commercial enterprise.<sup>a</sup></li> <li>Petitioner is, or will be, engaged in the management of the new commercial enterprise.</li> <li>Petitioner's invested capital is at risk.</li> <li>Creation of at least 10 full-time positions.</li> </ul>
I-829	<ul style="list-style-type: none"> <li>Evidence that the petitioner invested, or was actively in the process of investing, the required capital and sustained the investment for at least a 2-year period.</li> </ul>	<ul style="list-style-type: none"> <li>The new commercial entity created or can be expected to create, within a reasonable time, at least 10 full-time positions for qualifying employees.<sup>b</sup></li> </ul>

Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) documentation. | GAO-23-106452

<sup>a</sup>Because Regional Centers generally involve larger projects and more complex corporate structures, the petitioner may submit documents to demonstrate the relationship between the new commercial enterprise and the Regional Center.

<sup>b</sup>In the case of a troubled business, the petitioner must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident.

Prior to the enactment of the EB-5 Reform Act in March 2022, individuals seeking to establish a Regional Center had to submit an initial application (Form I-924). The application was to include a proposal for the promotion of economic growth which detailed prospective job creation and increased domestic capital investment, and any other supporting documentation. Applicants also had to include a detailed statement regarding the amount

<sup>27</sup>In administrative immigration proceedings (including visa petition proceedings), the petitioner or applicant bears the burden of establishing that he or she is eligible for the benefit sought based on a preponderance of the evidence, except where a different standard is specified by law. *Matter of Chawathe*, 25 I. & N. Dec. 369, 375-76 (A.A.O. 2010); *Matter of Martinez-Gonzalez*, 21 I. & N. Dec. 3329, 1997 WL 602544, at \*1 (B.I.A. 1997); *Matter of Soo Hoo*, 11 I. & N. Dec. 151, 152 (B.I.A. 1965). The “preponderance of the evidence” standard requires that the applicant demonstrate his or her eligibility claims to be more likely than not, or probably true. See *Matter of Chawathe*, 25 I. & N. Dec. at 376. “The ‘preponderance of the evidence’ standard requires that the evidence demonstrate that the applicant’s claim is ‘probably true,’ where the determination of ‘truth’ is made based on the factual circumstances of each individual case.” Id. (citing *Matter of E-M-*, 20 I. & N. Dec. 77, 79-80 (B.I.A. 1989)). The statute and regulations governing the EB-5 program do not specify a different standard; therefore, EB-5 petitioners or applicants must establish eligibility for participation in the EB-5 program based on a preponderance of evidence.

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and source of capital committed to the Regional Center, as well as a description of the promotional efforts they had taken and planned. Once IPO approved a Regional Center, a designated representative had to submit an update for each fiscal year (Form I-924a) showing that the Regional Center continued to meet the program requirements, such as promoting economic growth.

The EB-5 Reform Act changed the application and approval process for establishing and maintaining Regional Centers by including several new form types and requirements.<sup>28</sup> Among other things, a Regional Center must annually reissue a certification of compliance with oversight requirements related to securities laws. The act further established several mandatory and discretionary grounds for terminating, suspending, or sanctioning Regional Centers, or terminating designation or participation of a new commercial enterprise or job-creating entity.

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## Agency Roles and Responsibilities

Several agencies are involved to varying degrees in ensuring the integrity of the EB-5 program.

- **DHS.** Within USCIS, IPO adjudicates petitions and applications and works to ensure that program participants, including immigrant investors and principals operating Regional Centers, comply with program requirements. For example, potential immigrant investors are required to demonstrate that they obtained investment funds by lawful means.<sup>29</sup> As of August 2022, IPO staff included approximately 45 adjudication officers who review and adjudicate petitions and applications, and 20 economists who review business plans and

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<sup>28</sup>USCIS released the following forms following enactment of the EB-5 Reform Act: (1) Form I-956, Application for Regional Center Designation, (2) Form I-956H, Bona Fides of Persons Involved with Regional Center Program, (3) Form I-956F, Application for Approval of an Investment in a Commercial Enterprise, and (4) Form I-956G, Regional Center Annual Statement.

<sup>29</sup>See 8 U.S.C. § 1153(b)(5)(L) (source of funds); 8 C.F.R. § 204.6(e), (f), (g)(1), (j); 8 C.F.R. § 216.6(c)(2). In the 1989 Senate Report, it states that “the committee intends that processing of an individual visa not continue under this section if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs).” S. Rep. No. 101-55, at 21. This committee report was cited as a basis for changing the definition of capital to exclude assets directly or indirectly acquired by unlawful means. See Employment-Based Immigrants, 56 Fed. Reg. 60,897, 60,902 (Nov. 29, 1991) (codified at 8 C.F.R. pts. 103, 204).

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Regional Center project proposals.<sup>30</sup> FDNS Immigration Officers and Intelligence Research Specialists embedded in IPO (IPO FDNS) investigate EB-5-related fraud and national security concerns.<sup>31</sup> IPO FDNS refers cases of fraud that warrant a criminal investigation to ICE HSI or to other law enforcement agencies, as appropriate.

- **State.** After USCIS approves initial petitions for immigrant investors to participate in the program, State adjudicates the immigrant visa application for applicants living abroad. The visa adjudication process generally includes an interview with the applicant, security checks, and other activities to help ensure investors and their families comply with national security and other requirements for admission to the U.S.
- **SEC.** The SEC investigates allegations of fraud or other misconduct in connection with securities offerings related to EB-5 projects by principals operating Regional Centers, or others.
- **DOJ.** Within DOJ, the FBI investigates any activity by immigrant investors or Regional Centers that may pose a risk to national security, as well as other criminal activities. DOJ also brings cases against parties suspected of EB-5 related fraud or misconduct.<sup>32</sup>
- **Treasury.** Within Treasury, the Committee on Foreign Investment in the United States (CFIUS) is an interagency committee authorized to review certain transactions involving foreign investment in the U.S. and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on national security.<sup>33</sup> As a member agency, DHS reviews each transaction before CFIUS to screen for national security concerns. A transaction before CFIUS could include an EB-5 transaction. Within DHS, IPO FDNS is responsible for reviewing relevant CFIUS transactions for a nexus to

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<sup>30</sup>IPO staff also include FDNS personnel, compliance officers, management and program analysts, and others. According to USCIS officials, IPO is working to increase its staffing levels to support its mission.

<sup>31</sup>As of August 2022, IPO FDNS had a total of 34 staff members, including supervisors and support personnel.

<sup>32</sup>Other agencies may also assist in EB-5 related investigations, such as Internal Revenue Service Criminal Investigation and the Department of Labor.

<sup>33</sup>The Secretary of the Treasury chairs CFIUS. Other voting members include the heads of the departments of Justice, Homeland Security, Commerce, Defense, State, and Energy, as well as the heads of the Office of the U.S. Trade Representative and the Office of Science & Technology Policy. The Foreign Investment Risk Review Modernization Act of 2018 expanded the scope of CFIUS reviews.

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immigration benefits, including, but not limited to, EB-5 Regional Centers and job-creating entities.

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## USCIS Processes for Reviewing EB-5 Program Fraud and National Security Concerns

Within USCIS, FDNS receives EB-5 fraud and national security referrals and requests for assistance from internal USCIS sources (e.g., adjudicators, FDNS staff in other offices) or external entities (e.g., ICE, other law enforcement agencies). FDNS tracks and records these fraud and national security concerns in its case management system—FDNS-DS. FDNS staff are to record EB-5 program-related fraud referrals, requests for assistance, leads, and cases, as well as national security concerns, in FDNS-DS. These entries are collectively referred to as case management entities.<sup>34</sup> FDNS processes EB-5 fraud concerns and national security concerns as two separate workflows.

**Fraud.** FDNS's *Fraud Detection Standard Operating Procedures* outline the process that FDNS staff are to follow in reviewing fraud concerns. According to the procedures, FDNS categorizes fraud-related referrals as leads within FDNS-DS. If an Immigration Officer determines that a referral does not have sufficient information, the officer may process it as a declined lead and not investigate the referral further.<sup>35</sup> FDNS enters requests for assistance as such in FDNS-DS. If FDNS Immigration Officers find potential fraud indicators during their initial review of requests for assistance, and they find that the request for assistance provides sufficient information, they will elevate it to a lead in FDNS-DS.<sup>36</sup>

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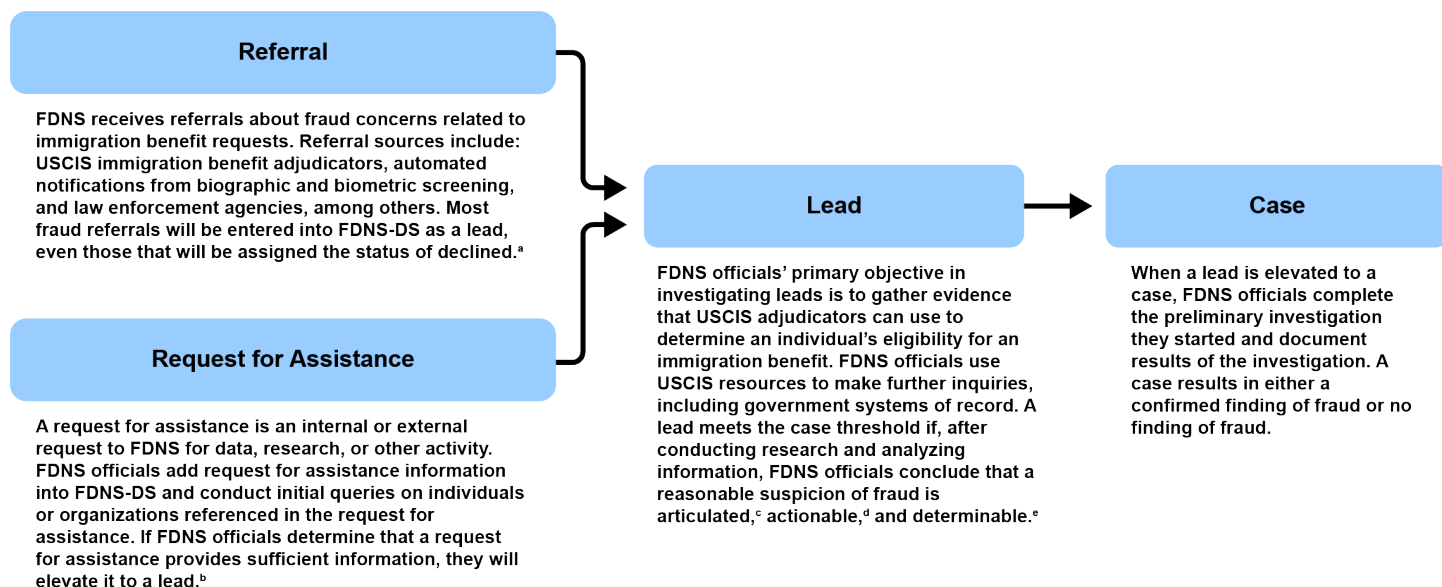
<sup>34</sup>Data from FDNS-DS includes case management entities from all of FDNS, and may include case management entities that are both directly and indirectly related to the EB-5 program.

<sup>35</sup>FDNS considers referrals to be sufficient if they: (1) include biographical or organizational information; (2) relate to an immigration filing; and (3) include a properly completed fraud referral (if the referral is from a USCIS source). FDNS officials further noted that a referral is sufficient if it includes fraud, national security, or public safety indicators.

<sup>36</sup>FDNS records requests for assistance as such in FDNS-DS, not as leads like other referrals. FDNS designates requests for assistance in FDNS-DS to allow staff to determine if there is a relationship between the request and any ongoing investigation. FDNS uses the same sufficiency criteria for requests for assistance as referrals, discussed above.

FDNS Immigration Officers are to elevate leads to cases if further investigation shows that a lead meets the case threshold (see figure 2).<sup>37</sup>

**Figure 2: U.S. Citizenship and Immigration Services (USCIS) Fraud Detection and National Security (FDNS) Fraud Administrative Investigation Process**



Source: GAO analysis of FDNS documentation. | GAO-23-106452

<sup>a</sup>According to FDNS's *Fraud Detection Standard Operating Procedures*, if the referral does not provide sufficient information it will be assigned the status of a declined lead in FDNS-DS. FDNS considers referrals to be sufficient if they: (1) include biographical or organizational information; (2) relate to an immigration filing; and (3) include a properly completed fraud referral (if the referral is from a USCIS source). FDNS officials further noted that a referral is sufficient if it includes fraud, national security, or public safety indicators.

<sup>b</sup>FDNS uses the same sufficiency criteria for requests for assistance as referrals, discussed in note a.

<sup>c</sup>FDNS deems fraud as articulated if a subject has a nexus to an immigration-related benefit and there is information to support a reasonable suspicion of fraud or willful misrepresentation of a material fact. Sufficient justification for opening a case may also be articulated if there is reason to believe that, owing to fraud or willful misrepresentation, the subject is ineligible to transmit or receive an immigration benefit.

<sup>d</sup>FDNS deems fraud as actionable if it is within the scope of USCIS and an investigation by FDNS or an external entity is likely to develop evidence that will support an administrative denial of an application, petition, request, criminal prosecution, or initiation of removal proceedings.

<sup>e</sup>FDNS deems fraud as determinable if, after conducting preliminary investigation, an FDNS officer has a reasonable belief that the investigation will result in fraud found or fraud not found determination.

<sup>37</sup>For leads elevated to cases, officials noted that FDNS is to refer cases meeting certain acceptance criteria to ICE HSI for criminal investigation, as outlined in a memorandum of agreement between ICE and USCIS

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**National security.** According to FDNS documentation, national security referrals and requests for assistance are to go through an initial vetting process by FDNS. During initial vetting, FDNS Intelligence Research Specialists review the referrals and requests for assistance. They are to confirm whether the information includes national security indicators and is correctly categorized as a national security concern before entering it into FDNS-DS. FDNS then opens an administrative investigation to further assess the potential national security threat, according to officials. If FDNS assesses and validates the threat, it will refer to it as a confirmed national security concern.<sup>38</sup>

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## Types of EB-5 Program Fraud Risks

In August 2015, we reported that USCIS and others have identified unique fraud risks associated with the EB-5 program that are generally not present in other immigration benefit programs.<sup>39</sup> Specifically, we reported that the investment component of the program creates increased complexity and the potential for fraud risks. We also reported that USCIS faces difficulties in verifying investors' sources of funds and in verifying that the funds are being invested as reported.

EB-5 program fraud may involve immigration benefit fraud, which is the act of willfully or knowingly misrepresenting material facts to obtain an immigration benefit for which the individual would otherwise be ineligible.<sup>40</sup> Immigration benefit fraud can occur in a number of ways. It is often facilitated by document fraud (e.g., submitting falsified affidavits or making other materially false written statements in an immigration form or supporting document) and identity fraud, which is the fraudulent use of

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<sup>38</sup>FDNS processes national security concerns according to a USCIS program known as the Controlled Application Review and Resolution Program. This program is a four-step process involving identifying a national security concern, assessing eligibility in cases with a national security concern, external vetting, and adjudication. IPO officials noted that USCIS is finalizing a new national security policy, which will replace the Controlled Application Review and Resolution Program. USCIS expects the new policy to be ready by late fiscal year 2023.

<sup>39</sup>[GAO-15-696](#).

<sup>40</sup>Such material misrepresentations may or may not involve a specific intent to deceive. According to *Standards for Internal Control in the Federal Government*, fraud involves obtaining something of value through willful misrepresentation, and whether an act is in fact fraud is a determination to be made through the judicial or other adjudicative system and is beyond management's professional responsibility for assessing risk. For the purposes of this report our references to "fraud" as a denial or termination reason pertains to suspected or alleged fraud and confirmed fraud, as determined by the judicial or adjudicative system.

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others' valid documents or personal information.<sup>41</sup> Immigration benefit fraud in the EB-5 program context may include a petitioner deliberately concealing illicit sources of investment funds to deceive USCIS and eventually obtain a visa. USCIS may deny a benefit request or revoke its approval upon determining that the individual is, or was, not eligible for approval by a preponderance of evidence, due to fraud material to the adjudication process.<sup>42</sup>

EB-5 program fraud may also involve persons—such as direct or third-party promoters, associated with a Regional Center, a new commercial enterprise or job-creating entity, or issuer of securities—defrauding good faith immigrant investors without their knowledge or involvement in the fraudulent scheme. Examples of fraud risks and other risks associated with the EB-5 program include:

- petitioners that may attempt to use illicit funds, such as those obtained through money laundering or other criminal activity, to fund an EB-5 investment;
- petitioners or Regional Center applicants that may fraudulently represent the number or nature of jobs created from an EB-5 project;
- Regional Center staff members that may divert EB-5 funds from good faith investors and legitimate EB-5 projects to their own purposes; and
- petitioners that may attempt to use the EB-5 program to gain entry into the U.S. for the purpose of conducting activities that may pose a national security risk.

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## Recent EB-5 Program Changes

Since we last reported on the EB-5 program in 2016, the program has been subject to major regulatory and statutory changes.

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<sup>41</sup>Under 8 U.S.C. § 1324c, immigration-related document fraud includes forging, counterfeiting, altering, or falsely making any document, or using, accepting, or receiving such falsified documents in order to satisfy any requirement of, or to obtain a benefit under the Immigration and Nationality Act.

<sup>42</sup>See 8 C.F.R. pts. 103 (subpt. A), 205. Fraud in the immigration context may result in various civil violations or criminal offenses. See, e.g., 18 U.S.C. ch. 47 (fraud and false statements), in particular § 1001 (criminal penalties for false statements and concealment before any U.S. government entity); 18 U.S.C. §§ 1541–1547 (criminal penalties for immigration-related fraud); 18 U.S.C. § 1621 (criminal penalties for perjury); 8 U.S.C. §§ 1182(a)(6)(C)(i), (a)(6)(F), 1227(a)(1)(A), (a)(1)(B), (a)(3)(C)(i) (grounds of removability for fraud or willful misrepresentations), 1324c (civil penalties for immigration-related document fraud and criminal penalties for not disclosing one's role as document preparer).

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**Modernization Rule.** In November 2019, DHS implemented major regulatory changes to the EB-5 program to address longstanding concerns, including increases to the minimum investment amounts, which had not been adjusted since the program's inception. The EB-5 Modernization Rule, however, was subsequently vacated by a California federal district court on June 22, 2021.<sup>43</sup> As a result, the program reverted to operating under the regulatory requirements that existed prior to November 2019.

**EB-5 Reform Act.** In March 2022, the EB-5 Reform Act made significant changes to the program. Among a number of substantive amendments, these changes include:

- imposing new oversight requirements, such as requiring USCIS to audit Regional Centers at least once every 5 years;
- establishing specific statutory bases to deny or revoke petitions, applications or benefits where such documents are predicated on or involved fraud, deceit, intentional material misrepresentation or criminal misuse, or if approval of such documents is contrary to the U.S. national interest due to threats to public safety or national security concerns;
- establishing several mandatory and discretionary grounds for terminating, suspending or sanctioning Regional Centers, or terminating designation or participation of a new commercial enterprise or job-creating entity;
- reserving a certain percentage of visas for rural (20 percent), high-unemployment (10 percent), and infrastructure projects (2 percent);
- increasing the minimum investment amount from \$1 million to \$1.05 million, and from \$500,000 to \$800,000 for targeted employment areas and infrastructure projects;

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<sup>43</sup>In 2019, the previous administration attempted a regulatory overhaul of the EB-5 Program under the EB-5 Modernization Rule (published in the *Federal Register* on July 24 and effective on November 21, 2019), which was subsequently vacated by a California federal district court on June 22, 2021. See EB-5 Immigrant Investor Program Modernization, 84 Fed. Reg. 35,750 (July 24, 2019); vacated by *Behring Regional Ctr., LLC v. Wolf, et al.*, No. 20-cv-9263, Order Granting Summary Judgment in Plaintiff's Favor on Claim Four, Doc. 51 (N.D. Cal. Filed June 22, 2021). In January 2021, the administration voluntarily sought to dismiss, without opposition from plaintiff, its appeal of the June 22, 2021 vacatur of the EB-5 Modernization Rule. *Behring Regional Ctr., LLC v. Mayorkas, et al.*, No. 21-16421, Doc. 14, Unopposed Motion for Voluntary Dismissal (9th Cir. Jan. 5, 2022).



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- providing for automatic future adjustments to the minimum investment amounts; and
  - creating a new integrity fund to which Regional Centers must contribute between \$10,000 and \$20,000 annually (depending on the size of the Regional Center).
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## EB-5 Program Participation Sharply Declined in Recent Years; Investment Characteristics Varied

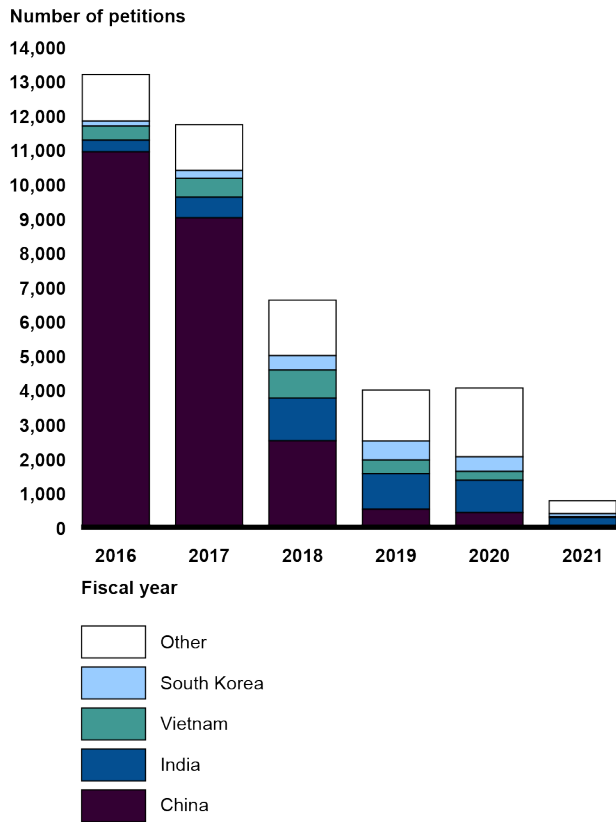
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### Overall EB-5 Program Participation Declined From Fiscal Years 2016 through 2021

#### EB-5 Initial Investor Petitions, Approvals, and Denials

USCIS received just over 40,000 initial investor petitions (Form I-526) from fiscal years 2016 through 2021. The countries with the most petitioners were China (58 percent), India (11 percent), Vietnam (6 percent), and South Korea (5 percent). During this time, the number of I-526 petitions USCIS received sharply decreased—from about 13,000 in fiscal year 2016 to about 800 in fiscal year 2021, as shown in figure 3. The decline in participation was largely driven by fewer petitions from Chinese investors. Specifically, the number of Chinese investors filing petitions decreased from approximately 83 percent of total petitions in 2016, to about 38 percent in 2018, 11 percent in 2020, and 4 percent in 2021.

**Figure 3: Number of EB-5 Initial Investor Petitions (Form I-526) U.S. Citizenship and Immigration Services Received, by Investor Country, Fiscal Years 2016 through 2021**



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-23-106452

While the number of Chinese investors filing I-526 petitions decreased, petition receipts from other countries increased from fiscal years 2016 through 2020. For example, from fiscal years 2016 to 2020, I-526 petitions from India, South Korea, and Mexico more than doubled.

The decline in EB-5 program participation reflects overall decreasing EB-5 visa demand from new investors since the height of I-526 petition filings in fiscal year 2015. USCIS documents, IPO officials, and representatives from associations representing EB-5 investors attributed the overall decline in I-526 petitions to various factors. For example, these factors include:

- the worldwide impact of the COVID-19 pandemic;

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- an annual cap of around 10,000 EB-5 visas, and an overall per country ceiling of up to 7 percent of the total number of family-sponsored and employment-based visas, resulting in longer wait times for countries that have reached and exceeded the per country limit, such as China, India, and Vietnam, particularly in visa categories such as EB-5 which have been oversubscribed in recent years;<sup>44</sup>
  - a decline in interest due to an “overfishing” of potential investors in prior years that may have made it more challenging to recruit new investors;
  - changes in the program including the EB-5 Modernization Rule (effective November 2019 to June 2021), which increased minimum investment levels for the first time since the program’s creation, potentially decreasing demand; and
  - the lapse in authorization for the Regional Center Program on June 30, 2021, which left only the original EB-5 investment pathway as an option until the EB-5 Reform Act (March 2022) reestablished and updated the program. The Regional Center Program attracted significantly more investors than the original pathway in recent years. Specifically, from fiscal years 2016 through 2021, about 93 percent of all I-526 petitions were associated with Regional Center petitions. This may be in part because the Regional Centers generally require less direct investor involvement, and because the Regional Center Program allows petitioners to rely on estimating indirect job creation.<sup>45</sup>

From fiscal years 2016 through 2021, USCIS adjudicated approximately 46,000 I-526 petitions.<sup>46</sup> USCIS approved about 87 percent of the

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<sup>44</sup>Visas are available for EB-5 in a number not exceeding 7.1 percent of the worldwide level of employment-based immigrants. 8 U.S.C. §§ 1151(d), 1153(b)(5)(A). Generally, the total number of immigrant visas available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 in any fiscal year may not exceed 7 percent (for a single foreign state) or 2 percent (for a dependent area) of the total number of visas available under such subsections in that fiscal year. 8 U.S.C. § 1152(a).

<sup>45</sup>Regional Center investors may rely on economically and statistically valid methodologies for determining the number of jobs created by the program, including jobs estimated to have been created directly, which may be verified using such methodologies, and jobs estimated to have been directly or indirectly created through capital expenditures, revenues generated from increased exports, improved regional productivity, job creation, and increased domestic capital investment resulting from the program. See 8 U.S.C. § 1153(b)(5)(E)(v)(I).

<sup>46</sup>The sum of approved and denied I-526 petitions does not equal the total receipts over the same time because petitions may not be received and adjudicated in the same fiscal year.

adjudicated petitions, and denied about 13 percent. USCIS can deny an I-526 petition if the petitioner fails to meet certain legal requirements, including:

- petitioner-specific elements (required amount of capital must be invested, or in the process of being invested, in the new commercial enterprise; investment capital must be obtained through lawful means); and
- project-specific elements (the new commercial enterprise must be established; the petitioner is, or will be, engaged in the management of the enterprise; petitioner’s investment capital is at risk; and at least 10 full-time positions must be created).

EB-5 program adjudication results (i.e., the number of petitions approved and denied) by the largest volume countries of origin are shown in table 3.

**Table 3: U.S. Citizenship and Immigration Services EB-5 Program Initial Investor Petition (Form I-526) Adjudication Results by Country, Fiscal Years 2016 through 2021**

Country	Approved	Denied	Total Adjudications	Percent of Adjudicated Petitions Denied
China	30,125	4,330	34,455	12.6%
India	2,337	292	2,629	11.1%
Vietnam	1,590	185	1,775	10.4%
South Korea	962	59	1,021	5.8%
Brazil	613	122	735	16.6%
Taiwan	635	98	733	13.4%
Venezuela	321	67	388	17.3%
Iran	189	169	358	47.2%
Mexico	251	90	341	26.4%
Russia	170	76	246	30.9%
Other countries	2,884	589	3,473	17.0%
<b>Total</b>	<b>40,077</b>	<b>6,077</b>	<b>46,154</b>	<b>13.2%</b>

Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-23-106452

Our analysis of USCIS data found that investors from countries with the most total approved and denied I-526 petitions tended to have a lower percentage of petitions denied. For example, while USCIS issued the greatest proportion of all denials to Chinese investors (71 percent, 4,330), the percent of adjudicated petitions denied (13 percent) was lower than

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Visa Approvals and Denials for  
EB-5 Immigrant New Arrivals  
and Status Adjustments

that of a number of other countries.<sup>47</sup> IPO officials suggested that investors associated with Regional Centers often work with attorneys who may be more accustomed to the complexities of the EB-5 program and better understand what information is necessary to include for petition approval.

After USCIS approves initial petitions for immigrant investors to participate in the EB-5 program, State adjudicates U.S. visa applications from the investors and their applicable family members (spouses and children) who submit Form DS-260.<sup>48</sup> USCIS adjudicates applications from investors and any applicable family members who submit Form I-485, which allows individuals to apply for conditional lawful permanent resident status when present in the U.S. and without having to return to their home country to complete visa processing.<sup>49</sup>

From fiscal years 2016 through 2021, State issued visas for about 37,000 new arrival (Form DS-260) EB-5 investors and family members (spouses and children), while USCIS approved about 8,600 EB-5 investor and

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<sup>47</sup>Of the 71 countries with at least 10 total approved and denied petitions from fiscal years 2016 through 2021, the percent of adjudicated petitions USCIS denied for Chinese investors was 49<sup>th</sup> highest. Additionally, USCIS denied at least one in four petitions from 18 countries. These countries include Honduras, Iran, USSR, Kenya, Czech Republic, Saudi Arabia, Egypt, Israel, Russia, Kuwait, Belarus, Ukraine, Bolivia, Lebanon, Australia, Mexico, Ireland, and Portugal. Note: USCIS records these data based on country of birth. As a result, the data may include entries for countries that no longer exist, such as the USSR.

<sup>48</sup>USCIS and State use “family derivatives” to refer to family members, defined as an investor’s spouse and any unmarried children generally under 21 years of age. State uses the terms “issued” and “refused” to refer to positive and negative adjudicative decisions, respectively. In the context of this report, “issued” and “approved,” and “refused” and “denied” mean the same thing.

<sup>49</sup>New arrivals refer to foreign nationals who were not residing in the U.S. when they applied for immigrant status. Adjustments of status refer to foreign nationals already in the U.S. who are applying for lawful permanent resident status based on an immigrant visa petition. An adjustment of status may, for example, involve a foreign national who first entered the U.S. on a temporary employment visa such as an H-1B visa. The individual may later decide to participate in the EB-5 program and seek lawful permanent residence through that program by filing Forms I-526 or I-526E, I-485, and later, Form I-829.

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family member adjustments of status (Form I-485).<sup>50</sup> As shown in figure 4, from fiscal years 2016 through 2019, State and USCIS granted nearly all of the total cap of around 10,000 EB-5 admissions per year.<sup>51</sup> However, in 2020 and 2021, only about a third of the total cap was reached. This decline in visa approvals largely reflects similar trends in declining Form I-526 petitions discussed earlier, as well as the effects of the COVID-19 pandemic on State immigrant visa-related services.<sup>52</sup>

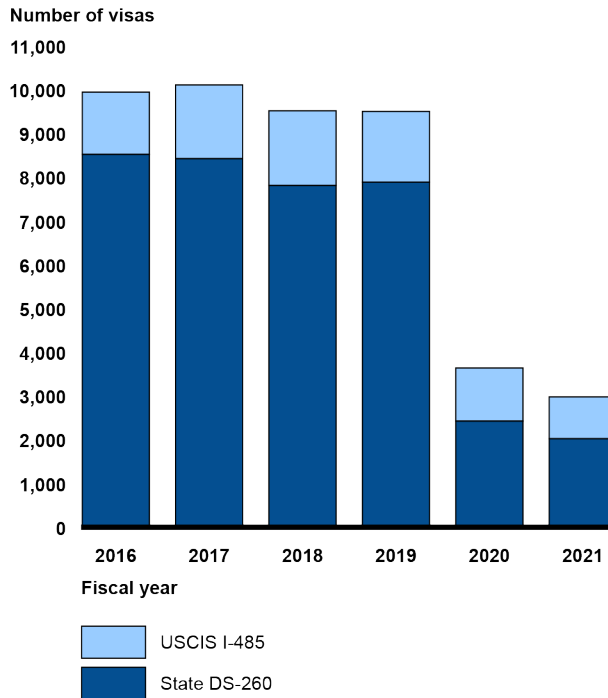
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<sup>50</sup>State and USCIS data represent the status of an application at the end of a fiscal year. However, that status could later change. This could be due to, for example, an appeal from the applicant or retroactive revocation that results in USCIS or State counting the application again in a later fiscal year. Specifically, an application that USCIS or State issued or approved in one year may be revoked in a subsequent year. As such, aggregated numbers may not fully reflect these changes and may include some double-counting of applications.

<sup>51</sup>Figure 3 shows that the number of issued visas in fiscal year 2017 slightly exceeded 10,000. State officials noted that this may be due to data lags—for example, it may take up to a month for overseas visa issuance data to update.

<sup>52</sup>Due to the COVID-19 pandemic, State instructed its overseas posts to suspend routine visa services and provide only mission critical and emergency services in late March 2020. According to State documentation, this had a significant impact on the provision of immigrant and nonimmigrant visa-related services. For more information on how the pandemic affected State's Consular Affairs Bureau, see GAO, *Consular Affairs: State May Be Unable to Cover Projected Costs if Revenues Do Not Quickly Rebound to Pre-Pandemic Levels*, [GAO-22-104424](#) (Washington, D.C.: Apr. 18, 2022). Posts were only able to resume routine visa services on a post-by-post basis beginning in July 2020, as local conditions allowed. For more information on how State adjusted its overseas operations in response to the pandemic, see GAO, *COVID-19: State Should Strengthen Policies to Better Maintain Overseas Operations in Future Crises*, [GAO-22-104519](#), (Washington, D.C.: Mar. 16, 2022).

**Figure 4: Number of EB-5 Admissions Granted to New Arrivals (DS-260) and Adjustments of Status (I-485) by Fiscal Year, 2016 through 2021**



Source: GAO analysis of Department of State (State) and U.S. Citizenship and Immigration Services (USCIS) data. | GAO-23-106452

Note: New arrivals refer to foreign nationals who were not residing in the U.S. when they applied for immigrant status (Form DS-260). Adjustments of status refer to foreign nationals already in the U.S. who are applying for lawful permanent resident status using Form I-485. An adjustment of status may, for example, involve a foreign national who first entered the U.S. on a temporary employment visa such as an H-1B visa. The individual may later decide to participate in the EB-5 program and seek lawful permanent residence through that program by filing Forms I-526 or I-526E, I-485, and later, Form I-829.

Our analysis of State and USCIS EB-5 data showed that for fiscal years 2016 through 2021, USCIS and State issued denials for approximately 4,800 new arrival and status adjustment applications.<sup>53</sup> According to State, consular officers may deny DS-260 applications for reasons including failure by the applicant to provide required information, or because the information they reviewed indicates the applicant falls within

<sup>53</sup>Reasons for denial for Forms DS-260 and I-485 are distinct from those of the initial investor petition, Form I-526. As such, an investor's approval at the I-526 stage and denial at a subsequent stage, such as DS-260 or I-485, does not necessarily indicate a failure to detect inadmissible petitions or applications in prior stages. Additionally, State and USCIS may later approve an application that was initially denied if the applicant provides sufficient new information.

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Approvals and Denials for  
Petitions to Remove Lawful  
Permanent Resident Status  
Conditions

the scope of one of the inadmissibility or ineligibility grounds of the law. USCIS adjudicators may deny Form I-485 applications for various reasons, which render the applicant ineligible for lawful permanent resident status.

Similar to Form I-526 petitions, Chinese investors and their eligible family members made up the largest proportion of total Form DS-260 and I-485 approvals (60 percent) and denials (45 percent), respectively. Also similar to Form I-526 petitions, the percent of adjudicated applications from Chinese individuals denied (about 7 percent) was lower than that of a number of other countries.<sup>54</sup> See appendix I for information on the total number of adjudicated applications, and the percent of adjudicated applications denied, for the 10 largest volume countries.

From fiscal years 2016 through 2021, USCIS received 84,946 I-829 petitions from investors and their family members seeking to remove visa conditions and obtain lawful permanent resident status two years after initial approval. The majority of these I-829 petitions came from Chinese investors and their family members (at least 51 percent).<sup>55</sup> During this time, USCIS approved I-829 petitions for 31,197 investors and family members.<sup>56</sup> Of these, 46 percent were investors while 54 percent were

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<sup>54</sup>Of countries with at least 10 total DS-260 and I-485 application adjudications, State or USCIS denied at least one in four DS-260 and/or I-485 applications from 16 countries. They include Iran, Syria, Bangladesh, the Philippines, the Dominican Republic, Peru, Kuwait, Ghana, Cambodia, Guatemala, Kenya, Jamaica, Haiti, Armenia, Nepal, and Trinidad and Tobago.

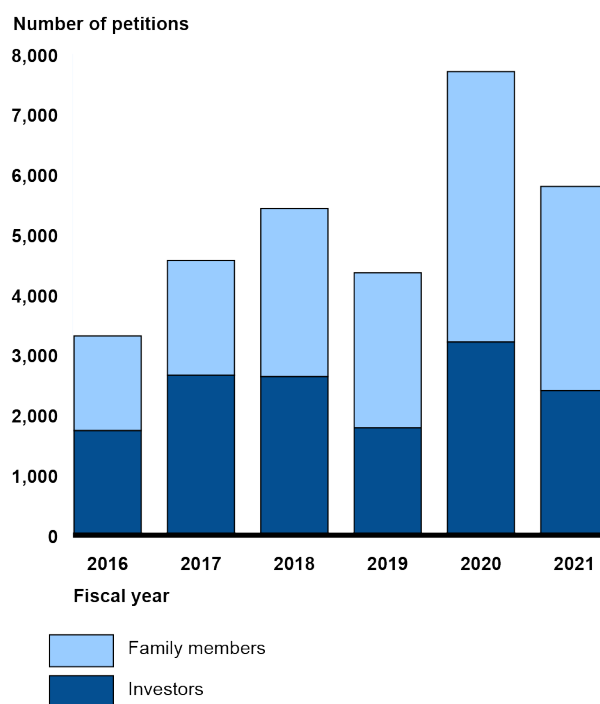
<sup>55</sup>The next largest country of birth category was unknown or null (26 percent). Of those reported, the countries with the next largest percentages of investors and family members after China were Vietnam (at least 3 percent), India (at least 3 percent), and South Korea (at least 2 percent). According to USCIS officials, the most common reason for an unknown entry is that staff did not correctly enter the country of birth in the initial data entry period, usually due to conflicting information existing in the file. Null refers to petitions USCIS received at a time when country of birth was not a mandatory field.

<sup>56</sup>In each fiscal year from 2016 through 2021, except for 2020, USCIS adjudicated less than half of the total volume of new I-829 petitions received. We previously reported on the USCIS petition backlogs in August 2021 and made six recommendations, including that the Director of USCIS should develop and implement performance measures for monitoring and reporting the timeliness of processing applications and petitions that have significant pending caseloads. DHS agreed with our recommendation and described planned actions to incorporate such measures into the agency performance management and planning process for fiscal year 2023. We are continuing to monitor the agency's efforts to implement this recommendation. See GAO, *U.S. Citizenship and Immigration Services: Actions Needed to Address Pending Caseload*, [GAO-21-529](#) (Washington, D.C.: Aug. 18, 2021).



family members.<sup>57</sup> As shown in figure 5, the number of investors and family members USCIS approved each year to become lawful permanent residents varied from fiscal years 2016 through 2021.

**Figure 5: Number of EB-5 Investor and Family Member Lawful Permanent Residents (I-829) U.S. Citizenship and Immigration Services Approved, Fiscal Years 2016 through 2021**



Source: GAO analysis of U.S. Citizenship and Immigration Services data. | GAO-23-106452

Our analysis of USCIS data found that China was the top country of birth for EB-5 petitioners who obtained lawful permanent resident status from

<sup>57</sup>USCIS I-829 petition approvals generally lag receipts, approvals, and issuances of Forms DS-260 and I-485 by at least 2 years. This is due to processing times and program rules, which require Form I-829 to be submitted 2 years after the initial investor petition. The number of individuals who can have the I-829 approved to remove conditions from their lawful permanent resident status are not subject to an annual cap.

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fiscal years 2016 through 2021 (at least 72 percent).<sup>58</sup> During this same time, USCIS denied 1,646 I-829 petitions. Of the petitions denied, 42 percent were for investors, while 58 percent were for family members.<sup>59</sup> At least 56 percent were born in China.<sup>60</sup> USCIS may deny Form I-829 petitions for failing to meet program eligibility requirements.<sup>61</sup>

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## EB-5 Investments Are Made in a Variety of Industries across the Country

When completing Form I-829, EB-5 petitioners are required to provide information related to their investments. This includes information on the investment industry and the location of their investment entities. IPO maintains this investment-related information on the forms themselves. However, IPO also maintains some data on EB-5 investment-related information in its data system, including information on the industries in which investments are made, the state or territory of the investments, the number of investment entities per state or territory, and the number of individual investors per state or territory.<sup>62</sup>

## Investments Most Often Made in the Construction Industry

Our analysis of IPO data found that from fiscal years 2016 through 2021, about half of the EB-5 investments with available data identified Construction as the industry sector in which the investments were made. Other sectors in which investors reported investing included Finance and

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<sup>58</sup>The next largest category for investors and family members was unknown or null (14 percent). USCIS did not record the country of birth for about 27 percent of family members with approved I-829 petitions because previous versions of the form did not require that information. According to the available data, the next highest country of birth, South Korea, accounted for at least 1 percent of EB-5 immigrants who received lawful permanent resident status.

<sup>59</sup>On average, each EB-5 investor has more than one family member. Therefore, when an investor is denied at the I-829 stage and all associated family members are subsequently denied, the number of denied family members is often higher than the number of denied investors.

<sup>60</sup>The next largest category for investors and family members was unknown or null (14 percent). USCIS did not record the country of birth for about 25 percent of family members with denied I-829 petitions because previous versions of the form did not require that information. According to the available data, the next highest recorded country of birth, South Korea, accounted for at least 3 percent of denied Forms I-829.

<sup>61</sup>These requirements include providing evidence that the petitioner invested, or was actively in the process of investing the required capital and sustained the investment for at least a 2-year period; and evidence that the new commercial enterprise created or can be expected to create within a reasonable time, at least 10 full-time positions for qualifying employees.

<sup>62</sup>IPO does not systematically collect electronic information on all EB-5 investment information that investors report on forms, as officials noted these are not required entry fields during intake or adjudication and are not required for adjudication purposes.

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Almost All U.S. States and Territories Have EB-5 Investment Entities

Insurance, Accommodation and Food Services, Real Estate and Rental and Leasing, and Manufacturing.<sup>63</sup> According to IPO officials, the industry applicants list for initial job creation is often different than the industry of the finished project. For example, a Regional Center project may ultimately result in the construction of a hotel, but applicants list the industry as Construction as this reflects the jobs that were created in building the project.

EB-5 investment entities include both Regional Centers and new commercial enterprises. As of June 30, 2021, there were 630 Regional Centers approved by USCIS to operate in 47 states and five territories (see figure 6).<sup>64</sup> Our analysis of available IPO data further shows that there were new commercial enterprises approved to operate in at least 41 states plus the District of Columbia during fiscal years 2016 through 2021.<sup>65</sup>

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<sup>63</sup>We analyzed industry codes IPO collected from approximately 52 percent of approved I-829 petitions.

<sup>64</sup>USCIS may approve Regional Centers to operate in more than one state. The data do not include Regional Centers that USCIS may have approved and then later terminated.

<sup>65</sup>The nine states without new commercial enterprises according to the data available are: Alaska, Arkansas, Iowa, Kansas, Maine, Missouri, Nebraska, New Mexico, and Wyoming. Alaska, Maine, and American Samoa were the only states and/or territories that did not have any approved Regional Centers or new commercial enterprises in the data we analyzed. We analyzed new commercial enterprise state of operation data IPO collected on approximately 70 percent of approved Form I-526s. IPO data did not include the state of operation for 30 percent of entries. IPO officials stated that they do not electronically record this information for all approved I-526 petitions as it is not a required entry field and is not necessary for adjudication.



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Our analysis of available IPO data on investors by state from fiscal years 2016 through 2021 shows that at least nine states had a minimum of 1,000 investors that were approved to participate in Regional Centers within that state.<sup>66</sup> These states included New York, California, Florida, New Jersey, Pennsylvania, Texas, Maryland, Washington, and Delaware.<sup>67</sup>

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## USCIS Collects Some EB-5 Data but Lacks Readily-Available Data on Fraud and National Security Trends

USCIS data show that the number of EB-5 program requests for assistance, leads, and cases related to fraud fluctuated from fiscal years 2016 through 2021, while national security concerns generally increased.<sup>68</sup> However, while USCIS collects data on the number of EB-5 program fraud and national security concerns that it investigates, it does not have readily-available data pertaining to the specific characteristics of fraud concerns and trends in the program. Additionally, USCIS does not collect petition and application denial reasons or Regional Center termination reasons, including when fraud or national security is an underlying factor.

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## USCIS and Other Agencies Collect Data on EB-5 Program Fraud and National Security Concerns

According to USCIS data, in fiscal year 2021, the number of EB-5-related investigations created—including leads, cases, and national security concerns—made up less than 3 percent of pending petitions (I-526s and

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<sup>66</sup>These data do not include investors participating in the original, standalone EB-5 pathway. About 7 percent of investors chose the standalone pathway from fiscal years 2016 through 2021.

<sup>67</sup>IPO was unable to determine the state associated with the investor's approved Form I-526 in about 30 percent of entries. Because of this, we present the minimum number of investors in these states, and there may be additional states with 1,000 or more investors. Similar to the new commercial enterprise location data, IPO officials stated that they do not electronically record state/territory information for all approved I-526 petitions. They said this is because it is not a required entry field and is not necessary for adjudication.

<sup>68</sup>As discussed above, a request for assistance is an internal or external request to FDNS for data, research, or other activity about potential fraud, national security, or public safety concerns.

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I-829s).<sup>69</sup> The number of confirmed EB-5 fraud and national security concern cases made up less than 1 percent of pending EB-5 petitions (I-526s and I-829s) in fiscal year 2021.<sup>70</sup>

### USCIS Data Trends on Fraud-related Requests for Assistance

The number of requests for assistance related to potential fraud in the EB-5 program that FDNS created increased significantly between fiscal years 2016 and 2017, and then fluctuated from fiscal years 2018 through 2020. Officials said that the increase in requests for assistance between fiscal years 2016 and 2017 may have been a result of several factors, including a change in standard operating procedures which required staff to create requests for assistance when adjudicators noted specific types of information potentially related to unlawful activity. IPO officials also noted that an increase in overall form filings led to USCIS hiring more adjudicators and resulted in a subsequent rise in requests for assistance. Additionally, officials said that they introduced mandated FDNS referral trainings that resulted in increased requests for assistance from adjudicators.

In fiscal year 2021, requests for assistance decreased by 45 percent compared to fiscal year 2020. As discussed earlier, the number of new investor petitions also decreased sharply during this time. Officials said that the decrease in requests for assistance may have been due to a USCIS hiring freeze, the COVID-19 pandemic which impacted the ability of FDNS to complete work, and the lapse in the Regional Center Program. The lapse in the Regional Center Program prevented adjudicators from working on I-526 and I-924 Regional Center-related petitions and applications, which reduced the number of petitions that could have been the subject of a request for assistance.

### USCIS Data Trends on Fraud Leads

EB-5 program-related fraud leads fluctuated from fiscal years 2016 through 2021. The number of leads created peaked in fiscal year 2019,

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<sup>69</sup>While some requests for assistance, leads, and cases are associated with a single petitioner or Regional Center, others may involve multiple subjects. For example, when a Regional Center is the subject of a request for assistance, lead or case, IPO officials told us that it may appear as only one entry in FDNS-DS, but numerous job-creating entities and individual petitioners may be associated with the case. In large cases, IPO officials told us that staff may work investigations for multiple petitions under a single FDNS-DS entry. Therefore, the extent and magnitude of fraud and national security concerns will vary by case management entity.

<sup>70</sup>Specific data on requests for assistance, leads, and cases were omitted because the information was deemed sensitive. In general, the number of created requests for assistance, leads, and cases was in the hundreds each year from fiscal years 2016 through 2021.

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and then decreased in fiscal years 2020 and 2021. The number of leads created doubled between fiscal years 2018 and 2019. FDNS officials said that this increase in leads was partially attributable to a variety of factors. These factors include additional adjudicator trainings on lawful source of funds and other topics; the introduction of new checks for connections to high-risk countries or entities; and the inputting of a large backlog of fraud-related tips that had not previously been recorded in FDNS-DS. According to FDNS officials, the majority of the fraud-related tips did not contain actionable information; Immigration Officers created benefit fraud leads to document that information, but closed them almost immediately. The number of leads in fiscal year 2021 decreased by about 25 percent compared to fiscal year 2020. This decrease may have been due to the decrease in requests for assistance during this time, as discussed earlier.

#### USCIS Data Trends on Fraud Cases

The number of EB-5 program-related fraud cases FDNS created fluctuated from fiscal years 2016 through 2021, with FDNS creating a similar number of cases in fiscal years 2016, 2018, and 2019. In fiscal year 2021, the number of cases FDNS created decreased by about 40 percent compared to fiscal year 2019. Officials said that the decrease in cases created may have been due to a number of factors. For example, officials said that overseas verifications requests paused due to the COVID-19 pandemic during fiscal years 2020 to 2022, which prevented FDNS Immigration Officers from completing investigations.<sup>71</sup> Officials also noted that IPO FDNS submits more overseas verification requests than any other USCIS office. Additionally, the decrease in fraud leads in fiscal year 2021 compared to fiscal year 2020, as discussed earlier, reduced the number of leads that could be elevated to a case. This may have also been a factor in the decrease in cases during this time.

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<sup>71</sup>During an overseas verification, an officer may use a wide variety of techniques to determine that documents are authentic or that statements made are true.

The percentage of completed EB-5 program-related fraud cases where FDNS staff found fraud that was material to the petition or application is shown in table 4.<sup>72</sup>

**Table 4: Percent of Completed EB-5-related Fraud Cases Where USCIS’s Fraud Detection and National Security Directorate Found Fraud, Fiscal Years 2016 through 2021**

Fiscal Year	Percent of Completed Cases Finding Fraud
2016	50
2017	29
2018	56
2019	42
2020	68
2021	67

Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) Fraud and National Security Directorate data. | GAO-23-106452

According to FDNS-DS data, fraud cases from fiscal years 2016 through 2021 were most often associated with foreign nationals whose country of birth was China (at least 57 percent). Missing and unknown countries of birth made up about 12 percent, followed by Vietnam (at least 10 percent).<sup>73</sup> However, investors and their family members from China also make up the largest percent of petitioners (58 percent) and those from Vietnam makes up the third largest percent of petitioners (6 percent), as discussed earlier.

<sup>72</sup>FDNS categorizes case findings as fraud found, fraud not found, inconclusive, or no statement of findings produced. FDNS eliminated the inconclusive category in 2019. However, based on our review of FDNS-DS summary data, some Immigration Officers continued to close benefit fraud cases with a finding of “inconclusive” through fiscal year 2021. This decreased as a portion of total completed cases from 15 percent in fiscal year 2016 to 4 percent in fiscal year 2021. Officials said that Immigration Officers may categorize a case as “no statement of findings produced” if the case is associated with another overarching case. In such instances, the statement of findings may be linked to the case management entity for the overarching case, or they may be post-adjudication cases that end up as referrals to ICE.

<sup>73</sup>Country of birth FDNS-DS entries are tied to information provided on the receipt. According to FDNS officials, not every case management entity has a receipt attached to the record, and, not every receipt includes a country field. Additionally, officials noted that multiple receipts could be associated with one case management entity



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## USCIS Data Trends on National Security Concerns

According to FDNS-DS data, the number of referrals and requests for assistance for EB-5 national security concerns submitted by IPO staff increased significantly from fiscal years 2017 through 2021.<sup>74</sup> Specifically, FDNS recorded over three times more national security concern referrals and requests for assistance in fiscal year 2021 than in fiscal year 2017. According to IPO FDNS officials, the number of *confirmed* national security concerns (where FDNS has assessed and validated the threat) were similar each year from fiscal years 2016 through 2020, and then increased significantly in fiscal year 2021. These officials attributed the increase in both referrals and requests for assistance and confirmed national security concerns to interagency partners releasing additional threat information related to organizations and institutions of concern in 2021.

According to FDNS-DS data, the majority of national security concern referrals and requests for assistance from fiscal years 2016 through 2021 were associated with foreign nationals whose country of birth was China (at least 60 percent). Missing and unknown countries of birth made up about 17 percent, followed by Iran (at least 7 percent), Venezuela (at least 3 percent), and Russia (at least 3 percent).

## EB-5 Program Fraud and National Security Data from Other Enforcement Agencies

USCIS does not conduct enforcement actions. It coordinates with and makes referrals of confirmed fraud, criminal activity, or national security threats, to federal law enforcement agencies. These law enforcement agencies include, but are not limited to, the SEC, ICE HSI, and FBI. As we reported in August 2015, SEC, ICE HSI, and FBI may also uncover EB-5 program-related fraud through its own investigative efforts and, as appropriate, share this information with USCIS.<sup>75</sup> These agencies track and collect summary data on EB-5 program-related investigations they conduct.<sup>76</sup>

- **SEC.** According to SEC data, from fiscal years 2016 through 2021, the agency received over 1,280 tips, complaints, and referrals

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<sup>74</sup>Data on national security concern referrals and requests for assistance for fiscal year 2016 are not available in FDNS-DS. According to FDNS officials, FDNS evolved its data entry practices over the years and did not complete its transition to FDNS-DS until fiscal year 2017.

<sup>75</sup>[GAO-15-696](#).

<sup>76</sup>The FBI provided testimonial evidence regarding the number of EB-5 cases it investigated during this time period, due to the small number of cases.

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identified in its systems as related to possible securities fraud violations in the EB-5 program. Of those, SEC referred 69 to other state, local, or federal law enforcement agencies for further review. Additionally, SEC took 47 EB-5 program-related enforcement actions from fiscal years 2016 to 2021, of which 45 had favorable outcomes and two remain pending.<sup>77</sup> For example, in 2021, the SEC filed an emergency action and obtained an asset freeze against Fleet New York Metropolitan Regional Center LLC, for alleged securities fraud in connection with two Regional Center real estate projects in Queens, New York.<sup>78</sup> The SEC complaint alleges that the principal of the Regional Center fraudulently raised more than \$229 million dollars through five EB-5 program offerings from more than 450 investors.

- **ICE HSI.** According to ICE HSI officials, from fiscal years 2016 through 2021, ICE HSI initiated 14 cases based on EB-5 program leads or referrals received from USCIS.<sup>79</sup> Additionally, during this time, ICE officials reported taking 123 actions related to EB-5 program investigations, including criminal arrests, indictments, convictions, seizures, and administrative arrests.<sup>80</sup> ICE HSI officials said that examples of the types of EB-5 program fraud they investigate include money laundering, tax evasion, false statements on EB-5 forms, and mail or wire fraud depending on how the funds and information were transmitted. For example, in July 2022, ICE HSI participated in an investigation with the FBI of Oyster Bay, NY, residents who allegedly perpetuated a decade-long scheme to defraud investors in a fictitious EB-5 project. The Oyster Bay residents raised \$27 million, \$16.5 million of which came from EB-5 investors.
- **FBI.** FBI officials told us that from 2016 through March 2022, the FBI Financial Crimes Section investigated 16 EB-5 program cases. The FBI may partner with other agencies to investigate EB-5 related cases. For example, in 2017, the FBI partnered with ICE HSI and other agencies to investigate a case involving the California

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<sup>77</sup>Favorable outcomes include settlements and court rulings in the SEC's favor.

<sup>78</sup>Richard Xia, a/k/a Yi Xia and Fleet New York Metropolitan Regional Center, LLC, f/k/a Federal New York Metropolitan Regional Center, and Relief Defendant Julia Yue, a/k/a JiQing Yue (Release No. LR-25230; Sep. 28, 2021) (sec.gov).

<sup>79</sup>ICE does not track the number of EB-5 referrals received from FDNS and other agencies that did not result in opened investigations, according to ICE officials.

<sup>80</sup>ICE administrative arrests are based on administrative arrest warrants. Unlike judicial warrants, ICE warrants are purely administrative, as they are neither reviewed nor issued by a judge or magistrate, and therefore do not confer the same authority as judicially approved arrest warrants.

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Investment Immigration Fund, LLC Regional Center, which ran a multi-faceted scheme to collect over \$50 million from EB-5 program investors.

#### State Department EB-5 Visa Data

From fiscal years 2016 through 2021, State issued over 37,000 visas for EB-5 applicants and their family members and refused over 3,600 EB-5 visa applications. State collects data on EB-5 visa application refusal reasons, which are based on visa ineligibility reasons prescribed in the Immigration and Nationality Act. Our analysis of State data found that 76 EB-5 visa refusals fell under ineligibility reasons that pertained directly to fraud or national security (about 2 percent of the 3,600 refused visa applications) during this time.<sup>81</sup> The countries with the most refusals were China, Iran, India, Vietnam, and South Korea.

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#### Data Collection Limitations Pose Challenges to IPO's Ability to Monitor Evolving Fraud and National Security Risks

##### IPO FDNS Lacks Readily-Available Data on Types of EB-5 Program Fraud

IPO FDNS has taken some steps to collect data that are useful for identifying fraud and national security trends and risks in the EB-5 program. However, due to limitations in its tools for collecting such data, IPO FDNS does not have readily-available automated information for monitoring trends and identifying evolving fraud risks within the program. It instead relies on time-consuming manual reviews and other efforts to obtain this information.

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<sup>81</sup>Our analysis further showed that the most common reason State refused EB-5 petitions pertained to section 221(g) of the Immigration and Nationality Act. A 221(g) refusal generally means that the application is incomplete and further action from the applicant is required or further administrative processing is required. After the submission of additional documentation or further administrative processing, the consular officer may approve the application or refuse the application under the same or different ineligibility code. Another common refusal reason was that the application was subject to the 2017 Executive Order suspending entry of foreign nationals from certain listed countries. State officials told us that visas may be refused for multiple reasons, and that the same visa could be refused more than once for the same or different reason if an application is incomplete or additional documentation was required. See 8 U.S.C. § 1201.

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As noted earlier, the primary system IPO FDNS uses to record data on EB-5 program fraud and national security concerns is FDNS-DS.<sup>82</sup> FDNS staff use this data system across USCIS to enter, update, and track information concerning individuals, or groups of individuals, who are suspected of either committing fraud or of being a national security risk.<sup>83</sup> IPO FDNS officials said that staff primarily use FDNS-DS to manage FDNS's workflow and the system also includes some readily-available elements that can be useful in understanding EB-5 program trends and potential fraud and national security risks. For example, FDNS-DS includes data on the number of EB-5 requests for assistance, leads, and cases per fiscal year. These can be used to perform statistical analyses of general EB-5 fraud and national security rates and trends, according to officials.

However, FDNS-DS is limited in that it does not have fields to collect information on the types of unique fraud present in the EB-5 program, such as those related to the source of investment funds and financial schemes to defraud investors. Additionally, FDNS-DS data fields do not include specific types of EB-5-related national security concerns. Officials said that some additional descriptive information about EB-5 program fraud and national security concerns exists in FDNS-DS free text fields, but these fields are not standardized or easily reviewable for reporting purposes. For example, information entered into free text fields may not always contain the same types of data or information. As a result, officials must obtain this information through time-consuming manual review.

Officials told us that FDNS-DS is not designed to capture specific characteristics of fraud or national security within any individual immigration benefit program. As such, FDNS-DS contains fields related to general types of immigration benefit fraud, such as marriage fraud, rather than fields for types of fraud related to each specific immigration benefit program, such as the EB-5 program. FDNS plans to replace FDNS-DS with a new case management system. However, IPO FDNS officials told us in August 2022 that the new system may have some, but not all, data

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<sup>82</sup>FDNS records information on fraud incidents and individual national security concerns in FDNS-DS. According to FDNS officials, these incidents and individual concerns can be analyzed collectively to assess overall fraud and national security risks to the EB-5 program.

<sup>83</sup>FDNS-DS allows FDNS Immigration Officers to cross-reference background, identity, security check, and adjudication information for petitions and applications with suspected or confirmed immigration fraud, public safety issues, and/or national security concerns.

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fields for types of fraud or national security concerns related to the EB-5 program. In addition, officials said that the system deployment has been delayed to the second quarter of fiscal year 2023.

Because of the limitations in FDNS-DS, IPO FDNS officials said they have to conduct a time-consuming manual review of voluminous paper petition files to obtain information to monitor trends in the data and help identify evolving fraud and national security risks.<sup>84</sup> For example, in 2018, IPO FDNS conducted a review of fraud leads and cases from calendar years 2015 through 2017 to identify trends and the most common categories of fraud during this time. According to IPO FDNS officials, their review was a year-long effort. The analysis found that source of funds document fraud was the most prevalent type of referred and confirmed fraud in the program.

Officials told us that they used this analysis to develop future trainings on identifying source of funds fraud for adjudicators and economists. Additionally, officials said that the analysis was also helpful in that it showed there were relatively low percentages of confirmed fraud and national security concerns in the program. Specifically, according to the analysis, about 1 percent of petitions were associated with confirmed fraud, and about 0.03 percent were associated with national security concerns.

IPO FDNS officials noted that while this 2018 analysis provided useful information about fraud and national security trends and risks within the EB-5 program, it would be challenging and time-consuming to update the analysis without a more systematic way to do so. As such, they have not conducted a similar analysis since 2018. Additionally, these officials noted that the analysis represented risks that were present at the time, but do not account for the evolving nature of risk in the EB-5 program.

IPO officials said that given the limitations of FDNS-DS for tracking and monitoring specific EB-5 fraud and national security concerns, they communicate through various channels to share common fraud and national security concerns that they encounter. For example, IPO officials

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<sup>84</sup>EB-5 petitions require extensive supporting paper documents and may be several feet high. Petition files include the completed petition form and supporting documentation; files may also include research on the petitioner conducted by IPO, any communications from IPO such as requests for evidence and/or notices of denial, and statements of findings from FDNS if, applicable.

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said they use working groups to connect the different divisions within IPO and discuss a range of issues as they arise.<sup>85</sup> Officials also said that IPO FDNS officers attend interagency and DHS-level working groups to share their expertise on EB-5 related threats. Additional IPO efforts to assess and address overall fraud and national security risks within the EB-5 program are discussed later in this report.

IPO FDNS has also taken steps to collect additional information related to EB-5 program national security concerns that is not readily available in FDNS-DS, such as the type of national security concern and referral reason. According to IPO FDNS officials, staff can use this information to identify individual EB-5 national security concern characteristics and provide information on the number of EB-5 petitions awaiting further review by FDNS staff—capabilities which FDNS-DS does not possess.<sup>86</sup>

According to GAO's *Fraud Risk Framework*, managers who effectively manage fraud risks collect and analyze data, including data from reporting mechanisms and instances of detected fraud, for real-time monitoring of fraud trends and identification of potential control deficiencies.<sup>87</sup> Taking steps to systematically collect and track data on the types and characteristics of EB-5 program fraud would provide IPO FDNS with more readily-available information for monitoring and assessing program trends and overall risks. These data would also better position IPO to identify potential control deficiencies and respond to unique and evolving risks in the EB-5 program, such as by increasing training as needed. IPO FDNS, for example, could collect information on EB-5 fraud types and characteristics in an existing data system, or separately.

## IPO Does Not Collect Key Information on EB-5 Denials and Regional Center Terminations

IPO denies EB-5 petitions and applications and terminates Regional Centers for various reasons. However, IPO does not have a process to collect and assess reasons for petition and application denials or

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<sup>85</sup>In 2017, IPO established a working group composed of representatives from different divisions within IPO. IPO officials told us that the group meets less frequently than it did in the past. They said this was due to other avenues that opened up to discuss topics. Additionally, officials noted that IPO had distributed many of the issues typically discussed at the group meetings to other areas and other working groups.

<sup>86</sup>Additional information on these efforts was omitted due to sensitivity concerns DHS identified.

<sup>87</sup>[GAO-15-593SP](#).

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Regional Center terminations, including in cases where fraud or national security concerns were a factor.

IPO may deny an I-526 or I-829 petition if an adjudicator determines that the petitioner did not meet petition or project-specific requirements.<sup>88</sup> For example, at the I-526 stage, USCIS adjudicators may deny a petition if they determine that an investor did not obtain invested capital through lawful means.<sup>89</sup> From fiscal years 2016 through 2021, IPO denied about 6,000 I-526 petitions and about 1,640 I-829 petitions.

Prior to the enactment of the EB-5 Reform Act, IPO was able to deny a Regional Center application or terminate Regional Center participation if (1) the Regional Center no longer served the purpose of promoting economic growth; or (2) the Regional Center failed to submit the required information, or pay the required fee. Between August 2015 and June 2021, USCIS terminated 516 Regional Centers for at least one of these two statutory reasons.<sup>90</sup>

IPO officials stated that they do not collect information on the specific reasons for denials or terminations because of the limited statutory criteria for denying petitions and applications and terminating Regional Centers. Specifically, prior to the March 2022 EB-5 Reform Act, while fraud and national security concerns could be relevant to determining eligibility of an applicant or petitioner, the law did not specifically define such categories as statutory bases for denying or revoking a document,

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<sup>88</sup>USCIS also has the authority to revoke approved petitions if information is uncovered showing that the petitioner is not eligible for the benefit for which they were approved.

<sup>89</sup>At the I-829 stage, an adjudicator may deny a petition for not providing evidence that the New Commercial Enterprise created, or can be expected to create within a reasonable time, at least 10 full-time positions for qualifying employees. USCIS may also deny a petition based on source of funds on two grounds. The first, 8 C.F.R. § 216.6(c)(1)(ii) requires that the necessary amount was invested or is actively in the process of being invested, and any unlawfully sourced funds would therefore fail to meet the capital investment requirement. The second, 8 C.F.R. § 216.6(c)(2) allows for petition denial, termination of conditional status, and issuance of a notice to appear in removal proceedings, if it becomes known to the government that funds were obtained unlawfully and the derogatory information is not overcome.

<sup>90</sup>In August 2015, we reported that IPO had terminated a total 34 Regional Centers since the program's inception. According to an IPO official, the increase in terminations was the result of an enforcement effort instituted by IPO's Compliance Division. The data reflect terminated Regional Centers as of June 2021.

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or terminating a Regional Center.<sup>91</sup> As a result, IPO officials stated that official denial and termination reasons were limited to those identified in statute and that this information was not relevant for their fraud and national security mitigation efforts.

The EB-5 Reform Act, however, establishes specific statutory bases to deny or revoke petitions, applications, or benefits where fraud, deceit, intentional material misrepresentation or criminal misuse are a factor, or for public safety or national security concerns. USICS officials advocated for these enhancements to their statutory authority for a number of years. For example, they provided technical assistance to congressional committees in 2012 and 2015 concerning proposed legislative changes to the EB-5 program. In June 2018, the USCIS director testified before Congress that the agency lacked explicit statutory authority to terminate a Regional Center for criminal or security concerns. As such, the director said the agency had to demonstrate these concerns related to the Regional Center's failure to promote economic growth separately from any criminal or security concern, which was an unnecessarily lengthy and circuitous route to terminate a Regional Center.<sup>92</sup>

Additionally, in August 2015, we reported on USCIS concerns about its authority in this area.<sup>93</sup> IPO officials and adjudicators we interviewed further reiterated these concerns, noting that finding ways to link fraud or national security concerns to statutory criteria or identify administrative grounds for denial could be challenging and time consuming.

IPO officials said that examining the reasons for petition or application denials or Regional Center terminations in a systematic manner would require an extensive, labor-intensive manual review of paper files. These

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<sup>91</sup>We previously reported that while there could be some uncertainty about USCIS's authority with respect to national security concerns identified in the adjudication process, its authority to address fraud or misrepresentation committed by petitioners or applicants generally has been well established. This is because petitioners or applicants must show that their claims for EB-5 program eligibility are more likely true than not, and any potential fraud would generally bear on the truthfulness and ultimate success of such claims. We also reported that USCIS officials noted that USCIS has authority to deny a Form I-485 application based on fraud, misrepresentation, and national security concerns. This is because they constitute grounds of inadmissibility that would render an immigrant investor ineligible for adjustment to conditional permanent residency. See [GAO-15-696](#).

<sup>92</sup>Testimony of L. Francis Cissna, USCIS Director, in U.S. Congress, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115th Cong., 2nd sess., June 19, 2018.

<sup>93</sup>[GAO-15-696](#).



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officials noted that a manual review would require IPO staff to pull hard copies of adjudicated petitions and review notices of denial and termination. Such notices discuss grounds for denial or termination and may include information on underlying fraud or national security concerns.

Moreover, officials said that some cases would require staff to review supporting documents to determine the underlying reason for the denial or termination. Such supporting documents include requests for evidence, FDNS statements of findings, or notices of intent to deny or terminate. Additionally, these officials noted that while recently adjudicated files (within the last 12 to 18 months) may still be at USCIS, staff would have to retrieve older files from storage at Federal Records Centers. Officials further noted that obtaining files from the Federal Records Centers has been difficult and time consuming due to staffing shortages and the COVID-19 pandemic.

We reviewed 234 publicly available Regional Center termination notices from fiscal years 2016 through 2021 and found nine that included references to fraud as an underlying reason for termination.<sup>94</sup> For example, a termination notice from 2018 cited a DOJ case where a Regional Center principal pleaded guilty to federal fraud and money laundering charges for participating in a multi-faceted scheme that collected over \$50 million from EB-5 program investors. The notice used the case as evidence for the official termination reason that the Regional Center no longer served the purpose of promoting economic growth.

According to GAO's *Fraud Risk Framework*, managers who effectively manage fraud risks should adapt fraud risk management activities and communicate the results of monitoring and evaluations. This is to include using the analysis of identified instances of fraud and fraud trends to improve fraud risk management activities.<sup>95</sup> IPO's ability to deny petitions and applications and terminate Regional Centers is an important tool in preventing participants who are ineligible or who pose fraud or security risks from participating in the EB-5 program.

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<sup>94</sup>Our analysis of termination notices showed that the most common official reason for Regional Center termination was that the Regional Center no longer served the purpose of promoting economic growth (127 of 234 notices). Because we did not review the underlying files, our review may not have captured the full universe of terminations in which fraud or national security concerns were a factor.

<sup>95</sup>[GAO-15-593SP](#).

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According to IPO officials, IPO is in the process of transitioning forms I-526/I-526E and I-829 into a new electronic database. They said that given USCIS's expanded authorities and additional discretion to deny petitions and applications, the electronic database could allow the tracking of denial reasons. Officials added that they expect that the capability for electronic processing will be available during fiscal year 2023. However, IPO officials noted that they are still in the process of understanding their new authorities and are unsure if a data field for denial and termination reasons will be included in the new database.

In light of the new statute, developing and implementing a process to collect and assess data on reasons for EB-5 petition and application denials and Regional Center terminations—including whether fraud or national security is a factor—would provide IPO with valuable insight into program risk and how IPO is utilizing its long-sought new authorities. These actions could further help IPO improve and adapt fraud risk management activities as the program evolves.

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## USCIS Has Taken Steps to Assess EB-5 Program Risks and Address Continuing Challenges

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### USCIS Conducted Several EB-5 Program Fraud and National Security Assessments since 2016

While IPO faces technical challenges that hamper its ability to systematically collect and track some key data points, it has engaged in a number of efforts to assess overall fraud and national security risks. Specifically, IPO has conducted several assessments on EB-5 program fraud and national security risks and specific program elements since 2016. For example, in response to a recommendation we made in September 2016 to develop a fraud risk profile, IPO took steps to assess risks that could arise in multiple areas within the EB-5 program and sponsored a comprehensive, program-wide fraud risk assessment.<sup>96</sup> Additionally, from 2017 through 2021, IPO or IPO FDNS conducted at least one fraud or national security assessment on an aspect of the EB-5 program each year. These include a 2017 national security concerns

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<sup>96</sup>See [GAO-16-828](#). USCIS leadership approved the final product in March 2018.

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assessment; a 2018 fraud trend analysis; and analyses examining EB-5 petitions.

These fraud and national security assessments discussed possible threats to the program, including from high-risk countries, entities of risk, and the EB-5 program's largest petitioner groups.<sup>97</sup> According to IPO FDNS officials, the program conducted many of these assessments in response to a recommendation we made in August 2015 to conduct regular EB-5 program assessments.<sup>98</sup>

USCIS's EB-5 program risk assessment activities are consistent with leading practices described in GAO's *Fraud Risk Framework*. For example, the framework includes provisions for conducting fraud risk assessments at regular intervals and when there are changes to the program or operating environment. The framework also calls for periodic evaluations. IPO FDNS officials said they plan to continue to conduct regular fraud and national security assessments. Doing so could help strengthen USCIS's prevention, detection, and mitigation capabilities for the EB-5 program while also enhancing overall fraud risk management efforts. Similarly, as discussed earlier, collecting additional data on specific EB-5 fraud and national security trends would provide USCIS with key information as the program evolves, which the framework also identifies as important for effectively managing fraud risk.

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## USCIS Enhanced Efforts to Address EB-5 Program Risks

IPO and IPO FDNS have undertaken a number of initiatives to address fraud and national security risks related to the EB-5 program since 2016. These efforts include:

- **Compliance Division and compliance reviews.** IPO established a Compliance Division in 2017 to help improve the integrity and administration of the EB-5 Regional Center program. The division's responsibilities include reviewing Regional Centers' required annual certifications, conducting Regional Center compliance reviews, and terminating Regional Centers that fail to maintain their eligibility. The Regional Center Compliance Review Program is a voluntary verification program. As part of the reviews, IPO verifies the

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<sup>97</sup>As discussed earlier, the EB-5 program's largest petitioner groups include initial investors from China, India, Vietnam, and South Korea.

<sup>98</sup>USCIS implemented the recommendation in 2018 based on the program-wide fraud risk assessment and future plans for additional assessments. See [GAO-15-696](#). This report omits information on the specific details of these assessments due to sensitivity concerns identified by DHS.

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information provided in applications and annual certifications. It also verifies compliance with applicable laws and authorities to ensure continued eligibility for the Regional Center designation. This process includes reviewing commercial and public records, interviewing Regional Center personnel, and conducting site visits. From 2017 through 2021, IPO officials stated that the division conducted about 27 compliance reviews.

- **CFIUS reviews.** IPO FDNS reviews CFIUS transactions for a nexus to immigration benefits, including those related to EB-5 Regional Centers and job-creating entities. According to IPO FDNS officials, the number of potential transactions subject to CFIUS jurisdiction increased significantly since 2020, after regulations implementing the Foreign Investment Risk Review Modernization Act of 2018 went into effect. These officials stated that they were aware of a limited number of instances between 2013 and 2021 in which EB-5 projects were named in CFIUS cases (less than 1 percent of reviewed transactions).
- **FDNS Administrative Site Visit and Verification Program.** In 2016, FDNS began conducting site visits to EB-5 new commercial enterprises and job-creating entities to ensure compliance with program requirements, such as verifying job creation. As part of this program, FDNS officers are to visit each entity at the I-829 stage (the application to remove permanent residence conditions). The number of site visits FDNS conducted dropped significantly in fiscal years 2020 and 2021.<sup>99</sup> FDNS officials attributed the decline in site visits to limitations on in-person visits and reduced revenue during the COVID-19 pandemic.<sup>100</sup>
- **Training initiatives.** IPO has sponsored trainings related to fraud and national security indicators and tools for verifying that investment funds are derived from a lawful source, among other topics. For example, IPO's 2018 fraud trend analysis identified source of funds

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<sup>99</sup>This report omits details on the number of EB-5 site visits FDNS conducted due to sensitivity concerns identified by DHS.

<sup>100</sup>In September 2022, we reported that the volume of work in the Administrative Site Visit and Verification Program decreased in fiscal years 2020 and 2021 due to the impact of COVID-19 on USCIS's operating environment. See GAO, *U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage Fraud Risks*, [GAO-22-105328](#) (Washington, D.C.: Sept. 19, 2022).

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document fraud as the most common type of EB-5 fraud,<sup>101</sup> and IPO subsequently offered several new trainings for adjudicators and economists on this topic. Additionally, IPO partnered with the SEC to provide a 2019 training on securities fraud detection.

- **Checks for high-risk countries and entities.** IPO has taken steps to address concerns about the potential for members of, or those affiliated with, communist or other totalitarian regimes to gain admission to the U.S. under the EB-5 program.<sup>102</sup> For example, IPO offered national security training that emphasized key indicators linking petitioners with entities or organizations of concern. IPO has also undertaken efforts to study additional internal actions that may be beneficial in identifying individuals with links to entities that pose national security risks. Further, IPO developed a series of reports to provide adjudicators with an overview of political, financial, fraud, and national security risks from certain countries. IPO officials said they intend these reports to increase adjudicators' understanding of risk factors in EB-5 petitions.

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## Staff Identified Some Areas for Improvement in Initiatives

IPO and IPO FDNS staff we interviewed noted areas for potential improvement in some of these fraud and national security initiatives.<sup>103</sup> For example:

- Three of the six economists we interviewed raised questions about the efficiency of reviewing all projects under the Administrative Site Visit and Verification Program when some of the information collected during these reviews is often readily available online. Another two economists noted that FDNS field staff who conduct the site visits are not always familiar with the complexities of the EB-5 program. IPO officials stated that they implemented a process in 2021 for staff to

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<sup>101</sup>According to IPO officials, source of funds fraud occurs when assets are directly or indirectly acquired by unlawful means, such as criminal activities. Investors may also submit false bank records or other documents to support their investment funds.

<sup>102</sup>In light of amendments made by the EB-5 Reform Act, investors' association with such a regime could lead a USCIS adjudicator to conclude that approving their petition or application is contrary to the U.S. national interest due to threats to public safety or national security concerns. Further, voluntary membership in or affiliation with a communist or other totalitarian party is grounds for inadmissibility under the Immigration and Nationality Act, which could render an applicant ineligible for a visa or adjustment of status. 8 U.S.C. § 1182(a)(3)(D).

<sup>103</sup>The 15 IPO and IPO FDNS staff members we interviewed included five adjudicators, six economists, two Immigration Officers, and two Intelligence Research Specialists.

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conduct open-source research related to EB-5 site visits. Additionally, officials noted that IPO is taking measures to assist field staff in conducting site visits, such as sending IPO staff to assist in complex cases and providing EB-5 specific site visit training.<sup>104</sup>

- While most staff we interviewed expressed a positive view of training offered by IPO, six of the 15 noted a need for additional banking and financial training, as well as more national security training specifically targeted to EB-5 program risks. IPO officials noted that they have provided specialized financial training; however, USCIS budget cuts curtailed their ability to provide specialized training from 2020 through mid-2022.
- Other staff commented on the need for enhanced adjudication authority to deny petitions based on national security concerns (five of 15), and for certain process-oriented regulatory changes (four of 15), such as requiring Regional Centers and associated enterprises to disclose more detailed ownership information. With respect to these concerns, the March 2022 EB-5 Reform Act expanded IPO's authority to deny petitions and terminate Regional Centers based on fraud and national security concerns, and also addressed some of the process-oriented regulatory changes discussed by IPO staff. IPO officials noted that USCIS is in the process of determining how to interpret and implement many of the changes under the act.

Moreover, we have previously recommended that USCIS take action to further evaluate its overall antifraud operations. Specifically, in September 2022, we reported on USCIS efforts to manage fraud risks in its immigration programs.<sup>105</sup> We recommended, among other things, that FDNS headquarters evaluate the efficiency and effectiveness of its antifraud activities. While this recommendation is not targeted specifically at the EB-5 program, efforts at the FDNS headquarters level to evaluate antifraud activities would include some EB-5 program-related initiatives, such as the Administrative Site Visit and Verification Program. As we reported in September 2022, developing and implementing a risk-based process for evaluating the effectiveness and efficiency of antifraud activities would provide FDNS greater assurance that it is effectively preventing, detecting, and responding to potential fraud. Information from

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<sup>104</sup>The EB-5 Reform Act requires USCIS to perform at least one site visit to each of a Regional Center's new commercial enterprises or job-creating entities, or the business locations where any jobs are claimed as being created. 8 U.S.C. § 1153(b)(5)(F)(iv).

<sup>105</sup>[GAO-22-105328](#).

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those efforts would also allow FDNS to make evidence-based decisions about what activities should be adapted to improve results. Implementing this recommendation would help improve fraud detection in immigration benefit programs across USCIS, including EB-5.<sup>106</sup>

Additionally, the EB-5 program is poised to undergo significant changes as the program implements the EB-5 Reform Act. For example, the Compliance Division previously conducted Regional Center compliance reviews on a voluntary basis and, according to IPO officials, was unable to review all annual certifications each year due to staffing shortages.<sup>107</sup> The act provides USCIS explicit audit authority and requires it to audit every Regional Center at least once every 5 years. IPO previously conducted less than 10 compliance reviews each year, according to IPO officials. The new audit authority will significantly increase the number of reviews IPO is to conduct each year, according to IPO officials. As of August 2022, IPO officials stated they were in the process of developing a formal audit program to replace the compliance review process. Officials said that formal audits will give USCIS more insight into stakeholder operations and provide avenues to issue sanctions or other penalties on non-compliant program participants.

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### USCIS Is Taking Steps to Address Some Data Challenges and Improve Investigation Efficiency

IPO and IPO FDNS staff we interviewed identified a range of challenges associated with adjudicating and investigating EB-5 petitions and applications, and USCIS identified steps it is taking to help address these challenges. The most commonly-cited challenges included data-related problems and the length of time associated with investigating fraud referrals and vetting petitions for national security concerns.

### Steps to Address Various Data Challenges

Thirteen of the 15 IPO staff we interviewed identified challenges with USCIS data systems that affect adjudication and investigation efforts, including those related to reliability and functionality. Specifically, staff commented on data entry errors, lack of fields for entering some data points collected on EB-5-related forms, and the inability of various internal systems to interface with each other. For example, one staff noted they were aware of instances of petition data being entered incorrectly or in shorthand into some adjudicative systems and, as a result, entries across different systems may not match. Staff also commented on the reliance

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<sup>106</sup>DHS agreed with our recommendation; however, as of February 2023, the agency had not yet implemented the recommendation.

<sup>107</sup>IPO officials told us they selected which annual certifications to review each year based on several risk factors, including time since the last review.

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on voluminous paper files and lack of digitization for EB-5-related forms. One staff noted that if they need to access information that is collected on the paper form but not recorded in an electronic database, it could take a week or longer to request and obtain the file.

In August 2015 and September 2016 we reported on similar data challenges and how these challenges related to fraud mitigation efforts. For example, in August 2015, we reported that USCIS's information systems and processes limited its ability to collect and use data on EB-5 participants to address fraud risks in the program, such as certain business information that officials noted could help mitigate fraud and misrepresentation. We recommended that USCIS develop a strategy to expand information collection, among other things. In response to our recommendation, USCIS developed a data collection plan documenting a strategy to expand information collection from petitioners and applicants, and in 2017, published revised EB-5-related forms to improve data collection. In September 2016, we reported that while USCIS had taken preliminary steps to digitize and analyze paper files, the EB-5 program was hampered by a reliance on voluminous paper files, and failing to carry through with planned efforts to digitize could limit USCIS's ability to improve fraud risk management.

IPO officials acknowledged that some data challenges persisted and that some of its processes are outdated in comparison to most USCIS offices. For example, petitioner and applicant files are hard copy, paper files and many processes remain largely manually driven. IPO officials stated that IPO is taking steps to mitigate these challenges. For example, officials said IPO established a process for adjudicators to report data errors they uncover when reviewing petitions and that they are working on addressing system weaknesses, including linking data fields across systems.

IPO officials also stated that they are in the process of contracting out an effort to digitize I-829 forms.<sup>108</sup> Specifically, this effort involves scanning and digitizing pending I-829 files to help address the backlog of petitioners waiting to potentially have permanent residence conditions removed. As of June 2022, there were about 11,500 pending I-829s. Officials said that they transferred slightly more than half of these files (6,100) to a contractor for digitization in fiscal year 2022. Officials also

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<sup>108</sup>Officials noted that as of April 2022, contracting issues and other USCIS priorities had delayed the I-829 form digitization effort.



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## Steps to Use Investigation Resources More Efficiently

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told us that they expect to begin ingesting new I-829 and I-526 forms electronically into the new USCIS-wide Electronic Immigration System in 2022, and that additional EB-5 forms would be available in the system over the next couple of years. However, as we have previously reported, USCIS has faced long-standing challenges and delays in implementing the new data system.<sup>109</sup>

Additionally, as discussed earlier, FDNS plans to replace FDNS-DS with a new case management system in fiscal year 2023. IPO and IPO FDNS officials noted that while the new data systems should provide improved capabilities, full digitization and other benefits will take a long time to realize. In the interim, officials stated that IPO will continue its efforts to mitigate challenges and improve efficiencies where possible.

Twelve of the 15 IPO staff we interviewed commented on backlogs and staffing shortages in IPO FDNS, noting that fraud or national security referrals and investigations take an extensive amount of time to complete.<sup>110</sup> For example, one staff member stated that once an adjudicator identifies a fraud indicator and sends a request for assistance to IPO FDNS, it can take years before officials start an investigation or bring charges, or an adjudicator issues a request for evidence and/or a notice of intent to deny the petition. During that time, they noted that any fraud present could continue to be perpetrated. IPO officials agreed that fraud investigations are time intensive as these cases typically include multiple agencies conducting their own investigations. While USCIS policy guidance states that cases with fraud, public safety, or national security indicators must be referred to FDNS, some staff we spoke to noted that some adjudicators may be reluctant to refer petitions to FDNS because of how long reviews take.<sup>111</sup>

IPO FDNS officials acknowledged that lengthy FDNS response times may discourage some adjudicators from referring petitions. Officials stated that backlogs and lengthy investigation times are due to several factors,

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<sup>109</sup>GAO-15-696. In April 2022, officials told us that the time frame for EB-5 form ingestion into the Electronic Immigration System may be delayed due to other USCIS priorities.

<sup>110</sup>According to IPO FDNS officials, as of July 2022, over half of fraud cases may be under law enforcement investigation. This percentage has remained generally constant over the past few years. IPO FDNS officials noted that they do not control law enforcement investigation timelines.

<sup>111</sup>IPO officials stated that referrals have been increasing, according to their internal data.

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including long-standing staffing shortages. Specifically, officials noted that while the EB-5 program grew in terms of number of petitioners and number of IPO adjudicators, FDNS staff did not. According to these officials, IPO FDNS staff levels are currently about 63 percent of what the FDNS staffing model estimates they should be, with IPO FDNS sections handling fraud and national security cases at less than 50 percent.<sup>112</sup> Officials also noted that the EB-5 program's unique and complex nature makes it difficult to backfill positions from other parts of FDNS and that they are working to increase staffing levels.

To mitigate the challenges posed by staffing shortages, officials said they are taking steps to make the EB-5 program fraud and national security investigation process more efficient. For example, they developed a worksheet that provides a snapshot of key information in each referral to reduce the need to constantly refer back to paper files, and other processes to help manage workflow. Officials also stated that they emphasize the importance of referrals in regular trainings and throughout management meetings. For example, a May 2022 training on national security indicators states that referrals are important for protecting the safety and security of the U.S. Additionally, IPO officials noted that the new discretionary denial authority in the EB-5 Reform Act could reduce the time needed to process petitions and applications and requests for assistance.

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## Conclusions

From fiscal years 2016 through 2021, about 31,000 immigrant investors and their family members gained lawful permanent resident status through the EB-5 program and helped contribute to the U.S. economy through investments in new job-creating businesses.<sup>113</sup> However, these features of the program that can provide economic benefits to the U.S. can also create unique fraud and national security risks that USCIS must identify and address. Within USCIS, while IPO has taken steps to assess and address EB-5 fraud and national security risks, it does not have readily-available data about the types and characteristics of EB-5 program fraud. Systematically collecting and tracking this information would help IPO to better monitor and assess fraud trends in the program and respond to unique and evolving fraud risks. Additionally, it would help

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<sup>112</sup>According to IPO FDNS officials, budget constraints, along with a 1-year hiring freeze and attrition contributed to the staffing shortfalls.

<sup>113</sup>As discussed above, from fiscal years 2016 through 2021, USCIS approved I-829 petitions to remove conditions on permanent resident status for about 31,000 investors and family members.

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IPO more readily identify areas for improvement as the program continues to evolve and change.

IPO's ability to deny petitions and applications and terminate Regional Centers is an important tool in preventing participants who are ineligible or who pose fraud or security risks from participating in the EB-5 program. The March 2022 EB-5 Reform Act granted IPO long-sought authority to deny applications and petitions and to terminate Regional Centers on the basis of fraud and national security concerns. However, IPO does not have a process to collect and assess reasons for petition and application denials or Regional Center terminations, including in cases where fraud or national security concerns were a factor. Developing and implementing a process to collect and assess data on reasons for EB-5 petition and application denials and Regional Center terminations—including whether fraud or national security was a factor in the action—would provide IPO with valuable insight into how it is using its new authorities and help IPO improve and adapt its fraud risk management activities.

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## Recommendations for Executive Action

We are making the following two recommendations to USCIS:

The Director of USCIS should systematically collect and track data on the types and characteristics of EB-5 program fraud. (Recommendation 1)

The Director of USCIS should develop and implement a process to collect and assess data on reasons for EB-5 petition and application denials and Regional Center terminations, including whether fraud or national security was a factor in the action. (Recommendation 2)

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## Agency Comments

We provided a draft of the sensitive version of this report to DHS, DOJ, State, Treasury, and the SEC for review and comment. DHS provided comments, which are reproduced in full in appendix II. In its comments, DHS agreed with both of our recommendations and described planned actions to address them. DOJ, State, Treasury, and the SEC told us they had no formal written comments on the report. DHS, DOJ, State, and the SEC provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees; the Secretaries of Homeland Security, Justice, State, and Treasury; and the Chair of the SEC. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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If you or your staff members have any questions about this report, please contact Rebecca Gambler at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov). GAO staff who made key contributors to this report are listed in appendix III.

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler  
Director, Homeland Security and Justice

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*List of Requesters*

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Budget  
United States Senate

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Guy Reschenthaler  
House of Representatives

# Appendix I: EB-5 Program New Arrival and Adjustments of Status Adjudication Results

U.S. Citizenship and Immigration Services (USCIS) adjudicates the initial petition for immigrant investors to participate in the EB-5 program. The Department of State (State) then adjudicates visa applications from immigrant investors and any applicable family members (spouses and children) who submit Form DS-260 for applying for a visa to the U.S.<sup>1</sup> USCIS adjudicates applications from investors and any applicable family members who submit Form I-485, which allows individuals to apply for lawful permanent resident status when present in the U.S. and without having to return to their home country to complete visa processing.<sup>2</sup> Table 5 shows total numbers of adjudicated applications, and the percent of adjudicated applications denied, of the 10 countries with the largest volume of EB-5 petitions.

**Table 5: EB-5 Program New Arrival (DS-260) and Adjustments of Status (I-485) Adjudication Results, Fiscal Years 2016 through 2021**

Country		State (DS-260)	USCIS (I-485)	Overall
China	Adjudications	25,791	3,620	29,411
	Percent Refused/Denied	7.4%	6.6%	7.3%
Vietnam	Adjudications	3,429	273	3,702
	Percent Refused/Denied	8.5%	5.1%	8.2%
India	Adjudications	1,764	1,230	2,994
	Percent Refused/Denied	17.7%	16.8%	17.3%
South Korea	Adjudications	1,712	328	2,040
	Percent Refused/Denied	4.4%	27.7%	8.2%
Brazil	Adjudications	727	814	1,541
	Percent Refused/Denied	9.4%	3.4%	6.2%
Taiwan	Adjudications	1,363	154	1,517
	Percent Refused/Denied	4.1%	8.4%	4.5%

<sup>1</sup>USCIS and State use “family derivatives” to refer to family members, defined as an investor’s spouse and any unmarried children generally under 21 years of age. State uses the terms “issued” and “refused” to refer to positive and negative adjudicative decisions, respectively. In the context of this report, “issued” and “approved,” and “refused” and “denied” mean the same thing.

<sup>2</sup>New arrivals refer to foreign nationals who are not currently in the U.S. who are applying for immigrant status. Adjustments of status refer to foreign nationals already in the U.S. who are applying for immigrant status. An adjustment of status may, for example, involve a foreign national who first entered the U.S. on a temporary employment visa such as an H-1B visa. The individual may later decide to participate in the EB-5 program and seek lawful permanent residence through that program by filing Forms I-526 or I-526E, I-485, and later, Form I-829..

**Appendix I: EB-5 Program New Arrival and  
Adjustments of Status Adjudication Results**

<b>Country</b>		<b>State (DS-260)</b>	<b>USCIS (I-485)</b>	<b>Overall</b>
Venezuela	Adjudications	280	486	766
	Percent Refused/Denied	19.6%	3.1%	9.1%
Iran	Adjudications	590	51	641
	Percent Refused/Denied	65.1%	13.7%	61%
Mexico	Adjudications	248	351	599
	Percent Refused/Denied	8.1%	18.8%	14.4%
Hong Kong S.A.R.	Adjudications	481	105	586
	Percent Refused/Denied	4.4%	5.7%	4.6%
Other	Adjudications	4,366	2,305	6,671
	Percent Refused/Denied	11.0%	18.3%	13.5%
<b>Grand Total</b>	<b>Adjudications</b>	<b>40,751</b>	<b>9,717</b>	<b>50,468</b>
	<b>Percent Refused/Denied</b>	<b>9.0%</b>	<b>11.4%</b>	<b>9.5%</b>

Source: GAO analysis of State Department (State) and U.S. Citizenship and Immigration Services (USCIS) data. | GAO-23-106452

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

March 13, 2023

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-23-106452, "IMMIGRANT INVESTOR PROGRAM: Opportunities Exist to Improve Fraud and National Security Risk Monitoring"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's recognition of the steps U.S. Citizenship and Immigration Services (USCIS) has taken to assess overall fraud and national security risks in the EB-5 Immigrant Investor Program (EB-5) program. GAO noted the Immigrant Investor Program Office (IPO), which is the USCIS office charged with managing the EB-5 program, sponsored a comprehensive, program-wide fraud risk assessment for the EB-5 program in 2018. Additionally, from 2017 through 2021, USCIS annually conducted at least one fraud or national security assessment on an aspect of the EB-5 program.

GAO also acknowledged USCIS efforts to address fraud and national security risk related to the EB-5 program since 2016, including: (1) establishing the Compliance Division within IPO in 2017; (2) conducting compliance reviews; (3) reviewing relevant Committee on Foreign Investment in the United States (CFIUS)<sup>1</sup> transactions for a nexus to immigrant investors and participants of EB-5 regional centers and related entities; and (4) including the EB-5 program in the Fraud Detection and National Security Directorate

<sup>1</sup> The CFIUS is an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.



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**Appendix II: Comments from the Department  
of Homeland Security**

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(FDNS) Administrative Site Visit Verification Program. IPO has also undertaken various training initiatives, and reviews applications for any involvement with U.S. government-sanctioned entities. DHS remains committed to addressing data challenges, improving fraud and national security risk monitoring, and strengthening the operations and integrity of the EB-5 program.

The draft report contained two recommendations with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing accuracy, contextual, and sensitivity issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER  Digitally signed by JIM H  
CRUMPACKER  
Date: 2023.03.13 10:41:37 -04'00'

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations Contained in GAO-23-106452**

GAO recommended the Director of USCIS:

**Recommendation 1:** Systemically collect and track data on the types and characteristics of EB-5 program fraud.

**Response:** Concur. USCIS will establish an intra-agency working group to develop a plan to systematically collect and track data on the types and characteristics of EB-5 program fraud, and will use applicable information and available data to identify the most relevant types and characteristics of EB-5 program fraud, and implement a system change into the Fraud Detection and National Security Directorate Data System (FDNS-DS) (or successor system). This will help strengthen reporting and tracking and provide a more effective and efficient way for USCIS to collect and track data on the varieties of EB-5 program fraud.

This intra-agency working group will include FDNS, the Office of Information Technology (OIT), the Field Office Directorate (FOD), and the Office of the Chief Data Officer (OCDO), as well as other key stakeholders from USCIS directorates. The FDNS IPO Chief, FDNS Systems Integration Division Chief, and FDNS Reports and Analysis Branch Chief will have primary responsibility for this effort, and will complete a process for collecting and tracking data on types of EB-5 program fraud.

This effort will include the following actions:

<b>Actions</b>	<b>Estimated Completion Date (ECD)</b>
Create a plan to systematically collect and track data on the types and characteristics of EB-5 program fraud.	April 28, 2023
Implementation of the plan to collect and track data on the types and characteristics of EB-5 program fraud.	August 31, 2023
Completion of initial documentation of at least one type/characteristic of EB-5 program fraud.	September 29, 2023

Overall ECD: September 29, 2023.

**Appendix II: Comments from the Department of Homeland Security**

**Recommendation 2:** Develop and implement a process to collect and assess data on reasons for EB-5 petition and application denials and Regional Center terminations, including whether fraud or national security was a factor in the action.

**Response:** Concur. The intra-agency working group will develop and implement a process to collect and assess data on reasons for EB-5 petition and application denials, and regional center terminations, including whether fraud or national security was a factor in the action. Following this work, USCIS will consider the statutory grounds for denial or termination, as well as how best to capture this information in USCIS systems, to allow for organized reporting and tracking. The results of this change will provide an effective and efficient way for USCIS to collect and track data on the reasons for denials and terminations.

This intra-agency working group will include FDNS, OIT, FOD, and OCDO, as well as key stakeholders from USCIS directorates. The IPO Chief, and the FOD Assistant Associate Director for Information Technology will have primary responsibility for implementing this effort, and will complete a process for collecting and tracking data types of EB-5 program fraud. The outcome will be the establishment of a data field within IPO's case management system which specifies the reason for the denial or termination which that can then be referenced by various reporting mechanism.

This effort will include the following actions:

<b>Actions</b>	<b>ECD</b>
Create a plan to collect and assess data on reasons for EB- 5 petition and application denials, and regional center terminations.	April 28, 2023
Complete modifications to the data base and user interface to capture data on reasons for EB-5 petition and application denials, and regional center terminations in IPO's case management systems.	September 29, 2023

Overall ECD: September 29, 2023.

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# Appendix III: GAO Contact and Staff Acknowledgements

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## GAO Contact

Rebecca Gambler at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Adam Hoffman (Assistant Director), Sarah Turpin (Analyst-in-Charge), Benjamin Crossley, Jewel Conrad, Dominick Dale, Gabrielle Fagan, Michele Fejfar, Sasan J. “Jon” Najmi, Rebecca Shea, Nick Weeks, and Jacob Wu made key contributions to this report.

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