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COMBATING “NOTARIO FRAUD” LOCALLY

Travis B. Olsen*

INTRODUCTION

On June 9th, 2011 the Federal Trade Commission, Department of Justice, Immigration and Customs Enforcement, U.S. Citizenship and Immigration Service, Executive Office for Immigration Review and several state and local enforcement agencies announced a monumental joint effort to combat “notario fraud” or the unlawful practice of immigration law (UPIL).1 U.S. Citizenship and Immigration Service (USCIS) Director Alejandro Mayorkas said:

we are dedicated to protecting vulnerable immigrants from those who seek to exploit them... through our sustained outreach, enforcement and education efforts, and our close collaboration with our federal, state, and local partners, we will provide the communities we serve with the help needed to combat this pernicious problem.2

Through this collaborative effort, several federal agencies have filed complaints or criminal charges against suspected fraudsters who prey on vulnerable immigrants. On June 1, 2011 the Federal Trade Commission filed a complaint against LOMA International Business Group, Servicios Latinoamericanos de Maryland Inc. and the proprietor Manuel Alban and his wife Lola Alban.3 Allegedly, over the past ten years, the Defendants in this complaint, who are not licensed to practice law, assisted consumers in at least 600 immigration applications filed with USCIS.4 Robert Mejia pled guilty of a scheme to fraudulently provide immigration legal services, which included impersonating an Immigration and Customs Enforcement official.5 Samuel Klein received a sixty-three month prison sentence for

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1. National Initiative to Combat Immigration Services Scams, U.S. CITIZENSHIP AND IMMIGRATION SERV. NEWS (June 9, 2011), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01083fda91570310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045fd6a1RCRD.
2. Id.
4. Id. at 6.
5. Maryland Man Who Impersonated a Federal Immigration Agent Sentenced to 8 Years in Prison in Fraud Scheme Defendant Also Convicted of Possessing Ammunition After Felony Conviction,
"visa fraud, filing a fraudulent tax return, and making a false statement in a financial aid application to the Department of Education." Klein's wife was also sentenced to twenty-seven months in prison for her role in the scheme.

The severity of the harm caused, the number of defrauded consumers, and the resulting criminal violations generally allow a federal agency to become involved in the prosecution of UPIL. But many of the perpetrators do not fall into this category. Thus, local agencies with greater proximity to, and familiarity with, the victims are instrumental in shutting down smaller, but no less harmful, operations.

Historically, the unlawful practice of law has been prevented by state bar associations and state attorneys general. For example, California enacted the first legislation specifically regulating "non-attorney service providers" in 1986. Since that time, state enforcement has become an essential component to combating notario fraud. Multiple state agencies have joined with the federal agencies in this collaborative effort and have used this opportunity to announce recent enforcement actions taken.

I argue that the most effective way to combat notario fraud is through enforcement of state legislation based on a comprehensive understanding of the culture, circumstances, and relationships involved in notario fraud. This article will examine the statutes of several states and their specific application to the unlawful practice of immigration law, analyze the effectiveness of these laws, and propose potential changes to ensure successful prevention of notario fraud.


7. Id.

8. Andrew F. Moore, Fraud, the Unauthorized Practice of Law and Unmet Needs: A Look at State Laws Regulating Immigration Assistants, 19 GEO. IMMIGR. L.J. 1, 10 (2004).

9. Id.

A. Immigration Adjudication

This article provides a brief explanation of the adjudication of immigration applications to show the ease with which untrained persons can insert themselves in the immigration process. Because a person seeking an immigration benefit must first file an application with USCIS, it is the most pertinent federal agency in addressing the issue of notario fraud. For example, if a lawful permanent resident (LPR) would like to become a U.S. citizen, she must file an application with USCIS. Additionally, if a U.S. citizen or LPR desires to bring a family member to the United States, he must file a petition with USCIS.

Applications to USCIS regarding immigration status are made through standardized forms, where the applicant need only fill out the biographic information requested and check “yes” or “no” to the questions asked. Supporting documentation, such as photographs, birth certificates, and tax returns are often requested in addition to the form. The form must then be mailed along with the application fee to a specified USCIS office or service center.

If the application is approved, the applicant is notified by mail or during the interview with a USCIS officer. If the application is denied, the applicant will either retain the lawful status he or she previously enjoyed or be placed in removal proceedings to be deported from the United States. Imprisonment during the pendancy of these proceedings is possible. In few instances USCIS may deny an application but not refer the applicant to Immigration Court even though the applicant is left with no lawful immigration status. Regardless of the outcome, an applicant cannot recoup the application fee paid to USCIS.

B. Notario fraud

The term “notario fraud” has come to signify the unlawful practice of immigration law. This term stems from the word “notario,” which is a Spanish word that literally translates to “notary.” However, a notary in the United States is a “clerical position,” and completely different than the professional notario in a Spanish-speaking country. “In numerous Latin American countries, including Mexico, Argentina, Peru, and Honduras, having a law degree is a prerequisite for

13. 8 C.F.R. § 204.1(e).
14. USCIS fees range from a few hundred dollars to several thousands when multiple applications are filed together. See Check Filing Fees, U.S. CITIZENSHIP AND IMMIGRATION SERVICES FORMS, (Nov. 23, 2010), http://www.uscis.gov/portal/site/uscis/menuitem.cb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=bae408b1c4b3210VgnVCM100000b92ca60aRCRD&vgnextchannel=bae408b1c4b3210VgnVCM100000b92ca60aRCRD.
becoming a notario."¹⁸ "Latin notaries . . . are state-appointed, private legal professionals who, whenever asked, are required to: (1) carry out nonadvocacy counseling; (2) give private transactions proper legal form and authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions.¹⁹ "Notarios in Mexico, for example, have the power to declare legal instruments (such as contracts and wills) legally valid."²₀

Immigrants, particularly those from Latin America, apply this understanding of the term "notario" to the U.S. legal system. Thus, it is reasonable for many immigrants to see an advertisement for a "notario" or "notary public" in the United States and believe that person to be an attorney. Some notary publics and others not licensed but merely using that title, have seized upon this misunderstanding and hold themselves out as attorneys, enabling them to engage in the practice of law without a license. Sometimes their advertisements will even feature the scales of justice or the facade of a courthouse to reinforce the idea that they are lawyers. Because the clientele are immigrants, the unauthorized practice of law is generally confined to an immigration practice. This type of unlawful practice of law is commonly known as notario fraud and its perpetrators as notarios. It is important to note that not all victims are Hispanics.

The challenges of being an immigrant also contribute to victims of notario fraud being easily misled and defrauded. Many notaries are immigrants themselves, or the children of immigrants, and thus have a natural rapport with their clients, especially when they are from the same country; the immigrant clients feel comfortable because that person speaks their language and understands their culture. The language aspect is key, especially in places that increasingly push for 'English-Only' environments. Thus immigrants who are unfamiliar with the U.S. legal system and who do not speak English will seek legal assistance from a familiar and seemingly trustworthy source. And although we use the term "fraud," some of these non-lawyer practitioners actually "possess a genuine desire to help people but have harmed immigration claims inadvertently."²¹

Because of the rapport with immigrant communities, many non-lawyers engaged in UPIL also provide other services needed by immigrants such as driver's license assistance and computer access. Generally notario fraud occurs "by persons who provide an array of bilingual services to a particular immigrant community. . . [which] might include translating documents, wiring money to homeland relatives, notary services and job placement."²² This type of business becomes a one-stop service provider for immigrants; legal service is generally only one aspect of the business. It is thus important to understand that those who engage in UPIL generally do not only do so with one client, but with many as part of their on-going business.

Understanding who is being misled, why they are misled, and who is doing the misleading allows us to understand what services being provided cause harm and

¹⁸. Langford, supra note 15.
¹⁹. Cisneros, supra note 15.
²⁰. Langford, supra note 15, at 120.
²². Id.
²³. This article is concerned with those engaging in UPIL who charge a fee for their legal services and not those who may do so to assist a family member or friend. The same harm can befall an immigrant but in many cases this is permissible. See also 8 C.F.R 292.1(a)(3).
can be considered fraud or UPIL. A person who provides translation services might merely translate a USCIS form for an immigrant and not give any advice on what form is appropriate or what are the legal qualifications for the immigration benefit sought. The giving of legal advice can thus be somewhat tricky to define and distinguish from mere clerical or interpreting services. However, “there rarely is a black letter rule, specific form, or single fee that can simply be applied to determine an immigrant’s residency status” and an individual’s circumstance can dramatically change their eligibility for a specific immigration status. \(^\text{24}\) “Filing the wrong documents, missing a deadline, or failing to fully disclose all the facts in a case can mean the difference between legal status, deportation, and, in the case of some asylum seekers, even death.” \(^\text{25}\)

A common example of a situation where innocent clerical services have caused serious harm involves Temporary Protected Status (TPS) which is granted to nationals of certain countries which have suffered a substantial natural disaster or are engaged in armed conflict. \(^\text{26}\) To qualify for TPS, a person must be physically present in the United States by the date that the U.S. Government designates a country’s nationals for TPS, and the person must have continuously resided in the U.S. since that date. \(^\text{27}\) A person applying for TPS must submit the correct USCIS forms, documentary evidence of identity and nationality, and proof of residence in the United States prior to the designation date. \(^\text{28}\) Failure to provide this supporting documentation can result in a denial of one’s application. Temporary work permit cards may be issued to applicants while their applications are pending or while USCIS is awaiting additional supporting documents. However, in most cases the applicants assume that the temporary work permit granted meant that their TPS applications had been approved, when in actuality they were still pending; the granting of a temporary work permit does not necessarily mean that the person has been granted lawful immigration status. Their applications may ultimately be denied, leaving the person without TPS status and vulnerable to deportation from the U.S. Many times, these situations can be traced to the notario who filed the initial application incorrectly during the initial registration period. Had the original application been filed correctly or had the proper supporting documentation been included, than the TPS application would have been originally granted. Unfortunately these mistakes were not found until years later when it was too late to take advantage of Temporary Protected Status.

Immigrants come to the United States with preconceived notions about legal systems and legal services based on their home countries. Unfamiliarity contributes to immigrants seeking assistance from a familiar source while navigating this new country. Some people who are this source go beyond their capacities and authority and provide legal services unlawfully. “Incompetence in the complexities of immigration law can have disastrous results because filing the wrong document, missing a deadline, or misjudging the relief available to a client can mean the

\(^\text{24}\) Id.
\(^\text{26}\) 8 USC § 1254a(b)(1); INA § 244A(b)(1).
\(^\text{27}\) 8 C.F.R § 244.2.
\(^\text{28}\) 8 C.F.R § 244.9(a)(1)-(2) (2011).
difference between legal status and deportation." Notario fraud, thus, causes great harm to a vulnerable population.

C. State Laws and Enforcement

Exactly what constitutes the practice of immigration law has been defined differently by various states, leading in part to confusion as to what constitutes notario fraud. Generally, the practice of immigration law is understood to be "select[ing] immigration forms for clients, giv[ing] advice on immigration law and possible strategies for obtaining lawful status in the United States and charg[ing] a fee for services." Each state uses its own definition, either through statute or case law, to combat notario fraud. The specific statutes vary; some are generic deceptive trades practice laws while others go a step further and specifically target notarios, immigration assistants, immigrant consultants, or whatever other title is given to those engaged in the unauthorized practice of immigration law. Below is an examination of six states' statutes, some addressing generic fraud, some specifically addressing notario fraud, that have been recently used to prosecute the myriad of ways in which non-lawyers have assisted consumers, for pay, in immigration matters.

a. California

In a 2010 case Musa Bala Baldé, Irene Penaloza Baldé and Glenda Venegas allegedly "engage[d] in business under the name American Legal Services" and misled "families to conclude that Defendants were entitled to practice law." The company's advertisements stated "Your Legal and Immigration Solutions," "For all your legal and immigration needs," and "Legal Services Without the Attorney Price." The Defendants also allegedly referred to themselves in business cards and in communication with customers as "attorneys," "staff attorneys" and "associates, implying that they are associate attorneys," however none were members of the California State Bar or authorized to practice law.

The Government's complaint also alleged that the Defendants provided "unauthorized legal assistance by completing and submitting immigration applications and forms . . . decid[ing] which immigration applications and forms to use and fil[ing] these applications and forms, without [their] clients ever requesting or understanding the nature of the specific documents." Their assistance included advice to "at least one client . . . not to attend her scheduled appointment at a

31. Moore, supra note 8 at 10.
32. Note that these six states are not the only states with generic or target statutes used to combat notario fraud.
34. Id. at 3-9.
35. Id. at 9.
36. Id.
37. Id. at 10.
consular office” and forging an attorney’s signature on a motion to reopen and
forging clients’ signatures of immigration forms.\footnote{38}

Further, the Defendants allegedly “falsely told clients that they [were] eligible for certain immigration benefits and status. . . when the clients [were] not in fact eligible for such benefits or status.”\footnote{39} Other alleged false statements made by the Defendants include: that standard receipt notices were actually approval notices of applications submitted granting lawful immigration status, that clients would “receive work permits within three months and residency within six or eight months”, that Defendants could “fix” problems created by the Defendants, and “pretending to call ‘immigration’ by telephone” and claiming that an official assured the Defendants that the client was eligible for lawful immigration status.\footnote{40} Clients were allegedly told not to contact USCIS because “immigration would become angry and drop the client’s case.”\footnote{41}

The complaint alleges that American Legal Services’ “clients have detrimentally relied on these false and misleading promises, statements, and assertions of fact” resulting in frivolous applications being filed.\footnote{42} Specifically, one previous client “was forced to stay in Ciudad Juarez [Mexico] where she had no family and witnessed substantial violence.”\footnote{43}

Defendant Musa Bala Baldé was previously found liable in small claims court in October 2009 when the court found that “Defendant misrepresented he was an immigration attorney and he is not an attorney.”\footnote{44} A police report had also previously been filed against the Defendants with the Oakland and Fremont Police Departments alleging similar actions to those that form the basis of this complaint.\footnote{45}

The City of Oakland (Oakland) claims that Defendants’ actions violate the California Business and Professions Code (a general unauthorized practice of law statute), Penal Code and Immigration Consultants Act (which concerns specifically the unlawful practice of immigration law).

The California Business and Professions Code states:

Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor.\footnote{46}

The Penal Code and Immigration Consultants Act states:

It is a misdemeanor for any person for compensation to knowingly make a false or misleading material statement or assertion of fact

\footnotesize{\begin{itemize}
\item[]\footnote{38} Id. at 12, 13.
\item[]\footnote{39} Id. at 11.
\item[]\footnote{40} Id. at 12-13.
\item[]\footnote{41} Id. at 13.
\item[]\footnote{42} Id. at 12.
\item[]\footnote{43} Id. at 6.
\item[]\footnote{44} Id. at 7.
\item[]\footnote{45} Id.
\item[]\footnote{46} CAL. BUS. & PROF. CODE § 6126 (2011).}

in the preparation of an immigration matter which statement or assertion is detrimentally relied upon by another.

The complaint also alleges violations of California's Immigration Consultant Act (ICA), which prohibits persons from engaging in business for compensation as an immigration consultant. The ICA states that:

A person engages in the business or acts in the capacity of an immigration consultant when that person gives non-legal assistance or advice on an immigration matter. That assistance or advice includes, but is not limited to, the following:

1. Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms.
2. Translating a person’s answers to questions posed in those forms.
3. Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms.
4. Submitting completed forms on a person’s behalf and at their request to the United States Citizenship and Immigration Services.
5. Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

An immigration matter means "any proceeding, filing, or action affecting the immigration or citizenship status of any person."

According to this statute, an immigration consultant is merely required to register with the Secretary of State of California, pass a background check and comply with various requirements, including making clear that he or she is not an attorney, providing written contracts, and refraining from making false or misleading statements or guarantees to his or her clients. The Defendants had not registered as immigration consultants prior to engaging in their alleged business practices.

Oakland has requested that the Defendants be permanently enjoined from violating the specified sections of the California Business and Professions Code, Penal Code, and ICA, and that restitution to the Defendants’ injured clients, including actual damages and attorney’s fees, be made. Oakland also seeks the maximum fine of $2,500 for each violation of the Penal Code totaling $15,000 for

47. CAL. PENAL CODE § 653.55.
49. See § 22441(a).
50. Id. § 22441(b).
51. Id. § 22441.1.
52. Id. § 22442.2(c).
53. Id. § 22442.
54. Id. § 22444(a)-(b).
55. California Complaint, supra note 33, at 13.
56. Id. at 17-18.
57. CAL. PENAL CODE § 653.55.
each violation of the Business and Professions Code and $100,000 per violation of the ICA, estimating eighty-two violations for a total of $8,200,000. To date there is no resolution to this case.

b. Indiana

Evelyn O. Casiano of Allen County, Indiana did business as "United Hispanic Caring Hearts." Ms. Casiano is alleged to have "held herself out as a Notary Public, or 'Notario Publico' . . . [a] title given to specialized attorneys in some Latin American countries" and represented herself as "an assistant to an attorney." Her business practices included advising "clients regarding procedures for requesting certain immigration statuses . . . [and] selecting appropriate [United States Citizenship and Immigration Services] forms and assisting in their preparation and completion for submission." The Defendant accepted payment for these services even though she does not possess a license to practice law nor have any specialized training to assist with immigration services.

The Indiana Attorney General (Indiana) filed a complaint against Ms. Casiano alleging that her actions violated the Deceptive Consumers Sales Act of Indiana (DCSA). The DCSA generally prohibits representing oneself in sales or service transactions as having approval or affiliation that one does not have. Deceptive acts also include providing a sale or service that requires a permit or license if the actor does not possess the required license. In applying this statute to Ms. Casiano’s actions, Indiana relied on the Indiana Supreme Court’s holding in State v. Diaz “that selecting immigration forms and advising clients on how to fill out selected immigration forms, as well as advising consumers regarding their immigration status is the practice of law.”

To remedy these violations, Indiana has sought the following forms of relief as provided in the DCSA: 1) reimbursement of money paid to Ms. Casiano for immigration services; 2) expenses of the Office of Attorney General incurred in the investigation and prosecution of Ms. Casiano; 3) $5,000 fine per violation alleged; and 4) $500.00 per “incurable deceptive act.” In addition, the Indiana AG sought a permanent injunction to “advising consumers regarding USCIS procedures and policies; preparing completing and/or submitting USCIS forms on behalf of consumers; accepting payment for services requiring the assistance of an attorney or certified immigration specialist.” To date there is no resolution to this case.

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58. See § 22445(a).
59. California Complaint, supra note 33 at 18.
60. Complaint at 1, State of Indiana v. Casiano, No. 02D01-1103-PL-98 (Cir. Ct., March 9, 2011). [hereinafter Indiana Complaint]
61. Id. at 2.
62. Id.
63. Id.
64. Id. at 3. See Deceptive Consumers Sales Act, IND. CODE § 24-5-0.5.
65. See §24-5-0.5-3(a)(7).
66. Id. §24-5-0.5-10.
67. Indiana Complaint, supra note 60, at 3; see also Diaz, 838 N.E.2d at 444.
68. Indiana Complaint, supra note 60, at 4-5; see also DCSA § 24-5-0.5-4; § 24-5-0.5-8.
c. Washington

Rod and Nora Williams created and operated "Immigration Services of America" and:

advis[ed] customers as to the legal requirements for obtaining specific benefits under the immigration laws of the United States of America, select[ed] and fill[ed] out applications and government forms, draft[ed] petitions and letters to the immigration authorities in support of immigration benefits, obtain[ed] and collect[ed] the documents required to process such petitions, provid[ed] legal advice to customers on immigration matters and other matters, and fil[ed] forms with immigration authorities.\(^{69}\)

The Defendants also entered into written and verbal contracts "to provide legal advice and legal, logistical and documentary support . . . related to petitions for immigration benefits."\(^{70}\)

The Washington Attorney General (Washington) filed a complaint against Defendants on April 1, 2011 alleging multiple violations of the Consumer Protection Act and Immigration Assistant Practices Act (IAPA).\(^{71}\) The IAPA defines an immigration assistant as "every person who, for compensation or the expectation of compensation, gives non-legal assistance on an immigration matter."\(^{72}\) A "matter" includes:

any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person which arises under immigration and naturalization law, executive order, or presidential proclamation, or which arises under action of the United States immigration and naturalization service, the United States department of labor, or the United States department of state."\(^{73}\)

IAPA prohibits immigration assistants from "giv[ing] any legal advice concerning an immigration matter."\(^{74}\)

Those who provide assistance in these matters, but not legal advice, must first register with the secretary of state.\(^{75}\) Immigration Assistants must also provide written contracts to customers, including:

\(^{69}\) *Indiana Complaint, supra* note 60, at 4.
\(^{70}\) *Id.*
\(^{71}\) *Id.* at 1.
\(^{72}\) *Wash. Rev. Code § 19.154.060* (2011). Please note that this statute has since been repealed and a revised law concerning immigration assistants went into effect on October 20, 2011. A discussion of the new statute is found further below in this article. The current section on "Immigration Services of America" deals solely with the previous Washington statute as that law was the basis for the enforcement action.
\(^{73}\) *Id.* § 19.154.020(2).
\(^{74}\) *Id.* § 19.154.080(6).
\(^{75}\) *Id.* § 19.154.040.
a clause containing an explanation of the services to be performed; identification of all compensation and costs to be charged to the customer for the services to be performed; a statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the assistant for any purpose . . . a statement that the immigration assistant is not an attorney and may not perform legal services and “a statement that the customer has seventy-two hours to rescind the contract.” 76

"Any violation of [the IAPA that] substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce." 77 According to the Consumer Protection Act, unfair and deceptive acts or practices are per se violations. 78

Washington sought an injunction and fine of “up to $2,000 per violation” of the Consumer Protection Act as stipulated in the statute. 79 The Consent Decree signed by the Defendants found liability of $20,000 in fines but $17,500 of that was suspended on condition of compliance with the entire Decree. 80 The Defendants also agreed to a permanent injunction which forbids them or their agents from giving:

advice regarding the qualifications required for a visa, work permit, residency, citizenship or other immigration benefit or status . . . select which visa, residency, citizenship, immigrant or non-immigrant, or other legal status to apply for, or which application or other form to use . . . advise a person regarding his or her answers on any immigration related forms. 81

The Defendants cannot advertise, provide, charge fees for or receive money or other compensation for . . . translating an immigration-related form . . . helping a person obtain any supporting documents regarding immigration . . . making referrals to attorneys for legal representation in an immigration matter” without first registering as immigration assistants according to the IAPA. 82

d. New York

In the spring of 2009 the New York Attorney General (New York) began investigating the American Immigrant Federation, Inc. (AIF), its affiliates, and its president, Estela Figueredo. 83 AIF was “a not-for-profit organization based in New York” 76 Id. § 19.154.070; see also Washington Complaint, supra note 74, at 5-6.
77. See § 19.154.090.
78. Id.; see also Washington Complaint, supra note 74, at 5.
79. See § 19.86.140; see also Washington Complaint, supra note 74, at 7.
80. Consent Decree at 9, State v. Williams, No. 11-2-00334-8 (Wash. executed Apr. 4, 2011) [hereinafter Washington Consent Decree].
81. Id. at 4-5.
82. Id.
83. Assurance of Discontinuance at 1, In re Figueredo, No. 10-039 (N.Y. executed Apr. 6, 2010) [hereinafter New York AOD].
New York City, with more than 20,000 customers. These customers paid $100 annually to become members of AIF believing that they [would] receive free or low cost legal assistance, only to find out that they must pay significant additional fees, typically thousands of dollars, in order to receive legal representation. For these fees, AIF "instruct[ed] individuals on which immigration forms to complete and file . . . and advis[ed] individuals on the best course of action for their immigration matters."

Despite providing this advice, neither AIF nor Figueredo were licensed to practice law or authorized or accredited in any way and thus "mis[led] the public and convince[d] them that they were authorized to provide legal services." This misrepresentation was brazenly public as "Figueredo [was] showcased on several Spanish-language radio and television stations where she discusses immigration laws giving the impression that she is an attorney experienced in immigration matters."

New York law generically regulates a person who:

hold[s] himself out to the public as being entitled to practice law . . . or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counsel, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law."

New York specifically targets the unlawful practice of immigration law through the Immigration Services Provider Law (ISPL), which defines a provider as "any person . . . that provides immigration assistance services." Immigration assistance services are defined as "assistance, for a fee . . . to persons who have, or plan to, come to the United States from a foreign country, or their representatives, in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person." It is also prohibited for a provider to "give legal advice, or otherwise engage in the practice of law" or "assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language." This law prohibits non-lawyers from "providing any legal

86. Id at 7.
87. Id. at 6-7.
88. Id. at 6.
89. N.Y. JUD. LAW § 478.
90. N.Y. GEN. BUS. LAW § 460-a(2).
91. Id. § 460-a(1).
92. Id. § 460-e(1).
services, for example, giving legal advice to consumers on what form of immigration relief they should be seeking or what immigration forms to complete and file,” but allows “clerical services, such as completing immigration forms based on information provided by the immigrant consumer.”  

According to the Agreement of Discontinuance, AIF violated this statute because its employees gave legal advice by “instructing individuals on which immigration forms to complete and file,” instead of merely filling out a form the client chose on his own.

The statutory penalties for these violations are an injunction, restitution and a fine of up to $75,000 per violation. The actual relief imposed in this case through the Assurance of Discontinuance requires that AIF will “cease and desist from operating any business which provides immigration services,” that Figueredo be “permanently barred from serving as an officer, director, trustee, manager, employee, fundraiser or agent for a not-for-profit organization . . . in the State of New York and the AIF paid $1.2 million in restitution to defrauded clients.” As security collateral, Figueredo was required to “deliver a mortgage” from property she individually owned “in the amount of $350,000.”

e. Texas

Yolanda Salazar Perez is the Director of the Nueva Union (New Anointing) Biblical Institute/Church in Houston. Perez allegedly enticed persons to become members of her church and then filed immigration applications for them falsely claiming that would work for the church’s ministry. “At least 300 consumers have apparently become members of Perez’s church.” She also allegedly told “consumers what forms they need prepared, and prepare[d] those forms on consumer’s behalf.” Texas also alleged that Salazar Perez “falsely claim[ed] to have worked for the U.S. Immigration and Naturalization Service” and “to be or have been a contractor with the U.S. Department of Homeland Security.”

This was not the first time that Perez has been investigated for notario fraud related practices. In 2005 Perez was previously found in violation of Texas state law for “providing unauthorized and misleading immigration services.” During that time she operated multiple businesses in multiple locations, including churches, with 4,881 identified customers. Perez agreed to a permanent injunction in order to settle that suit. She was also notified by the Executive Office of Immigration

94. Id. at 7.
95. See § 460-h.
96. New York AOD, supra note 88, at 9, 11, 12.
97. Id. at 10.
99. Id.
100. Id. at 7.
101. Id.
102. Id.
103. Id. at 11-12.
104. Id.
105. Id. at 12.
Review that her business is not accredited to provide legal representation.\textsuperscript{106} Texas alleges that the recent actions by Perez, Bruno Perez, Julie Lopez, and Lucina Lopez violated the Deceptive Trade Practices Act (DTPA) and the Texas Government Code.\textsuperscript{107} The DTPA prohibits:

False, misleading, or deceptive acts or practices in the conduct of any trade or commerce;\textsuperscript{108}

Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;\textsuperscript{109}

Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;\textsuperscript{110}

Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;\textsuperscript{111}

Advertising goods or services with intent not to sell them as advertised;

Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.\textsuperscript{112}

The Texas Government Code requires all persons practicing law to be licensed by state or otherwise meet one of the narrow exceptions related to authorized students.\textsuperscript{113} Texas relies on the state's Supreme Court case Unauthorized Practice of Law Committee v. Cortez, which upheld a permanent injunction order for practicing law without a license against defendants who had assisted individuals in filing immigration forms.\textsuperscript{114}

Texas is currently seeking relief from Perez in the form of injunctions, restitution, and damages for identifiable victims of this fraud, attorney's fees for violations of the Texas Government Code,\textsuperscript{115} the maximum fine possible for a violation of the DTPA, $20,000 per violation.\textsuperscript{116} There is also a maximum penalty of $250,000 per violation\textsuperscript{117} "for actions calculated to acquire or deprive money or

\textsuperscript{106} Id. at 11.
\textsuperscript{107} Id. at 1.
\textsuperscript{108} TEX. BUS. & COM. CODE ANN. § 17.46(a).
\textsuperscript{109} Id. § 17.46(b)(2).
\textsuperscript{110} Id. § 17.46(b)(3).
\textsuperscript{111} Id. § 17.46(b)(5).
\textsuperscript{112} Id. § 17.46(b)(9).
\textsuperscript{113} Id. § 17.46(b)(24).
\textsuperscript{114} TEX. GOV'T CODE ANN. § 81.102.
\textsuperscript{115} Unauthorized Practice of Law Committee v. Cortez, 692 S.W.2d 47 (Tex. 1985).
\textsuperscript{116} TEX. GOV'T CODE ANN. § 402.006(c).
\textsuperscript{117} See § 17.47(c)(1).
\textsuperscript{118} Id. at § 17.47(c)(2).
other property from any consumer who was 65 years of age or older.”

f. Colorado

Beginning in 2008, Simply Done Immigration, SDI Document Services, and other related businesses along with their president, Joseph P. Corrigan, “began to advertise nationally that their ‘specialists’ provide phone consultations and immigration document services to ‘provide you with the best solution to your immigration problems.'” Defendants advertised its services through multiple websites including www.US-ImmigrationHelp.com, www.immigration-documents.com, and www.uscis.info; the website for U.S. Citizenship and Immigration Service is www.uscis.gov. In addition, Defendants bought ad words from Google and Yahoo which allowed its advertisements to be shown on a webpage when a person searched words such as “USCIS” and “immigration assistance.”

The complaint alleges, “Defendant’s various advertisement lead customers to believe that they are dealing directly with the government.”

Defendants employed salespersons to answer calls generated by online advertising, greeting the consumers with “U.S. Immigration National Hotline” and convincing consumers to purchase immigration forms, which are free from the government, as well as other services. Payment was made upfront over the phone or by money order. Consumers were often unaware that these payments did not include the USCIS filing fee. In fact, Defendants’ fees were “substantially the same” as the USCIS fees, creating additional confusion as to what services were covered and whether Defendants were actually the government or not.

“Document specialists” then assisted the consumers by telephone in completing in these forms. The Colorado Attorney General, hereinafter Colorado, alleged that misrepresentations and lies were common techniques employed by these salespeople; incorrect forms and paperwork were also often provided. Many consumers, after reviewing the documents sent to them by Simply Done, realized that they were not, in fact, dealing with the government, as they had assumed.

In August 2009 Colorado approached Defendants about these business practices. Two months later the Colorado Office of Attorney Regulation approached Defendants as well. In both instances, Defendants claimed to have

119. Texas Complaint, supra note 103, at 18.
121. Id.
122. Id. at 5.
123. Id.
124. Id. at 3, 5.
125. Id. at 4.
126. Id.
127. Id. at 5.
128. Id. at 3.
129. Id.
130. Id. at 4.
131. Id.
132. Id.
taken down his business websites with a minor exception. However, the business was not completely shut down until mid-2010.

Colorado claimed that these actions violated the Colorado Consumer Protection Act (CCPA). The following specific violations constitute deceptive trade practices in violation of the CCPA:

- Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

- Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;

- Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

- Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

- Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;

- Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefore;

- Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

- Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer.

Violations of these statutes carries potential penalties of permanent injunction, restitution, Attorney General fees, a fine of $2,000 per violation.

133. Id.
134. Id.
135. Id. at 7-10; See also COLO. REV. STAT. § 6-1-105 (2010).
136. See § 6-1-105(1)(b).
137. Id. § 6-1-105(1)(c).
138. Id. § 6-1-105(1)(e).
139. Id. § 6-1-105(1)(g).
140. Id. § 6-1-105(1)(l).
141. Id. § 6-1-105(1)(n)(VII).
142. Id. § 6-1-105(1)(u).
143. Id. § 6-1-105(1)(e).
144. Id. § 6-1-110(1).
(capped at $500,000)\textsuperscript{146} and $10,000 per violation when the victim is an elderly person.\textsuperscript{147}

Colorado and the Defendants reached a consent judgment which permanently enjoins them from the actions complained of and imposes a fee of $20,000 payable over three years.\textsuperscript{148} This money will first be used to repay harmed consumers, then to reimburse Colorado for attorney’s fees, and finally “for future consumer education, consumer fraud and antitrust enforcement.”\textsuperscript{149} However, this judgment specifically contains no admission of liability as “Defendants contest that they have violated the CCPA, any other laws, and expressly deny any wrongdoing on their parts.”\textsuperscript{150}

D. Analysis

Although the specific facts vary in each of the cases- performing the work of an attorney, claiming to be an attorney, recruiting religious workers and possibly claiming to be USCIS- each act and defendant has led others to detrimentally rely upon misleading representations. Each state has used different statutes, presently available, to prosecute these actions. For example, both the states that have relied upon generic consumer protection or deceptive trade practices acts and the states that have statutes specifically prohibiting the unauthorized practice of immigration law, have also have succeeded in stopping these practices.\textsuperscript{151}

The key to stopping the unlawful practice of immigration law is to have a well-defined, broad understanding of the unlawful practice of immigration law and then adding statutory “teeth” so that prosecution will prevent those current non-lawyer immigration service providers from continuing their unlawful practice and will deter others from engaging in these actions.

a. Deceptive Trade Practice Statutes

For example, Indiana, Texas and Colorado have each prosecuted defendants under generic consumer protection laws restricting false representation of affiliation,\textsuperscript{152} engaging in consumer transactions requiring a permit or license,\textsuperscript{153} general deceptive practices,\textsuperscript{154} and failure to disclose material information.\textsuperscript{155} Each of these statutes requires the state to prove an unfair trade practice. To do this, the state


\textsuperscript{146} See § 24-5-0.5-3(a)(7).

\textsuperscript{147} See § 24-5-0.5-10.

\textsuperscript{148} See § 17.46(b)(2).

\textsuperscript{149} See § 6-1-105(1)(u).
must prove that the defendants not only selected immigration forms, but did so in a way that was misleading or unfair. Generally, this requires a finding that the person claimed to be an attorney or claimed to be qualified to perform a specific service. This can be easy when the notario advertises himself as such but complications arise when victims don't see themselves as victims because they knew that the person was not an attorney. This fact does not diminish the harm done and should not affect the unlawful nature of the act. If a specific act is defined as a per se violation then an enforcement agency will not need to prove deception because the very nature of the act involves misleading consumers to believe that the non-lawyer is qualified to perform legal services. Doing work that requires a license or specialized knowledge conveys the assumption that the person performing the work possesses the requisite license or knowledge. If neither the license nor knowledge are possessed, than the consumer was misled.

The key then is to define legal advice and services statutorily and create a per se violation thereby reducing the need for aggrieved consumer assistance and attorney general explanation of why a notario's actions are deceptive.

b. Immigration Assistant Statutes

New York, California, and Washington have all passed laws which require non-lawyer immigration service providers to first register with the state in order to provide non legal assistance, advice, or services. These statutes attempt to "limit what services [immigration consultants] may provide and how they may provide them." Rather than forbidding immigration consultants, these laws try to limit their conduct and subject violators to civil and criminal sanctions." Seeking to regulate notarios instead of prohibit their practice demonstrates a failure to capture the realities of their business and the unique circumstances of their immigrant clients.

Washington's Immigration Assistant Practices Act and the New York Immigration Service Providers Law allow for non-legal assistance but prohibits giving legal advice. The Washington Attorney General defines legal advice as "selecting government forms." The New York Attorney General interprets the law to allow "clerical services, such as completing immigration forms based on information provided by the immigrant consumer, translating documents and mailing documents on behalf of consumers to the required government agencies for processing." These statutes and the Attorney Generals' application of the statute attempt to create a clear, bright line difference between completing a form and selecting a form. But taking into account realistic situations, such an attempt cannot get past the blurry line of what actually constitutes a legal service. Separating completing and selecting a form is a false distinction and opens the door to greater problems to a consumer's immigration situation.

In essence, these laws and accompanying interpretations allow an immigrant consultant to charge an application fee only if the client affirmatively

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156. See § 460-h; see also § 22440; see also § 19.154.090.
158. Id.
159. See § 19.154.060, 19.154.080(6); see also § 460-a.e.
160. Washington Complaint, supra note 74, at 5.
expresses a desire to file Form I-821, as opposed to the client expressing a desire to file for TPS or for a work permit, in which case the consultant would not be allowed to complete or file anything. In either of the latter scenarios, the consultant is supposed to send away a potential paying customer unless she returns knowing the correct form to file, even though the customer likely doesn’t know where to find this information or how to read English. Since it is likely that a notario would simply tell the client what form she would need to fill out to avoid losing business, the regulation against merely telling a client which form to use would likely not be observed. Selecting and filing the incorrect form can be costly to the client and delay her case. Moreover, filing the incorrect form can result in imprisonment, deportation, separation from family, and, in some cases, can permanently prevent the applicant from receiving any immigration benefit in the future.

Another potential problem arises when a client mistakenly tells the immigration assistant to file the wrong form, such as asking to file Form N-400 for permanent residency, when in actuality Form N-400 is used to apply for citizenship. Even if the client states the correct form, she may not actually qualify for that immigration benefit. If the immigration assistant tells the customer that the form is incorrect, he would be doing more than merely “completing immigration forms,” in violation of the statute. In that scenario, if the notario completed the requested, but incorrect, form, he would have abided by the regulation. However, the client could lose her money, her current immigration status, and may possibly be removed from the United States. If the client told an attorney that she wanted to file Form N-400 to become a permanent resident and the attorney did so, the attorney could face a bar complaint or civil suit for having filed the wrong form. An incorrect filing by an immigration assistant or notario would result in no consequence to him because he abided by the regulations and the harmed customer has no recourse or redress.

In addition, most notarios “provide an array of bilingual services.” In fact, according to the Washington statute, immigration assistants are in compliance by “transcribing responses to a government agency . . . , translating a person’s answer to questions posed on those forms; securing for a person supporting documents currently in existence, such as birth and marriage certificates.” Those who need assistance with immigration forms, translation of documents, assistance obtaining birth certificates from other countries, and additional services are immigrants generally unfamiliar with our laws, language, business practices, and even specific neighborhoods. Under these regulations immigration assistants are supposed to tell their customers that they can only perform certain services and that the customers must go to another person for other services, such selecting the correct immigration form. Life in a new country can be difficult, and thus immigrants will likely seek out businesses that can handle all of their immigration needs, as opposed to only a few. As a result, immigration assistants are themselves pressured to satisfy all of their clients’ needs or risk losing those clients.

162. All USCIS forms are published exclusively in English.
163. Tobocman, supra note 21.
c. Recent Amendments

In response to these issues and complaints about the Immigration Assistant Practices Act, the Washington Legislature passed substantial revisions to that law which was signed by the Governor on May 3, 2011. The new provisions went into effect on October 20, 2011. The Act will now be referred to as the "Immigration Services Fraud Prevention Act" (ISFPA). This new law erases the term immigration assistant and instead prohibits all who are not permitted to practice law from engaging in the following for compensation:

Advising or assisting another person in determining the person’s legal or illegal status for the purpose of an immigration matter;

Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

Charging a fee for referring another to a person licensed to practice law;

Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter. All persons are also prohibited from claiming "that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law."

However, those not licensed to practice law are permitted to translate USCIS forms and obtain supporting documents. But the person may no longer translate answers on an immigration form, only the form itself. The ISFPA also requests that the state Supreme Court’s practice of law board evaluate “the specific

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166. See § 19.154.020(1).
167. Id. at 3.
168. Id. at 4.
169. Id. at 5.
170. Id.
services non-attorneys may provide to immigrants that do not rise to the level of the practice of law in immigration matters" and report "the board’s findings and recommendations" to the legislature. 171

The ISFPA makes several important changes to the previous law but still fails to grasp the fine line walked by notarios in providing immigration assistance. The ISFPA specifies that a person translating a government form must be presented the form by the customer. 172 As previously mentioned, this requires that the customer know which immigration form he needs beforehand and provide that form to the notario. This is realistically implausible. Although these changes seek to limit the services a notario can charge fees for, the ISFPA still allows non-lawyer immigration service providers to be involved in immigration-related legal matters. The relationship between legal and non-legal immigration-related services is too close to attempt to distinguish in a way that permits non-lawyer immigration service providers access to a vulnerable clientele seeking legal services. And it is that relationship, that proximity with legal services, which must be eliminated.

d. A Way Forward

In 2005 the Maryland Legislature passed the Maryland Immigrant Consultants Act (MICA). 173 This law defines an immigration consultant as “a person that provides non-legal advice, guidance, information, or services to a client on an immigration matter for a fee.” 174 But such “immigration consultant may not provide legal advice or legal services concerning an immigration matter.” 175 Under this new statute, “legal services include providing forms to an individual, completing forms on behalf of an individual, filing forms on behalf of an individual, advising an individual to file forms, or applying for a benefit on behalf of an individual.” 176 The penalty for violating this statute is a criminal conviction of a misdemeanor, a fine not exceeding $1,000, and imprisonment not exceeding one year. 177

The difference between the MICA and the other statutes we have examined is that in Maryland, simply providing an immigration form or completing the form for a fee is unlawful, practically making it a per se violation. This law restricts the proximity of notarios to legally-binding immigration forms when they charge a fee. Although restitution of the aggrieved parties is essential, a key component of combating notario fraud is deterrence of potential notarios. This can be achieved by more severe and diverse penalties, including potential jail time. If it were known that a person were arrested and convicted for unlawfully practicing immigration law by selecting and completing an immigration form, other notarios would likely be deterred from this practice.

Despite this per se law in Maryland that clearly defines legal services and provides for harsh penalties, to date this law has not yet been used to prosecute any

171. Id. at 6-7.
172. Id. at 5.
173. MD. CODE, ANN. § 14-3301-6 (West 2011).
174. Id. § 14-3301(c).
175. Id. § 14-3303(1).
176. Id. § 14-3301(e)(2).
177. Id. § 14-3306(a). MICA also provides a private right of action against an immigrant consultant with recovery of treble damages and attorney’s fees. See also § 14-3306(b-c).
notario. As part of the recent collaborative effort discussed at the beginning of this article, the Maryland Attorney General took action against an office in Baltimore called Latin Service, LLC (Latin Service).\textsuperscript{178} Latin Service’s and its owners’ alleged conduct included “falsely advertising that they were lawyers and ‘Notarios’ who could assist in immigration matters, including obtaining and preparing immigration forms for a fee, when in fact Latin Service did not employ any licensed attorneys and, therefore, could not lawfully provide the immigration consultant services it offered consumers.”\textsuperscript{179}

While the Press Release by the Attorney General’s office mentions the MICA, the only action taken in this case was a cease and desist letter to stop “offering illegal immigration consultant services and to return the payments they received for the services to consumers . . . [and] calling themselves ‘Notarios’ unless they disclosed that they were not licensed attorneys and were not authorized to practice law.”\textsuperscript{180}

A cease and desist letter, as opposed to a civil complaint or even a criminal charge, can be, and in Maryland’s case has been, effective in stopping the unlawful practice of immigration law. However, since other services have been lawfully rendered at Latin Service, only the portion dealing with legal services has been shut down. Immigrants throughout the Baltimore area have known that Latin Service assists in immigration forms and one of its owners, Gelmin Portillo, was recently interviewed by a local Spanish-language newspaper as a “licenciado,” or attorney.\textsuperscript{181} It is therefore highly likely that immigrants will continue to seek legal assistance from Latin Service. The hope is that, because of a cease and desist letter, the owners of Latin Service will stop offering these services. Such hope ignores the reality of the profits generated, the large number of individuals who have sought legal assistance from Latin Service, and the ease with which Latin Service was able to offer legal services previously. The lawful portions of Latin Service cannot be stopped, but the potential severe economic penalties or imprisonment that could result from engaging in UPIL in the future would strike fear in potential notarios and strengthen the hope that one-stop shops for immigrants will not include legal services.

A law similar to the MICA, which broadly defines legal services to include completing immigration forms and provides severe penalties such as imprisonment, should be enacted in each state. Such a law would address the nature of immigration adjudication, the cultural considerations of immigrants, and the diverse ways in which unscrupulous or well-intentioned persons can damage the lives of immigrants. But enacting the law is not enough. The law must actually be used to prosecute the unauthorized practice of law to prevent recidivism.

\textbf{CONCLUSION}

Notarios, immigration assistants, immigrant consultants, and others who

\textsuperscript{178} Attorney General Gansler Takes Action Against Deceptive Immigration Consultants, \textit{supra} note 10.

\textsuperscript{179} \textit{Id.}

\textsuperscript{180} \textit{Id.}

\textsuperscript{181} \textit{Mundo Entrevista}, Mundo Latino, April 4 to April 30, 2011. The term “licenciado” can mean a university graduate or an attorney. \textit{See} MERRIAM-WEBSTER’S SPANISH-ENGLISH DICTIONARY at 166 (Merriam-Webster ed. 1998).
unlawfully practice immigration law place their clients at great risk in an already unknown and potentially treacherous landscape. The penalties and consequences associated with immigration separate families, take away educational and employment opportunities, and place individuals in dreadful and sometimes life-threatening situations. These consequences affect not only the client, but his immediate family and potential future generations. Enacting and utilizing strict notario fraud statutes like the Maryland Immigrant Consultant Act in every state will provide quicker, more efficient enforcement, and hopefully diminish the number of notarios and notario businesses.