



# **THE EB-5 IMMIGRATION CATEGORY- AN OVERVIEW**

# What is EB-5?

The EB-5 Program = 5th preference category of employment-based immigration:

1990 - Congress establishes what we now refer to as the 'Standalone' pathway.

1992 - Congress authorizes the Immigrant Investor or Regional Center Program.

E-5 petitioners = immigrant investors who will make a minimum capital investment in the U.S. for the explicit purpose of creating jobs for qualified U.S. residents.

# Investor Requirements



Investment for each immigrant investor:

- minimum = \$1 million (or \$500,000 if the investment in a TEA);
- must be an equity investment in a single new commercial enterprise;
- investment must be 'at-risk' having the potential for both gain and loss;
- investment must be sustained for a required period;
- must create a minimum of 10 jobs for each immigrant investor.

# The Process for Immigrant Investors

Investor develops a stand-alone project or selects a regional center project for investment

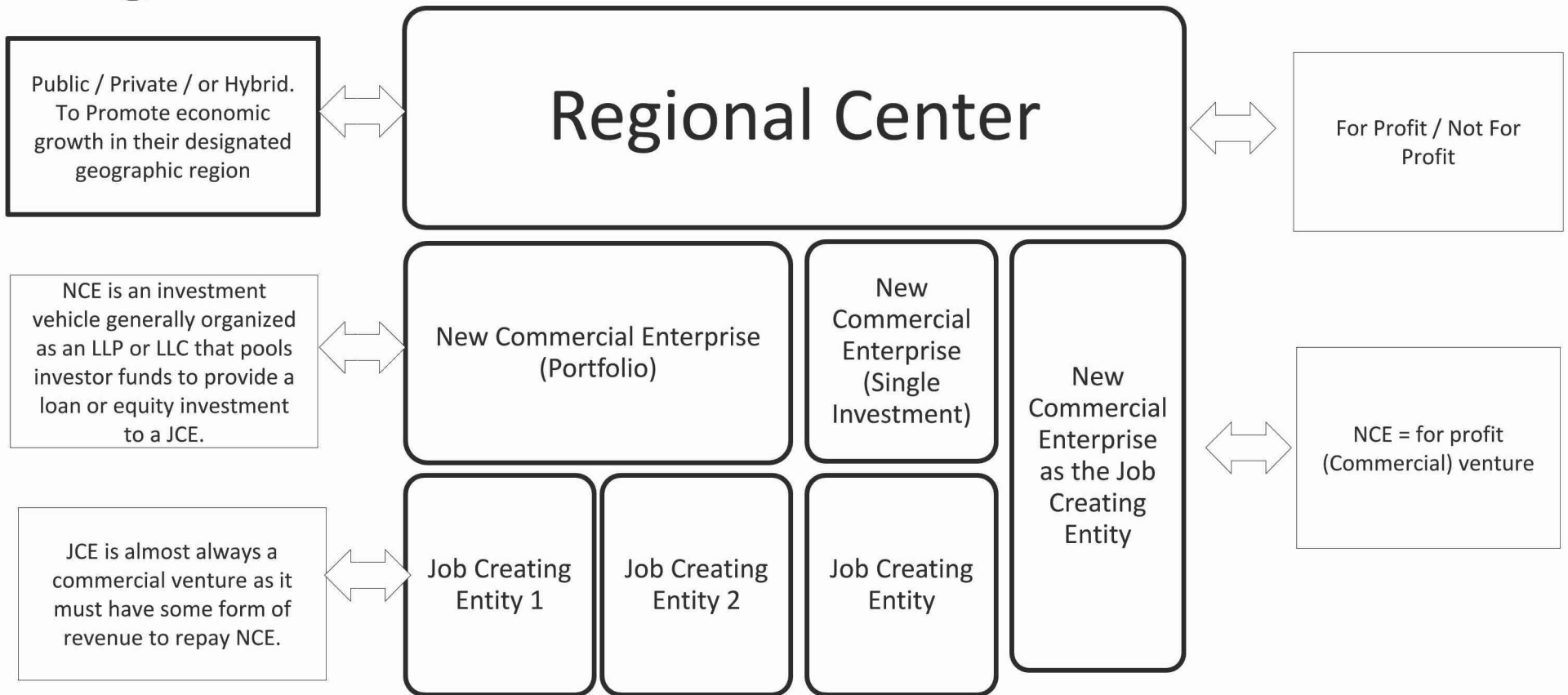
Investor files a Form I-526 petition to USCIS to obtain Conditional Permanent Residency

If approved, the Investor receives an EB-5 visa when a visa number is available

Within 90 days of the second anniversary of entering the U.S. as a CPR, the Investor files a Form I-829 to remove the conditions to his/her permanent residency by demonstrating sustainment of the investment and creation of the required number of jobs



# Regional Center Structure



# Investor motivation – Why EB-5?

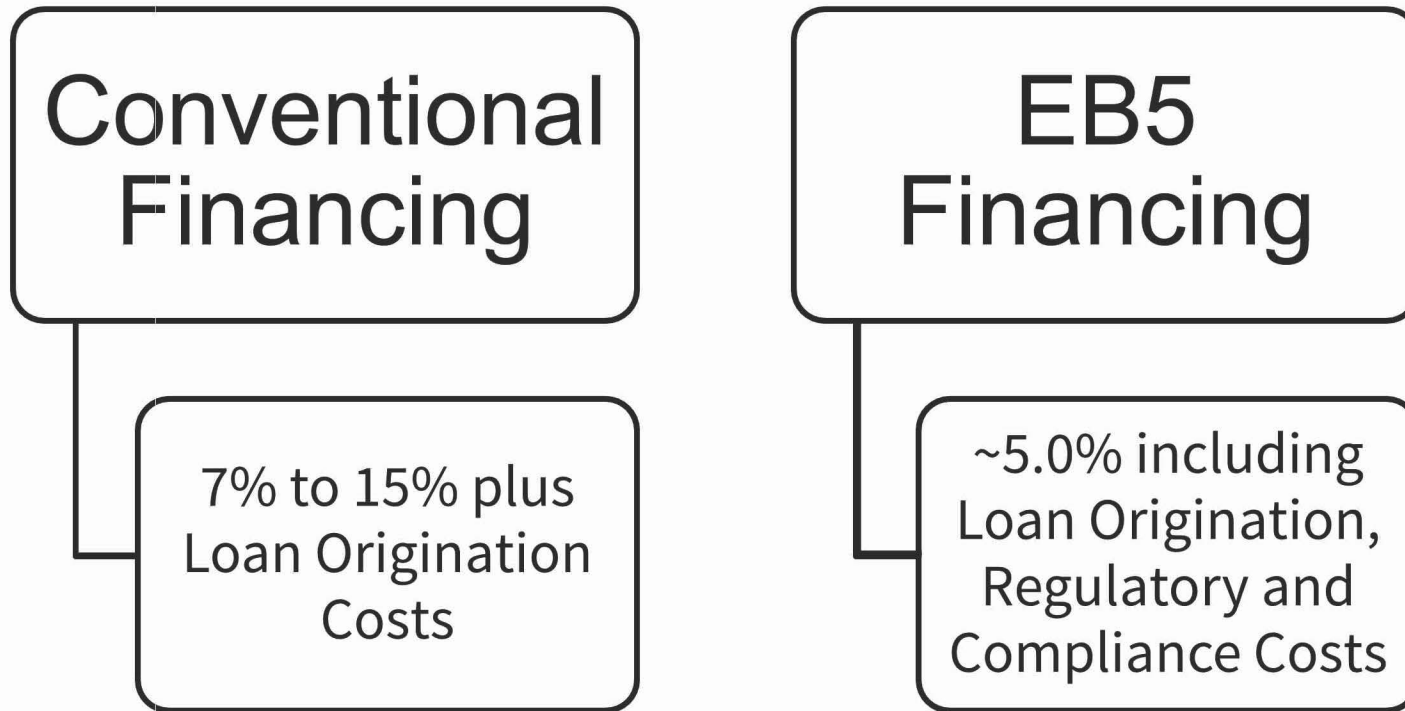
For immigrant investors, the greatest financial reward is the implicit value of Legal Permanent Resident (LPR) status, so investors are willing to accept modest monetary returns on their capital investment.

# Business motivation – Why EB-5?

In the Regional Center Program, U.S. businesses benefit from:

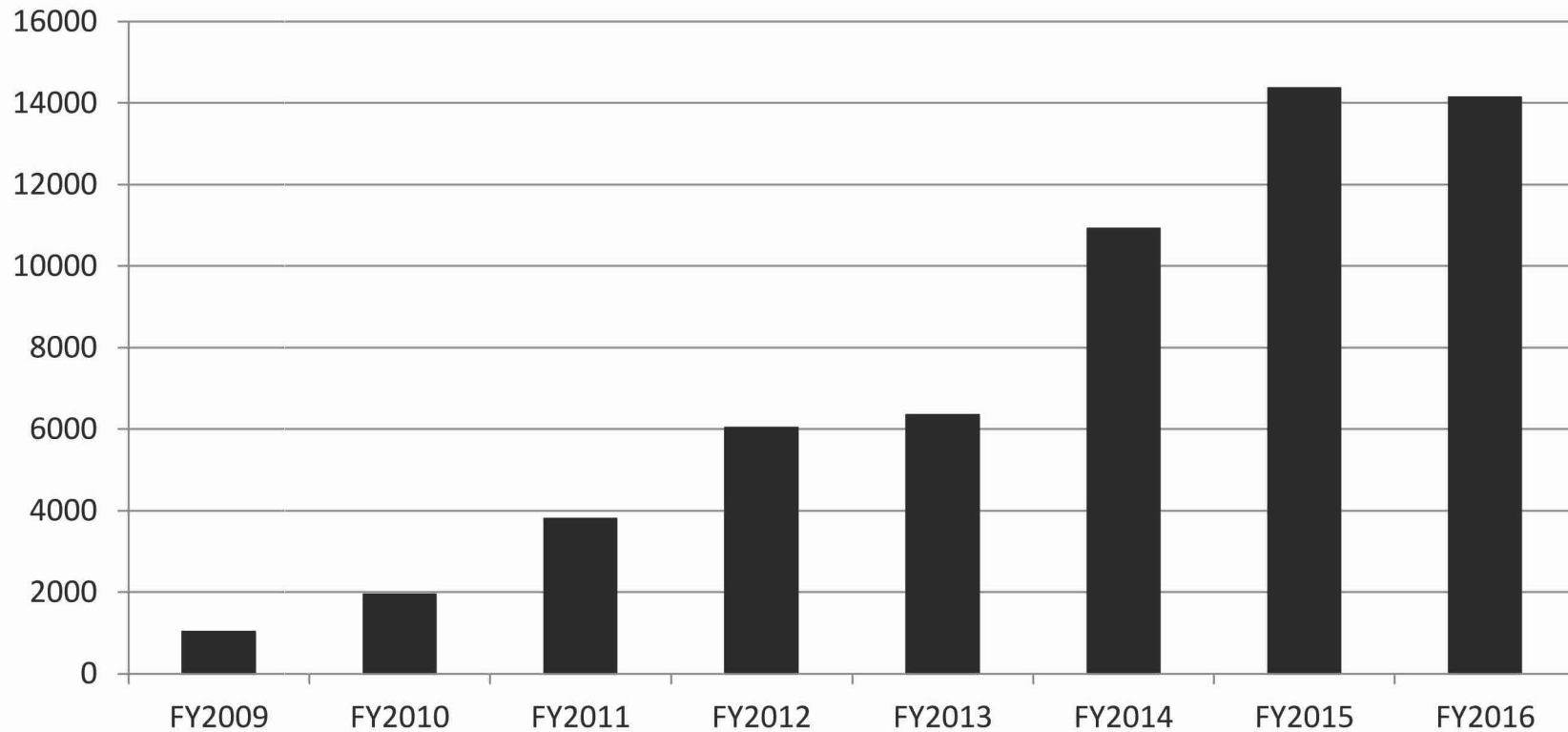
- The lower cost of EB-5 capital and
- Administrative fees to the Regional Center, generally between \$50,000 and \$75,000 which can be used to cover the promotional and administrative costs of the Regional Center.

# Business motivation – Why EB-5?



# EB-5 Filings and Adjudication

## I-526 Receipts





# **LAWFUL SOURCE OF FUNDS**

# Lawful Source of Funds

- According to the regulations, the capital investment must be from assets acquired through lawful means.
- To make this determination, the adjudicator must track the capital from the original source to determine that the funds were 1) acquired through lawful means and 2) not obtained from any illegal source.
  - Evaluating the Evidence
  - Types of Evidence

# Common Sources of Funds

## USES OF INCOME

- Accumulated Funds for EB5 Investment: Petitioner needs to show a) proof of income AND b) accumulation of funds (i.e. savings account, brokerage account, etc.)
- Purchase of Property: SOF derived in some form from purchase of property. Must show sufficient income to purchase property.
- Investment into Business: SOF derived from ownership in a business (i.e. sale or liquidation of shares/distributions/loans from company secured by shares). Must show income used to purchase shares.



# Path of Funds

- The path of funds includes not only how the funds were accumulated or obtained, but also how the funds traveled from the ORIGINAL SOURCE to the NCE.
- Each step of the path must be documented. If not, we request additional evidence.

# Path of Funds

## Common Scenarios:

Petitioner transfers the EB-5 capital to 10 friends and family who send the money out of the country and comingled in Petitioner's overseas or U.S. account. The funds are then sent to the NCE's escrow agent or bank account.

Types of evidence: Bank account statements; funds transfer slips; declarations from the friends/family establishing the relationship and the agreement; identification cards and passport copies of friends/family.

# Path of Funds

## Common Scenarios:

Petitioner enlists one friend and transfers the full amount of capital to that individual. The same individual then transfers the equivalent amount in foreign currency or USD to the petitioner's overseas or U.S. account. The capital is then sent to the NCE's escrow agent or bank account.

Types of Evidence: we request the source of funds for the third-party transferor, i.e. income, etc. as previously discussed. Additionally, we trace the funds from the petitioner to the third-party transferor (bank account statements from both parties, funds transfer slips from the bank, confirmation letters, etc.) and from the third-party transferor to the petitioner's overseas bank account and then to the NCE.

# Minors as EB-5 Petitioners

A minor may file a petition to request classification as an immigrant investor; however, they must satisfy all eligibility requirements and include the same evidence and documentation required of all immigrant investors.

- 1) The immigrant investor, including a minor, must establish that he or she is the legal owner of the capital invested and has obtained the capital through lawful means. It is not possible, for example, to apply on behalf of someone else (e.g. parents can not apply on behalf of a child).
- 2) Any agreements or executed contracts must demonstrate the legal rights and obligations by which the parties, including minor investors, are bound. Considerations:

Is it lawful for the minor to enter into the agreement in the applicable jurisdiction?

Are the relevant contracts voidable or unenforceable due to the investor's status as a minor?

Information regarding immigrant investor eligibility requirements can be accessed here:

<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter2.html>



# **REGIONAL CENTER COMPLIANCE OVERVIEW**

# **Compliance Division Overview**

- 1. Review of annual filings of regional centers;**
- 2. Regional center compliance reviews by a dedicated team of auditors;**
- 3. Termination of Regional Centers that fail to promote economic growth, inactive , or fail to comply with law or regulations**
- 4. Research and analysis to support of staff adjudicating petitioner and regional center filings**

# **Regional Center Annual Filings (Form I-924A)**

**Regional Centers are required to submit an I-924A annually. The I-924A includes information on:**

**The principal of the RC**

**The management of the RC**

**The amount of EB-5 capital invested**

**The amount of non-EB-5 capital invested**

**The jobs created**

**the industries the RC is involved in**

**the NCEs and JCEs affiliated with the RC**

**The total numbers of actions taken on petitioner filings**



# **Regional Center Compliance Reviews**

- **Launched in FY17**
- **Purpose is to further enhance program integrity and verify information in regional center applications and annual certifications.**
- **Verifies compliance with applicable laws and authorities to ensure continued eligibility for regional center designation and participation in the EB-5 regional center program**
- **Includes an on- site compliance assessment of the regional center**



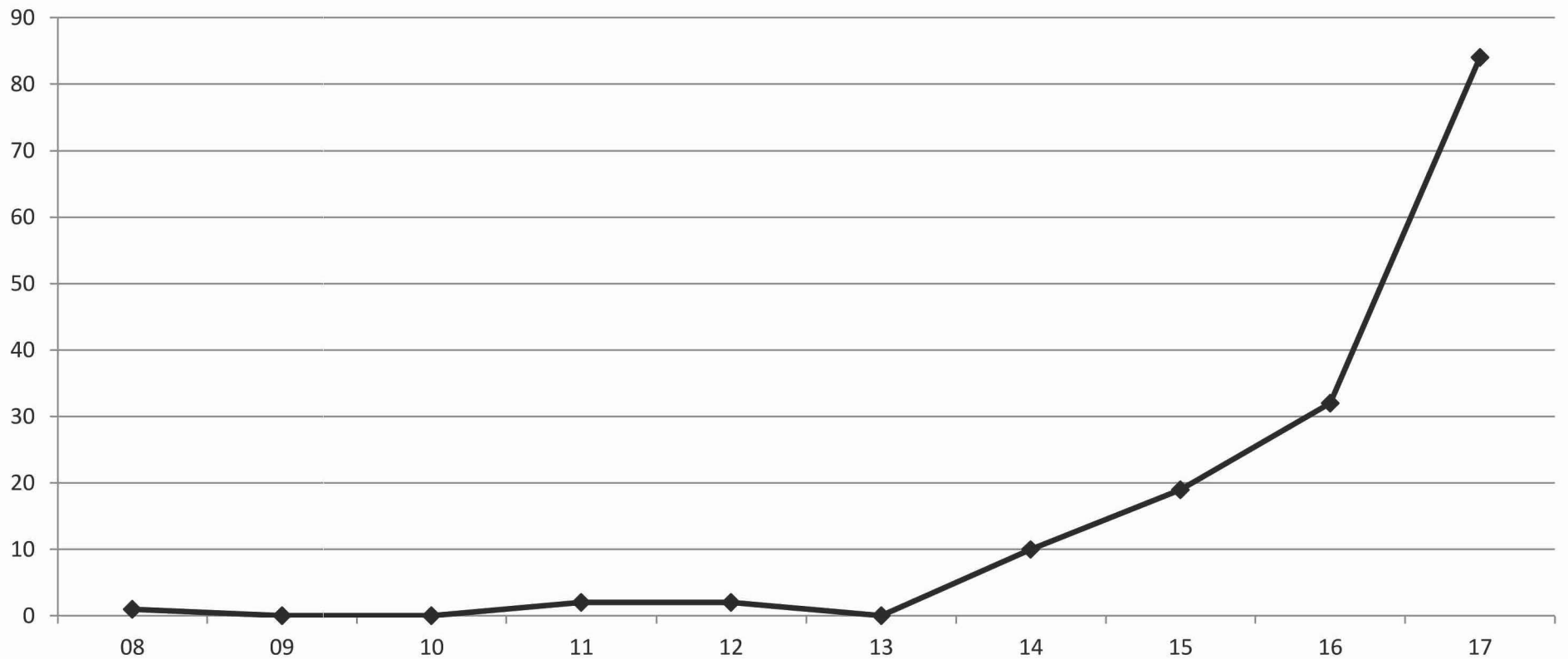
# Termination of Regional Center Designation

USCIS will issue a Notice of Intent To Terminate (NOIT) a regional center's participation in the program if:

- USCIS determines a regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.
- Regional center fails to submit Form I-924A in a timely manner, i.e., by December 29 (about 3 months after the end of the fiscal year).
- 8 CFR 204.6 (m)(6)
- Regional Center fails to pay the fee associated with the I-924A filing.

# Terminations

## Number Regional Centers Terminated by Fiscal Year



# Approved and Terminated Regional Centers

## USCIS approved regional centers:

<https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

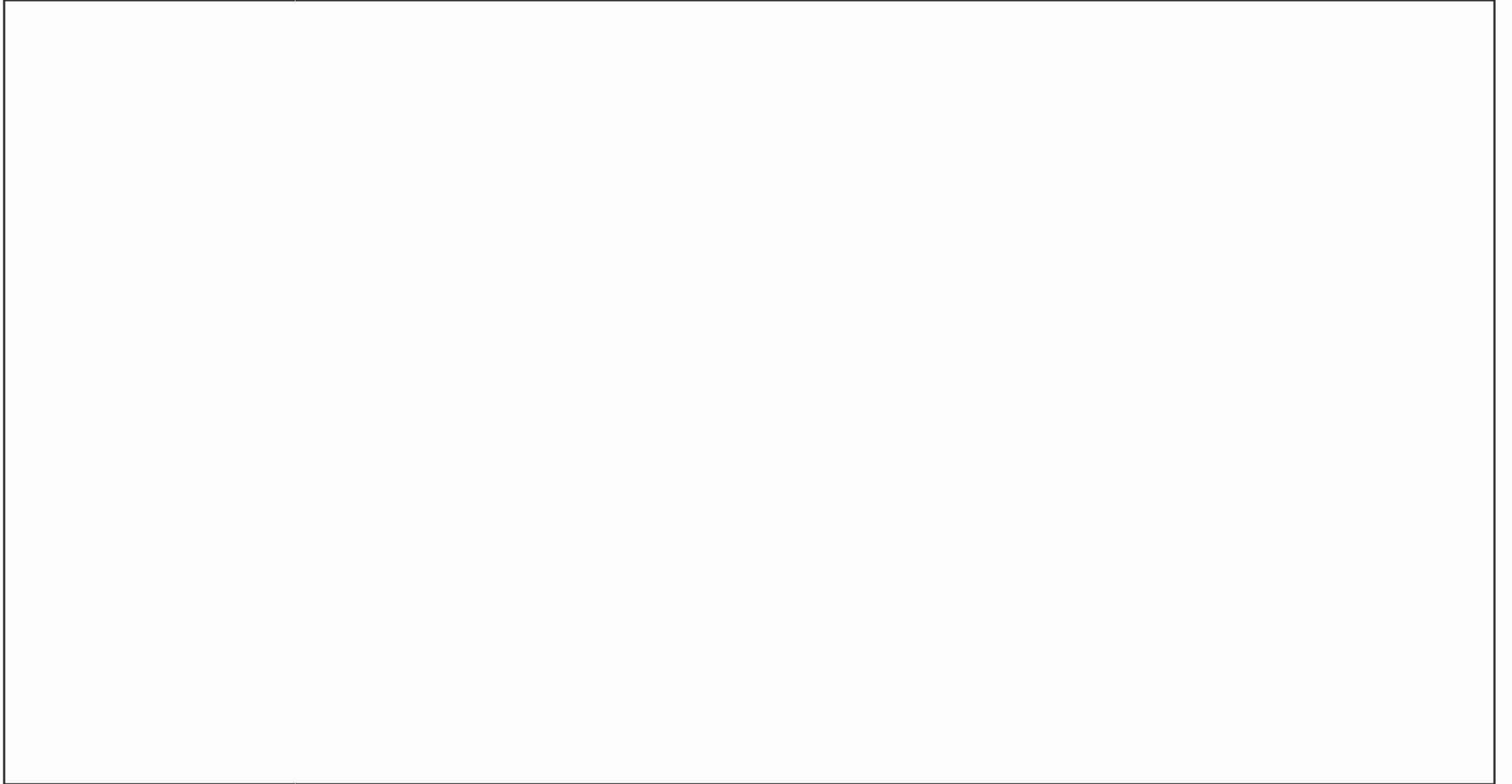
## USCIS terminated regional centers:

<https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process/regional-center-terminations>

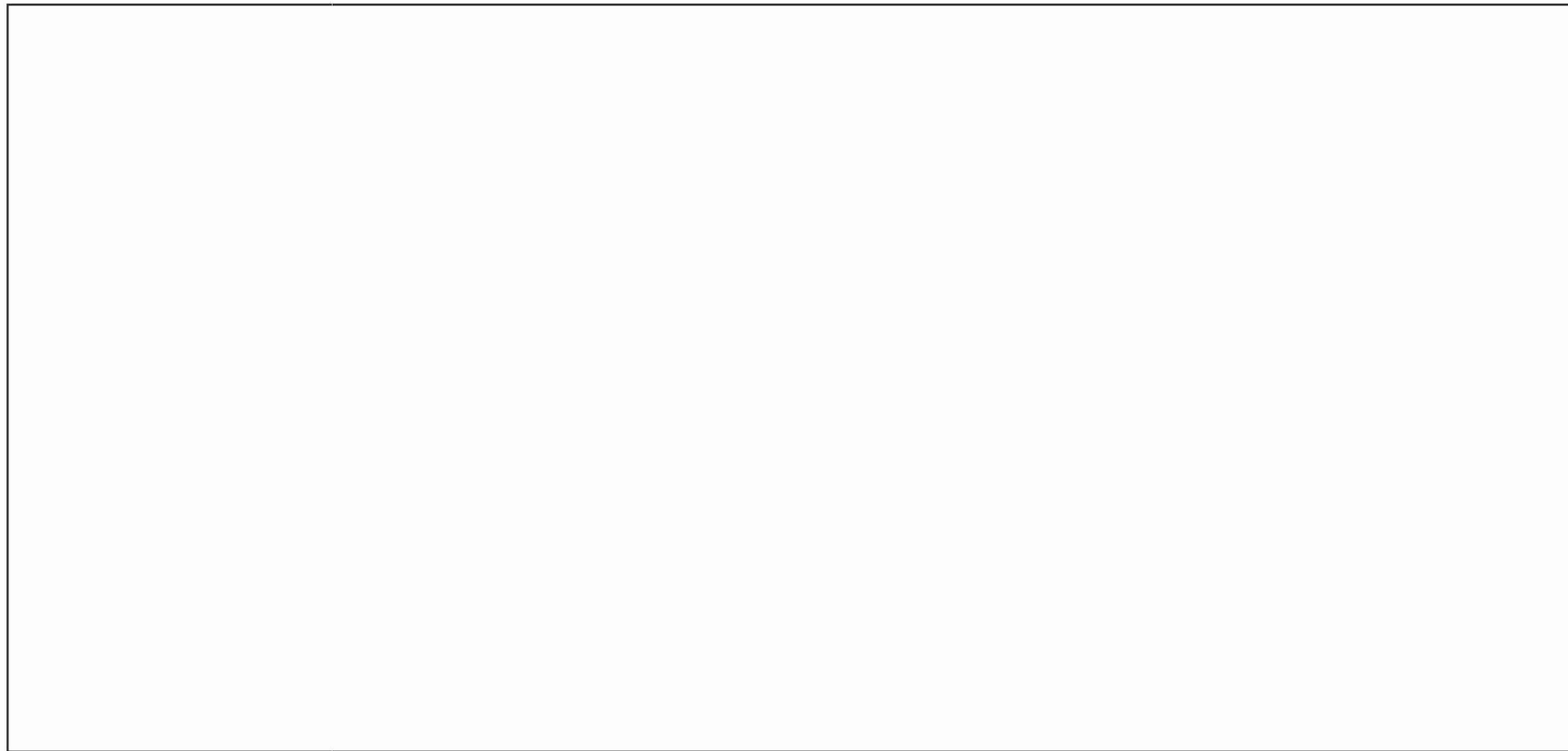
## USCIS regional center termination notices:

<https://www.uscis.gov/about-us/electronic-reading-room/regional-center-termination-notices>

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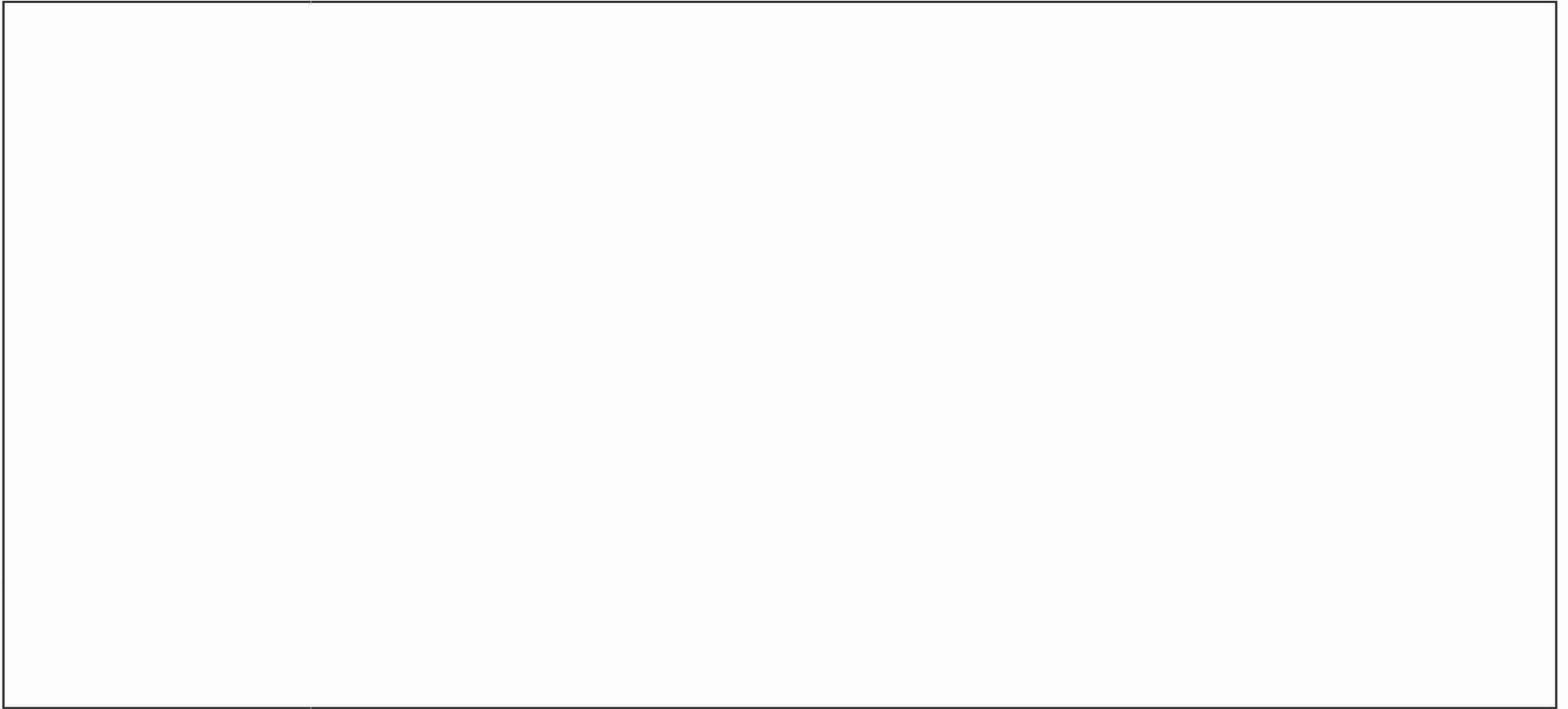
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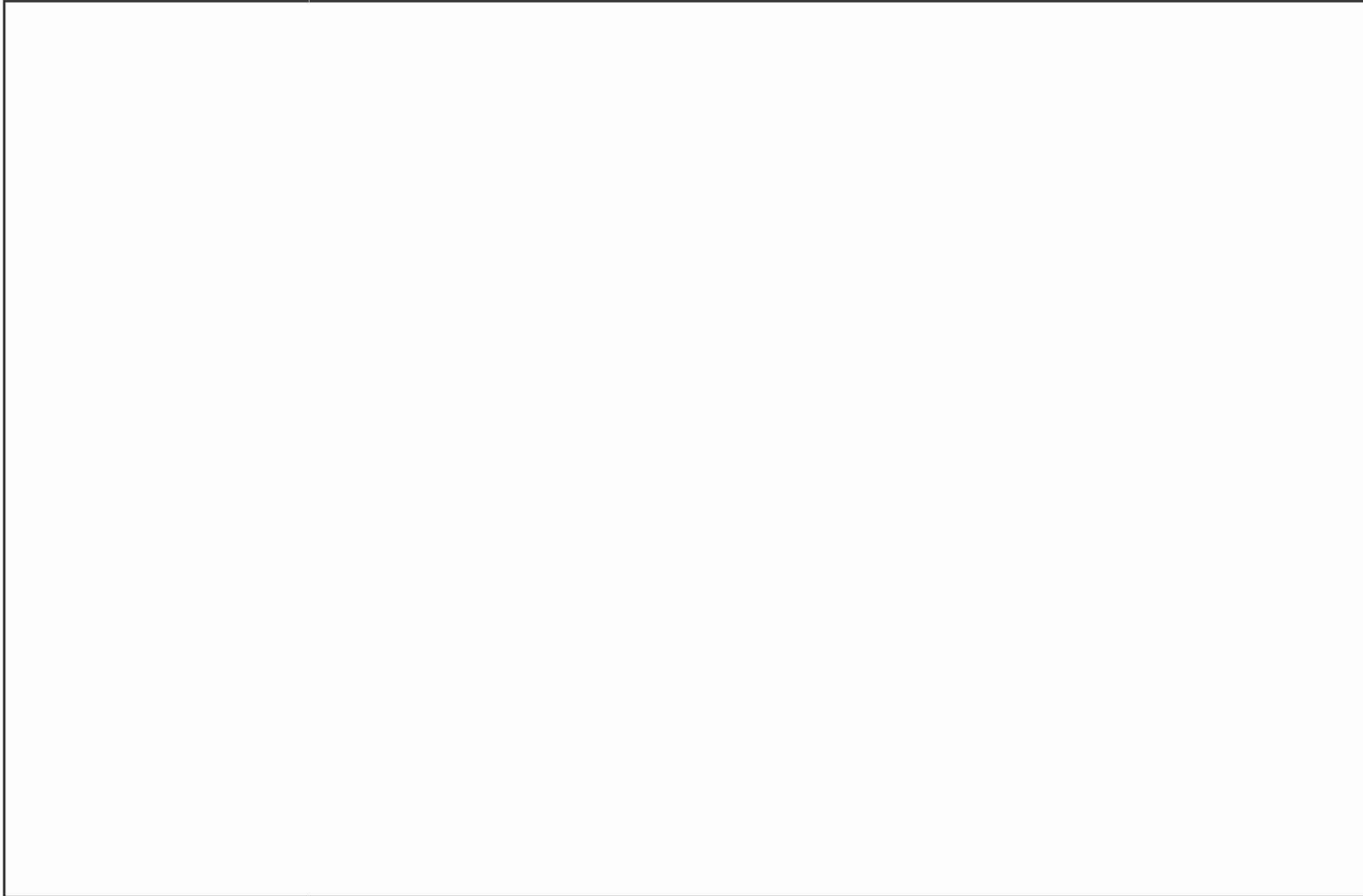


# **EB-5 Visas: Detecting Fraud and Crime**

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# EB-5 Country Breakdown: 2016

| <u>COUNTRY</u> | <u>EB-5 Visas Issued</u> | <u>% of Total</u> |
|----------------|--------------------------|-------------------|
| CHINA          | 10449                    | 82.52%            |
| VIETNAM        | 424                      | 3.35%             |
| INDIA          | 403                      | 3.18%             |
| SOUTH KOREA    | 147                      | 1.16%             |
| TAIWAN         | 142                      | 1.12%             |
| BRAZIL         | 122                      | 0.96%             |
| MEXICO         | 71                       | 0.56%             |
| IRAN           | 66                       | 0.52%             |
| HONG KONG      | 44                       | 0.35%             |
| UNITED KINGDOM | 37                       | 0.29%             |
| CANADA         | 36                       | 0.28%             |
| JAPAN          | 35                       | 0.28%             |
| RUSSIA         | 33                       | 0.26%             |
| SOUTH AFRICA   | 33                       | 0.26%             |
| EGYPT          | 22                       | 0.17%             |
| NIGERIA        | 16                       | 0.13%             |

**GRAND TOTAL:**  
12, 662 EB-5 Visas

# Common EB-5 Fraud Schemes

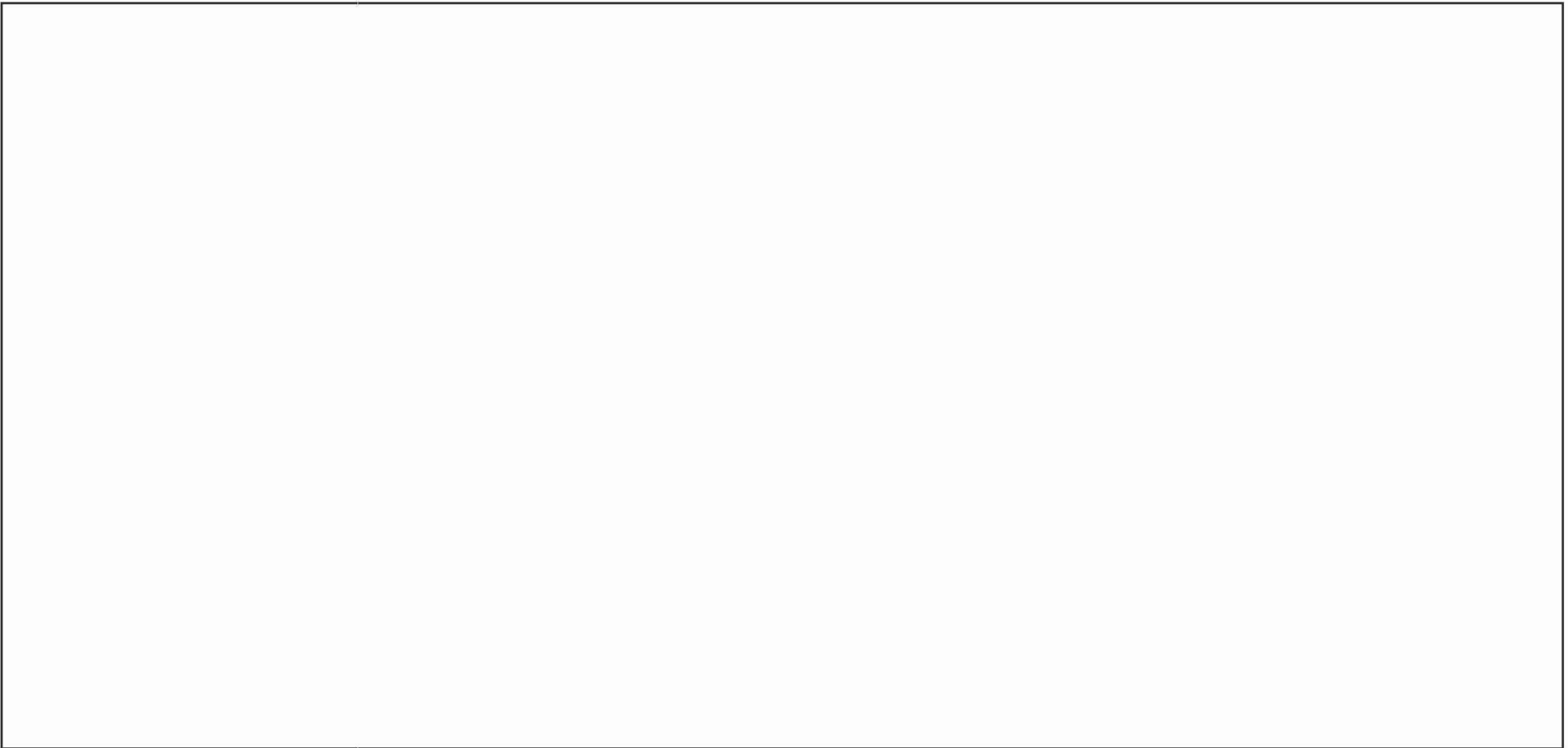
Standalone Issues

Investor based fraud

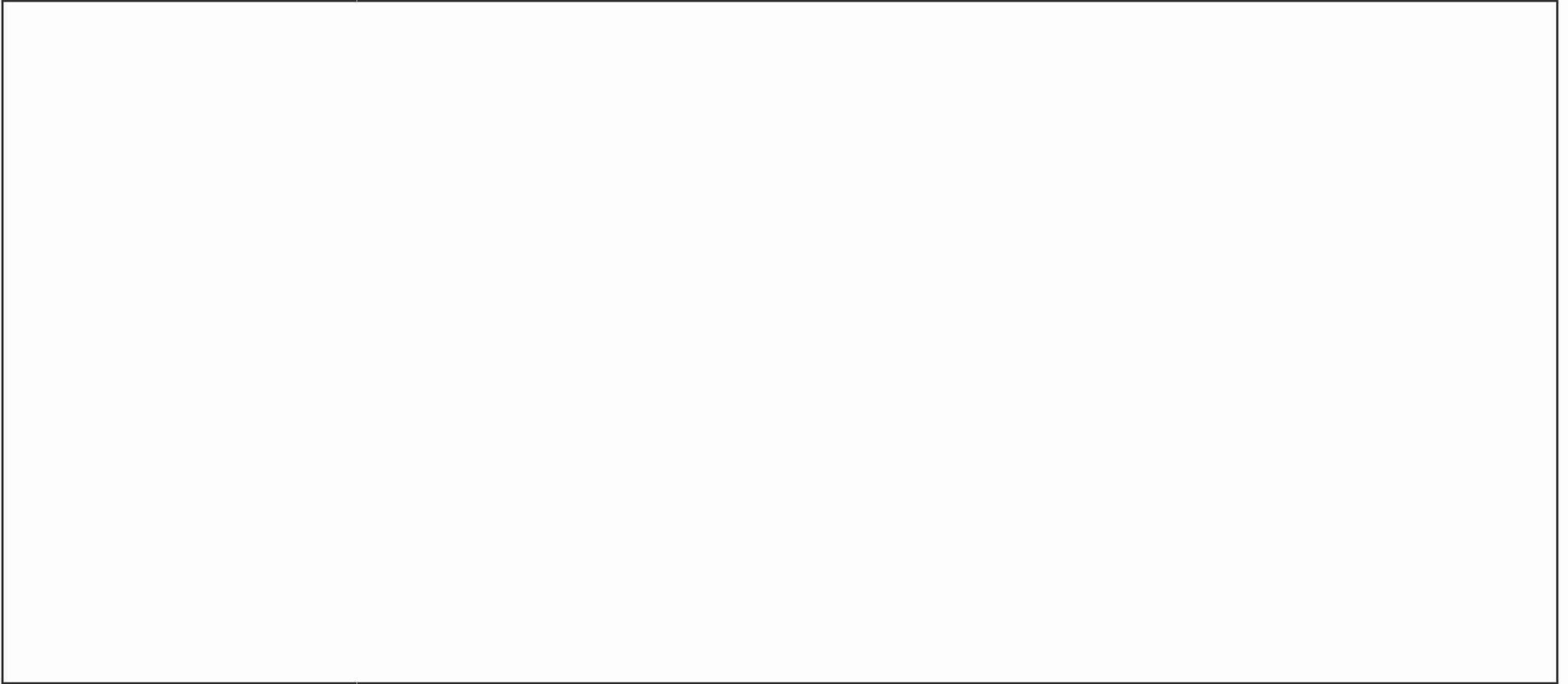
Regional Center based fraud



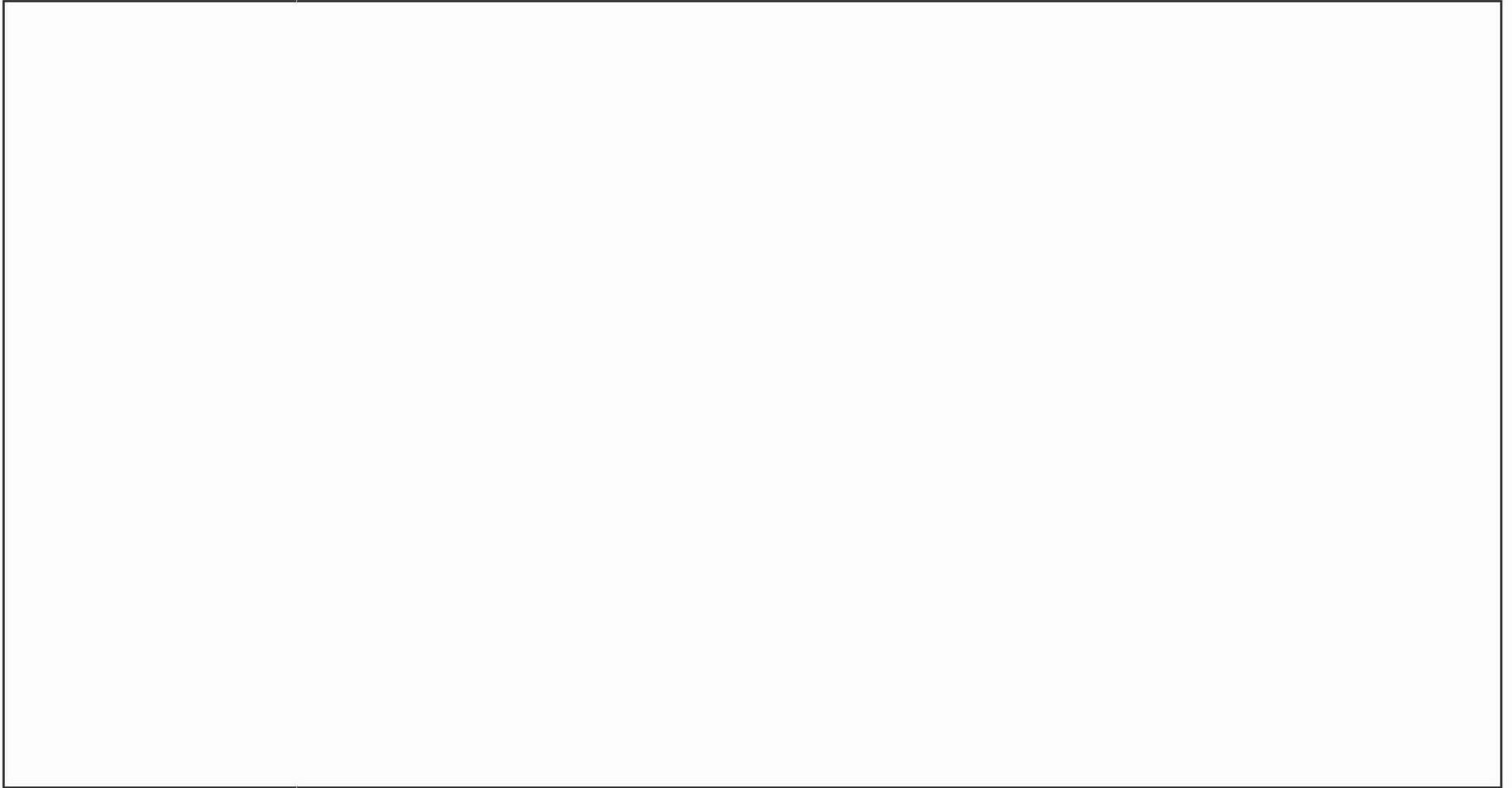
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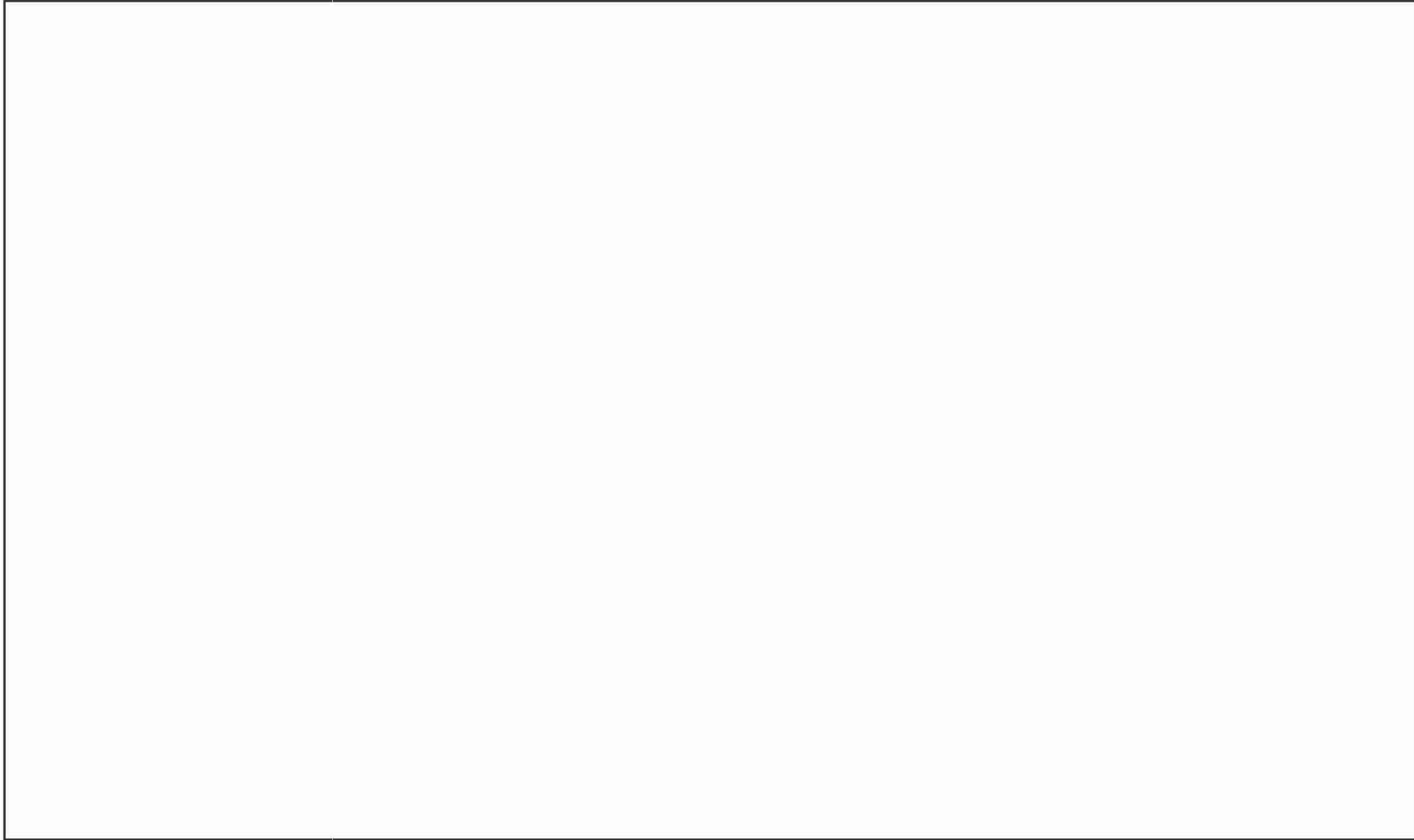
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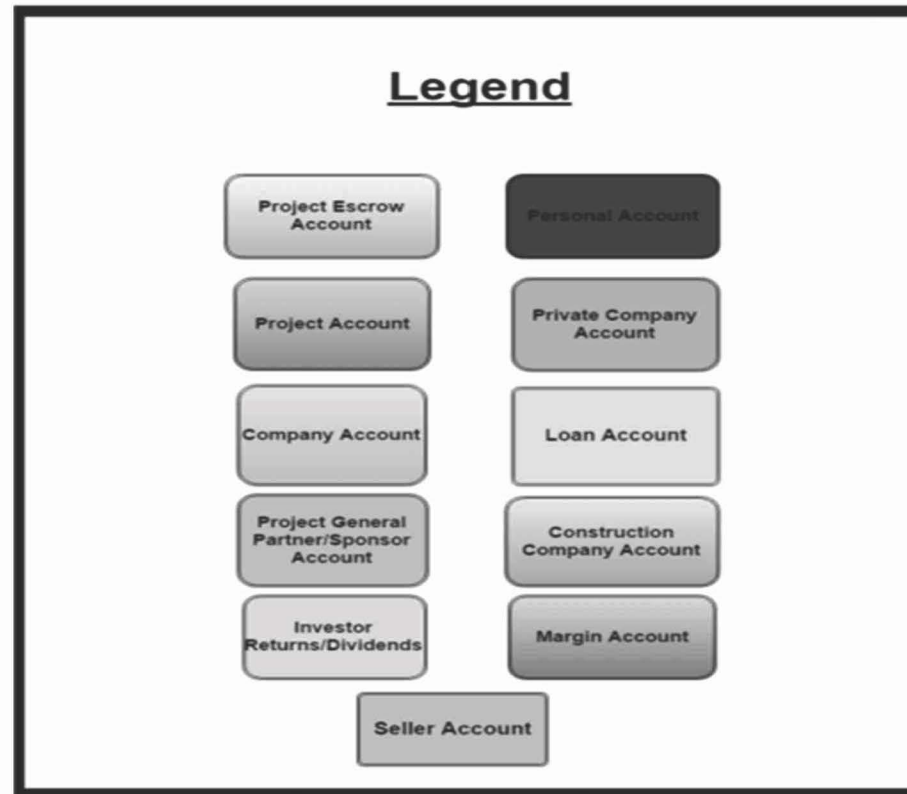
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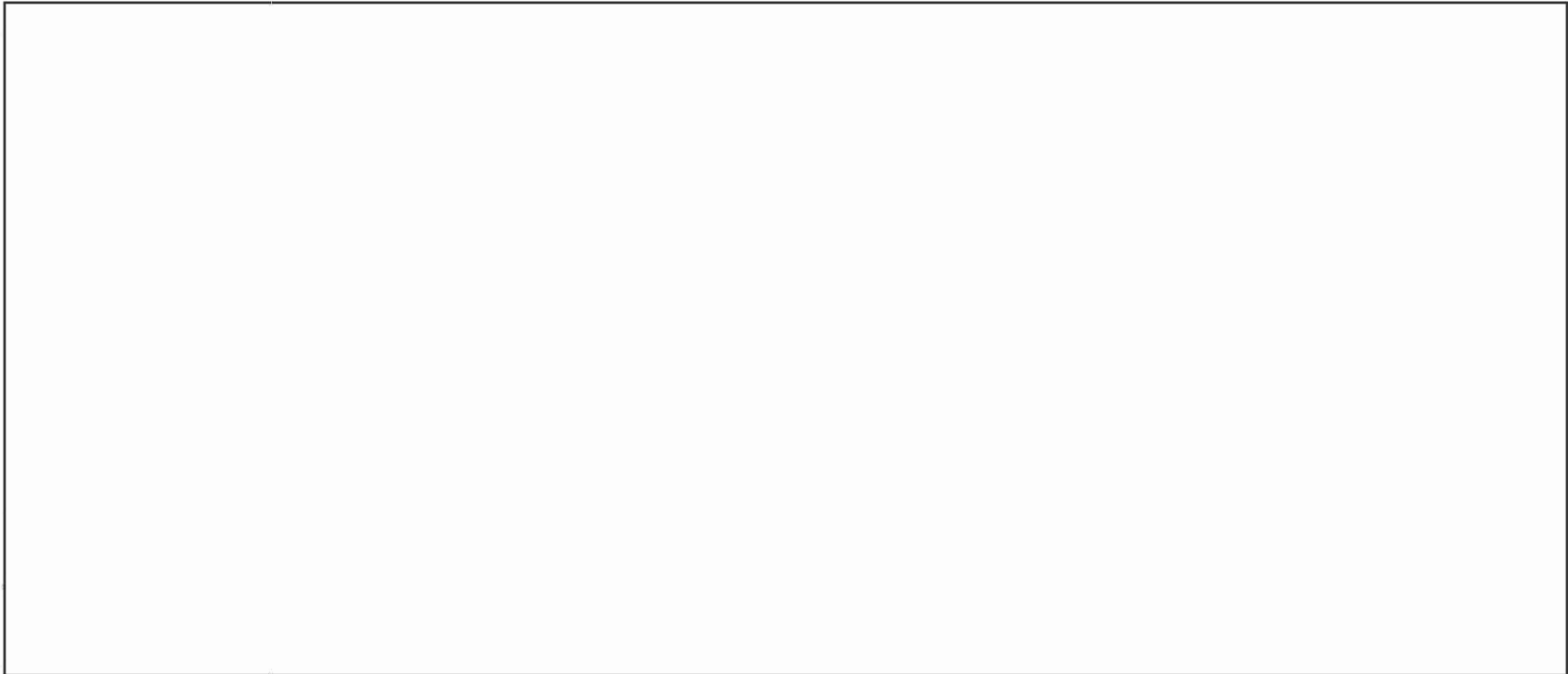


# Legend for Flow Chart



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# Regional Center Based Fraud





**The Seattle Times**

# Real Estate Developer with roots as Tibetan monk firmly planted in capitalism

Originally published July 15, 2012 at 9:00 pm | Updated July 19, 2012 at 11:07 am



**Raised in a family of Tibetan goatherders and trained as a Buddhist monk, Bellevue developer Lobsang Dargey says his life journey is rooted in the American dream.**

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# Rags-to-riches story will likely end in prison for Seattle-area real-estate developer Dargey



Originally published January 4, 2017 at 12:52 pm Updated January 4, 2017 at 4:47 pm



As part of a plea deal with prosecutors, Lobsang Dargey has agreed to serve up to 10 years in federal prison and refund millions of dollars to his victims. (Ellen M. Banner/The Seattle Times)

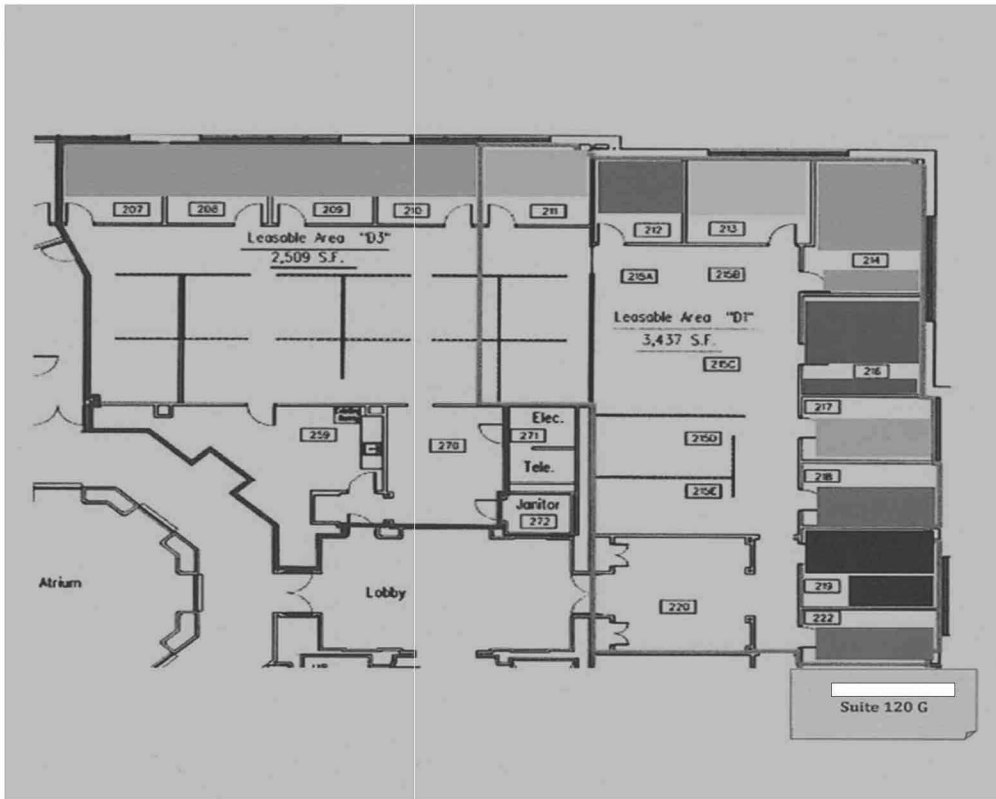
**Lobsang Dargey on Wednesday pleaded guilty to two felony charges and agreed to spend up to 10 years in prison and pay up to \$24 million in restitution to investors he defrauded.**

By Mike Rosenberg  
*Seattle Times business reporter*

From his birth on the livestock floor of a primitive farmhouse in Tibet to celebrating multimillion-dollar deals with local luminaries in Seattle, developer Lobsang Dargey's rise was swift and remarkable. And now, his fall is complete.

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# EB-5 Standalone Fraud



# Investor Based Fraud

Lawful Source of Funds:

Money Laundering

Counterfeit Docs

Shareholder Loan Issues

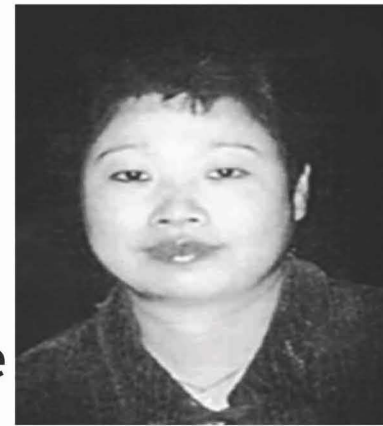
Identity issues/ NS Concerns

# Investor Fraud: Shilan Zhao & Qiao Jian Jun

On January 10, 2017 Shilan Zhao plead guilty to immigration fraud related to her and her “husband’s” EB-5 filings.

Qiao was once director of China's largest grain stockpile, Sinograin, and has been sought by the Chinese government since 2011 after he fled to the U.S. on suspicion of bribery and theft of national assets.

HSI noted in its press release the substantial assistance USCIS provided in the investigation



# Site Visit Program

1. 13 GS-11 IO's Hired and in place
2. Placed in areas where Regional Centers are located.
3. Less than 300 project sites concentrated near the locations where they are assigned



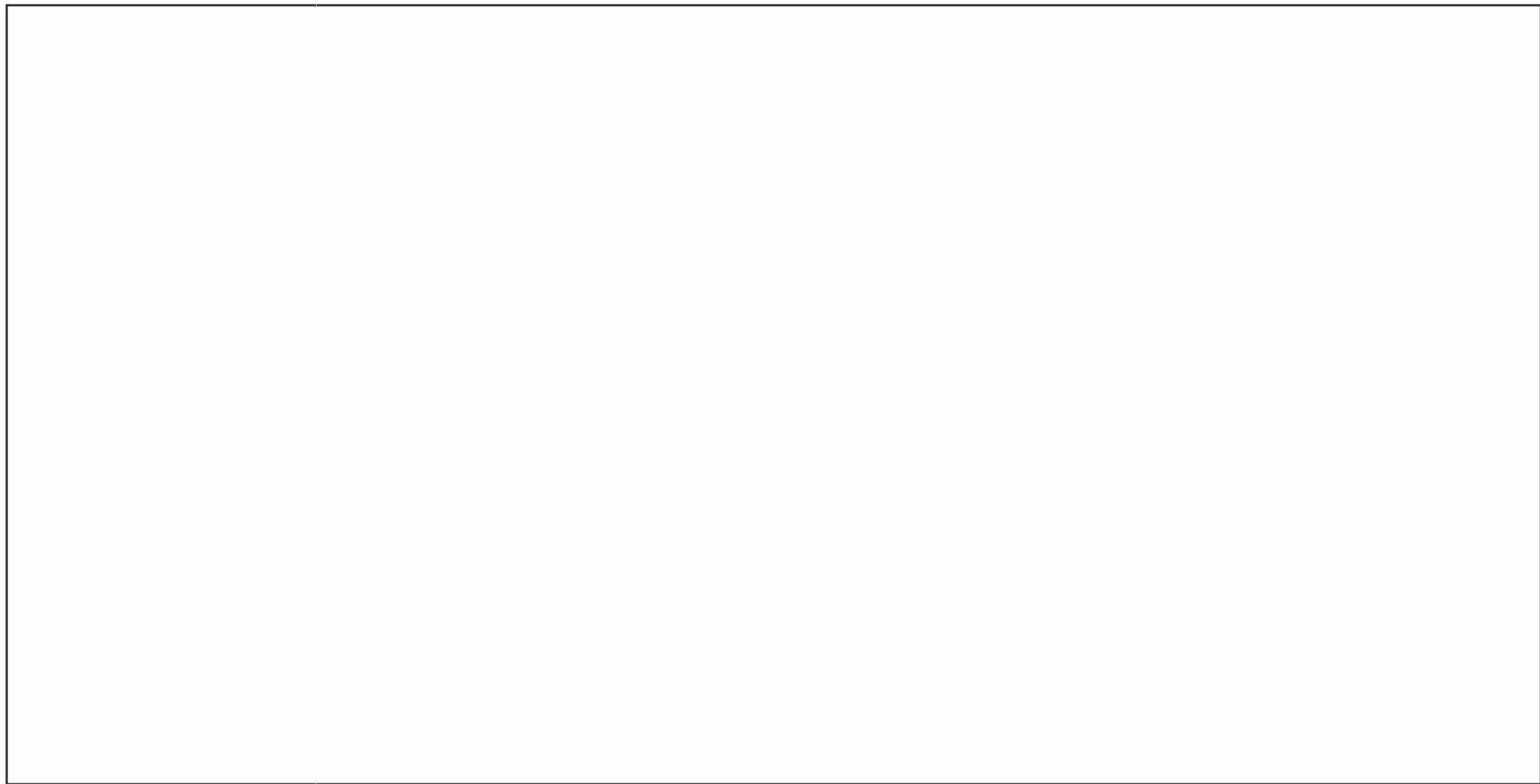


# Verifying Commercial Activity

*REI will open D.C. flagship location at Uline Arena in NoMa*



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# Just send me the files....?



**Questions?**