

# Capital Without Contribution

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*The United States offers immigration pathways based on economic contribution, yet this principle is applied inconsistently across employment-based (EB) visa preference categories. While the EB-1, EB-2, and EB-3 visas require immigrants to demonstrate exceptional ability, advanced education, or labor market necessity, the EB-5 investor visa grants permanent residency solely in exchange for capital. This Note argues that this inconsistency exposes a deeper flaw in U.S. immigration law: an incoherent and unequal definition of “economic value.” By treating capital as a sufficient basis for citizenship—without requiring skill, integration, or verifiable public benefit—the EB-5 program reveals how U.S. immigration policy privileges wealth over talent, labor, or civic contribution.*

*Through a critical analysis of the EB-5 program’s structure, a comparative study of employment-based and international investor visa systems, and a case study of the Jay Peak fraud scandal, this Note demonstrates that the United States has failed to articulate a coherent theory of economic value in migration policy. It concludes by proposing a redefinition of “economic contribution” that prioritizes measurable public benefit, direct skill transfer, and genuine developmental impact over mere financial transactions.*

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## INTRODUCTION

The United States immigration system promises economic opportunity and categorizes immigrants according to their potential contributions to the national economy. Congress created U.S. immigration policies governing lawful permanent immigration that “emphasize four major principles: (1) family reunification; (2) immigration of persons with needed skills; (3) refugee protection; and (4) country-of-origin diversity.”<sup>1</sup> Each category reflects different driving policy values.

Traditional immigration pathways, such as family sponsorships or asylum and refugee resettlement, often involve prolonged periods of adjustment and integration, during which immigrants engage with American civic institutions, learn the language, participate in schools and local organizations, and build social networks. Refugees and asylum seekers are required to be physically present in the U.S. for at least one year before they can apply for permanent residency.<sup>2</sup> By contrast, investors through the EB-5 program are permitted limited involvement in their investments, which can be made while they are abroad. The EB-5 program bypasses the traditional integration process by allowing affluent investors to obtain permanent residency primarily on the basis of capital investment, rather than community engagement.

Employment-based visas, in particular, are designed to reward those who bring extraordinary skills, essential labor, or valuable investment. Yet within this framework exists a fundamental contradiction: While most employment-based preference categories—first (EB-1), second (EB-2), and third (EB-3)—require proof of talent, education, or labor market demand, the fifth preference investor visa (EB-5) offers permanent residency in exchange for financial capital alone. In October 2025, the Department of Homeland Security (DHS) proposed a sweeping reduction of EB-5 fees,<sup>3</sup> prompting a deeper question: Why is the investor class treated as a special economic bloc within the U.S. immigration system, if not because of its capital rather than its contribution?

With President Trump’s recent comments on the “Gold Card,”<sup>4</sup> a review of the EB-5 investor visa program should reflect that the immigration system is disjunctive and weighs negatively on the moral economy of citizenship, despite any short-term capital gains. The EB-5 visa was created in 1990 to stimulate the U.S. economy “through job creation and capital investment by foreign

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1. WILLIAM A. KANDEL, CONG. RSCH. SERV., R43145, U.S. FAMILY-BASED IMMIGRATION POLICY 1 (2018).

2. *Green Card for Asylees*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 8, 2025) <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-asylees>.

3. Britain Eakin, *DHS Unveils Proposal to Reduce EB-5 Investor Visa Fees*, LAW360 (Oct. 22, 2025, at 19:27 ET), <https://www.law360.com/articles/2402455>.

4. Michael Williams & Piper Hudspeth Blackburn, *Trump Says US Will Sell \$5 Million ‘Gold Card’ to Wealthy Foreigners*, CNN (Feb. 25, 2025, at 22:01 ET), <https://www.cnn.com/2025/02/25/politics/us-gold-card-foreigners-trump/index.html>.

investors.”<sup>5</sup> The program allowed investors to apply for lawful permanent residents (obtain a green card).<sup>6</sup> Investors are required to make a necessary investment in a commercial enterprise in the United States and plan to create or preserve ten full-time jobs for qualified U.S. workers.<sup>7</sup> The minimum investment amount is \$1,050,000 or \$800,000 if investing in a targeted employment area.<sup>8</sup> In the fiscal year 2024, 14,510 immigrants received a green card through the investor visa program.<sup>9</sup> Investors are allotted 7.1 percent of the total green card limit (9,940), with a minimum of 3,000 reserved for investors in rural or high-unemployment areas.<sup>10</sup> However, unlike skilled workers who must demonstrate their subject matter expertise or agricultural laborers who perform manual labor, EB-5 investors gain entry simply by transferring funds.

U.S. employment-based visas reflect an uneasy balance between merit, labor, and capital. The EB-5 program, in particular, treats financial investment as a substitute for contribution, embedding a market logic into what was once a civic institution. This dynamic is not unique to the United States. The EB-5 program is part of a global trend described as “citizenship shopping”—the acquisition of permanent residence or citizenship in a foreign country for access and convenience. The trend is characterized by short-term capital gains. In 2019, citizenship-by-investment programs raised over \$4 billion globally.<sup>11</sup> Political sociologist Kristin Surak notes that citizenship-by-investment programs have rapidly increased since 2010.<sup>12</sup> “Golden passports are but a small part of a wider global economy of citizenship in which people and countries are valued—and evaluated—differently.”<sup>13</sup> Seen through this global lens, the EB-5 is part of an international economy of citizenship in which value is quantified by wealth and mobility rather than work or belonging.

A review of legal scholarship reveals a gap in disaggregating economic visas to understand the types of economic contributions the U.S. aims to achieve through these immigration policies. This Note argues that U.S. immigration law’s treatment of investor migrants, compared to that of high-skilled and labor-based migrants, reflects not only policy inconsistency but also a deeper uncertainty about the value of economic visas. While the employment-based

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5. *About the EB-5 Visa Classification*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Nov. 18, 2025), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification>.

6. *EB-5 Immigrant Investor Program*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 3, 2023), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>.

7. *Id.*

8. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 5.

9. OFF. OF HOMELAND SEC. STAT., U.S. DEP’T OF HOMELAND SEC., LEGAL IMMIGRATION AND ADJUSTMENT OF STATUS REPORT: FY 2024 (QUARTERLY) tbl. 1B (June 24, 2025), <https://ohss.dhs.gov/topics/immigration/legal-immigration-and-adjustment-status-report>.

10. WILLIAM A. KANDEL, CONG. RSCH. SERV., R42866, PERMANENT LEGAL IMMIGRATION TO THE UNITED STATES: POLICY OVERVIEW 5 tbl.1 (2024).

11. KRISTIN SURAK, THE GOLDEN PASSPORT 139 (2023) (citation omitted).

12. *Id.* at 258 (“The rapid spread of citizenship by investment programs since the early 2010s is striking.”).

13. *Id.* at 271.

visa system generally requires documented productivity through skills, scarcity, and labor-market verification, the EB-5 program entirely disregards these standards. By comparing these pathways, this Note demonstrates that arguments in favor of economic visas do not address our system's lack of a coherent framework for measuring value, revealing a hierarchical and sometimes contradictory vision of national membership.

#### I. GLOBAL FRAMEWORKS OF ECONOMIC MIGRATION AND CAPITAL CONTRIBUTION

Citizenship and global mobility have long been used as a source of social standing.<sup>14</sup> In the evaluation of naturalization reforms, the “strength” of citizenship has come to mean something harder to get and easier to lose.<sup>15</sup> Visa programs are a “public act of defining whom to admit to membership,” impacting people in the country and internationally.<sup>16</sup> However, governments have typically encouraged naturalization to eliminate employment instability for permanent residents and to ensure wholehearted participation in our economy (access to small-business loans) and politics (voting). The investor visa, however, is a road to global mobility that does not require social ties or expect political engagement; it is a procedural shortcut to membership.

An international comparison of EU countries that have established investor visa programs reveals the obstacles to EU membership for the European Parliament.<sup>17</sup> Surak, who studies this phenomenon, describes how the elite mobility regime enables globally wealthy individuals to strategically select citizenships based on financial benefits.<sup>18</sup> She suggests that policymakers do not expect immigrant investors to continue contributing to economic growth in the same way migrant workers might.<sup>19</sup> They fill an economic gap rather than joining a national identity.<sup>20</sup> Surak and Yusuke Tsuzuki found that residence-by-investment programs are primarily associated with short-term fiscal inflows and real estate spending rather than robust, long-run productivity or innovation gains (i.e., benefits consistent with integration or skill transfer).<sup>21</sup> To take her conclusions further, if citizenship can be purchased without any expectations of loyalty, then citizenship loses its normative value as a binding social contract. Instead, citizenship shopping exacerbates global inequality because while refugees, asylum seekers, and irregular migrants face increasingly strict barriers

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14. JUDITH SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 387 (1995).

15. Christian Joppke, *Earned Citizenship*, 62 *EUR. J. SOCIO.* 1, 6–7 (2021).

16. Ayelet Shachar, *Unequal Access: Wealth as Barrier and Accelerator to Citizenship*, 25 *CITIZENSHIP STUD.* 543, 550–51 (2021).

17. SURAK, *supra* note 11, at 136–37.

18. Kristin Surak & Yusuke Tsuzuki, *Are Golden Visas a Golden Opportunity? Assessing the Economic Origins and Outcomes of Residence by Investment Programmes in the EU*, 47 *J. ETHNIC & MIGRATION STUD.* 3367, 3384 (2021).

19. *Id.*

20. *Id.*

21. *Id.*

and hostile reception, the wealthy can bypass restrictions with capital alone. Citizenship, then, becomes an optional outcome of strategic financial planning.

The divergent trajectories of investor visa programs reveal that states are increasingly struggling to reconcile market access with civic belonging. Canada's revival of its Start-Up Visa after the collapse of its Federal Investor Immigrant Program<sup>22</sup> reflects a recalibration toward entrepreneurial contribution—a model that ties residency to innovation rather than passive wealth. In contrast, the United Kingdom's decision to close its Tier 1 Investor Visa in 2022 signaled that mere investment no longer demonstrates allegiance or integration; “passively holding UK investments will no longer be enough to obtain settlement.”<sup>23</sup>

Similar to the UK, Spain's 2025 decision to abolish its “golden visa” program underscores a growing discomfort among nations with citizenship as a tradable asset, particularly amid concerns about housing speculation and unproductive foreign capital.<sup>24</sup> Even smaller nations that once profited from selling citizenship—such as Pacific Island states that issued over 14,000 passports between 1982 and 2002—eventually confronted reputational and security costs that outweighed the short-term fiscal benefits.<sup>25</sup> These shifts demonstrate that when states anchor citizenship solely in capital, they risk hollowing out its moral and civic content. Instead, loyalty and contribution become negotiable, and membership becomes something that can be bought, withdrawn, or revoked depending on market sentiment.

Despite the global rise in citizenship shopping and capital-driven immigration schemes, these programs have rarely fulfilled their promise of attracting model citizens. Their failures, however, stem from distinct problems. Some, like the UK's Tier 1 Investor Visa, collapsed under credible allegations of fraud and abuse—where corrupt foreign capital, particularly from Russian elites, undermined the program's integrity.<sup>26</sup> Others, such as Canada's Federal Immigrant Investor Program,<sup>27</sup> faced criticism for unequal access rather than outright misconduct: Roughly 96 percent of applicants were Chinese

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22. Colin R. Singer, *Start-Up Visa Immigration Sets New Record in 2023*, IMMIGRATION.CA (Feb. 14, 2024), <https://immigration.ca/start-up-visa-immigration-sets-new-record-in-2023>. The program is currently paused as of Jan. 1, 2026. Slava Apel, *Canada Ended the Start-Up Visa, It Did Not End Entrepreneur Immigration*, IMI DAILY (Feb. 24, 2026), <https://www.imidaily.com/north-america/canada-ended-the-start-up-visa-it-did-not-end-entrepreneur-immigration>.

23. *UK Scraps Rich Foreign Investor Visa Scheme*, BBC (Feb. 17, 2022), <https://www.bbc.com/news/uk-politics-60410844>.

24. *Spain—Golden Visa Cancelled: GMS Flash Alert 2025-008*, KPMG (Jan. 9, 2025), <https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2025-008.html>.

25. SURAK, *supra* note 11, at 38.

26. BBC, *supra* note 23.

27. Jean-François Harvey, *Canada Startup Visa Program: Understanding the Latest Policy Changes and Their Impact*, HARVEY L. CORP. (Mar. 11, 2025), <https://harveylawcorporation.com/canada-startup-visa-program-latest-policy>.

nationals,<sup>28</sup> prompting concerns that the program had become demographically unbalanced and politically untenable. Yet in both cases, governments invoked “integrity” to justify termination or reform, blurring the line between legitimate policy concerns and latent prejudice about who deserves membership. As Surak notes, when citizenship becomes a market commodity, states risk redefining belonging through wealth and perception rather than civic contribution, revealing how investor visas expose both the inequality and moral fragility of capital-based citizenship.<sup>29</sup>

The global trajectories of investor visa programs reveal a common structural flaw: Governments consistently overestimate the economic value of capital while underestimating its civic costs. Whether in the UK, Canada, or Spain, programs that detached investment from integration ultimately collapsed under the weight of corruption, unequal access, or public backlash. These failures demonstrate that the challenge is not administrative but conceptual—when citizenship is reduced to a financial instrument, it loses the moral coherence that sustains national membership. The United States’ EB-5 program must be read within this same pattern: a case study in how economic logics erode civic purpose.

## II. THE EMPLOYMENT-BASED VISA SYSTEM IN THE UNITED STATES

Having traced how global citizenship-by-investment programs redefine membership through capital, the U.S. system presents a telling internal hierarchy of “economic contribution.” Within its employment-based immigration framework, Congress has long tied eligibility to demonstrable skill, labor-market demand, or exceptional ability; these criteria are meant to ensure that migration yields measurable public benefit. The first three employment-based preference categories (EB-1 through EB-3) reflect this logic: They reward individuals whose human capital and labor satisfy the nation’s productive needs. The fifth preference, however, departs sharply from that model. The EB-5 investor visa treats financial investment alone as sufficient evidence of contribution, collapsing the distinction between wealth and work. Understanding how this system operates and how EB-5 sits uneasily within it reveals the legal and conceptual contradictions at the heart of the United States’ approach to economic migration.

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28. Tim Shufelt, *Why Is Canada Keeping Out China’s Rich?*, FIN. POST (Mar. 2, 2012), <https://financialpost.com/uncategorized/why-is-canada-keeping-out-chinas-rich>.

29. Kristin Surak, *Millionaire Mobility and the Sale of Citizenship*, 47 J. ETHNIC & MIGRATION STUD. 166, 182–83 (2021).

#### A. OVERVIEW OF U.S. NATURALIZATION LAWS AND CITIZENSHIP THEORIES

The Supreme Court has long recognized the power and privilege associated with being granted U.S. citizenship.<sup>30</sup> “In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship.”<sup>31</sup> Our courts have resisted efforts to revoke citizenship once conferred because of the privileges and rights given to U.S. citizens.<sup>32</sup>

The same framework of entitlement that is applied to birthright citizenship can be applied to investor permanent residents. If one is not born on U.S. soil to receive birthright citizenship, then a lawful permanent resident must eventually apply for citizenship to “naturalize.”<sup>33</sup> Though a valuable resource, citizenship is generally based on morally arbitrary criteria.<sup>34</sup> Researchers explore the dilemma of the scarcity of allocating citizenship, which is resolved by a “reliance on birthright transfer of entitlement.”<sup>35</sup> The criteria for birthright citizenship contingent on the legal status of the child’s parents are based on luck, deeming citizenship as inherited property.<sup>36</sup> Just as there is a birthright transfer of entitlement, the U.S., a capitalist country, transfers entitlement to citizenship for wealthy foreigners. Indeed, Ayelet Shachar argues that barriers to citizenship serve a crucial role in “preserving restricted access to the community’s accumulated wealth and power.”<sup>37</sup> Just as the concept of birth and political membership needs to be explored as a basis of unequal life prospects,<sup>38</sup> so too does the connection between wealth and political membership.

A historical trajectory of U.S. citizenship shows a shift from exclusionary policies to inclusion and rights-based frameworks.<sup>39</sup> Naturalization was initially restricted to “free white persons” in the 1790 Nationality Act, excluding Indigenous peoples, non-Europeans, and Black slaves.<sup>40</sup> Citizenship was expanded in the late 1860s to the early 1920s when the Fourteenth Amendment<sup>41</sup>

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30. *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (“The effect of the conclusion that the words ‘white person’ mean a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship.”).

31. *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967).

32. *Schneiderman v. United States*, 320 U.S. 118, 125 (1943) (“This is so because rights once conferred should not be lightly revoked. And more especially is this true when the rights are precious and when they are conferred by solemn adjudication, as is the situation when citizenship is granted.”).

33. *Citizenship and Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 5, 2020), <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization>.

34. AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 4 (2009).

35. *Id.* at 7.

36. *Id.* at 7, 13.

37. *Id.* at 10.

38. *Id.* at 11, 17.

39. See generally MICHAEL SCHUDSON, *THE GOOD CITIZEN: A HISTORY OF AMERICAN CIVIC LIFE* (Harv. Univ. Press 1999) (1998) (describing how American citizens have practiced citizenship throughout United States history).

40. Naturalization Act of 1790, ch. 3 § 1, 1. Stat. 103.

41. U.S. CONST. amend. XIV, § 1.

and the Indian Citizenship Act established birthright citizenship and granted U.S. citizenship to Native Americans.<sup>42</sup> The Chinese Exclusion Act of 1882, which barred Chinese laborers from entering the U.S.,<sup>43</sup> exempted certain non-laboring classes, notably merchants.<sup>44</sup> It defined laborers as “skilled and unskilled,”<sup>45</sup> a cursory shift towards meritocracy.

The mid-twentieth century indicated a strong shift towards inclusion with the Immigration and Nationality Acts of 1952<sup>46</sup> and 1965,<sup>47</sup> removing racial barriers and abolishing national origin quotas. Researchers have discussed the conflicting balance of liberal democratic principles with this history of exclusion, marking the challenge of creating new immigration pathways.<sup>48</sup> Recently, most people who naturalized came to the United States as immediate relatives of U.S. citizens or through family-sponsored preference categories.<sup>49</sup> However, the number of immigrants who become citizens through employment-based green cards is not low. In fiscal year 2024, 97,000 immigrants with employment-based green cards naturalized, accounting for 11.9 percent of all naturalizations in the United States that year.<sup>50</sup> Given the number of immigrants who became citizens through employment, scholarship should weigh the aims of employment-based categories against their outcomes.

#### B. A MAP OF EMPLOYMENT-BASED VISAS SHOWS THAT ECONOMIC VISAS VALUE SKILL, LABOR DEMANDS, AND POTENTIAL CONTRIBUTIONS

In the U.S., the five employment-based visa categories are outlined in the Immigration and Nationality Act, which has been amended at least eight times since it was enacted in 1952.<sup>51</sup> The EB-1 allocates visas for outstanding researchers, individuals with extraordinary ability, multinational managers, and those whose work is in the national interest.<sup>52</sup> EB-2 and EB-3 visas are dedicated to skilled workers and professionals.<sup>53</sup> The EB-4 visa is left intentionally broad to serve U.S. interests because it is for “special immigrants.”<sup>54</sup> Finally, the EB-

42. *Today in History—June 2: Indian Citizenship Act*, LIBR. OF CONGRESS, <https://www.loc.gov/item/today-in-history/june-02> (last visited Apr. 21, 2025).

43. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58.

44. *The Chinese Exclusion Act, 1882: A Spotlight on a Primary Source by the US Congress*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/chinese-exclusion-act-1882> (last visited Jan. 17, 2026) (explaining exempted classes).

45. Chinese Exclusion Act of 1882, ch. 126, § 15, 22 Stat. 58, 61.

46. Immigration and Nationality (McCarran-Walter) Act of 1952, Pub. L. No. 414, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.).

47. Immigration (Hart-Celler) Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified at 8 U.S.C. § 1152).

48. ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 14 (1997).

49. *Naturalization Statistics*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan 24, 2025), <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics>.

50. *Id.*

51. 8 U.S.C. § 1153 (2022).

52. *Id.* §§ 1153(b)(1)–(2).

53. *Id.* § 1153(b)(3).

54. *Id.* § 1153(b)(4). This category falls outside of the scope of this Note, as it serves more than an economic purpose. The EB-4 visa is offered to religious workers, members of the armed forces, special

5 visa is offered to investors who can create employment opportunities in the U.S.<sup>55</sup> These categories establish skill, labor market demand, and potential contribution as the valuable foundations of economic visas.

The EB-1 visa requires extensive documentation recognizing one's contributions to a field in which they work in the U.S. Because it offers an expedited pathway, it is distinguished from other visa categories. The EB-1 is divided into three subcategories: extraordinary ability, outstanding researchers, and multinational executives employed at a U.S.-affiliated entity abroad.<sup>56</sup> An applicant's extraordinary ability or research must be nationally or internationally acclaimed through "extensive documentation."<sup>57</sup> As of the April 2025 bulletin posted by U.S. Citizenship and Immigration Services (USCIS), applications submitted by Indian nationals for green card consideration in 2022 will now be processed.<sup>58</sup> The expedited timeline reflects the economic value of special skills brought to the U.S.

In contrast, the EB-2 and EB-3 skilled worker visa applicants must meet heightened scrutiny and longer wait times. Skilled workers consist of employees who are sponsored to work by a U.S. employer, have the equivalent of a master's or bachelor's degree, and apply for a green card. Critically, this economic visa requires employers to test the labor market in the U.S. by obtaining a labor certification from the Department of Labor before applying. The certification process can take at least six months and often longer if a U.S. worker may also qualify for the same position. Unlike the EB-1, under the bulletin, Indian nationals who applied in 2013 will now have a chance to have their application processed.<sup>59</sup> The EB-2 and EB-3 demonstrate labor demands as a basis for acquiring an economic visa.

The EB-5, on the other hand, reflects capital investments without contribution—the central theme of this Note. The fifth employment-based preference requires an investor to create ten U.S. full-time jobs for those authorized to work, other than the applicant's family members.<sup>60</sup> It also requires an investment of \$800,000 or \$1,050,000, depending on the type of project, to be made directly.<sup>61</sup> In theory, the capital and job requirements would contribute to the U.S. economy, but these contributions fall far behind those of immigrants who seek permanent residence through the EB-1, EB-2, and EB-3 categories.

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immigrant juveniles, and more. *See Employment-Based Immigration: Fourth Preference EB-4*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 8, 2025), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4>.

55. 8 U.S.C. § 1153(b)(5)(A) (2022).

56. *Id.* §§ 1153(b)(1)–(2).

57. *Id.* §§ 1153(b)(1)–(2).

58. *Visa Bulletin for April 2025*, U.S. DEP'T OF STATE (Mar. 3, 2025), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2025/visa-bulletin-for-april-2025.html> (last visited May 8, 2025).

59. *Id.*

60. 8 U.S.C. § 1153(b)(5)(A)(ii) (2022).

61. *Id.* § 1153(b)(5)(C).

### C. THE FIFTH PREFERENCE EMPLOYMENT-BASED INVESTOR VISA (EB-5) REWARDS CAPITAL WITHOUT CONTRIBUTION

When Congress established the EB-5 Immigrant Investor Program in 1990, it envisioned a policy that would simultaneously attract foreign capital, create U.S. jobs, and stimulate development in underserved regions. In principle, the program promised a rare alignment of private and public interests: Investors would gain lawful permanent residency, while communities would gain employment and infrastructure. It has met some of these purposes. At its best, EB-5 funding has facilitated projects such as rural manufacturing plants, hotel construction, and urban redevelopment that might not otherwise have secured financing. Yet these successes remain limited and inconsistent. Over time, the program's outcomes have diverged from its objectives, prompting an expanding array of internal and external critiques.

EB-5 visas are distinct from EB-1, EB-2, and EB-3 visas because they are based on an exchange of pure capital contributions and the potential for job creation/maintenance. The EB-5 visa program is often described as "immigration for the one percent."<sup>62</sup> An EB-5 investor may be driven by goals that range from gaining easier global mobility with a more powerful passport to securing a potential exit strategy should conditions shift in their home country.<sup>63</sup> There are fundamental questions about the program's theoretical coherence, such as which forms of economic contribution should count. Its policy implementation also raises concerns about oversight, the regional-center framework, and inconsistent adjudication. Economically, critics question whether the program truly delivers on its promises of job creation and public benefit. Scholars and policymakers also question its social and civic outcomes, its legal integrity, and its public legitimacy, citing limited integration, unequal access, vulnerability to fraud and political favoritism, and the perception that citizenship can be bought. The following sections examine how these dimensions reveal the widening gap between the EB-5's intended benefits and its actual impact.

#### 1. Proposed Benefits Fall Short

Job creation is one of the most cited benefits of the investor visa program. However, a criticism of the financial impacts of investor visas is that the funding does not go where it is intended, such as areas with high unemployment rates in the U.S. This misappropriation of funding is due to the program's structure of regional centers, which this Note will provide an overview of.

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62. Kristen Doerer, *Does the EB-5 Visa Program Take Advantage of Investors?*, PBS (Dec. 11, 2015, at 17:46 ET), <https://www.pbs.org/newshour/economy/does-the-eb-5-visa-program-take-advantage-of-investors>; Muzaffar Chishti & Faye Hipsman, *Controversial EB-5 Immigrant Investor Program Faces Possibility of Overhaul*, MIGRATION POL'Y INST. (May 25, 2016), <https://www.migrationpolicy.org/article/controversial-eb-5-immigrant-investor-program-faces-possibility-overhaul>.

63. Chishti & Hipsman, *supra* note 62.

The EB-5 visa enables an investor to participate through a USCIS-approved regional center, a private or public economic entity in the U.S. that promotes economic growth, after paying fees for USCIS accreditation.<sup>64</sup> The use of a government-approved, business-facilitating program for investment purposes is not uncommon. For example, Canada's investor visa, known as the Start-Up Visa Program, requires investors to gain support from one of their approved business incubators to apply for the visa.<sup>65</sup> Through the regional centers, investors can pool their capital together with that of other EB-5 investors to invest in a single project.<sup>66</sup> Created to prevent fraud, the regional center obtains a license from USCIS and "act[s] as either a general partner under an equity model, or a financier under a loan model."<sup>67</sup>

Regional centers have allowed investors to pool capital successfully. Although they have not had much success with low-income areas, Los Angeles County saw regional centers successfully direct foreign capital into large-scale entertainment projects. The Los Angeles Film Regional Center partnered with Time Warner on three developments, aggregating \$272.5 million in EB-5 loans from 545 investors and generating more than 3,500 direct and indirect jobs.<sup>68</sup> Likewise, in 2010, the Los Angeles County Regional Center facilitated a \$125 million loan to Sony Pictures Entertainment through 250 individual investments, an expansion projected to create an additional 3,250 jobs.<sup>69</sup> This demonstrates the program's potential to mobilize foreign capital into domestic job creation at scale, highlighting why Congress originally justified investor visas on economic grounds.

However, regional centers have also been the source of many criticisms of the EB-5 visa. Large businesses have taken advantage of the EB-5 program because they can meet compliance and reporting requirements, pay fees, and guarantee job creation.<sup>70</sup> Namely, critics argue that EB-5 investments often fail to benefit economically distressed communities because states have manipulated the boundaries of Targeted Employment Areas (TEAs) to include affluent neighborhoods that are more appealing to investors—such as those in Manhattan

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64. *EB-5 Immigrant Investor Regional Centers*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 1, 2024), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers>.

65. *Immigrate with a Start-up Visa: List of Designated Organizations*, GOV'T CANADA (Jan. 2, 2026), <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/start-visa/designated-organizations.html>.

66. Shihab & Associates, *EB-5: Understanding Regional Centers*, SHIHAB IMMIGR. FIRM (Feb. 13, 2024), <https://www.shihabimmigrationfirm.com/blog/2024/february/eb-5-understanding-regional-centers>.

67. *Id.*

68. Amanda Maher, *EB-5 Financing at Work in Two Inner Cities*, INITIATIVE FOR A COMPETITIVE INNER CITY, <https://icic.org/blog/eb-5-financing-work-two-inner-cities> (last visited Oct. 25, 2025).

69. *Id.*

70. Madeleine Sumption, *Can Investor Visas Be Made to Work? Lessons from the United Kingdom and United States*, in *INVESTMENT MIGRATION IN EUROPE AND THE WORLD* 229 (Dimitry Kochenov, Madeleine Sumption & Martijn Van Den Brink eds., 2025).

and Hollywood.<sup>71</sup> During a Senate hearing in 2016, Judiciary Committee Chairman Senator Charles Grassley (R-IA) highlighted this disparity, stating: “Cities in Georgia, North Carolina, and Minnesota compete with Beverly Hills, Miami, and New York City. It is hard for smaller states and cities to compete with the glitzy hotels and luxurious condo projects.”<sup>72</sup> Further, in the same year, two EB-5 regional directors misappropriated \$350 million by fraudulently taking funding from investors without completing the projects.<sup>73</sup>

The types of projects EB-5 visa applicants invest in are resource-intensive and exacerbate social isolation by widening class disparities. Geographically, the EB-5 offers an incentive for target high-unemployment or rural areas (with a population of less than 20,000), and therefore directs applicants to specific locations. An example of a target high-unemployment area is Big Sky, Montana, where the median income was approximately \$138,805 in 2024.<sup>74</sup> In addition to being well known that affluent communities, such as those with luxury condos, are often closed, wealth and income inequality lead to divergence in social networks.<sup>75</sup> With financial and social benefits falling short on their own terms, Congress turned towards reform in light of ongoing fraud by investors and those who are sponsoring investment projects through regional centers.

Even when an investor visa program works as intended, other countries have reported these programs have negligible impacts on the economy as a whole. For example, Canadian officials argue that Canadian investors have made a negligible impact on the economy, despite their impact on the housing market.<sup>76</sup> In the UK, policymakers claimed the investor visa created passive investments that were subject to high fraud and security concerns.<sup>77</sup> In Australia, the Business Innovation and Investment Program found negative fiscal impacts, and the data shows that the average incomes of investors are lower than those of other skilled visas.<sup>78</sup>

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71. Chishti & Hipsman, *supra* note 62.

72. *Id.*

73. *Id.*

74. *Big Sky, MT: Census Place*, DATA USA, <https://datausa.io/profile/geo/big-sky-mt#:~:text=About,was%20%20cars%20per%20household> (last visited May 9, 2025).

75. Gergő Tóth, Johannes Wachs, Riccardo Di Clemente, Ákos Jakobi, Bence Ságvári, János Kertész & Balázs Lengyel, *Inequality Is Rising Where Social Network Segregation Interacts with Urban Topology*, 12 NAT. COMM. 1141, 1142 (2021) (“Social networks are claimed to maintain and even amplify inequalities when economic status plays a role in how social relations are established. For example, a major micro-level mechanism for social-tie formation is homophily, the tendency for similar individuals to become friends.”).

76. Jesse Ferreras, *How Over 46,000 Wealthy Immigrants Took a Back Door into Vancouver and Toronto’s Housing Markets*, GLOBAL NEWS (Jan. 29, 2018, at 18:45 PT), <https://globalnews.ca/news/3886743/quebec-immigrant-investor-program-vancouver>.

77. Aubrey Allegretti, *UK Axes ‘Golden Visa’ Scheme After Fraud and Russia Concerns*, GUARDIAN (Feb. 17, 2022, at 12:57 ET), <https://www.theguardian.com/uk-news/2022/feb/17/uk-ministers-plan-to-scrap-golden-visa-scheme-amid-russia-concerns>.

78. AUSTRALIAN GOV’T DEPT. HOME AFFS., REVIEW OF THE MIGRATION SYSTEM: FINAL REPORT 65 (2023), <https://www.homeaffairs.gov.au/reports-and-pubs/files/review-migration-system-final-report.pdf>.

While the EB-5 program is formally justified on economic grounds, its success cannot be measured by private investment alone. An immigration system that trades residence for capital necessarily implicates questions of integration because the promise of economic growth is premised on the idea that investors will become long-term participants in the national economy rather than detached financiers. Economic contribution divorced from participation risks becoming extraction: Investors profit from the very communities whose stability and infrastructure make their ventures possible, without engaging in the reciprocal relationships that sustain them.

Political scientist Robert Putnam observes that ethnic and cultural diversity initially strain social cohesion, but that inclusive, locally grounded initiatives can generate new forms of solidarity and shared identity over time.<sup>79</sup> Canada's community-based resettlement model for refugees<sup>80</sup> illustrates how civic and economic integration reinforce one another: social participation expands networks that sustain entrepreneurship and employment. Putnam directly states that locally based programs aimed at reaching new immigrant communities are a powerful tool for mutual learning.<sup>81</sup> By contrast, investor migrants whose contributions are mediated through capital rather than presence rarely form such ties. Their participation often produces measurable returns for the investor but negligible benefits for the broader public. Thus, the EB-5 program's narrow economic framing overlooks the civic infrastructure that transforms financial inflows into enduring public value.

## 2. Structural Failures and Persistent Fraud

Since the introduction of EB-5 regulations, numerous efforts have been made to reform or even eliminate the EB-5 program. In 2017, legislation was introduced in the House of Representatives to amend the Immigration and Nationality Act, aiming to eliminate the EB-5 visa.<sup>82</sup> On June 19, 2018, the Senate Committee on the Judiciary held a hearing titled "Citizenship for Sale: Oversight of the EB-5 Investor Visa Program."<sup>83</sup> There, USCIS representatives urged congressional support for the Modernization Final Rule, including implementing the Fraud Detection and National Security Directorate, which performs EB-5 site visits.<sup>84</sup>

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79. See generally Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-first Century The 2006 Johan Skytte Prize Lecture*, 30 SCANDINAVIAN POL. STUD. 137 (2007).

80. *Find Help to Adjust as a Refugee in Canada*, GOV'T CANADA (Oct. 30, 2025), <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/government-assisted-refugee-program/providers.html>.

81. Putnam, *supra* note 79, at 164.

82. *All Information (Except Text) for H.R. 1502—To Terminate the EB-5 Program*, CONGRESS.GOV (2017), <https://www.congress.gov/bill/115th-congress/house-bill/1502/all-info>.

83. *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (2018) (statement of L. Francis Cissna, Director, U.S. Citizenship & Immigr. Servs.).

84. *Id.*

The long-awaited change<sup>85</sup> in the program was the EB-5 Reform and Integrity Act (RIA) of 2022, which President Biden signed into law and has seen pushback from stakeholders.<sup>86</sup> The RIA reauthorized the Regional Center Program for five years while making integrity reforms and modifying program requirements.<sup>87</sup> The RIA raised the minimum investment amounts to \$1,050,000 for standard investments and \$800,000 for investments in Targeted Employment Areas (TEAs), which include rural or high-unemployment areas.<sup>88</sup> Further, a new fund financed by mandatory fees from regional centers, the EB-5 Integrity Fund, was created to detect and investigate fraud or other violations.<sup>89</sup>

Although enacted in 1990, the EB-5 program was not widely utilized until 2008, as it was initially subject to fraud, which has continued to this day.<sup>90</sup> Notably, in September 2011, the CEO of Jay Peak Resort testified before a House Judiciary Subcommittee in Congress about how his ski resort raised over \$200 million in equity capital by welcoming over 400 investors from fifty-six countries.<sup>91</sup> In 2024, Stenger was found guilty of feloniously submitting false documents to the Vermont Regional Center as part of the largest fraud scheme in Vermont.<sup>92</sup> Federal prosecutors found more than \$200 million in misused funds of the \$400 million raised for eight projects at Jay Peak and Burke Mountain Ski resorts.<sup>93</sup> More, in 2021, USCIS detected that 67 percent of completed EB-5 applications were fraudulent.<sup>94</sup> This scandal is one of many that illustrate the disconnection between the promised value of an economic migrant and their actual contribution.

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85. James Reiser, *A Dive Into EB-5: A Need for Complete Modernization of U.S. Investor-Based Immigration Program or EB-5 (Employment-Based Immigration: Fifth Preference)*, 35 *TOURO L. REV.* 1255, 1257–58 (2020) (calling for further modernization of the EB-5 program to avoid fraud and investor uncertainty).

86. See *Analysis of New EB-5 Reform and Integrity Act of 2022*, BAKER DONELSON (Mar. 15, 2022), <https://www.bakerdonelson.com/analysis-of-new-eb-5-reform-and-integrity-act-of-2022>; Mona Shah, *The Rural Bias Built Into EB-5's DNA: Is USCIS's I-956F Backlog Quietly Killing Urban EB-5 Deals?*, MONA SHAH & PARTNERS (Apr. 17, 2026), <https://mshahlaw.com/the-rural-bias-built-into-eb-5s-dna-is-uscis-i-956f-backlog-quietly-killing-urban-eb-5-deals>.

87. See *Analysis of New EB-5 Reform and Integrity Act of 2022*, BAKER DONELSON (Mar. 15, 2022), <https://www.bakerdonelson.com/analysis-of-new-eb-5-reform-and-integrity-act-of-2022>.

88. See U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 5 (choose “Capital Investment Requirements” from dropdown).

89. *EB-5 Integrity Fund*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 28, 2025), <https://www.uscis.gov/IntegrityFund> (choose “Annual Integrity Fund Fee for Regional Centers” from dropdown).

90. Nathan Quach, *Repaving the Path for the Immigrant Investor*, 21 *U.C. L. BUS. J.* 115, 119–20 (2024).

91. *Investor Visa Program: Hearing Before the Subcomm. on Immigr. Pol’y & Enf’t of the H. Comm. on the Judiciary*, 112th Cong. (2011) (statement of William J. Stenger, President & CEO, Jay Peak Resort).

92. Dan D’Ambrosio, *Auditor Finds State Bungled Oversight of Jay Peak EB-5 Projects in Massive Fraud*, BURLINGTON FREE PRESS (Apr. 17, 2024, at 5:22 ET), <https://www.burlingtonfreepress.com/story/news/2024/04/17/jay-peak-eb-5-fraud-auditor-blames-state/73328854007>.

93. *Id.*

94. U.S. GOV’T ACCOUNTABILITY OFF., GAO-23-106452, *IMMIGRANT INVESTOR PROGRAM: OPPORTUNITIES EXIST TO IMPROVE FRAUD AND NATIONAL SECURITY RISK MONITORING* 35 (2023).

The Department of Homeland Security's Office of Inspector General (OIG) investigation<sup>95</sup> from 2012–2015 into the EB-5 program underscores how the visa's structure invites not only fraud but also political manipulation. The OIG found that then-USCIS Director Alejandro Mayorkas personally intervened in several adjudications involving politically connected stakeholders—including projects linked to figures such as Senator Harry Reid and former Governor Ed Rendell—contrary to standard agency procedure.<sup>96</sup> Although the OIG did not make a criminal finding, it concluded that these interventions “created an appearance of favoritism and special access” and eroded staff confidence in the program's integrity.<sup>97</sup> The report ultimately showed that in EB-5 adjudications, outcomes were often shaped more by capital investment than by statutory standards or genuine economic need—illustrating that when something as consequential as citizenship is tethered to pure capital, it becomes far more susceptible to manipulation than if governed by clear statutory criteria.

More recently, in January 2025, immigration advocate Jessica Vaughan made a statement before the U.S. House Committee on the Judiciary, suggesting eliminating the EB-5 program because it serves “no legitimate national purpose.”<sup>98</sup> It remains to be seen whether this reform will address the rampant fraud, as lawsuits continue to be brought forward<sup>99</sup> and the global trend continues to shift toward economic visas.

### 3. Repercussions for National Identity and the Commodification of Citizenship

Expansion of the EB-5 program would morph the democratic access of being a U.S. citizen into a financial transaction. Brubaker describes citizenship as a membership organization and an association of citizens.<sup>100</sup> Earning membership increasingly takes on a dual meaning of proving one's ‘deservingness’ and demonstrating economic self-sufficiency.<sup>101</sup> Loyalty, or nationalism, is inherent to the granting of citizenship; it is why the U.S. does not allow dual citizenship with many countries.<sup>102</sup> The U.S. value of civic integration of naturalized citizens is reflected in many of the responsibilities set forth by USCIS—namely the naturalized citizen's responsibility to stay informed of the issues affecting their community, participate in the democratic

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95. OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., INVESTIGATION INTO EMPLOYEE COMPLAINTS ABOUT MANAGEMENT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES' EB-5 (2015).

96. *Id.* at 1–2.

97. *Id.*

98. *Restoring Immigration Enforcement in America: Hearing Before the Subcomm. on Immigr. Integrity, Sec. & Enf't of the H. Comm. on the Judiciary*, 119th Cong. 9 (Jan. 22, 2025) (statement of Jessica M. Vaughan, Dir. of Pol'y Stud., Ctr. for Immigr. Stud.).

99. See Isaac Monterose, *Wells Fargo Says Atty Is to Blame for SEC's EB-5 Fraud Suit*, LAW360 (Apr. 28, 2025, at 18:28 ET), <https://www.law360.com/articles/2331205/wells-fargo-says-atty-is-to-blame-for-sec-s-eb-5-fraud-suit>.

100. ROGERS BRUBAKER, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY 21 (2d ed. 1998).

101. Shachar, *supra* note 16, at 549.

102. *Id.*

process, respect and obey federal, state, and local laws, participate in their local community, pay income and other taxes honestly, serve on a jury when called upon, and defend the country if the need should arise.<sup>103</sup> These responsibilities refer not only to status maintenance or tax compliance, but to the active participation of individuals in their adopted country's civic and political life.

The EB-5 program does not embrace egalitarian principles. The path to the EB-5 is largely financial and procedural, requiring the job creation condition to be satisfied before the investor receives permanent residency. This framework differs from models in other countries. In addition to a physical presence requirement before receiving permanent residence,<sup>104</sup> Australia's Significant Investor Visa program emphasizes long-term presence and economic contribution. The EB-5, in contrast, does not require physical presence and offers an exit strategy that allows investors to have their capital returned to them upon completion of the program requirements.<sup>105</sup> More can be said with an analysis of programs within the U.S.

Processing times of various U.S. immigration pathways are particularly demonstrative of the transactional nature of gaining citizenship. An Indian national who is a sibling of a U.S. citizen would have had to wait twenty years before being granted permanent residency due to backlogs.<sup>106</sup> There is currently no wait for EB-5 investors unless they invest in the unreserved category, which excludes rural, high-unemployment, or infrastructure development areas.<sup>107</sup> Even then, there is only a five-year wait for the EB-5 unreserved category, as compared to twenty years for a family-based route.<sup>108</sup> The expedited timeline reflects the U.S.'s prioritization of short-term capital and economic visas over pathways that value family reunification and relational migration.

Investor visa programs in other countries further illustrate the commodification of citizenship and the dilution of national identity. As a case in point, Malta's "golden passport" program has faced significant controversy due to allegations of corruption, lax oversight, and an impact on EU integrity. The Individual Investor program was launched in 2014 and provided non-EU nationals a pathway to acquire Maltese citizenship—and, by extension, EU citizenship—through substantial financial contributions.<sup>109</sup> These contributions include donations to a national development fund (€2,000), investments in

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103. *Should I Consider U.S. Citizenship*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 5, 2020), <https://www.uscis.gov/citizenship/learn-about-citizenship/should-i-consider-us-citizenship>.

104. *Residency Requirements for Australian Significant Investor Visa Clarified*, NO BORDERS L. GRP., <https://noborderslawgroup.com.au/articles/residency-requirement-for-australian-significant-investor-visa-clarified> (last visited Apr. 21, 2025) (requiring the primary applicant to be physically present in Australia for at least 40 days of the year).

105. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 5.

106. U.S. DEP'T OF STATE, *supra* note 58.

107. *Id.*

108. *Id.*

109. *Malta Golden Visa Program*, RESIDENCY CITIZENSHIP PROGRAM, <https://www.residency-bond.eu/malta-visa.html> (last visited Apr. 20, 2025).

Maltese assets through the government (€68,000 for property purchase or €98,000 for property rental), and property purchases (€350,000 for a one-time purchase or €12,000 annually for rental).<sup>110</sup> Notably, there is no physical residence requirement.<sup>111</sup> Malta's program made international news when the Commission referred Malta to the Court of Justice, citing risks related to security, money laundering, and tax evasion that violated EU law.<sup>112</sup> While the investor visa program still exists, many properties that were acquired under the program remained unoccupied, leading to a distortion of local communities and a "ghost town."<sup>113</sup>

### III. REDEFINING ECONOMIC DEVELOPMENT IN IMMIGRATION POLICY

In contrast, the current Trump administration rationalizes executive orders based on capital conservation,<sup>114</sup> leading to a critical evaluation of what citizenship means in an increasingly transactional world. The perception of meritocracy of the EB-5 investor visa program is also reflected in contrast to the H-1B visa program, a visa for high-skilled foreign workers in fields like technology and engineering who apply for green cards in the EB-2 and EB-3 categories. The H-1B is a temporary visa, but it offers a path to permanent residence. Although investors and high-skilled workers bring financial capital when immigrating, they reflect divergent theories about merit-based programs. The H-1B program is beneficial to the U.S. because applicants are subject matter experts in areas like science and technology, evidenced by an employer's confirmation that their skills are necessary to their success. Fundamentally, the H-1B visa is rooted in the idea that skills are the most relevant metric for desired groups of immigrants. In comparison, the EB-5 program's job creation requirement can be achieved without any personal effort or presence in the community. This contrast created a bifurcation that passive wealth is more valuable than specialized skills. It is further confirmed by politicians who criticize the H-1B program and state, "Our American culture venerated mediocrity over excellence for way too long."<sup>115</sup> The civic value of economic

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110. *Id.*

111. *Id.*

112. European Commission Press Release IP/22/5422, Investor Citizenship Scheme: Commission Refers Malta to the Court of Justice (Sep. 28, 2022).

113. Emanuele Midolo, *The Golden Visa Scheme that Left Malta with Ghost Towns*, THE TIMES (Dec. 1, 2024, at 00:01 GMT), <https://www.thetimes.com/life-style/property-home/article/maltas-golden-visa-citizenship-by-investment-worth-77s3vf7z>.

114. Soo Rin Kim & Will Steakin, *DOGE Says It's Saved \$105 Billion, Though It's Backtracked on Some of Its Earlier Claims*, ABC NEWS (Mar. 3, 2025, at 17:41 PT), <https://abcnews.go.com/US/doge-website-now-saved-105-billion-backtracked-earlier/story?id=119408347>; Michael Williams & Piper Hudspeth Blackburn, *Trump Says US Will Sell \$5 Million 'Gold Card' to Wealthy Foreigners*, CNN (Feb. 25, 2025, at 22:01 ET), <https://www.cnn.com/2025/02/25/politics/us-gold-card-foreigners-trump/index.html>.

115. Sakshi Venkatraman, *Some H-1B Workers Say They Feel Insulted by Debate Over Visa Holders*, NBC NEWS (Jan. 6, 2025, at 13:05 PT), <https://www.nbcnews.com/news/asian-america/h1b-visas-debate-immigration-ramaswamy-musk-trump-rcna186173>.

self-sufficiency is delineated between pure capital and long-term skill in the workforce.

The hierarchical nature of economic visas is stark when the EB-5 investor visa program is compared to the H-2A Agricultural Visa program. Both programs serve economic purposes—one by supplying labor, the other by attracting capital—yet they offer drastically different immigration expectations. The H-2A program enables U.S. employers to temporarily hire foreign agricultural workers to address labor shortages, but does not provide a pathway to a green card. Conversely, the EB-5 investor visa is a pathway to a green card, but it does not provide a temporary visa for investors. At the opposite end of the spectrum of pure capital economic visas are visas for manual labor. Agricultural workers often endure long hours, low wages, hazardous conditions, and restricted mobility.<sup>116</sup> They are tied to a single employer, lack meaningful labor protections, and face the constant threat of visa expiration or deportation.<sup>117</sup> Crucially, the H-2A visa does *not* offer a path to permanent residency or citizenship, no matter how long a worker contributes to the economy or how essential their labor is to the national food supply.<sup>118</sup> This disparity reveals that the economic value of citizenship is judged by class.

#### A. THE SHIFT FROM PRODUCTIVE VALUE TO PROTECTIVE VALUE

Historically, the opportunity to work and to be paid an earned reward for one's labor was not merely an economic exchange; it was a social right, a marker of public respect and personal independence. Paid labor distinguished the free man from the slave, embodying a cultural and moral departure from a corrupt European past.<sup>119</sup> Yet, the ideal of productive value—measured by work, skill, and direct contribution—has been increasingly overshadowed by protective value, a value on protecting one's interests. This shift is especially visible in investor visa programs that “turn wealth into a core criterion for admission conceptually reignite an older, exclusive, and exclusionary vision of property ownership (whether land, resources, or in relation to one's ‘dependents,’ including women, slaves, and children).”<sup>120</sup>

Christian Joppke's concept of “neoliberal nationalism,” a method for understanding Western citizenship that is neither ethnic nor civic but rather based on merit, provides a lens for understanding this transformation.<sup>121</sup> Joppke argues that earned citizenship has drifted away from a liberal model rooted in

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116. Tina Vasquez, *US Farms Are Forcing Workers to Buy Inedible, Expensive Meals: 'It Makes You Feel Enslaved,'* THE GUARDIAN (Oct. 2, 2024, at 11:00 ET), <https://www.theguardian.com/us-news/2024/oct/02/h2a-worker-program-migrant-farm-food>.

117. *Id.*

118. *H-2A Program for Temporary Agricultural Workers*, CTR. FOR GLOB. DEV., [https://www.cgdev.org/sites/default/files/archive/doc/migration/H-2A\\_Fact\\_Sheet8.6.pdf](https://www.cgdev.org/sites/default/files/archive/doc/migration/H-2A_Fact_Sheet8.6.pdf) (last visited Mar. 29, 2026).

119. SHKLAR, *supra* note 14, at 64.

120. Shachar, *supra* note 16, at 546.

121. Joppke, *supra* note 15, at 2.

rights and responsibilities, evolving instead into a privilege contingent on demonstrated capacity to achieve and contribute—or, in the case of the EB-5 visa, to simply possess capital.<sup>122</sup> Using a theoretical framework, the shift to assigning more value to capital than labor or skill is based on one’s ability to contribute. This framework reflects a broader shift toward protective value, where the ability to provide financial security—for oneself and the state—outweighs the traditional expectation of productive contribution.

This emphasis on protective value is visible in the U.S. requirement of economic self-sufficiency for immigrants, enforced through policies like the “Public Charge” rule. These policies are meant to prevent immigrants from becoming a financial burden on the state, thereby ensuring that residency is reserved for those who can support themselves. Yet this framework raises critical questions about the government’s role: Is it meant to support public welfare and civic integration or merely to shield public resources from perceived risks? If resource scarcity is the justification for limiting access, then is there some logic in prioritizing those who can support themselves? But without that justification, the focus on economic sufficiency seems less a matter of necessity and more a reflection of a state that values capital over community.

The tension between productive and protective value becomes even clearer when comparing the financial activities of EB-5 investors with those of traditional migrant workers. Families of migrants, especially from South America and Asia, often send significant remittances to support their relatives in their home countries.<sup>123</sup> These remittances are a form of productive value earned through labor, reflecting sacrifice and maintaining strong familial ties. In contrast, EB-5 investors channel their funds not due to familial duty or necessity, but to obtain permanent residency and access to Western financial and social systems. Their investments usually go through regional centers, focusing on real estate or infrastructure projects, often lacking accountability or genuine community engagement. While remittances enhance transnational ties and offer essential support for global development, EB-5 investments are primarily tailored to serve individual interests. This often favors the global wealth holders in mobility over the distribution of wealth, illustrating how the EB-5 program diminishes community-centered economic contributions.

The gap between productive and protective value is further exposed by the challenges of undocumented immigrants who were brought to the U.S. as children—DREAMers. These individuals embody the ideals of productive value: They are educated in American schools, speak English fluently, and were raised in their American communities. The Deferred Action for Childhood Arrivals (DACA) program provides temporary protection from deportation, but

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122. *Id.*

123. Dilip Ratha, *Remittances: Funds for the Folks Back Home*, IMF: F&D MAG., <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Remittances> (last visited Apr. 20, 2025).

it does not provide a direct path to citizenship.<sup>124</sup> Despite DREAMers embodying the values that have traditionally represented American belonging, such as hard work, perseverance, education, and service, Congress has not passed legislation to provide DREAMers with a path to permanent residence after efforts spanning over a decade.<sup>125</sup> EB-5 investors may have never lived in the U.S. or speak the language fluently, as they often outsource their investment management. One group of immigrants has grown up within American communities, and the other sees American residency as a strategic asset—a form of financial protection rather than a civic relationship. It raises questions about how the system accommodates wealth while leaving behind the most integrated. In privileging protective value over productive value, the EB-5 program reveals a profound misalignment between American ideals and American immigration policy.

#### B. RECOMMENDATIONS FOR REFORM

If the U.S. will not eliminate the EB-5 investor visa program despite the arguments raised in this Note about commodification, policymakers must take several steps to transform the program into a more just and principled immigration pathway by considering what expectations should be for global wealth holders. To be consistent with the purported citizenship values, the EB-5 program should require a connection to the community via proof of physical presence in the U.S., similar to other immigration pathways, and eliminate full capital return guarantees. Moreover, the investments should be directed to ensure geographic justice outside of the TEAs. For example, EB-5 applications that channel capital into projects benefitting communities harmed by displacement or environmental damage instead of directing investments in luxury real estate and private profit. These investment projects can be Indigenous-owned enterprises or companies that address the effects of climate change. Governance can also include community input over political lobbying by developers.

#### CONCLUSION

Reimagining economic migration demands technical reform and a normative recalibration of what the state believes immigrants owe—and are owed—in return to prevent capital without contribution. Capitalism perpetuates golden visa programs, which create an unequal foundation and source of global mobility. Through the EB-5 investor visa program, U.S. policymakers have indicated an inherent value of economic self-sufficiency over civic engagement

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124. *Documented Dreamers: An Overview*, AM. IMMIGR. COUNCIL (Nov. 18, 2024), <https://www.americanimmigrationcouncil.org/fact-sheet/documented-dreamers-overview>.

125. Danielle Douez, *DACA Deadline Passes, Congress Fails to Act and Fate of 'Dreamers' Remains Uncertain: 6 Essential Reads*, CONVERSATION (Mar. 6, 2018, at 06:40 ET), <https://theconversation.com/daca-deadline-passes-congress-fails-to-act-and-fate-of-dreamers-remains-uncertain-6-essential-reads-92886>.

and cultural assimilation. This is despite the fact that the EB-5 did not deliver the economic contributions as expected. The deadline for renewing the EB-5 program looms (2027) as the Trump administration indicates its dissatisfaction with the low amount of capital investment required. This article cautions policymakers when expanding the program. By aligning itself with the global investor market, the U.S. risks reducing its own conception of citizenship to an unaffordable brand rather than a meaningful relationship between individuals and states based on participation and responsibilities.

The EB-5 investor visa does not merely complicate the United States' employment-based immigration framework—it exposes a deeper fracture in how the state conceptualizes migrant value. While the EB-1, EB-2, and EB-3 programs demand credentials, productivity, and labor market verification, the EB-5 pathway offers green cards in exchange for capital alone, with limited scrutiny of whether that capital translates into public benefit. This divergence is not just a policy inconsistency; it reflects a system that lacks a coherent theory of what immigrants are for.

By treating wealth as an acceptable stand-in for skill, labor, or civic commitment, the EB-5 program transforms membership in the national community into a financial transaction. The contrast with labor-based migrants—whether high-skilled professionals or low-wage agricultural workers—reveals an immigration regime that rewards capital while burdening labor. This asymmetry undermines the legitimacy of a system that claims to be merit-based and economically rational, but which in practice privileges financial insulation over demonstrable contribution.

The U.S. immigration system's failure to reassess the role of investor visas alongside its continual tightening of labor-based pathways signals a troubling blind spot. It suggests that the state does not fully understand, or is unwilling to define, what kinds of value it truly seeks from newcomers. Without such clarity, immigration law risks reinforcing a stratified model of citizenship: One in which wealth grants easy access, and labor, no matter how essential, must prove itself indefinitely.

These outcomes are not unique to the United States. Across Europe and Asia, “gold card” and “golden visa” programs have produced unintended social consequences, including housing inflation and public backlash over inequality.<sup>126</sup> The persistence of similar issues within the EB-5 system suggests that technical reforms alone cannot restore legitimacy.<sup>127</sup> Investor visas rest on a transactional logic that treats residence as a commodity rather than a civic commitment, making structural redefinition—not expansion—essential to preserve the integrity of economic migration policy.

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126. Anoussa Salim, *Trump Gold Card Visa Is a Disaster in Sight*, *GEOPOLITICS* (Mar. 3, 2025), <https://thegeopolitics.com/trump-gold-card-visa-is-a-disaster-in-sight>.

127. *See generally* Quach, *supra* note 90 (enumerating various SEC violations by EB-5 investors and regional directors in a call for modification of the program).

An area of further research includes whether expanding programs like the EB-5 should change the U.S.'s commitment to its citizens.<sup>128</sup> Examining U.S. obligations to investors and its citizens through this program is possible if there were more data on the investor pipeline to citizenship; however, limited data on the EB-5 program restricts the scope of this Note. USCIS presents naturalization data by grouping individuals who receive their green card in the employment-based category, including the EB-2 or EB-3 programs used by H-1B visa holders. However, with more specific information about how many investors go on to naturalize as citizens, researchers can fill in the gaps about the longer-term economic contributions of this investment. Examining potential barriers to cultural integration,<sup>129</sup> such as language, socioeconomic differences, or perceived isolation within immigrant investor communities, could highlight areas for improvement in immigration pathways focused solely on finances.

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128. Joppke, *supra* note 15, at 3–4 (citing Margaret Somers who claimed that the United States was internally stateless and unwilling to help citizens after Hurricane Katrina).

129. Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 16 IMMIGR. & NAT'L REV. 83, 85 (1994) (“Corresponding to the individual’s complex motivation for seeking naturalization is the society’s complex motivation for admitting the individual to citizenship.”).

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