

NOTARIO FRAUD REMEDIES

A Practical Manual for Immigration Practitioners

C. JEFFERS BOGGS | STEPHANIE REDFIELD | CASSANDRA WATERS

A partnership of The Community
Justice Project and Ayuda

**THE COMMUNITY
JUSTICE PROJECT**

GEORGETOWN LAW

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A PRACTICAL MANUAL FOR IMMIGRATION PRACTITIONERS

A PARTNERSHIP OF THE **COMMUNITY JUSTICE PROJECT** AT
GEORGETOWN UNIVERSITY LAW CENTER AND **AYUDA**.

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NOTES CONCERNING THE USE OF THIS MANUAL:

PRONOUN SELECTION

Throughout this Manual you will see fraudulent immigration consultants (notarios) referenced as “he” and victims of this crime as “she.” This use is not intended to imply that most notarios are male or that most victims are female; nor is it meant to convey any greater substantive or political meaning. The use of these pronouns is simply for ease of reference and to reduce confusion.

REFERRALS TO OTHER SECTIONS

Throughout this Manual we will refer to other sections or appendices related to the information being described. Please check the footnotes in each section for such references.

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FOREWORD: NOTARIO FRAUD AND IMMIGRANT COMMUNITIES

“Notario fraud” has drawn increasing attention from practitioners, government officials, and advocacy organizations due to recent developments in national immigration policy and to the ever-growing number of immigrants defrauded each year. This issue manifests in a myriad of ways, but often produces severe consequences for victims and their families. As advocates for these victims, you are on the front lines of a battle to name the harm and provide meaningful legal redress. It is crucial that you, as the first point of contact for many immigrants who have been defrauded, recognize the harm, seek and advocate for immigration remedies, and endeavor to hold notarios accountable for their crimes.

A Note on the Term Notario Fraud

In this Manual, we will be using the term “notario fraud” to refer to immigration consultant fraud as a whole. This includes the traditional legal definition of fraud, as well as a wider range of serious harm wrought by individuals who capitalize on immigrants’ vulnerability and ignorance of the US legal system to offer substandard, false, or nonexistent immigration services.

The term “notario fraud” is often used by practitioners and other interested parties to refer to immigration consultant fraud. Much of the information contained in this Manual is broadly applicable to any immigration scam designed to exploit victims’ unfamiliarity with the legal system and fear of government authorities to elude punishment.

This project is a joint effort between Georgetown Law Center’s Community Justice Project and Ayuda, a non-profit immigration services organization that has served the DC immigrant community for over 40 years. Ayuda was founded in the Adams Morgan neighborhood, an area known for its thriving Central American population. As most of Ayuda’s clients are Spanish-speaking, the organization has often confronted these immigration-based scams where notary publics advertise their services as “notarios públicos” to the community and defraud those that rely on them.

Every year, immigrants hoping to navigate our nation’s notoriously complex immigration system seek out help. Many end up in the offices of individuals like Luis Ramirez, a scam artist who for years preyed on victims out of an upscale office in McLean, Virginia. Mr. Ramirez had a notary public license in the United States and advertised various legal services on his website, luisramirezlaw.com, which featured him standing in front of a waving American flag.¹

To many Spanish-speaking immigrants, Mr. Ramirez appeared to be a legal expert skilled in immigration law and sympathetic to immigrants seeking legal status. He had a local radio show where he discussed immigration issues and identified himself to the community as a “notario público,” which, due to a quirk in translation, is itself misleading. In many Latin American countries, “notarios públicos” or “notarios” are state-appointed legal practitioners who possess even higher qualifications than an attorney.² Here in the United

¹ Flores v. Ramirez, No. 2012-02359 (Va. Cir. Jan. 16, 2013). A copy of the complaint is available in E2 Sample Civil Complaint (Ramirez Case).

² ELIZABETH COHEN, CAROLINE VAN WAGONER, & SARA WARD, GEORGETOWN UNIVERSITY LAW CTR., COMMUNITY JUSTICE PROJECT, TO PROTECT AND SERVE: ACCESS TO JUSTICE FOR VICTIMS OF NOTARIO FRAUD IN THE NATION’S CAPITAL 14 (Ayuda ed., 2012), available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice/upload/Ayuda-Final-Report-Stylized-Web-Version.pdf>; Cori Alonso-Marsden, “Strong Words, Gentle Deeds”: Evaluating the Effectiveness of the Maryland Immigration Consultant Act Five Years On, 4 LEGIS. AND POL’Y BRIEF 75, 82-83 (2012); Jonathan A. Pikoff and Charles J. Crimmins, *Lost in Translation: Texas Notary Public v. Mexico Notario Público*, TEXAS SEC’Y OF STATE, available at <http://www.sos.state.tx.us/statdoc/notary-public.shtml> (last visited Apr. 20, 2013) (The term “notary” originates from the time of Cicero; the split in meaning derives from a divergence between papal law in Rome and common law in England. Those using this manual who enjoy word origins as much as one of this

States, becoming a “notary public” requires very little in the way of training and does not license individuals to give legal advice.³

When Armando Rosas’* friend was detained and placed in removal proceedings, Mr. Rosas’ wife suggested he contact Mr. Ramirez after hearing his radio program. Mr. Ramirez recognized an opportunity to exploit Mr. Rosas, an undocumented immigrant who spoke limited English. Assuring Mr. Rosas that he was a skilled attorney, Mr. Ramirez told Mr. Rosas that he could get his friend out of detention on bond for \$4,000. Upon receiving these funds, he gave Mr. Rosas counterfeit documents stating he had obtained a stay of removal. In reality, he made no effort to follow up on the case at all.⁴

Mr. Rosas became one of dozens of victims defrauded by Mr. Ramirez, and his friend became one of the thousands of immigrants deported that year. But Mr. Ramirez’s nefarious activities did not end with Mr. Rosas. There are dozens of documented cases where he exploited individuals who came to him for legal assistance. If a victim confronted him, he would threaten to call immigration authorities or other government officials.⁵ For example, when Teresa Velaquez* asked for her money back, Mr. Ramirez told her he would report her as a drug trafficker.

Unfortunately, such scams are common throughout the United States. What makes the Ramirez case extraordinary is that his victims risked bringing their immigration status to the attention of authorities to hold him accountable. In all, 26 victims were identified in a criminal charge against Mr. Ramirez. The case began after a Virginia attorney brought the matter to the attention of the Office of the Commonwealth’s Attorney. Mr. Ramirez was charged with three counts of obtaining money under false pretenses, was found guilty, and was sentenced to a prison term.⁶ With the help of pro bono attorneys from Bryan Cave, Mr. Rosas also took Mr. Ramirez to civil court in Virginia, claiming violations of the Virginia Consumer Protection Act, the unauthorized practice of law, and fraud. The case, one of a handful brought against notarios across the country, settled with a monetary judgment against Mr. Ramirez for \$25,000, and an injunction barring him from providing, or advertising, legal services.⁷

Unscrupulous individuals without proper credentials, like Mr. Ramirez, target immigrants specifically because their status makes them uniquely vulnerable. Immigrants are often linguistically and culturally isolated, unfamiliar with the U.S. legal system, and fearful of approaching government officials because they do not want to draw attention to their status.⁸ Individuals who run immigration scams often share the ethnic background of their victims, locate their businesses in immigrant neighborhoods, and target their advertising at their own community. They then exploit the sense of trust that being integrated into the community engenders.⁹

The justice system can be used to work for immigrants victimized by notarios, but it all too often fails to recognize and comprehensively respond to the harm caused by these individuals. Mr. Ramirez was held accountable for his wrongs, but many of his victims continue to live in fear of deportation. Their harms still have not been fully redressed. However, there are opportunities for advocates to develop solutions. The threats Mr. Ramirez directed at his victims constitute extortion under Virginia law, VA Code Ann. § 18.2-59, which explicitly includes threatening to report an individual’s illegal presence in the country. Extortion is a

manual’s co-authors can visit the Texas Secretary of State’s website for a brief history of the development of the term *notario público* in addition to an overview of the differences between notary publics in Texas and *notarios públicos* in Mexico).

³ See COHEN, VAN WAGONER, & WARD, *supra* note 2, at 14.

⁴ See Flores v. Ramirez, No. 2012-02359 (Va. Cir. Jan. 16, 2013).

⁵ Justin Jovenal, *Adviser to Immigrants Accused of Misrepresentation*, WASH. POST, Mar. 12, 2012, available at http://articles.washingtonpost.com/2012-03-12/local/35447720_1_free-legal-advice-clients-legal-services-firm; Interview with Cori Alonso-Yoder, Staff Attorney, Ayuda, in Washington, D.C. (Apr. 25, 2013).

⁶ Sentencing Order at 2, Commonwealth v. Ramirez, FE-2012-971 (Va. Ct. of Sentencing, 2013).

⁷ Press Release, Bryan Cave LLP, Bryan Cave Once Again Stops Fraud on Immigrants Through Pro Bono Litigation (Jan. 31, 2013), available at <http://www.bryancave.com/newsevents/news/Detail.aspx?news=4082>.

⁸ COHEN, VAN WAGONER, & WARD, *supra* note 2, at 13-15 (Ayuda ed., 2012).

⁹ *Id.* at 15.

qualifying crime under the U-Visa program, which grants temporary status to victims of certain crimes who come forward and help law enforcement. Unfortunately, these facts were not developed in the criminal report against Mr. Ramirez, making obtaining this relief more difficult. Practitioners aware of these concerns can educate law enforcement and develop a factual record to support immigration relief. The U-Visa and other emerging remedies for notario fraud are discussed in this Manual. We hope to equip practitioners to advocate for victims and push decision-makers toward granting full reparation for the damages wrought by notarios such as Mr. Ramirez.

Some immigrants seek out assistance from notarios or other unlicensed consultants understanding full well that they are not lawyers, but rely on them for advice simply because they do not have other options.¹⁰ It is estimated that fifty to eighty percent of all non-citizens have unmet legal needs.¹¹ There is a dearth of pro bono legal services organizations dedicated to serving this population, and federal funding restrictions that prohibit assistance to undocumented immigrants impose additional barriers.¹² Immigrants who lack the resources to afford a private attorney often feel as if they have nowhere else to turn. Immigrants may be more comfortable working with someone in their own community who speaks their language.¹³ One survey found that immigrants who seek out notarios generally are less fluent in English, and make less money than those who seek lawyers.¹⁴ Plenty of notary publics are candid about their lack of credentials, and some immigrants may prefer to go to someone unlicensed but familiar to their community rather than an outsider. Some notarios may simply be making well-intentioned, but ultimately misguided, efforts to navigate a complex legal landscape without proper training.

Whether through malice or incompetence, the actions of notarios can have severe consequences for immigrants. Notarios often charge high fees for their services, sometimes demanding large sums of money for services such as providing immigration forms that are normally offered free of charge or at minimal cost. Some notarios collect exorbitant fees from clients and do not provide any real service at all, by failing to file paperwork or by promising to help the victim apply for immigration benefits that do not exist. Others may file at the wrong time or submit claims for benefits the victim is not qualified to receive. Several documented cases involve individuals filing frivolous asylum claims without the victim's knowledge or consent.¹⁵ These types of actions place immigrants in a particularly precarious situation as Immigration and Customs Enforcement (ICE) may view them as perpetrators of immigration fraud against the government rather than as victims. This fraud can cause an unsuspecting immigrant to be placed in removal proceedings.

Victims may not immediately be aware that they have been defrauded, and when they do discover the fraud they are frequently too afraid to report it. Many immigrants fear that if they report the crime, that contact with law enforcement might draw attention to their undocumented status. Failure to seek help may stem from culturally-specific notions of the effectiveness (or ineffectiveness) of justice systems. Lack of reporting makes it particularly difficult to measure the full extent of the problem. In the most comprehensive statistical survey of immigrant legal needs to date, thirteen percent of immigrants reported receiving legal help from notarios, and ten percent were not sure whether their representatives were attorneys.¹⁶ A more recent study by the Chicago Department of Business Affairs and Consumer Protection found that forty-four percent of the fifty-four immigration service providers visited had violated Chicago consumer protection laws. These laws were

¹⁰ Alonso-Marsden, *supra* note 2, at 84.

¹¹ Anne E. Langford, *What's in a Name? Notarios in the United States and the Exploitation of a Vulnerable Latino Immigrant Population*, 7 HARV. LATINO L. REV. 115, 118 (2004).

¹² Alonso-Marsden, *supra* note 2, at 84-85.

¹³ *Id.* at 85-86.

¹⁴ See *id.* at 85-86.

¹⁵ See, e.g., *Nunez v. Gonzales*, 231 F. App'x 666 (9th Cir. 2007).

¹⁶ ROBERT L. BACH, INSTITUTE FOR MULTICULTURALISM AND INTERNATIONAL LABOR, BINGHAMTON UNIVERSITY, *BECOMING AMERICAN, SEEKING JUSTICE, THE IMMIGRANTS' LEGAL NEEDS STUDY* 46 (1996).

created to reign in predatory business practices.¹⁷ Further national research is needed to obtain a more comprehensive analysis of the prevalence of notario fraud and how it is affecting immigrant communities throughout the United States.

Notario fraud has gained increasing interest from advocates and law enforcement over the past decade.¹⁸ On April 18, 2013, the Senate “Gang of 8” announced a bill to tackle comprehensive immigration reform that includes new criminal and civil penalties for individuals that commit “schemes to provide fraudulent immigration services.”¹⁹ This includes fines and potential imprisonment for individuals that “knowingly and falsely” represent themselves as attorneys or accredited representatives in immigration matters.²⁰ This effort to hold perpetrators accountable is a critical component of addressing notario fraud. However, without corresponding remedies to address the impact on victims, especially negative consequences on immigration status, such measures are incomplete. At least 15 million immigrants have unmet legal needs.²¹ Unfortunately, as immigration reform returns to the national agenda, the already booming demand for legal services will likely increase, providing opportunities for unscrupulous individuals to exploit and defraud victims. There is still much work to be done to define the scope of the problem and to advance and expand available legal remedies to address the issue. Immigration advocates must push for remedies that ensure that immigrants are not penalized for the actions of unethical individuals.

We hope that this Manual will assist practitioners by spreading awareness about the problem of notario fraud, by identifying potential remedies to address its impact on immigration, and by promoting progressive advocacy. Ending notario fraud requires outreach and collaboration among victims, practitioners, advocates, and law enforcement authorities. We encourage all who use this Manual to become a part of the movement to effect meaningful change and provide relief to this vulnerable population in need of justice and competent, zealous representation.

* Victims’ names are changed.

¹⁷ Press Release, Mayor Emanuel, Chicago, Mayor Emanuel Announces Results of a Sting Operation Targeting Fraudulent Immigration Providers (Mar. 8, 2013), available at http://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2013/march_2013/mayor_emanuel_announcesresultsofstingoperationtargetingfraudulen.html.

¹⁸ See, e.g., Press Release, New York Department of State, New York State Cracks Down on Notario Fraud: New Notary Public Regulations Will Deter Immigration Scammers (Sept. 26, 2012), available at <http://www.dos.ny.gov/press/2012/9-26notario.html>.

¹⁹ The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, Title III (G), § 3707(d), 113th Cong. (2013) (amending 18 U.S.C. 1545).

²⁰ See *Id.*

²¹ See Anne E. Langford, *supra* note 11, at 118 (there are 32.5 million foreign born persons in the U.S. and 50-80% have unmet legal needs).

INTRODUCTION TO CONTENTS

This Manual is a practical guide to help you, the immigration practitioner, recognize and address notario fraud. Often the most devastating consequences of this pernicious crime are its effect on the victim's immigration status. As the activity causing the harm is highly contextual and its consequences unique to each case, it is important to develop a comprehensive and in-depth understanding of the type of fraud the notario committed and its precise effect on the victim. Such information gathering is critical. Both the crime itself and the available remedies are rooted in the underlying facts. What you uncover will dictate which forms of relief your client might be eligible to receive. This Manual offers advice and best practices to identify victims, to assess a potential client's circumstances and to determine if there are remedies in immigration law to rectify the impact of the fraud.

Notario fraud is a complex issue, one that generally implicates multiple areas of the law including criminal, tort, contract, consumer protection, and unauthorized practice of law. The Manual identifies resources and key points of contact in other fields to ensure that immigration experts can offer appropriate referrals and resources for reporting the fraud, recovering economic losses, and holding the individual perpetrator accountable.

We hope that this guide will contribute to the vital work of practitioners already engaged in confronting this challenging and virulent issue and that it will help to build a collaborative, innovative community of advocates who can stop these abuses from occurring.

DESCRIPTION OF CONTENTS

SECTION I. INITIAL INTERVIEWS AND INFORMATION GATHERING

You are likely to be the first contact for an immigrant who has been a victim of notario fraud. Since victims are often unaware that fraud has occurred or do not think there are remedies available, advocates have a particular responsibility to be cognizant of the issue and ask probing questions. This section offers advice and best practices on information gathering, sample intake forms and information releases, and tips for gathering documentation to determine the scope of the fraud and the available remedies.

SECTION II. IMMIGRATION REMEDIES

There are several options for relief in the immigration system that might be available to a client who has been victimized by a notario. These avenues may be pursued concurrently or independently depending on the facts of your case. Note that case law and agency policy related to these issues is continuously evolving. While you can rely on this Manual for overarching concepts and enduring strategies for addressing notario fraud, it is not a substitute for remaining alert to changing law and conducting thorough research. This section provides guidance for assessing the following forms of immigration relief:

Seeking Prosecutorial Discretion:

This subsection details the relevant factors you should assess to determine whether to seek a favorable exercise of prosecutorial discretion, including whether your client has any countervailing negative factors like a criminal history. If you are dealing with a particularly sympathetic case, Department of Homeland Security (DHS) agents may be amenable to exercising favorable discretion towards your client. For example, if your client lived in the United States for ten years, has children who are U.S. citizens, and a notario led her to believe she had valid work authorization when she was actually

undocumented, she may be a good candidate for this type of discretion. As victims of a crime, individuals preyed upon by notarios are generally not considered a priority for removal under current Immigration and Customs Enforcement (ICE) policies. This subsection includes sample letters and advice on how to present your case to DHS.

U-Visa:

If the notario's actions were particularly egregious, your client suffered substantial harm, and the client is willing to cooperate with law enforcement, she may be eligible for a U-Visa. In this subsection we offer advice, guidance, and sample documents to help you apply for this four-year non-permanent status. The U-Visa is a novel remedy for victims of notario fraud, designed to protect immigrants and aid law enforcement efforts to apprehend individuals that prey on immigrant vulnerabilities, such as immigration status. There is significant potential for expanding the use of this form of relief. This section will provide you with an arsenal of potential arguments and policy considerations designed to push USCIS and law enforcement toward recognizing the damage caused to clients by notarios.

Motions to Reopen Based on Ineffective Assistance:

This option can be pursued if your client was initially eligible for immigration benefits but relied on the inaccurate legal advice of a notario to her detriment. This subsection offers case law, advice and relevant considerations to guide a request for relief based on the notario's ineffective assistance.

Assessing the Available Remedies

We have provided a flow chart following this Introduction to aid you in determining the next points of inquiry in your case. It is important to note that these avenues for relief are not laid out in a chronological fashion. Depending on your client's circumstances, many of these remedies may be sought concurrently and you may be gathering similar evidence and information to petition for multiple forms of relief.

SECTION III. REPORTING AND REFERRALS

This section provides guidance on when and how to document notario fraud for the purposes of building a successful immigration petition; advice on referring clients and those who do not qualify for an immigration remedy to law enforcement and civil practitioners to seek alternative restitution; and best practices for creating some record of the notario's wrongdoing. It details local, state, and federal resources outside the immigration system that may be able to offer assistance, depending on the victim's needs and objectives. This includes reporting to local law enforcement; connecting the client with pro-bono legal service organizations; filing a complaint with local, state or federal consumer protection agencies; or reporting the notario to an Unauthorized Practice of Law committee.

The section also discusses the relative advantages and disadvantages of each option, and offers guidance on how to analyze the potential risks associated with exposing your client to law enforcement. If you determine there are no available immigration remedies, it is important to be mindful of potential remedies in other areas of the law. We hope this section empowers you to offer victims a range of options for relief as well as referrals to further resources where appropriate.

SECTION IV. APPENDIX

Section IV contains sample pleadings and other documents from experienced immigration practitioners, as well as a list of further reading. We are deeply indebted to the organizations and individuals already

working on this issue and will be identifying existing resources throughout the Manual. We hope that by identifying other practitioners and organizations engaged with this challenging problem, we will contribute to developing a collaborative community, one that can share insights and best practices to end notario fraud.

CONCLUSION

BUILDING THE NETWORK

Although notarios have been defrauding vulnerable immigrants for decades, the issue has only recently gained recognition by advocates and law enforcement. By representing a notario fraud victim, you are joining the growing ranks of practitioners working to establish effective relief mechanisms for this pernicious problem. Since many of the remedies discussed in this Manual are relatively new there remains much work to be done to establish favorable precedent and policy. We hope that you will turn one drop of rain into a monsoon of advocacy by sharing your efforts with the broader community.

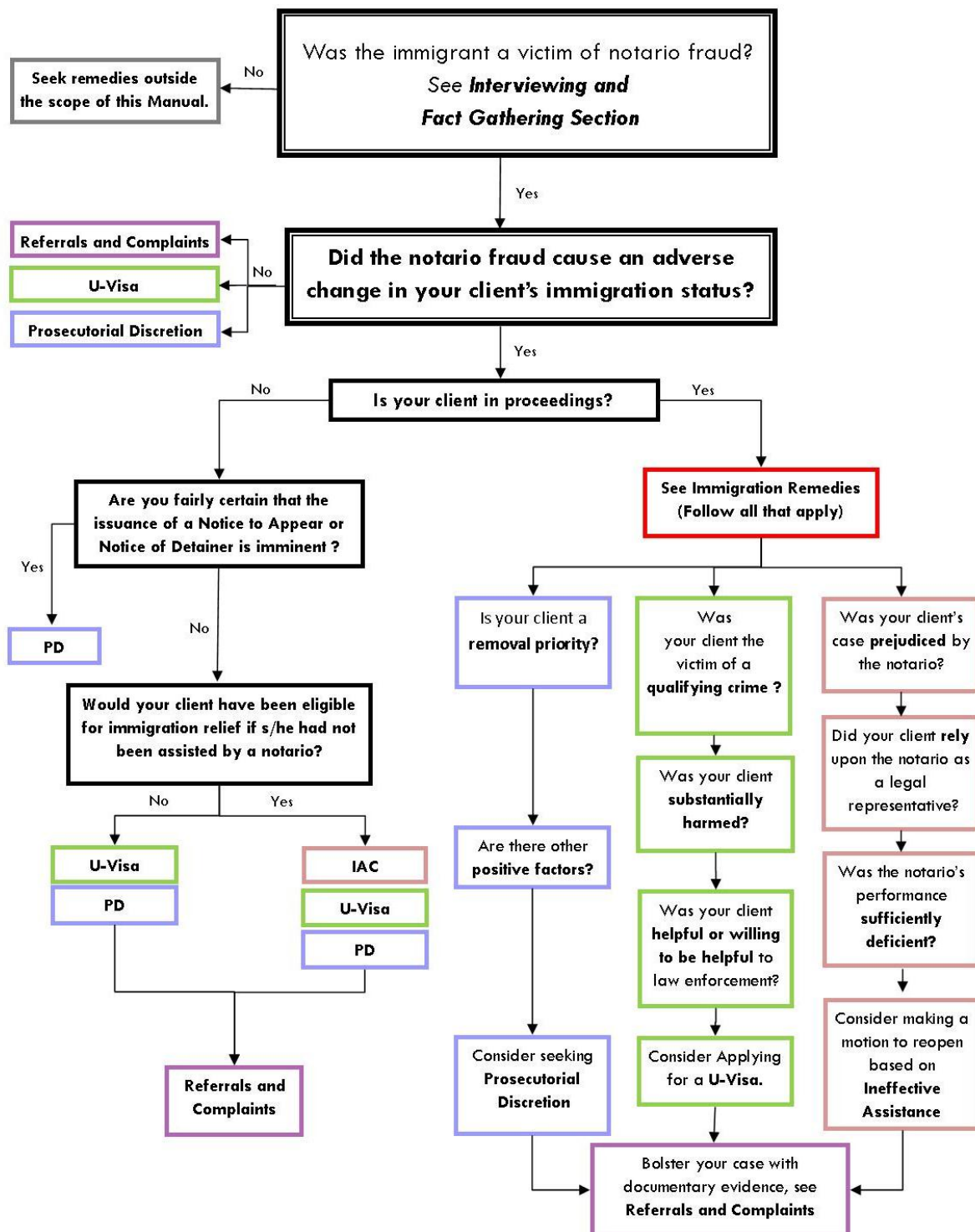
The American Bar Association maintains a site that serves as a national repository for information about notario fraud. If you are successful in obtaining relief for a client, please be sure to send new materials to fnf@americanbar.org, so the community can learn from your work. There is also a listserv for immigration attorneys, service providers, and others to discuss individual cases and nation-wide efforts to combat notario fraud. If you have questions about your case, or want support or guidance from others who have worked on these issues, this would be a good forum to go to for consultations or to share observations.

- Share Your Case: [email fnf@americanbar.org](mailto:fnf@americanbar.org)
- Join the Listserv: Visit <http://mail.abanet.org/scripts/wa.exe?AO=IMMIGFIGHTNOTARIOFRAUD>, and fill out the required information:
 - If you experience difficulties, please send an email message to LISTSERV@mail.abanet.org. Put nothing in the subject line, and remove any auto signatures from the body of the message. In the body of the message put: subscribe IMMIG-FIGHTNOTARIOFRAUD. Please type your first name and last name after IMMIG-FIGHTNOTARIOFRAUD. So for example, the text of the email would read, subscribe IMMIG-FIGHTNOTARIOFRAUD Jane Doe.
 - The system will ask for a confirmation that you want to join the listserv. Either reply to the message with OK or click on the link. More information is available here: <http://apps.americanbar.org/publicserv/immigration/notario/listserv.shtml>.

At the state and federal level, political actors are beginning to coalesce around legislative initiatives and enforcement efforts to redress the harms caused by unscrupulous notarios. President Obama specifically mentioned the need to crack down on immigrant consultant fraud in his reform platform.²² Immigration practitioners can, through their advocacy for individual clients, begin to redefine and expand the harms our legal system currently recognizes and ensure that the perpetrators cannot exploit their victim's vulnerability to avoid punishment. We hope that the information below will empower you to offer client-centered advice and guidance, and ultimately contribute to eliminating the malignant problem of notario fraud from immigrant communities.

²² Press Release, The White House Office of the Press Sec'y, FACT SHEET: Fixing our Broken Immigration System so Everyone Plays by the Rules (Jan. 29, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules>.

SECTION I: INITIAL INTERVIEWS AND INFORMATION GATHERING



**The above Flow Chart is meant as a reference only, and not as a substitute for the detailed analysis provided in the relevant sections of this Manual.

I. INTRODUCTION

The purpose of this section is to offer tools to identify notario fraud, and to develop an understanding of the harm that has been done to a potential client. This section will discuss the possible difficulties of working with and gleaning the necessary information from notario fraud victims. It offers strategies for breaking down potential trust barriers and building an open relationship to develop a full understanding of the underlying facts.

The concept of notario fraud as a legally cognizable harm is a relatively recent development, and many decision-makers are not aware of the extent of the problem. By presenting a compelling story, you can have a vital role in advancing and expanding available legal remedies. Unfortunately, some people in this country harbor bias towards immigrants. Prejudices can be changed, particularly by humanizing a larger issue through presenting an individual's story. You face the challenge of highlighting the suffering of your client in a way that is so arresting even those inclined to ignore it cannot look away. To do this, you need a complete understanding of your client's situation.

This section is designed to aid you in the collection of information. It provides a list of questions for an initial interview designed to reveal whether your client was a victim of notario fraud. These questions take into account that many victims are not necessarily aware that they have been defrauded. We have provided sample questions and considerations to be used after you have established that fraud has occurred. These questions are designed to elicit information about the notario and the harm done to your client. Fraud and its effects are fact-specific. It would be impossible to provide questions capable of detecting every possible iteration of this crime. This list of questions is not designed to be comprehensive; you will need to develop additional questions not included in this section in order to obtain necessary details about your client's situation.

The circumstances of individual notario fraud cases are as broad and varied as the hopes and aspirations of those victims who seek out their services. This section will, however, provide you with a basic framework and background knowledge to aid you in beginning to gather facts. The section also describes the potential barriers your client may have erected as a result of past interactions with legal representatives, and provides advice on how to start breaking down those barriers.

II. INTERVIEWING CONSIDERATIONS

Working with immigrants who have been victimized by notarios presents unique challenges. An individual's previous experience with a "legal practitioner" might have been negative, and potentially traumatic. Unlike some clients with whom you have worked with in your practice, notario victims may be reluctant to trust you. Some may personally have had negative experiences with licensed attorneys or have heard negative stories about lawyers from their communities. Others may believe that licensed attorneys will be reticent or hostile toward an undocumented client. Some may have gone to a notario knowing he was not a lawyer specifically because they felt anxious about interacting with an attorney. Some undocumented immigrants, unfamiliar with the workings of the United States government, might perceive attorneys as government officials who might report them to immigration.

Many immigrants come from countries rife with corruption. In these countries officials charged with ensuring public protection instead exploit impoverished individuals. Some immigrants who come through your doors have witnessed police and other public officials commit crimes with impunity. They may be wary of any interaction with law enforcement or judicial authorities.

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You may encounter a potential client who is completely unaware that she has been defrauded. You might be placed in the uncomfortable position of having to explain to this victim that someone she trusted actually caused her harm, and that this harm has affected her legally. The notario might be a respected member of the community making getting details even more difficult.

Everyone's interview style is different, but below are some general pointers to consider when approaching a notario fraud client. Many of the practitioners reading this Manual may find this information useful as a reminder of best practices. Ensuring that the client feels empowered and in control is particularly vital when the individual's previous experience with a representative was based on deception and underhandedness, or plain incompetence.

BEST PRACTICES:

- Make sure to clearly explain your role, your organization, and the purpose of the interview process. Discuss your credentials and what you can – and cannot – offer a potential client. Discuss your professional duties, especially with regard to client confidentiality. Many immigrants are unfamiliar with the U.S. legal system and may not understand the scope of your role as a lawyer. Careful explanation will help dispel any misconceptions and may actually serve to elicit pertinent information about the client's past experiences with legal representation.
- Consider beginning the interview by having a broad conversation about who the person is and why she is seeking your services. Immediately writing notes might be jarring. Starting with an open conversation may help the potential client relax and build trust.
- Think about removing physical obstacles, such as a desk, between you and the individual. This can help facilitate a more intimate conversation that does not feel overly formal or sterile.
- Whenever possible, conduct the interview in the language most comfortable for the potential client. If you are not fluent in that language, try to use a competent or professional interpreter rather than relying on family members or friends of the victim who might add their own commentary. Remember your ethical duties as a practitioner and explain how the presence of a family member may impede full and complete communication. Where professional interpreters are used, explain that they are also subject to ethical standards, which include a duty to maintain confidences.
- Return any original documents and keep copies for your records. Exploitative tactics used by notarios include retaining personal documents of the victims, so your client may be particularly wary of providing you with originals. If you must keep any original documents, explain why and provide receipts to the client.
- Keep literature in your office to inform immigrants about notario fraud. The FTC has several short handouts that can be ordered for free. See the footnote below to order.²³ Many immigrants do not realize notarios are unqualified to provide immigration services and often hurt those they purport to serve. Giving potential clients this information may serve as a preventive measure and help reduce the number of immigrants who use notarios.
- Ensure the individual understands that the interview process does not mean you are her legal representative. However, also make sure that she understands this initial interview will remain confidential regardless of whether you agree to take her on as a client. Again, many immigrants may

²³ FEDERAL TRADE COMMISSION, <http://www.consumer.ftc.gov/features/feature-0012-scams-against-immigrants> (last visited Apr. 22, 2013).

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be confused about the role of legal representatives in the United States. Notarios often overpromise. It is important to be explicit about the scope of your representation.

- If you decide you can offer representation, take appropriate steps to ensure that the client feels that she is in control of the decision-making. Many notarios simply tell their clients, “I will take care of it,” and proceed to file documents incorrectly or to do absolutely nothing. Notarios may even falsely claim to have obtained immigration relief for their victims. Be careful to explain what is and is not a viable possibility. This may help to reduce the feeling of helplessness and confusion caused by the prior interaction with a notario.

Sometimes it can be frustrating when you find that a client visited a notario who seems obviously unqualified. As lawyers, we are trained to be skeptical and have greater knowledge about ways to access accredited legal services. Victims of fraud may be embarrassed about the fact that they were victimized. Making an effort to withhold judgment or to empathize with the circumstances that might have led to her reliance on a notario may increase the likelihood that the potential client will be forthcoming. Going to the notario made logical sense to this person. You are likely to gain trust and gather more information if you approach the potential client with compassion and with the goal of building an open relationship.

As always, your primary guide should be the individual’s objectives. Determine what potential clients want – do they want an immigration problem resolved? Their money returned? To see the notario held accountable? Through this initial interview and fact gathering process you should begin to refer to other sections of this Manual to inform your client of potential options. Eventually, this understanding of the client’s individual needs and desires should guide you through your case, and through this Manual.

III. INTAKE PROCESS

OVERVIEW

When working with notario fraud victims, it is crucial to have a complete and accurate record of any paperwork filed with immigration authorities. Notarios often misrepresent the type of paperwork they filed, and clients may not have an accurate understanding of the documents submitted on their behalf. If your intake process includes preliminary questioning before an in-person meeting and the potential client states that she has seen a notario, be sure to ask that she bring any documentation she has, including contracts, receipts, business cards, advertisements for the notario, and any prepared documents.

An intake form is in the Appendix²⁴ and is discussed in greater detail below. It contains general questions designed to establish if a potential client was unwittingly victimized by a notario. While conducting interviews, listen for triggers, or indications that the individual visited a notario. For example, the possibility of fraud might be triggered by a statement from the potential client that she was helped with her immigration paperwork before coming to your office. Another common trigger is a claim made by a potential client that she is eligible for immigration benefits, like asylum, NACARA or TPS, when she is clearly ineligible.²⁵ Follow up with the potential client and determine where she got this information. She may have been the victim of a notario who prepared a fraudulent application or provided forgeries of proof of immigration status. Alternatively, if this line of questioning reveals that this obviously incorrect advice came from someone whom

²⁴ See Appendix Section I(A) Notario Intake Form.

²⁵ See Irena Lieberman, *Protecting Immigrants from Notario Fraud*, 18:3 A.B.A. GOV'T & PUB. SECTOR LAW. NEWSL. 1 (Spring 2009), available at http://apps.americanbar.org/publicserv/immigration/notario/protecting_immigrants_from_notario_fraud_spr09vol18no3.pdf.

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the immigrant believed was a government representative, make sure to get a name and follow up on their credentials. One fraud scheme involves individuals passing themselves off as government agents.²⁶

The sample fact-gathering interview provided also includes specific questions designed to elicit pertinent information once you have determined that fraud might have occurred. This information will assist you in assessing what forms of immigration and other relief are potentially available to your client. Ask probing questions designed to obtain information concerning what the notario promised the victim, any actions the victim believes the notario undertook, and any harm suffered as a result. It is also useful to directly ask if the client ever challenged the notario, and what occurred. Notarios may retaliate once they are confronted.²⁷ Discovering the particular impact of a notario's fraudulent actions is crucial to determine appropriate avenues of relief.

IV. INITIAL INTERVIEW FORM IN-DEPTH

GENERAL INTAKE QUESTIONS

You should consider including the following questions as a part of intake with a client. Often, clients are not aware that fraud occurred. Asking some basic questions designed to ascertain whether the person ever had prior assistance with the immigration system, and what this looked like, might alert you to a potential notario fraud case.

Have you ever gone to anyone to consult about your immigration status?

Has anyone ever helped you fill out forms before?

Have you ever worked with anyone who advised you not to mention your interaction with him/her?

This set of questions is designed to discover if the immigrant has potentially encountered a notario. In most cases, victims become exposed to the fraudulent behavior of notarios in the process of seeking immigration advice or assistance. Questions that explore their prior efforts to obtain immigration assistance are likely to reveal if they have encountered immigration consultant fraud.

Sometimes, victims who worked with notarios will be coached not to mention a notario's involvement in their current situation. Notarios may ask their victims not to reveal that they provided them with assistance.²⁸ Clients may be under the erroneous assumption that the notario helped them. Notarios often charge significantly less than lawyers, and if the client does not realize their services were substandard she may think the notario did her a favor. Not all notarios purposefully misrepresent their abilities or perform substandard work; however, because unaccredited and unlicensed persons generally lack the necessary training, even people with good intentions may inadvertently fail to adequately navigate the complexities of immigration law.

²⁶ See, e.g., Press Release, Dep't of Justice Office of Pub. Affairs, Two Plead Guilty in Scheme to Defraud Consumers Seeking Immigration Services (Aug. 23, 2012), available at <http://www.aiaa.org/content/default.aspx?docid=41033>; Danielle E. Gaines, *Second Person in Germantown Immigration Scam Sentenced to Prison*, MONTGOMERY GAZETTE, Jan. 8, 2011, available at http://www.gazette.net/stories/01082011/montnew113359_32582.php.

²⁷ See, e.g., Justin Jouvenal, *Adviser to Immigrants Accused of Misrepresentation*, WASH. POST, Mar. 12, 2012, available at http://articles.washingtonpost.com/2012-03-12/local/35447720_1_free-legal-advice-clients-legal-services-firm (notario threatened to report woman who confronted him to law enforcement); Miriam Wells, *'Rising Extortion' Signals Trouble for El Salvador's Gang Truce*, INSIGHT CRIME ORGANIZED CRIME IN THE AMERICAS, Mar. 18, 2013, available at <http://www.insightcrime.org/news-briefs/rising-extortions-trouble-salvador-gang-truce> ("Only 10 percent of extortion victims filed reports, said police investigators, while many stayed silent for fear of reprisals").

²⁸ Interview with Cori Alonso-Yoder, Staff Attorney, Ayuda, in Washington, D.C. (Apr. 16, 2013).

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Some victims may not want to cause the notario any trouble. Alternatively, the immigrant may be afraid of the notario. Threatening to expose a client's undocumented status to immigration officials is a common tactic employed to silence victims. By asking if the immigrant has ever consulted with someone concerning her immigration status, or received aid, you can begin to analyze whether there was an instance of notario fraud without mentioning the term notario, or lawyer. Victims may state that an acquaintance, neighbor, or relative assisted them with their immigration forms. This may suggest that they may have interacted with a notario.

If the first two broader questions do not elicit information, consider asking whether anyone told the immigrant not to mention their interaction. You can explain that you ask because unscrupulous individuals who actually harm their clients often tell them not to speak about their relationship so that the exploitation does not come to light. This may help introduce your client to the concept that the notario may actually have been the cause of her immigration difficulties and therefore make her more forthcoming.

Have you gone to a notario, notary public, or immigration consultant before?

Have you contacted a private attorney before?

Depending on the answers you receive to the questions above, these questions may or may not be necessary.

Gauge your client's reaction to see if she is receptive to more specific inquiries. As discussed above, she may have been primed by the notario not to speak about their relationship. If you believe this to be the case, consider moving this line of questions to a later period of your representation, when you feel your client grasps the true import of the notario's actions and may therefore provide a more honest answer, or when you have built a more trusting relationship. However, if you think these more specific, guiding, questions may produce better information you should ask them at this time.

Keep in mind the confusion between the terms notario público and notary public. The immigrant may state that she has been to a lawyer or a notario público whom she believed was highly qualified, when in actuality she was assisted by a less qualified notary public. Licensed attorneys have also been known to prey upon immigrant populations. The notario may also have presented himself as an attorney, and therefore your potential client would refer to him as such.

Do you have the name, address, and/or phone number of the person or company, and/or a business card, flyer, etc.?

If your client has access to this information it could prove to be very useful in verifying whether or not the individual who provided assistance was a notario. With this information you can check State Bar records, and the list of BIA accredited representatives²⁹ to determine if the client's former representative was licensed. Depending on the state, you may be able to review business records, including licenses, certificates of good standing, and articles of incorporation online. These are often available through public records maintained by state and local agencies. You can also run a criminal background check, consult local news sources, and search the Better Business Bureau to see if there have been any complaints about the business.³⁰

²⁹ A list of accredited representatives can be found on the Department of Justice website under the Recognition and Accreditation (R&A) Roster at <http://www.justice.gov/eoir/ra/raroster.htm> (last visited Apr. 22, 2013).

³⁰ There are many different Better Business Bureaus, the following is one such Better Business Bureau website on which you can search for a notario's business record under BBB Business Review at <http://www.bbb.org/us/Find-Business-Reviews/> (last visited Apr. 22, 2013).

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ASSESSING THE HARM

If the immigrant responds affirmatively to any of the inquiries above or you otherwise have established that there may have been immigration fraud, you should move on to gaining a fuller understanding of the circumstances and assess what damage might have occurred. This next set of questions is designed to help you determine: 1) What kind of assistance did the immigrant receive? and 2) Did this assistance constitute immigration consultant fraud?

What did this individual, company, or notary offer you?

Sometimes notarios will offer services that do not exist. Often, when actual or potential immigration reforms are discussed in the news, notaries will capitalize on the publicity.³¹ For example, when the Obama administration announced a new program that would allow certain categories of young people to remain in the country, known as Deferred Action, there was a wave of notarios advertising discounted rates to begin the process well before such a process even existed.³² Understanding what the notario offered may be important in future applications for relief such as reopening due to ineffective assistance of counsel. In order to assess your client's case, you need a detailed picture of the relationship with the notario.

Did the notario offer you a special deal, discount, expedited processing, or tell you that s/he had a special relationship with the Department of Homeland Security or any other government agency?

Often notarios will claim that they have a special relationship with officials or can obtain a discount for their victims. An affirmative response to this question is a strong indication of notario fraud.³³ Minnesota notario Chris LaRiche would tell immigrants who visited his office that he had personal connections with immigration authorities, and showed stacks of paperwork that he claimed were all the successful cases he had handled.³⁴

What type of services did the notario provide?

Were you advised of the legal remedies in your case?

Did s/he assist you with the selection of immigration forms or filings?

Did s/he help you complete immigration forms or filings without reviewing the content of those forms with you?

Did s/he send anything to USCIS/the immigration court on your behalf?

Did s/he perform other services for you?

These questions are designed to ascertain whether the notario performed services only accredited immigration practitioners can provide. If your potential client answers yes to any of the above questions, she may have relied on the notario for legal representation and her reliance may have been reasonable in light of the actions the notario performed. This reliance often invokes a duty of care similar to that expressed between an attorney and her client. Once invoked, the consultant has moved into the territory of fraudulent behavior or unauthorized practice of law.

³¹ See, e.g., Andrea Castillo, *Talk of Immigration Reform Sparks Oregon Increase in Fraudulent Tax Preparers and Lawyers, Experts Say*, THE OREGONIAN, Mar. 28, 2013, available at http://www.oregonlive.com/hillsboro/index.ssf/2013/03/talk_of_immigration_reform_spa.html.

³² Rosa Ramirez, *Advocates Warn of Immigration Scams*, NAT'L JOURNAL, July 23, 2012, available at <http://www.nationaljournal.com/thenextamerica/immigration/advocates-warn-of-immigration-scams-20120723>.

³³ See Press Release, Dep't of Justice Office of Pub. Affairs, *supra* note 26.

³⁴ Gregory Pratt, *Chris LaRiche Seduces Immigrants with Lies*, CITY PAGES, Jan. 11, 2012, available at <http://www.citypages.com/2012-01-11/news/chris-lariche-seduces-immigrants-with-lies/>.

Did the individual accept payment?

If your potential client does not identify a specific service performed by an immigration consultant you may still be able to detect this activity by asking if she ever paid someone for a service. Often notarios will charge exorbitant fees for services that should be offered for free or at little charge. Even if the immigrant believes that she went to an authorized practitioner, she may still clearly remember that she paid a large sum of money. If she answers in the affirmative to this question, you should try to obtain more information regarding exactly how much was paid and for what.

Did you receive a contract?

Did you sign any document(s)?

If yes, what documents did you sign?

These questions are designed to establish whether there is official documentation of what the notario promised and how he represented himself to his victim. You must gather hard evidence to substantiate a claim of notario fraud. You will need this documentation for seeking the forms of relief described in this Manual.

ESTABLISHING EXPECTATIONS

Fraud is a contextual event, inextricably linked to the individual's beliefs and subjective expectations. An understanding of the immigrant's expectations is important not only to get a clearer picture of the relationship with the notario, and the harm that resulted, but also because it may have an impact on what immigration remedies are available.³⁵ For example, pursuing a motion to reopen proceedings on the basis of notario fraud usually requires that the immigrant believe the person assisting her was an attorney or accredited representative.³⁶ In a typical case out of California, an immigrant relied on erroneous advice from a notario about the proper procedure for filing for adjustment of status, and as a result ended up making an untimely request. The victim, a seventy-one-year-old Armenian, believed the notario was a qualified attorney, and waited to apply based on his guidance. The Ninth Circuit granted her motion to reopen her removal proceedings because she believed the notario was a competent attorney and had "no reason to become suspicious that he failed to render competent advice."³⁷

Did the person who assisted you use the terms "notary," "notary public," "licensed attorney," and/or "advocate"?

The manner in which the individual referred to himself may indicate whether or not he defrauded the immigrant. For instance, due to the confusion between the terms notario público and notary public (discussed in detail in the Forward) many fraudulent immigration consultants emphasize this credential. If the person who assisted your client referred to himself as a "notario publico," you might be dealing with a fraud case. However, if he stated he was a licensed attorney or advocate, this does not in and of itself indicate whether

³⁵ See, e.g., *Avagyan v. Holder*, 646 F.3d 672, 675 (9th. Cir. 2011)(immigrant's belief that notario was qualified immigration attorney and reasonable reliance justified granting motion to reopen adjustment of status hearing).

³⁶ See Section II: (C) Ineffective Assistance of this Manual.

³⁷ *Avagyan*, 646 F.3d at 675.

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the immigrant was defrauded. The individual may have misrepresented himself as an attorney or licensed practitioner. It is important to continue with the line of inquiry below regardless of the response.

How did this person present him/herself to you?

As a person qualified to handle legal matters in your immigration or naturalization case?

As a person “licensed” by the court or “qualified” to provide legal services or legal advice?

If a consultant alleges that he was qualified to handle legal matters on behalf of an individual or to provide advice and your later research indicates the consultant is not a practitioner qualified to represent clients in immigration matters, you know that you are dealing with a notario. Additionally, this information may help you establish whether the immigrant reasonably relied on the notario to provide competent representation.

What did you think the consultant or notario could do for you? Why did you think this?

If you worked with someone who was not an attorney, did you know s/he was not qualified to represent you in immigration proceedings?

What promises did s/he make to you?

These questions are designed to establish the expectations the victim had when going to the notario. You will want your client to describe all the notario's statements regarding qualifications, the office and what it looked like, and anything else that can help you to determine whether a reasonable person in the immigrant's position might have believed the notario was a qualified representative. You will also want to discuss the immigrant's individual circumstances and subjective experiences to determine whether there are reasons for that person to believe the notario was qualified to provide representation.

How did you find out about the services of this person or company?

This question is intended to establish how the notario is identifying his victims. In many cases, notarios have deceptive or outright false advertisements offering legal services. Understanding the notario's tactics is important. If he used public advertising you may be able to obtain copies to include in an immigration packet or show law enforcement authorities to emphasize that your client was the victim of a scam. For example, a Minnesota notario who defrauded numerous individuals employed a common tactic: radio advertising that assured his victims he could get them work permits.³⁸ Maryland notario Maria Mejia used print advertising that stated she could represent clients in immigration matters like securing TPS and NACARA.³⁹

³⁸ Gregory Pratt, *supra* note 34.

³⁹ Complaint 3-4, *Argueta v. Mejia*, (Md. Cir. Aug. 28, 2008) (No. CAL08-22004), available at http://apps.americanbar.org/publicserv/immigration/notario/argueta_v_mejia.pdf.

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ESTABLISHING MONETARY AND OTHER LOSSES

Did the notario charge you for the consultation?

Do you remember the prices you were charged for these services?

How much did you pay and what services did you receive?

Were you given a receipt?

Notarios may charge exorbitant rates for substandard services, or simply provide no real service at all. Mariza Chavez, a notario operating in New Jersey, charged clients up to \$6,000 for forms that were filled out incorrectly.⁴⁰ Cesar Silva spent over \$8,000 dollars trying to obtain legal status and a work permit through a notario. The notario instead filed paperwork under an asylum provision that Mr. Silva was not eligible to receive, which resulted in a deportation notice for Mr. Silva.⁴¹

Further, the notario may charge for ‘services’ that are completely unnecessary. For example, when Elio Rodriguez, an illiterate immigrant in Maryland, approached a notario to get a green card, he spent hundreds of dollars on unnecessary medical exams and service filing fees based on the notario’s advice.⁴² Make sure to get a complete picture of the amount spent at the notario’s behest as it can help you to establish the scope of the harm perpetrated by the notario against the immigrant.

Did the notario keep your original documents and/or your legal notifications from court or USCIS?

If so, what documents?

Did you ask him/her to return your documents? How did s/he respond?

One of the unfortunate harms of notario fraud can be the loss of valuable documents like birth certificates and passports.⁴³ Many times the notario responds with threats when a client requests a return of these documents. This information can help direct you toward a remedy for your client. For example, extortion is a qualifying crime for U-Visa relief and, depending on your state’s law, such threats may help establish that extortion occurred.⁴⁴

How often were you in contact with the notary/consultant?

⁴⁰ Elizabeth Woman Arrested For Allegedly Defrauding Immigrants, NJ TODAY, Feb. 24, 2012, available at <http://njtoday.net/2012/02/24/elizabeth-woman-arrested-for-allegedly-defrauding-immigrants/>.

⁴¹ Tovin Lapan, *Fraudulent Legal Services Costly in Multiple Ways to Immigrants*, LAS VEGAS SUN, Feb. 23, 2012, available at <http://www.lasvegassun.com/news/2012/feb/23/fraudulent-legal-services-costly-multiple-ways-imm/>; see also ELIZABETH COHEN, CAROLINE VAN WAGONER, & SARA WARD, GEORGETOWN UNIVERSITY LAW CTR., COMMUNITY JUSTICE PROJECT, TO PROTECT AND SERVE: ACCESS TO JUSTICE FOR VICTIMS OF NOTARIO FRAUD IN THE NATION’S CAPITAL 15 (Ayuda ed., 2012) (“Monetary loss is perhaps the most obvious harm a victim may suffer, as notarios often charge excessive amounts for services that should be free or nominal in cost.”) (internal citations omitted).

⁴² See Cori Alonso-Marsden, “Strong Words, Gentle Deeds”: Evaluating the Effectiveness of the Maryland Immigration Consultant Act Five Years On, 4 LEGIS. AND POL’Y BRIEF 75, 76-77 (2012).

⁴³ COHEN, VAN WAGONER, & WARD, *supra* note 41, at 16.

⁴⁴ See Section II: (B) U-Visa of this Manual.

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This question is intended to give you more information about the scope of the relationship. For certain forms of relief you must provide the judge or decision-maker with very specific facts about the notario's representation. For example, in order to establish a prima facie case for motions to reopen proceedings due to ineffective assistance you must provide an affidavit with detailed information regarding the notario's representation.⁴⁵

After these services, what happened in your case?

This is a broad, open-ended question designed to elicit information about any documents or notices your client might have received from immigration authorities, and also an opportunity to discuss the impact of the fraud on her life more generally, depending on the overall picture you get from the previous questions. It may help to elicit additional information about the notario's bad acts that can assist in developing a claim of substantial harm in U-Visa applications or requests for prosecutorial discretion.

Did you ever confront the notario? How did s/he respond?

This question further drills down into the possible harms your client suffered at the hands of the notario. If the victim realized the fraud occurred and confronted the notario, the notario's behavior is an important factual element. When challenged, notarios may lash out at their victim. Often, the notario may threaten to report the victim or her family members to ICE.⁴⁶ This information is particularly relevant for U-Visa applications,⁴⁷ and to fulfill the requirements for a motion to reopen based on ineffective assistance.⁴⁸

Did you ever go to law enforcement, or seek help from other service providers?

If there are civil or criminal proceedings against the individual, you will want to coordinate potential immigration representation with these other actors. Reporting to law enforcement is an important component for U-Visa eligibility,⁴⁹ and a claim of ineffective assistance.⁵⁰ Officials are also an important source for affidavits and other documentation in support of any petition for immigration relief.

V. SCOPE OF REPRESENTATION AND NEXT STEPS

Based on the information you obtain from your client and his/her objectives, you can provide advice and counsel, offer referrals, and/or begin a conversation about direct representation. Consider whether any immigration remedies are available. If they are not, consider whether you can make referrals to practitioners in other areas. Below are some of the most important preliminary considerations following your initial fact-gathering.

FIRST STEP → FILE A FOIA:

⁴⁵ See Section II: (C) Ineffective Assistance of this Manual.

⁴⁶ See, e.g., Pratt, *supra* note 34; Flores v. Ramirez, No. 2012-02359 (Va. Cir. Jan. 16, 2013) in Appendix Section E3 Sample Civil Complaint (Ramirez Case).

⁴⁷ See Section II: (B) U-Visa of this Manual.

⁴⁸ See Section II: (C) Ineffective Assistance of this Manual.

⁴⁹ See Section II: (B) U-Visa of this Manual.

⁵⁰ See Section II: (C) Ineffective Assistance of this Manual.

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If you determine that the notario likely filed documents with immigration authorities, you should ask, or assist, the immigrant to file a Freedom of Information Request Form (FOIA) as soon as possible.⁵¹ Often notarios provide their victims with incomplete documentation, or do not show their victims the paperwork they filed. There have been cases where notarios filed fraudulent paperwork, such as asylum applications, without their victims' knowledge, much less their consent.⁵² Notarios may put their business addresses on the paperwork rather than the victims', so there may be orders or other issues that victims are unaware of.⁵³ This is precisely what happened to Catalina Garcia Nunez, who went to a notario to apply for permanent residency. She later discovered that the notario had submitted a fraudulent asylum claim through a FOIA request filed after a notice of deportation had been issued to the notario's address.⁵⁴ Filing a FOIA request will ensure that you and your client have a complete and accurate record of what has been filed. Often, it is impossible to know precisely which avenues are available to the immigrant without taking this step.

While most FOIA requests will not result in a fee, be aware that submitting a FOIA request constitutes an agreement to be charged up to \$25 without notice.⁵⁵ In practice, this rarely happens,⁵⁶ but be aware that it is a possibility. According to ICE, the agency's goal is to respond within 20 business days of receiving a request. If your request involves a "significant" amount of documentation, or requires records from a separate office or consultations with another agency, it might take up to 30 days.⁵⁷ You or the immigrant can check on the status of your FOIA request online.⁵⁸ USCIS has a three-track program, including an expedited procedure for those appearing before an immigration judge.⁵⁹ The agency has details on how to file a FOIA request on its website.⁶⁰

OBTAINING RELEASES:

If you determine that you can provide the individual with representation, make sure that you obtain informed consent and a release for any complaints or other documentation you intend to file with local law enforcement or government agencies regarding the notario's activities on the client's behalf. A sample information release request is available in the Appendix.⁶¹ Be sure to check the relevant rules of professional responsibility in your jurisdiction to ensure that you fully comply with your specific ethical obligations.

EXPLAINING A REFUSAL OF REPRESENTATION:

Unfortunately, in some cases you may determine there simply is not a remedy that you can offer, and you may only be able to make a referral, offer brief advice and counsel, or legal orientation. Remember, fully assessing an individual's situation and offering a reasoned, competent opinion on the possibility of legal relief is a service. While everyone is entitled to a second opinion, remind the individual that there may be notarios who will say the person is eligible for immigration help in order to charge a fee. This may be the only time this individual has an opportunity to engage with the justice system and sharing your knowledge of the way the law works should serve to demystify the process and empower the individual. If you determine that you are unable to accept the case for representation, be honest and direct about the reason, and ensure the individual understands. If it seems she is having a hard time accepting this, consider creating a written

⁵¹ See Appendix Section III(A) FTC Complaint.

⁵² See, e.g., *Nunez v. Gonzales*, 231 F. App'x 666, 667 (9th Cir. 2007) (victim went to notario seeking work permit, notario instead filed a fraudulent asylum application without the knowledge or consent of the victim).

⁵³ *Id.*

⁵⁴ *Id.* at 667-68.

⁵⁵ *Submitting Request*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT (last visited Apr. 2013), available at http://www.ice.gov/foia/submitting_request.htm.

⁵⁶ Interview with Cori Alonso-Yoder, Staff Attorney, Ayuda, in Washington, D.C. (Apr. 16, 2013).

⁵⁷ *Submitting Request*, *supra* note 55.

⁵⁸ ICE FOIA Status, USCIS, <http://www.ice.gov/foia/status/> (last visited Apr. 2013).

⁵⁹ USCIS, FOIA/Privacy Act Overview, available at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fce675e0270e6310VgnVCM100000082ca60aRCRD&vgnnextchannel=fce675e0270e6310VgnVCM100000082ca60aRCRD> (last updated Nov. 5, 2002).

⁶⁰ How to File a FOIA Request, USCIS,

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=fce675e0270e6310VgnVCM100000082ca60aRCRD&vgnnextchannel=fce675e0270e6310VgnVCM100000082ca60aRCRD> (last updated Apr. 24, 2012).

SECTION I: Initial Interviews and Information Gathering

memorandum of understanding outlining that you are providing a referral only and are not offering legal counsel or representation.

If the notario submitted documents on behalf of the individual, you should help her file a FOIA to at least ensure that she has an accurate record of the documents sent to immigration authorities. You should also encourage the individual to file an FTC complaint, or do so yourself, in order to create a record of the notario's activities. Notarios often have many victims, and documenting their behavior will help future victims, the practitioner community, and future investigations.⁶²

VI. CONCLUSION

Gaining a comprehensive, detailed picture of the nature of the fraud and the harm suffered by the individual seeking your help will guide you in determining which remedies, if any, are available in immigration and other areas of the law. Developing a trusting, open relationship with the potential client facilitates greater understanding of what drove him or her to the notario in the first place. Should you decide to represent the individual, the client's circumstances and needs can establish a starting point from which to analyze eligibility and formulate compelling arguments for the forms of relief discussed in this Manual.

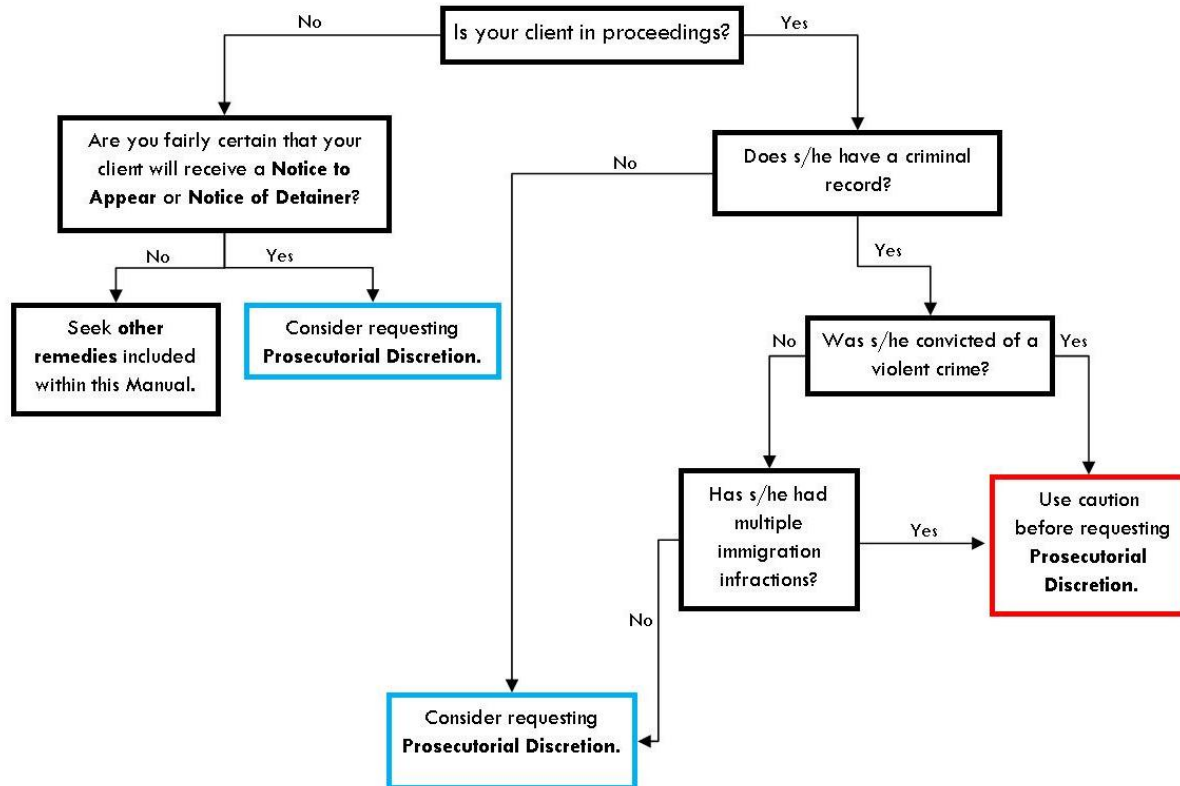
⁶² See Section III: Complaints and Referrals, Filing a Complaint with the FTC, in this Manual.

SECTION II IMMIGRATION REMEDIES

Depending on the picture you have developed of your client's situation, you may want to consider one or more of the options for immigration relief discussed below. You may request a favorable exercise of prosecutorial discretion by immigration officials at any time. Since your client was the victim of a crime, if there are few or no countervailing negative factors, you might be able to persuade officials to abstain from adverse immigration enforcement. If the notario's actions were particularly egregious and your client suffered substantial harm, you might consider applying for U nonimmigrant status. If it appears that your client was originally eligible for legal status, but did not receive it because of the notario's fraudulent or incompetent representation, you should consider a motion to reopen based on ineffective assistance. A holistic understanding of the underlying facts will help determine which options are the most viable.

SECTION II: (A) PROSECUTORIAL DISCRETION

Prosecutorial Discretion



** The above Flow Chart is meant as a reference only, and not as a substitute for the detailed analysis provided in the relevant section of this Manual.

I. INTRODUCTION⁶³

Once you have gathered preliminary information about your client's case and developed a factual basis from which to analyze potential remedies, you may consider whether it is appropriate to request prosecutorial discretion. As a victim of a crime, your client may be a good candidate for a favorable exercise of prosecutorial discretion if she is not a priority removal, as discussed below. Keep in mind the need to explicitly present the notario's actions as a crime worthy of restitution. Many prosecutors or officials may be misinformed of the severity of this type of fraud, and may in fact believe that your client is the perpetrator of fraud against the government, rather than a victim. Note that prosecutorial discretion is not a substantive remedy and may be sought in conjunction with other forms of relief discussed in this Manual.

In a nutshell → If your client is in removal proceedings, has received a Notice to Appear (NTA), or is subject to a final order of removal, you can request prosecutorial discretion at any time. When ICE decides to exercise favorable discretion, it will cease enforcement against your client for the time being. These decisions do not grant legal status, and unless ICE agrees to terminate proceedings, it can decide to reopen the case at a later date. Even when proceedings are terminated, ICE may decide to re-initiate removal at a later time. Therefore, discretion should be sought for dismissal of the case when your client is ineligible for other forms of relief or in conjunction with other immigration remedies.

DO NOT contact ICE to request discretion before a Notice to Appear (NTA) or Notice of Detainer has been issued unless you have very good reason to believe an enforcement action will soon be taken against your client, as this will simply alert ICE to your client's presence, potentially resulting in the initiation of removal proceedings.⁶⁴

What is prosecutorial discretion? → Government attorneys, ICE agents, and officers in ICE Enforcement and Removals Office have the authority to determine whether and to what extent they will enforce the law against an individual.⁶⁵ Current policy instructs officials to target scarce resources at the deportation of individuals with criminal convictions for violent crimes and repeat offenders, individuals who pose a threat to national security and public safety, and individuals who repeatedly violate immigration law through illegal re-entry and immigration fraud.

What it is not → Prosecutorial discretion is not a discrete immigration remedy. It will not convey lawful status.

What does this mean for your client? → Prosecutorial discretion can take many forms depending on when in the proceedings it is exercised. A favorable exercise of discretion can mean anything from ICE deciding not to issue a Notice of Detainer to granting a stay or deferral of removal for a person who would otherwise be deported.⁶⁶ Remember, even if your client was issued a final order of removal you can request that the order not be executed.

Unfortunately, in cases where notarios file fraudulent documents with the government, immigration officials often view the victim as the perpetrator. You have to confront this negative assumption and educate the

⁶³ This section describes prosecutorial discretion as a form of immigration relief for notario fraud victims. There are many other forms of prosecutorial discretion that may be sought in your case. For a more comprehensive view of discretion see MARY KENNEY, AMERICAN IMMIGRATION COUNCIL, PROSECUTORIAL DISCRETION: HOW TO ADVOCATE FOR YOUR CLIENT (2011), available at <http://www.legalactioncenter.org/sites/default/files/ProsecutorialDiscretion-11-30-10.pdf>.

⁶⁴ NAT'L IMMIGR. LAW CTR. ET. AL., SELF-HELP GUIDE FOR A PROSECUTORIAL DISCRETION REQUEST, 3-4 (2011) [hereinafter SELF HELP GUIDE], available at <http://www.chirla.org/sites/default/files/Prosecutorial%20Discretion%20Pro%20Se%20Packet.pdf>.

⁶⁵ Memorandum from John Morton, Dir., U.S. Immigration and Customs Enforcement, to all Field Directors et. al, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Priorities of the Agency, USCIS 2 (June 17, 2011) [hereinafter Morton, Exercising Prosecutorial Discretion], available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

⁶⁶ *Id.* at 2-3.

SECTION II: (A) Prosecutorial Discretion

immigration official on notario fraud. Many officials will not believe that your client acted in good faith or misunderstood the system. You may be working with prosecutors and adjudicators from a variety of agencies throughout the immigration process. Each of these officials makes a wide range of potential decisions that can favorably impact your client. There are many possible forms of prosecutorial discretion: rescission of a detainer, requests for deferred action, requests for stays of removal, etc. We will be focusing on how to advocate for a cancellation or termination of proceedings against your client that have been instigated as a result of notario fraud.

Ultimate authority over the exercise of discretion depends on which form of prosecutorial discretion you seek and the status of the proceedings against your client. For administrative closure or termination requests, the authority generally lies with the Office of the Principle Legal Advisor. If you are seeking an exercise of prosecutorial discretion to lift a detainer or for deferred action, the ultimate authority over the decision will likely be the Field Office Director for ICE's Office of Enforcement and Removal Operations. You should familiarize yourself with the officers and chain of command in your location.⁶⁷

Prosecutorial discretion can be exercised agency wide⁶⁸ or by an individual officer. Officers have the authority to exercise discretion at any point of the immigration proceedings. However, ICE has intimated that discretion should be exercised as early in the proceedings as possible to conserve resources.⁶⁹ Even if discretion was not exercised *sua sponte* early on in the process, ICE personnel are instructed to reconsider when new facts come to light.⁷⁰

ICE has the resources to remove less than four percent of undocumented immigrants per year, and therefore prioritizes the deportation of certain categories of immigrants.⁷¹ Officers are instructed to pursue removal consistent with the agency's priorities, which are targeted at the deportation of dangerous persons, recent illegal entrants, and fugitives or obstructionists of the immigration system.⁷² Be aware that although this is the official, stated policy, not all ICE officials adhere to it; some deport low-level offenders or even those with no criminal convictions.⁷³ Consider consulting with other practitioners and advocates about the disposition of officials in your jurisdiction.

When your client is not high priority for removal, you should advocate for prosecutorial grace, noting for the ICE official that the department's limited resources should not be expended on an individual of good standing such as your client.⁷⁴ DHS has indicated that, absent other aggravating factors militating removal, it is against ICE policy to initiate removal proceedings against any immigrant who has been the victim of or witness to a crime, as this would deter reporting,⁷⁵ so make sure to emphasize your client's status as the victim of a crime.

⁶⁷ See *Enforcement and Removal Operations*, ICE, <http://www.ice.gov/contact/ero/> (last visited Apr. 22, 2013).

⁶⁸ Mary Kenney, *supra* note 63, at 12.

⁶⁹ Morton, *Exercising Prosecutorial Discretion*, *supra* note 65, at 5.

⁷⁰ See Memorandum from Doris Meissner, Comm'r., USCIS, to Regional Directors et. al, *Exercising Prosecutorial Discretion*, USCIS 10 (Nov. 17, 2000) [hereinafter Meissner, *Exercising Prosecutorial Discretion*], available at <http://www.scribd.com/doc/22092970/INS-Guidance-Memo-Prosecutorial-Discretion-Doris-Meissner-11-7-00>.

⁷¹ Memorandum from John Morton, Dir., USCIS, to all ICE Employees, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, USCIS 1 (Mar. 2, 2011) [hereinafter Morton, *Civil Immigration Enforcement*], available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

⁷² *Id.* at 1-3.

⁷³ See RIGHTS WORKING GROUP, *FACES OF RACIAL PROFILING: A REPORT FROM COMMUNITIES ACROSS AMERICA 5-7* (2010), available at <http://www.rightsworkinggroup.org/sites/default/files/ReportText.pdf>; CTR. FOR CONSTITUTIONAL RIGHTS, NAT'L DAY LABORER ASSOC., & CARDOZO LAW SCHOOL, *BRIEFING GUIDE TO "SECURE COMMUNITIES"-- ICE'S CONTROVERSIAL IMMIGRATION ENFORCEMENT PROGRAM NEW STATISTICS AND INFORMATION REVEAL DISTURBING TRENDS AND LEAVE CRUCIAL QUESTIONS UNANSWERED 3* (2010), available at <http://ccrjustice.org/files/Secure%20Communities%20Fact%20Sheet%20Briefing%20guide%208-2-2010%20Production.pdf>.

⁷⁴ See Morton, *Civil Immigration Enforcement*, *supra* note 71, at 1 (stating that the agency's limited resources should not be expended on low priority cases).

⁷⁵ See Memorandum from John Morton, Dir., USCIS, to all Field Office Dirs. et. al., *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, USCIS 1 (June 17, 2011) [hereinafter Morton, *Certain Victims*], available at <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

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Further, ICE officials are instructed to consider new facts, which would include evidence or allegations of notario fraud as a cause of the immigrant's illegal status.⁷⁶

II. YOUR LETTER – HOW TO ADVOCATE FOR PROSECUTORIAL DISCRETION⁷⁷

The most efficient way to request prosecutorial discretion is to submit your request in writing, in addition to orally following up at a later date. Favorable discretion rests entirely in the hands of the officials considering your case. Your client has no legal right to a favorable exercise of discretion. Therefore, when drafting letters, you must be simultaneously zealous and diplomatic in your efforts to advocate for your client. Carefully consider the equities of your client's case.⁷⁸ If your client's situation falls within the priorities for removal outlined below, ICE will not be receptive and you may lose credibility with the agency in the future. Moreover, you risk further undermining your client's ability to trust in legal systems if you inaccurately assess the possibility of relief in a request that appears on its face unlikely to merit a favorable exercise of discretion as articulated by ICE policies.

When submitting a request for discretion, you should include a cover letter or brief stating why a favorable exercise of discretion is warranted and attach an appendix with supporting materials, such as proof that your client has no criminal record, evidence of notario fraud, and letters of support from community members, elected officials, and/or law enforcement. Be as concise as possible while including all the factual information an ICE officer would need to decide whether to exercise discretion in your client's case.⁷⁹

CAPTURING THE IMPACT OF NOTARIO FRAUD SO AS TO INVITE PROSECUTORIAL DISCRETION:

In your letter you will need to paint a compelling picture of your client as a victim of the notario's fraudulent behavior. Below are some tips to establish the impact of the notario's behavior on your client, to better invite favorable prosecutorial discretion:

- Emphasize that your client has been a victim of a crime and that it is against DHS policy, absent aggravating factors, to initiate removal in these circumstances.
 - Where appropriate, describe the notario's role and how this may have resulted in the creation of the incorrect immigration forms.
 - Ensure ICE recognizes that the notario, not your client, defrauded the government through the incorrect filing.
 - Attach evidence of the crime if possible, such as police reports and counterfeit documents
 - Attach reports filed with your local Unauthorized Practice of Law Committee, State or Municipal Consumer Protection Agencies, and/or the Federal Trade Commission's Consumer Sentinel.⁸⁰
 - Attach documentation of any civil or criminal actions taken against the notario.⁸¹
- Submit an affidavit from your client and her family, friends and community members to humanize the individual and sympathetically explain her situation. Be specific about the harm caused by the notario and the impact on the victim and her family.
 - Statements by family members can also be important to prove family ties in the U.S. or the lawful status of family members, which are weighed heavily in an applicant's favor in discretion determinations.⁸²

⁷⁶ See Meissner, *Exercising Prosecutorial Discretion*, *supra* note 70, at 1.

⁷⁷ An example letter requesting prosecutorial discretion can be found in Appendix Section B1 Sample PD Letter.

⁷⁸ See Meissner, *Exercising Prosecutorial Discretion*, *supra* note 70, at 10 (cautioning that "attempts to exploit prosecutorial discretion as a delay tactic, as a means merely to revisit matters that have been thoroughly considered and decided, or for other improper tactical reasons should be rejected").

⁷⁹ KENNEY, *supra* note 63, at 12.

⁸⁰ See Section III: Complaints and Referrals of this Manual.

⁸¹ See Section III: Complaints and Referrals of this Manual.

⁸² Interview with Cori Alonso-Yoder, Staff Attorney, Ayuda, in Washington, D.C. (Feb. 15, 2013).

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- If your client has family members with lawful status, submit these family members' birth certificates, lawful permanent resident cards, or other proof of lawful immigration status.
- Cite to the 2011 Morton memo on Exercising Prosecutorial Discretion stating that ICE has finite resources that should be focused on individuals identified as removal priorities.⁸³
 - Emphasize that discretion serves the agency's priorities as well as the needs of your client.
- Ask specifically for what you want.
 - For example, if you want the proceedings against your client terminated state that specifically.
- Highlight why discretion is appropriate in your client's case, including any positive factors as well as any harm your client might suffer if discretion is not granted.
- Provide corroborating evidence of positive factors. Make sure to be up front about any negative factors, and provide mitigating explanations where available.
- State why your client is not an enforcement priority.
 - She has no criminal record (or has never been charged with a violent crime).
 - She has lived in the United States for over 10 years.⁸⁴
 - She has not previously exploited the immigration system (i.e. she did not reenter the U.S. after removal).

FACTORS ICE CONSIDERS IN PD DECISIONS

Weigh the following factors and put forward only those candidates who best match ICE's priorities for prosecutorial discretion, remembering that overuse of discretion requests could discredit your reputation as a practitioner. Although no single factor is determinative, if your client has multiple negative factors that would flag her as a removal priority, and few if any positive factors, it would be inadvisable to pursue prosecutorial discretion.

Most Important Positive Factors

ICE has produced a list of positive and negative factors for the exercise of discretion,⁸⁵ outlined below. Those in bold are most likely to be on-point when you are dealing with a notario fraud scenario. If your client falls under any of these additional categories make sure to state that fact expressly in your request.

⁸³ See Morton, *Exercising Prosecutorial Discretion*, *supra* note 65, at 2-3.

⁸⁴ Interview with Michelle Mendez, Senior Attorney, Catholic Charities (Mar. 22, 2013) (the general cutoff for length of stay appears to be 2005 at this point. Anything more recent and ICE does not consider the immigrant to have lived here for a sufficient amount of time).

⁸⁵ Morton, *Exercising Prosecutorial Discretion*, *supra* note 65, at 5; Meissner, *Exercising Prosecutorial Discretion*, *supra* note 70, at 11.

Positive factors:

- Family members of U.S. citizens or legal permanent residents
- Lengthy presence in United States (i.e., 10 years or more)
- Minors and the elderly
- Childhood arrivals
- Women who are pregnant and/or nursing
- Victims of certain violent crimes such as domestic violence and trafficking
- Individuals with serious health conditions or disabilities⁸⁶
- Individuals with family members who would suffer exceptional and extremely unusual hardship if the individual was deported⁸⁷
- Veterans and their immediate family
- **Witnesses in prosecutions**
- **Plaintiffs in civil rights suits**
- Ties and contributions to the community
- **Current and past cooperation with law enforcement authorities**

Negative Factors:

- Aggravated felony conviction
- Multiple felony convictions
- Multiple misdemeanors
- Immigration violations
- Risk to national security
- Known gang members

Other Considerations in Favor of PD:

- If effecting removal is unlikely due to a lack of repatriation agreement
- Your client is eligible for other relief
- Community expresses opposition to removal

III. POTENTIAL STAGES TO ASK FOR PROSECUTORIAL DISCRETION

AFTER/ BEFORE A NOTICE OF DETAINER HAS BEEN ISSUED:

If your client is in jail for an unrelated matter or because USCIS was alerted to her presence due to the notario's representation, you can request that DHS not issue a Notice of Detainer. A Notice of Detainer is issued by DHS to law enforcement agencies requesting that the agency hold the individual for up to 48 hours longer than they would otherwise be held so DHS can assume custody.⁸⁸ Therefore this opportunity for discretion will only be useful if your client was recently incarcerated and you have reason to believe she has been reported to ICE or DHS by local authorities. If your client is currently (or has recently been) incarcerated, an ICE official can choose to cancel or not issue a Notice of Detainer; however, this form of

⁸⁶ Meissner, *Exercising Prosecutorial Discretion*, *supra* note 70, at 11.

⁸⁷ *C.f. Ortega-Marroquin v. Holder*, 640 F.3d 814, 816 (8th Cir. 2011) ("the [IJ] found that Ortega had satisfied the continuous-physical-presence and good-moral-character requirements for cancellation, had committed no disqualifying crime, but failed to demonstrate that his qualifying relatives (his two U.S.-citizen children) would suffer exceptional and extremely unusual hardship as a result of his removal" because the children had no severe medical issues) (Although the case was not discussing prosecutorial discretion it exemplifies the thought process of many immigration officials).

⁸⁸ See *ICE Detainers: Frequently Asked Questions*, IMMIGR. AND CUSTOMS ENFORCEMENT, <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm> (last visited Apr. 22, 2013).

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prosecutorial discretion is usually done internally within relevant ICE offices.⁸⁹ To request such discretion, you may write a letter asking that the Notice of Detainer not be issued, or be withdrawn if already sent. However, these requests should be made with great caution as evidence of criminal activity can make your client a priority for removal. The only time you should request that a detainer not be issued is if the charges against your client were dropped, or are likely to be dropped or proven false.

AFTER A NOTICE TO APPEAR (NTA) HAS BEEN ISSUED:

If your client receives an NTA, there is still the possibility that an officer may utilize discretion and choose not to file this NTA with the court or to alter or remove charges from the notice.⁹⁰ You may draft a letter to the ICE, USCIS, or CBP officer in charge of your client's case outlining the reasons why discretion is appropriate and requesting that she refrain from initiating proceedings against your client. It is important that you file this letter promptly. As with all other steps in this process, it is important only to push for prosecutorial discretion if you believe your client will be a low priority removal in accordance with relevant memoranda.

WHILE YOUR CLIENT'S CASE IS IN FRONT OF AN IMMIGRATION JUDGE (IJ) OR THE BOARD OF IMMIGRATION APPEALS (BIA):

If your client's case is already before an IJ or the BIA you can request discretion in one of two forms: (1) Administrative Closure or (2) Termination of Proceedings.⁹¹ This means that ICE will refrain from prosecuting your client's case for a certain amount of time. You can request closure or termination from an IJ or the BIA unilaterally or jointly with the prosecuting attorney.

While the process for requesting administrative closure or termination is the same, the consequences are different. Termination results in dismissal of the case. If the government wants to revisit the issue, it must begin afresh, with new charges and a new NTA. In contrast, administrative closure removes a case from the court's calendar, which can be re-opened with a simple motion to re-calendar the proceedings. No new charges are required. For most clients, termination is a more desirable outcome. However, if your case is not particularly strong, government officials might be more open to administrative closure. Closure could potentially provide your client time to apply for other remedies or indefinitely delay an impending removal order.

Presenting a Case for Administrative Closure or Termination:

If your client has filed for a change of status or other forms of immigration relief due to notario fraud, you can request that her removal proceedings be administratively closed or terminated. Being granted closure or termination means that your client will no longer be subject to impending proceedings, but does not guarantee any lawful status or broader immigration benefit. It is better to file jointly with the prosecuting attorney or with the prosecuting attorney's non-opposition, but you can make this request to the immigration judge even against opposing party objections. Factors the immigration judge will consider for closure include:

1. Reason closure is sought
2. Basis for any opposition to closure
3. Likelihood the immigrant will succeed on the petition, application, or other action that is being pursued outside the removal proceeding
4. Anticipated time period of the closure of your client's case
5. Responsibility of either party in contributing to the delay of bringing the case

⁸⁹ Morton, *Exercising Prosecutorial Discretion*, *supra* note 65, at 2; KENNEY, *supra* note 63, at 6-7.

⁹⁰ KENNEY, *supra* note 63, at 7-8; see also Memorandum from William J. Howard, Principal Legal Advisor, USCIS, to all OPLA Chief Counsel, Prosecutorial Discretion, USCIS 2 (Oct. 24, 2005) [hereinafter Howard, Prosecutorial Discretion], available at http://www.legalmomentum.org/assets/pdfs/cis_memo_for_chief_counsels_-_prosecutorial_discretion_.pdf.

⁹¹ See EXEC. OFFICE OF IMMIGR. REVIEW, IJ BENCHMARK: MOTIONS, available at <http://www.justice.gov/eoir/vll/benchmark/tools/Motions%20to%20Reopen%20Guide.htm> (last visited Apr. 24, 2013); see also U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, PROTECTING THE HOMELAND – TOOLKIT FOR PROSECUTORS, 6-7 (Apr. 2011) [hereinafter ICE Toolkit], available at <http://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

SECTION II: (A) Prosecutorial Discretion

6. Expected outcome of removal proceedings when the case is finally re-calendared⁹²

AFTER YOUR CLIENT HAS RECEIVED AN ORDER OF REMOVAL:

If your client has been ordered removed and has exhausted her appeals you can request discretion in the form of an *administrative stay of removal*. This means ICE will agree not to execute the removal order for a period of time (usually one year).⁹³ To request a stay, you should file Form I-246, which must be submitted in person to the local Enforcement and Removal Office. Note that, as opposed to requesting other forms of discretion, filing for a stay requires a fee.

The types of people ICE will consider for stays of removal include:

1. Immigrants with serious medical conditions
2. Pregnant women
3. Juveniles
4. **Witnesses in criminal or civil proceedings**
5. **Immigrants whose detention is not in the public interest**⁹⁴

Note: There are two forms of administrative stays: 1) admitted immigrant ordered removed or 2) inadmissible immigrant ordered removed.⁹⁵ If your client's case falls under the first category, the Field Office Director (FOD) has wide discretion to grant a stay. Stays in these circumstances are usually granted as a result of humanitarian concerns, or because it is in the government's best interest.⁹⁶ On the other hand, if your client falls under the second category, the FOD has limited discretion in granting stays and may only grant where immediate removal is not practicable, or where your client is needed by law enforcement for a prosecution. In the first case, DHS might keep your client in detention until the end of the stay; however, in the second, she may be released on bond.⁹⁷

ANYTIME: DEFERRED ACTION:

Deferred action can be requested at any point in the proceedings, but it is granted in very limited circumstances. It can be granted as an umbrella provision for certain classes of immigrants⁹⁸ or on an individual basis. Like a stay of removal, deferred action is granted for a specific amount of time. It does not affect any already existing period of unlawful presence.

The key benefit of deferred action is that your client may be eligible for an Employment Authorization Document (EAD).⁹⁹ If you are asking for deferred action on an individual case basis, there are two distinct types of deferred action requests: "(i) those seeking [deferred action] based on sympathetic facts, and (ii) a low-enforcement priority, and those seeking [deferred action] based on his/her status as an important witness in an investigation or prosecution."¹⁰⁰ Practically, deferred action in a similar manner to a stay, and does not require a fee. There is no set list of factors ICE will consider for deferred action requests; however, considerations generally include: criminal history; national security implications; likelihood of removal;

⁹² Matter of Avetisyan, 25 I. & N. Dec. 688, 696 (BIA 2012) ("The ultimate outcome of removal proceedings (for example, termination of the proceedings or entry of a removal order) when the case is recalendared before the Immigration Judge or the appeal is reinstated before the Board").

⁹³ ICE Toolkit, *supra* note 91, at 7-8, 11, 24.

⁹⁴ 8 C.F.R. § 212.5(b) (2009).

⁹⁵ ICE Toolkit, *supra* note 91, at 6-7. A lawfully admitted immigrant is one who entered the U.S. after inspection and authorization from an immigration officer. 8 U.S.C. § 1101(a)(13)(A). For factors which make an immigrant inadmissible see 8 U.S.C. § 1182.

⁹⁶ ICE Toolkit, *supra* note 91, at 7.

⁹⁷ *Id.*

⁹⁸ For example, President Obama's policy of Deferred Action for Childhood Arrivals (DACA) provides conditional permanent residency to certain immigrants who graduate from U.S. high schools, arrived in the United States before age 16, and lived in the U.S. continuously since 2007. For information see *Consideration of Deferred Action for Childhood Arrivals Process*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD> (last updated Jan. 18, 2013).

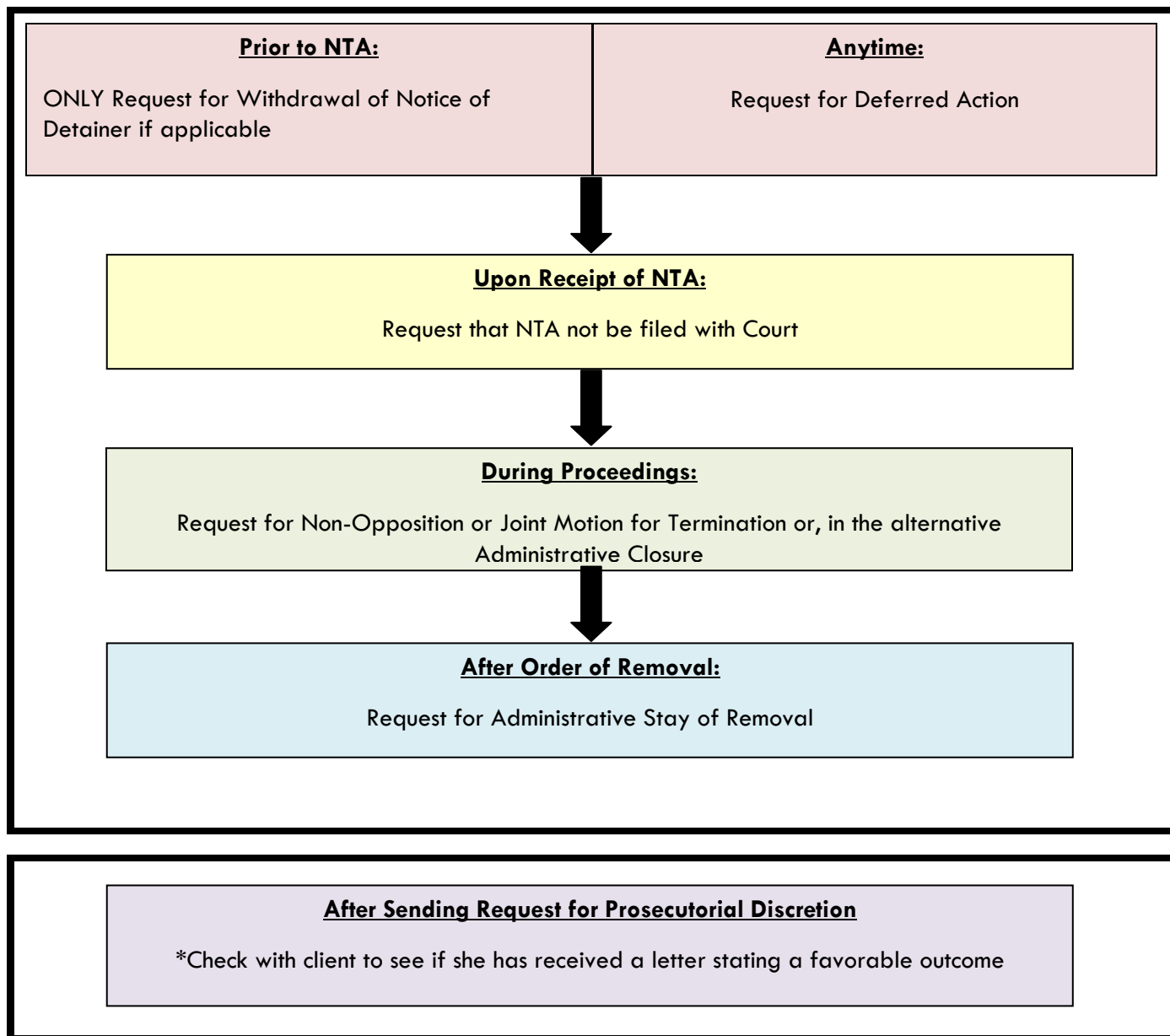
⁹⁹ If your client is granted DA she can apply for EAD pursuant to 8 C.F.R. § 274a.12(c)(14) if she can establish economic necessity.

¹⁰⁰ ICE Toolkit, *supra* note 91, at 4.

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presence of sympathetic factors; and/or whether a law enforcement agency desires your client's presence for an ongoing investigation or prosecution.¹⁰¹

IV. OVERVIEW



V. WHERE TO SEND YOUR LETTER

You should become familiar with the chain of command in your location to determine which officers have the authority to exercise discretion at each point in the proceedings. Additionally, consider who has ultimate authority over or, alternatively, who may be influential in exercising discretion. For example, the supervisor in the Office of the Principal Legal Advisor has the ultimate authority to determine whether prosecutorial

¹⁰¹ *Id.* at 5.

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discretion is appropriate, whereas Assistant Chief Counsels do not have the authority to cancel an NTA but may be persuasive voices in their offices.¹⁰²

If you have not developed a more nuanced understanding of the process in your location consider the following advice provided by the National Immigration Law Center (NILC).¹⁰³ NILC suggests that if your client is currently in removal proceedings yet does not have a final order of removal, you send your letter to the Chief Counsel in your location.¹⁰⁴ If your client already has a final order of removal, send your request to the local ICE Field Office Director and attach Form I-246 to the request.¹⁰⁵

VI. WHAT ACTIONS TO TAKE AFTER SENDING A REQUEST FOR PROSECUTORIAL DISCRETION

The Meissner memorandum clearly states that if a favorable decision for prosecutorial discretion is made, it must be documented.¹⁰⁶ Officers are required to record the decision in the applicant's file, and must describe the specific decision taken and its legal basis. Furthermore, an officer must notify the immigrant in writing of the decision, the action to be taken in her case, and the consequences of this action.¹⁰⁷ This letter is also required to indicate if there is a potential benefit that is linked to the action taken. For example, if your client received deferred action as a part of prosecutorial discretion, her letter should indicate she is now eligible for work authorization. It is important to inform your client that a successful appeal will be marked by receipt of such a letter, and she should frequently check if she has received it.

The Meissner memorandum, however, does not require notice if an officer decides not to favorably exercise prosecutorial discretion. Therefore if your client has not received a letter, it is important to periodically call the officer to whom the request was made.¹⁰⁸ This is really the only way to determine where in the process your client's request currently is. Even with these periodic check-ins your client may have to wait to discover whether the officer decided to exercise discretion, during which time she could potentially be removed, deported, or arrested without knowing if the request is still pending or has been denied.¹⁰⁹ The most proactive way of preventing this is to remain in contact with the officer and diplomatically remind him or her of the pending matter.

V. CONCLUSION

Whether you seek prosecutorial discretion or forgo this option is entirely dependent on the individual client's case and needs. In certain cases the notario fraud and its effects will be particularly egregious, yet the client falls into a priority removal category so requesting prosecutorial discretion is not in the best interests of your client. In others the notario fraud may not be particularly nefarious, yet your client has multiple sympathetic factors that weigh heavily in favor of prosecutorial discretion. Like the other forms of relief described in this manual, prosecutorial discretion will not be a viable option for every client; however, this option encompasses a wider range of factual scenarios than U-Visas or motions to reopen, which will be discussed below.

¹⁰² See KENNEY, *supra* note 63, at 9.

¹⁰³ See SELF HELP GUIDE, *supra* note 64, at 5. For the list of ICE Chief Counsel contact information see <http://www.ice.gov/contact/opla/>.

¹⁰⁴ For a list of ICE Chief Counsel contact information, see *Office of the Principal Legal Advisory, IMMIGR. AND CUSTOMS ENFORCEMENT*, <http://www.ice.gov/contact/opla/> (last visited Apr. 23, 2013).

¹⁰⁵ See <http://www.ice.gov/contact/ero/> for a list of field offices.

¹⁰⁶ See Meissner, *Exercising Prosecutorial Discretion*, *supra* note 70, at 11 ("When a DD or CPA decides to exercise prosecutorial discretion favorably, that decision should be clearly documented in the alien file, including the specific decision taken and its factual and legal basis").

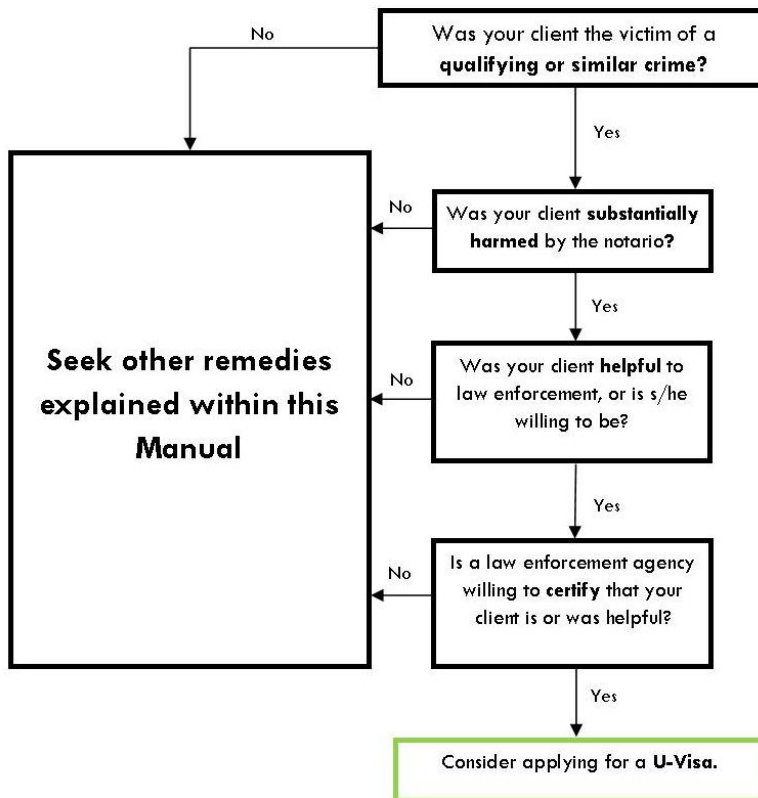
¹⁰⁷ KENNEY, *supra* note 63, at 14.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

SECTION II: (B) U-VISA

U-Visa



** The above Flow Chart is meant as a reference only, and not as a substitute for the detailed analysis provided in the relevant section of this Manual.

I. INTRODUCTION

In a nutshell → The U-Visa's underlying purpose is to protect immigrants from predatory individuals that use immigration status to manipulate victims, encourage crime reporting, and support law enforcement.¹¹⁰ Not every notario fraud victim will be eligible. But, as it is a relatively new remedy, there are opportunities for creative lawyering to expand the program and develop favorable policy.

What is it? → U nonimmigrant status, commonly referred to as the U-Visa, is a temporary, four-year status that allows immigrants who have been, are being, or will be helpful in the investigation or prosecution of a qualifying crime to remain and work legally in the United States.¹¹¹ After three years, victims who are otherwise eligible may apply for lawful permanent residency.¹¹²

What are the requirements? → The crime must have occurred in the United States and be either enumerated in the statute or substantially similar to those that are. The crime must have caused the victim substantial harm and law enforcement must certify that the victim was, is or is likely to be helpful in an investigation or prosecution.

Notario fraud victims are often reluctant to report the crime to law enforcement as this may draw attention to their undocumented status. U-Visas were designed to ensure that individuals that perpetrate crimes are not insulated from prosecution because the witnesses against them fear deportation.¹¹³ By offering legal status to those who come forward, USCIS provides incentives to report crimes and enhance policing efforts within the community. Even though this regime has a broad remedial purpose, USCIS often construes the statute narrowly. The U-Visa statute enumerates a wide range of crimes. Most involve violence, particularly those related to trafficking and domestic violence, but blackmail, extortion, perjury, witness tampering, obstruction of justice, and a general catchall for "any similar activity" also qualify.¹¹⁴ The Vermont Service Center, which adjudicates U-Visas, has stated that decision-makers prefer granting status for enumerated crimes.¹¹⁵ However, if your case is compelling but falls outside of the list of enumerated crimes, you can argue it is a similar crime that merits qualification.

Although the statute was enacted in 2000, the Department of Homeland Security (DHS) did not issue regulations until 2007.¹¹⁶ Agency policies and case law are still developing. Not every notario fraud victim will qualify for this remedy but it is an option for clients who have suffered severe consequences from a notario's activities. As this remedy involves identifying the individual to immigration authorities, it is particularly appropriate when a client is already in proceedings.

¹¹⁰ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533 (2000); Press Release, U.S. Citizenship and Immigration Services, USCIS Publishes New Rule for Nonimmigrant Victims of Criminal Activity (Sept. 5, 2007), available at http://www.uscis.gov/files/pressrelease/U-visa_05Sept07.pdf. In the press release, USCIS Director Emilio Gonzales said: "Many immigrant crime victims fear coming forward to assist law enforcement because they may not have legal status. . . . We're confident that we have developed a rule that meets the spirit of the Act; to help curtail criminal activity, protect victims, and encourage them to fully participate in proceedings that will aid in bringing perpetrators to justice."

¹¹¹ 8 U.S.C. § 1101(a)(15)(U); 8 U.S.C. § 1184(p)(6).
¹¹² 8 C.F.R. § 1225(m)(1); see also Jean Pierre Espinoza & Jung Choi, *Overview of the U Visa: "Race between Approval and Removal,"* 15 *Bender's Immigr. Bull.* 645, 645 (2010).

¹¹³ New Classification for Victims of Criminal Activity Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (proposed Sep. 17, 2007) (codified as 8 C.F.R. Parts 103, 212, 214, 248, 274a and 299); See also Jessica Farb, *The U-Visa Unveiled: Immigrant Crime Victims Freed from Limbo*, 15 *No. 1 Hum. Rts. Brief* 26, 26 (2007).
¹¹⁴ 8 U.S.C. § 1101(a)(15)(U)(iii); 8 CFR § 214.14(a)(9).

¹¹⁵ Interview with Laila Hlass, Supervising Attorney, Center for Applied Legal Studies, in Washington, D.C. (Apr. 16, 2013).

¹¹⁶ New Classification for Victims of Criminal Activity Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53014; see also Jessica Farb, *supra* note 113, at 26.

SECTION II: (B) U-Visa

SPECIAL CONSIDERATIONS FOR NOTARIO FRAUD VICTIMS SEEKING U-VISA STATUS

To date, Congress has not considered whether victims of notario fraud should be covered under the U-Visa. However, recent developments support the argument that the U-Visa regime should be more expansive. Congress added fraud in foreign labor contracting and stalking to the list of qualifying crimes in the 2013 Violence Against Women Reauthorization Act.¹¹⁷ This change confirms that victims of non-violent crimes deserve protection under the program. While some courts have declined U-Visas for victims of notario fraud in certain cases, these recent developments prove that there are opportunities to drive the law and agency interpretation in a positive direction. Many law enforcement agencies have shown an increasing willingness to hold notarios accountable for their crimes.¹¹⁸ Officials may not be aware of the U-Visa. You can introduce the regime as a tool to enhance their investigative capacity. Given the underlying remedial purpose and the expansive language of the legislation,¹¹⁹ the authors of this manual strongly believe that victims of notario fraud should qualify for U-Visas and practitioners should advocate for its use in these circumstances.

Currently, the statute authorizes USCIS to issue only 10,000 U-Visas per year;¹²⁰ however, an unlimited number of derivatives (visas for family members of qualified applicants) are available.¹²¹ In 2012, DHS reached the statutory maximum in August.¹²² Currently, individuals approved above the 10,000 cap are placed on a waitlist for issuance the following year.¹²³ While not ideal, for some clients, such as those already facing deportation, this administrative limbo may be preferable to the alternative. While ICE still has the ability to deport an applicant during the process, the agency often stays removal for individuals with pending U-Visa applications.¹²⁴

Currently, the Vermont Service Center refrains from reporting U-Visa applications it has denied to ICE unless there is a terrorism, fraud, or public safety concern issue. However, this policy is implemented at the discretion of USCIS, and therefore is subject to change.

¹¹⁷ Violence Against Women Reauthorization Act (VAWA) S. 47, Cong. 113, tit. I § 101, & tit. XII § 1222 (2013).

¹¹⁸ See Appendix II(B)(4): Montgomery County Invitation for Victims to Come Forward.

¹¹⁹ See New Classification for Victims of Criminal Activity Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,105.

¹²⁰ 8 U.S.C. § 1184(p)(2)(A).

¹²¹ 8 U.S.C. § 1184(p)(2)(B); see also Espinoza & Choi, *supra* note 111, at 649.

¹²² USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012, USCIS (Aug. 21, 2012) www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextoid=5cd8f03530a49310VgnVCM100000082ca60aRCRD.

¹²³ 8 C.F.R. § 214.14(d)(2).

¹²⁴ Interview with Cori Alonso-Yoder, Staff Attorney, Ayuda, in Washington D.C. (Apr. 26, 2013).

U-Visa Elements

In order to qualify for the U-Visa, your client must demonstrate that:¹²⁵

1. She was the victim of qualifying criminal activity and has suffered substantial physical or mental abuse
2. She possesses information concerning the qualifying criminal activity
3. She is helping, has helped, or is likely to help law enforcement in the investigation or prosecution of criminal activity
4. The criminal activity violated U.S. law or occurred in the United States

Below we offer specific information on proving there was a qualifying criminal activity, demonstrating substantial harm, and obtaining certification from law enforcement. As you review the information, keep in mind that this is a relatively new remedy for notario fraud victims so you will need to develop nuanced and creative case packets to present your client's story in a compelling way.

II. HAS YOUR CLIENT BEEN A VICTIM OF A QUALIFYING CRIME?

To be eligible for a U-Visa, your client must have been a victim of a qualifying crime, or similar criminal activity, committed in U.S. territory. 8 U.S.C. § 1101(a)(15)(U) lists the following qualifying crimes, as defined by relevant local, state or federal law, or any “attempt, conspiracy or solicitation” to commit any of the following:

<i>rape</i>	<i>being held hostage</i>	<i>extortion</i>
<i>torture</i>	<i>peonage</i>	<i>manslaughter</i>
<i>trafficking</i>	<i>involuntary servitude</i>	<i>murder</i>
<i>incest</i>	<i>slave trade</i>	<i>felonious assault</i>
<i>domestic violence</i>	<i>kidnapping</i>	<i>witness tampering</i>
<i>sexual assault</i>	<i>abduction</i>	<i>obstruction of justice</i>
<i>abusive sexual contact</i>	<i>unlawful criminal restraint</i>	<i>perjury</i> ¹²⁶
<i>prostitution</i>	<i>false imprisonment</i>	<i>fraud in foreign labor</i>
<i>sexual exploitation</i>	<i>blackmail</i>	<i>contracting</i>
<i>female genital mutilation</i>	<i>stalking</i>	<i>any similar activity</i>

The statute has broad language allowing for “any similar activity” to merit qualification.¹²⁷ However, since USCIS began issuing U-Visas in 2008, stakeholders believe that the agency has not been particularly receptive to claims based on non-enumerated crimes.¹²⁸ When your petition does not list an enumerated crime, you can strengthen your application by including facts that constitute the essential elements of one of the enumerated crimes, preferably supplied from law enforcement reports, indictments, or other official documents. Additionally, be prepared to demonstrate how the facts of your client's situation track onto the statutory definition of the enumerated crime in your jurisdiction

¹²⁵ 8 U.S.C. § 1101(a)(15)(U).

¹²⁶ Note that witness tampering, perjury, and obstruction of justice have an additional element of proof that will be discussed below. See 8 C.F.R. § 214.14(a)(14)(ii)(B).

¹²⁷ 8 U.S.C. § 1101(a)(15)(U)(iii).

¹²⁸ Research and interviews have produced no evidence of U-Visas granted for a “substantially similar” unenumerated crime related to notario fraud. If you have won a U-Visa for such a crime, please broadcast your success to the greater immigration legal community.

SECTION II: (B) U-Visa

There are opportunities to develop positive precedent and possibly expand the interpretation of the statute, but be mindful that it is not clear how often USCIS grants status based solely on a “substantially similar” crime.¹²⁹ Our research has found few successful cases. You are more likely to obtain relief for your client if you can fit the facts of your victim’s case into one of the enumerated crimes, such as blackmail, extortion, perjury, obstruction of justice, or witness tampering. Use the information gathering skills discussed above¹³⁰ to determine how your client was harmed by the notario, and whether it is possible to describe the facts of your client’s case as involving one of the enumerated crimes. It is not necessary that the notario actually be charged or convicted for the crime cited on the certification form, only that the fact pattern fits into the definition. Relevant examples drawn from actual cases are detailed below, with a simplistic description of the crime, potential fact patterns, and sample questions to elicit pertinent information.

It is important keep in mind that although this is a federally regulated application process, generally state law will define the crimes. However, be aware that perjury, obstruction of justice, and witness tampering have an additional specific intent requirement under USCIS regulations that requires the individual act with a specific purpose, discussed below.¹³¹ You *must* check your state’s criminal law. Some states, such as Colorado, specifically include in the definition of extortion threatening to report someone’s immigration status to government officials to obtain something of value,¹³² making the notario’s activity more likely to fit within the enumerated crime.

The examples provided below are derived from numerous fact patterns gleaned from practitioner interviews and cases. Although the cases do not debate the use of the U-visa, we have cited them for your general reference.¹³³

BLACKMAIL AND EXTORTION:

Your client may be a victim of blackmail or extortion if the notario threatened to inform law enforcement agencies of the client’s legal status, or any other violation of law the client may have committed, unless the client paid the notario money.

FACTS THAT SUGGEST EXTORTION:

Your client needed help with her immigration papers and found a notario who claimed he was qualified to help her. He placed a red stamp in her passport and fraudulently informed her that she had temporary status. He filled out and sent in an application for political asylum on her behalf, knowing that it would be denied and he could collect his fee and avoid punishment by ensuring her removal. Your client became suspicious, as she had never voiced any fear of political persecution. He revealed that she is not in fact a legal resident, as he had previously told her, and threatened to turn her in to immigration if she informed the police of his duplicity and fraud.

¹²⁹ In a response to a FOIA request, the USCIS stated it does not track certifications based on which crime is the basis for the request. (Apr. 15, 2013).

¹³⁰ See Section I: Intake and Information Gathering in this Manual.

¹³¹ 8 C.F.R. § 214.14(a)(14)(ii)(B).

¹³² See Colo. Rev. Stat. § 18-3-207(1.5) (2013).

¹³³ See generally, Nunez v. Gonzales, 231 F. App’x 666 (9th Cir. 2007); Fajardo v. I.N.S., 300 F.3d 1018 (9th Cir. 2002); Justin Jovenal, Legal Advisor Pleads Guilty to Defrauding Immigrants, Wash. Post (Dec. 10, 2012) available at http://www.washingtonpost.com/blogs/crime-scene/post/legal-adviser-pleads-guilty-to-defrauding-immigrants/2012/12/10/057f9096-42f6-11e2-8e70-e1993528222d_blog.html.

SECTION II: (B) U-Visa

PERJURY:

Your client may be able to cite perjury as the qualifying crime if the notario made false or misleading statements under oath. An essential element of this crime is that it must have been committed with the intent of frustrating efforts to bring the notario to justice or to allow him to further abuse his victim by manipulating the legal system.¹³⁴

FACTS THAT SUGGEST PERJURY:

Your client previously applied for asylum with the help of a notario. He told her that she was to pay him for every correspondence she received from the government. She did not see the finalized immigration form, nor did she know what facts the consultant decided to put into the application. The consultant cajoled her into signing the form and he himself signed as well. These documents were signed under penalty of perjury, yet the consultant had knowingly included incorrect information. He wanted to get your client's application into the system so that he could continue extracting money from her with each governmental communication.

OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING:

Your client may be able to include obstruction of justice or witness tampering in the U-Visa application if the notario harmed or intimidated her to prevent her from testifying against him. An essential element of these crimes is that they must be committed to frustrate investigative or prosecutorial efforts or to further the notario's exploitation or control of your client.¹³⁵

FACTS THAT SUGGEST OBSTRUCTION OF JUSTICE:

After paying for fraudulent services from a notario, your client was approached by law enforcement. They planned on prosecuting the notario for grand theft, as he fraudulently procured large sums of money from those he defrauded, including your client. Law enforcement asked your client to serve as a witness against the notario. The notario heard that your client was going to be a witness against him and threatened to hurt the client and her family if she agreed to testify for the state.

SUBSTANTIALLY SIMILAR CRIMES

If the criminal activity does not fall squarely within one of the above categories, consider whether there is an argument for inclusion of a crime framed as being substantially similar to one or more of the enumerated crimes. DHS regulations state that to qualify under this catchall, the criminal activity must be "substantially similar" to the "nature and elements" of an enumerated criminal activity.¹³⁶ Whether or not your argument is successful is a combination of effective advocacy and egregious facts that fall outside the enumerated crimes.

Fortunately, recent amendments to the statute in the 2013 Violence Against Women Reauthorization Act specifically added fraud in labor contracting to the U-Visa's list of enumerated crimes.¹³⁷ The underlying dynamic, where unscrupulous individuals make false representations to take advantage of vulnerable

¹³⁴ 8 C.F.R. § 214.14(a)(14)(ii)(B).

¹³⁵ 8 C.F.R. § 214.14(a)(14)(ii)(B).

¹³⁶ 8 C.F.R. § 214.14(a)(9).

¹³⁷ Violence Against Women Reauthorization Act (VAWA) S. 47, Cong. 113, tit. I § 101, & tit. XII § 1222 (2013).

SECTION II: (B) U-Visa

immigrants and then use the immigrants' status to prevent them from going to the authorities, has many parallels to the relationship notarios develop with their victims. Casting your facts so that the criminal act seems to implicate or defeat the underlying purpose for the U-Visa increases the chance that that criminal act will be considered substantially similar to the enumerated crimes. This is an opportunity to think creatively and advocate for your client. If your argument is successful, please be sure to share it with the immigration practitioner community.¹³⁸

Below is a potential fact pattern that may qualify as a substantially similar crime as well as a sample argument you might make to show why this client should be eligible for a U Visa:

MAKING THE CASE FOR SUBSTANTIAL SIMILARITY:

Your client went to a notario who stated that he could obtain legal status for your client because he knew someone who worked for ICE. In order to ensure your client got to the top of the list, the notario said she needed to pay \$1,000. He assured your client that this was how things were done in the U.S. immigration system. Your client also gave him her passport, birth certificate, and driver's license as he said he would need to keep them for continued correspondence with immigration officials. He filed an incorrect, late application and your client was placed in removal proceedings. She no longer has any of her personal documents as the notario did not return them, and she spent all her savings obtaining his services.

ARGUMENT:

The fraud visited upon my client is substantially similar to extortion, fraud in labor contracting, and obstruction of justice. The relief provided by the U nonimmigrant status was created to encourage immigrants to report crimes and enable law enforcement's investigative and prosecutorial efforts. The spirit of the regime governing U nonimmigrant status is to protect vulnerable immigrant communities from the types of crimes that most often plague them, and prevent perpetrators from using their victims' immigration status as a way to avoid prosecution. As is stated in the Federal Register, "the list of qualifying crimes represents the myriad types of behavior that can constitute...crimes of which vulnerable immigrants are often targeted as victims." (72 FR 53015). Notario fraud is one such crime. Similar to extortion, the defrauder purposefully exploited my client's vulnerable state, believing that he would easily avoid prosecution. Similar to fraud in labor contracting, the notario fraudulently misrepresented his ability to obtain a visa for my client and took extremely important and possibly irreplaceable personal documents from her. And, like obstruction of justice, this fraud was committed to further the notario's control and exploitation of my client. He has placed her in the most vulnerable position possible with few legal rights and no identifying documentation. Without immigration relief through the U-Visa, this notario will continue to prey upon such victims because they will be deterred from coming forward to participate in the prosecution. This is the very type of crime that U nonimmigrant status relief endeavors to prevent and therefore should qualify my client for U nonimmigrant status.

¹³⁸ See Introduction – "Building the Network" in this Manual.

III. PROVING SUBSTANTIAL HARM

To qualify for U nonimmigrant status, a victim must adequately prove that she suffered substantial physical or mental harm as a *result* of the qualifying crime.¹³⁹ This harm must be proximately and directly linked to the qualifying crime. DHS regulations define physical or mental abuse as injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.¹⁴⁰

USCIS employs a totality of the circumstances approach for determining substantial harm. Any one of these factors does not have to be present to find substantial injury, and a series of acts taken together may make a claim substantial where a single act would not.¹⁴¹ USCIS will consider if the crime “caused the aggravation of a pre-existing physical or mental injury.” If the crime involved a series of acts or occurred repeatedly over a period of time that is also relevant to the “totality” evaluation.¹⁴² There is no case law that determines exactly what constitutes harm, so it is especially critical to submit comprehensive evidence to support a finding that your client suffered substantial harm.¹⁴³ If you are making a novel argument about the underlying activity being a substantially similar crime, it is particularly important that you demonstrate egregious harm. If you do not include sufficient information, USCIS may issue a request for more information.¹⁴⁴ USCIS does not consider law enforcement certification to be demonstrative, so while corroborating statements from officials are helpful, they will not be dispositive on this issue. Be sure to build a vivid, detailed picture of the impact the crime had on your client.

*Factors USCIS Considers to Determine Substantial Harm:*¹⁴⁵

- The nature of the injury;
- The severity of the perpetrator's conduct;
- The severity and duration of the harm;
- The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions; and
- A series of minor acts which in the aggregate constitute considerable harm.

COMPILING EVIDENCE TO PROVE SUBSTANTIAL HARM

Evidence you should compile to demonstrate substantial harm could include:

1. Affidavits from the client giving a detailed account of the impact the crime had on her life.
2. Reports and affidavits from police, judges, or other court officials.
3. Reports from medical professionals, psychologists, or social workers and other agency personnel detailing the impact of the crime on the victim.
4. Medical records establishing health problems that began or worsened as a result of the notario's activities.
5. Statements from employers, school officials, clergy, or other community members describing the impact of the crime on the victim.

¹³⁹ 8 U.S.C. § 1101(a)(15)(U)(i)(I).

¹⁴⁰ 8 C.F.R. § 214.14(a)(8).

¹⁴¹ *Id.* § 214.14(b)(1); see also Robert Cisneros, *The U Visa for Crime Victims*, EMPIRE JUSTICE CTR. (Jan. 16, 2010) <http://www.empirejustice.org/issue-areas/immigrant-rights/access-to-status/the-u-visa-for-crime-victims.html>.

¹⁴² DHS, USCIS, *Instructions for Form I-918, Petition for U Nonimmigrant Status*, OMB No. 1615-0104, at 5, available at <http://www.uscis.gov/files/form/i-918instr.pdf> (expires Jan. 31, 2016).

¹⁴³ Espinoza & Choi, *supra* note 112, at 647.

¹⁴⁴ See Appendix II(B)(3) Sample Response to Request for Evidence.

¹⁴⁵ 8 C.F.R. § 214.14(b)(1).

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6. Protection orders against the perpetrator, or documentation of any other legal steps the victim may have taken to protect herself.
7. Photographs showing visible evidence of physical harm or property damage, particularly in combination with affidavits from individuals with personal knowledge of the events.
8. Evidence of financial hardship, including late bill statements or eviction notices.
9. Evidence of other hardship linked to the crime, such as documents indicating termination of employment or poor performance in school.
10. Counterfeit documents provided by a notario that can demonstrate how the client was deceived and what beliefs they might have had.
11. Evidence of hardship such as family separation or other concerns.

Key Considerations:

CONNECTING THE HARM TO THE CRIME

It is crucial that you establish a nexus between the harm and the qualifying crime, rather than discussing harm to your client arising from the notario's activities in general. For instance, if you are alleging blackmail, the harm should all be linked to the blackmail, not to the underlying fraud. The fact that your client has been put into deportation proceedings solely due to the notario's fraud cannot be the only harm your application relies on to prove substantial harm. You may include the effects of these experiences in your affidavits to develop a comprehensive and sympathetic picture of your client's situation, but make sure to highlight the harm resulting directly from the qualifying crime. For example, in the situation described above, stress that the notario's threat to reveal your client's status to ICE was the direct cause of your client's severe emotional and mental stress. ICE eventually was alerted to your client's immigration status, causing further harm, but it was the blackmail that made your client fear deportation and not report the notario.

INDIRECT VICTIMS

A victim can claim indirect harm in two circumstances: where a family member was harmed or where the justice system was obstructed.

- If your client's family member was the victim of the qualifying crime, you must show that the family member suffered direct and proximate harm as a consequence of the crime.
- In crimes generally considered to implicate a broader public harm rather than individual harm, such as obstruction of justice, witness tampering, and perjury, your client must prove that she was individually harmed as a result of the crime. For example, a petitioner who, as a result of the notario's perjury on her immigration application, is placed in removal proceedings, forced to leave significant family connections, and lose her job causing grave economic harm, has been individually harmed by the notario's qualifying crime.¹⁴⁶

MENTAL VERSUS PHYSICAL HARM

As a note of caution, adjudicators may hesitate to accept purely mental injury without some form of tangible and substantial evidence. It is important to submit any and all records of the harm, including psychological evaluations, medical records, occupational records, and any other evidence that documents your client's mental suffering.

¹⁴⁶ 8 C.F.R. § 214.14(a)(14).

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BE CREATIVE

Make sure to ask pointed questions about your client's life following the notario's actions to help you glean information about harm the client may not know to tell you. For example, if you know the notario extorted a lot of money from your client ask whether she was able to travel to work, whether she was able to buy food and medicine, or whether she was able to obtain other basic necessities. Consider asking family, friends, church members, or other community advocates to provide statements about your client's emotional response. The important thing is to humanize your client for the USCIS officer reading your application, and drive home the impact the crime had on your client. Think creatively about how to paint a picture of your client's suffering that will persuade the officer to grant your client a U Visa, and be sure that the client vividly refers to the harm in her own personal statement.¹⁴⁷

¹⁴⁷ See 8 C.F.R. § 214.14(c)(2)(iii).

IV. CERTIFICATION

WHAT IS IT?

Once you have established that your client suffered substantial injury from a qualifying crime and has been, is being, or is likely to be helpful to law enforcement, you should seek certification from law enforcement. Each U-Visa application must include Form I-918 Supplement B,¹⁴⁸ signed by a “certifying official,” which means the head or designee of a “certifying agency,” or a Federal, State, or local judge.¹⁴⁹

The criminal activity being investigated or charged does not have to result in a felony conviction, nor does the aggressor have to be charged or tried for the same crime for which a victim obtains certification.¹⁵⁰

WHO CAN CERTIFY?

A certifying agency can be *any* “Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.”¹⁵¹ The regulations include agencies with “criminal investigative jurisdiction in their respective areas of expertise,” and do not require the agency to have prosecutorial ability.¹⁵² This includes, but is “not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.”¹⁵³

HELPFULNESS:

Your client must possess specific facts about the criminal activity and be willing to cooperate with law enforcement. If your client is under 16, incompetent, or incapacitated, her parent, guardian, or next friend (someone other than a guardian who appears in court on the victim’s behalf) can provide the required assistance if she is also eligible for a U-Visa.¹⁵⁴

- If your client has *already reported the crime*, you can approach the officials she worked with to obtain certification.
- If your client *has not reported the crime*, you should begin by having a candid discussion about the benefits and potential risks of contacting law enforcement officials.
 - Consider which officials might be most sympathetic to your cause, and the prevailing attitudes towards immigrants in your jurisdiction.
 - If you determine that there are potential reporting opportunities, consider encouraging your client to report the notario’s criminal activity. Many immigrants may still be wary of engaging with law enforcement.
 - Explain that cooperation with law enforcement is required to obtain the U-Visa, and that the program is designed to help immigrants. Make sure to outline any potential dangers in reporting as well.

¹⁴⁸ 8 C.F.R. § 214.14(a)(12); See an example Appendix C(6) Form I-918 Supplement B.

¹⁴⁹ *Id.* § 214.14(a)(3). A designee is any person in a supervisory role who has been designated by the head of the certifying agency to issue certifications.

¹⁵⁰ See New Classification for Victims of Criminal Activity Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. at 53,020.

¹⁵¹ 8 C.F.R. § 214.14(a)(2).

¹⁵² See *id.* § 214.14(a)(2).

¹⁵³ *Id.* § 214.14(a)(2). On March 15, 2010, the Dep’t of Labor unilaterally announced it would begin exercising certifying authority under the U-Visa regime. See News Release, Dep’t of Labor, U.S. Labor Department to Exercise Authority to Certify Applications for U Visas (Mar. 15, 2010), available at <http://www.dol.gov/opa/media/press/opa/OPA20100312.htm>.

¹⁵⁴ 8 C.F.R. § 214.14(b)(3).

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- Offer to accompany your client to the interview with police or prosecutors. Prep your client on what information will be most relevant to investigating officials.
- In order to remain U-Visa eligible your client cannot refuse or fail to provide reasonably requested information and assistance.¹⁵⁵ It is important to talk to your client and make sure she understands her ongoing commitments under this program.

WHAT SHOULD BE INCLUDED IN YOUR APPLICATION PACKET?

The certifying official does not send information separately; the official should sign the form and return it to you, the lawyer, to include in a completed application. If possible, encourage the official to write examples of the specific and substantive aid your client gave to the investigative or prosecutorial efforts as this will enhance your application.¹⁵⁶ It is always helpful to include supporting documentation, such as police reports, statements, or photos. Be sure to request the certifying official include such information when available. If the official does provide additional documentation, she should write “see attachment” or “see addendum” on Form 1-918 Supplement B.¹⁵⁷ The official’s signature must be original, and “should be signed in a color of ink other than black for verification purposes. Photocopies, faxes, or scans of the certification form cannot be accepted.”¹⁵⁸ Be mindful of the requirement that certification must be from the head of the agency or a designee. While USCIS does not absolutely require verification that the signing official is the agency head, or has been designated by the head to act in this capacity, DHS has issued a Guide that states it is “helpful” to include documentation attesting to this fact.¹⁵⁹

ENGAGING WITH LAW ENFORCEMENT

It is entirely within the discretion of the certifying agency whether and under what circumstances it will issue U-Visa certifications. Many law enforcement officials are supportive of the effort to encourage immigrants who might otherwise be fearful of approaching government officials to come forward, as it enhances community relationships and increases reporting.¹⁶⁰ At the federal level, the government established a multi-agency taskforce in 2011 to combat immigrant consultant fraud.¹⁶¹ Many local and state prosecutors are aware of the problem and actively seek cases to bring against notarios.¹⁶² However, some law enforcement agencies may be unfamiliar with the program, or completely unaware of its existence. You can consider educating your local office on using the U-Visa as a tool to prevent and prosecute crime.

In jurisdictions actively engaging with the U-Visa program, designees likely already exist within law enforcement agencies. However, knowledge of the U-Visa program varies substantially. You may find that local officials are unaware the program even exists. In this case, you should proactively engage with officials and encourage them to begin issuing certification.¹⁶³ Depending on the structure of the agency in question,

¹⁵⁵ See 8 U.S.C. § 1255(m)(1).

¹⁵⁶ In one case USCIS sent a request for evidence (RFE) asking for more information from the certifying agency as the Supplement B sent with the application contained sparse evidence of helpfulness. A second Supplement B with more information was sent. Interview with Alyssa Reed, Attorney, Lichter Immigration (Apr. 11, 2013).

¹⁵⁷ DEPARTMENT OF HOMELAND SECURITY (DHS), U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE 6, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (last visited Apr. 24, 2013).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 9.

¹⁶⁰ See generally INT’L ASSOC. OF CHIEFS OF POLICE, A POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES (2007), available at <http://www.theiacp.org/PublicationsGuides/TopicalIndex/tabid/216/Default.aspx?id=866&v=1.pdf>.

¹⁶¹ See Press Release, USCIS, National Initiative to Combat Immigration Services Scams: DHS, DOJ and FTC Collaborate with State and Local Partners in Unprecedented Effort (June 9, 2011), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD>.

¹⁶² For example, a Montgomery County State’s Attorney has issued a letter asking victims of notario fraud to come forward. See Appendix IIB(4) Montgomery County Invitation for Victims to Come Forward.

¹⁶³ See generally NAT’L IMMIGR. FAMILY VIOLENCE INST., PROMOTING U VISA WITH LOCAL OFFICIALS, available at <http://www.nifvi.org/Promoting%20U%20Visas%20with%20Local%20Officials.pdf> (last visited Apr. 24 2013).

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you might ask officials to seek permission from their department head, or go to the head directly to discuss the program and implementation. Also, note that some jurisdictions still do not recognize defrauded immigrants as victims of crime. If this is the case in your jurisdiction, you may need to advocate on a more fundamental level before approaching law enforcement for certification.

POINTERS ON OUTREACH TO LAW ENFORCEMENT:

- Emphasize that the U-Visa was designed to benefit law enforcement, by enhancing interaction with a vulnerable population that is often the target of criminal activity specifically because immigrants are afraid to come forward and engage law enforcement.
 - Certification improves community relationships, encourages victims to report crimes, and assists in the capture of dangerous individuals.
 - This directly benefits law enforcement efforts in the immigrant community, facilitates arrests and prosecutions, and may deter criminal behavior.
- The language regarding who can certify U-Visa applications is purposefully broad to ensure that multiple agencies can offer relief to victims. Agencies have near-complete discretion to decide whether and under what circumstances they will issue certifications – deciding to become a certifying agency is not subject to any regulation beyond the requirement that the agency possess investigative authority.
 - Emphasize that there is no arduous external process to become a certifying agency. The process is entirely internal. Use the Department of Labor's decision to become a certifying agency as an example.
 - The agency head can issue a simple statement designating any agency official as qualified to certify.
- Law enforcement might express concerns about offering individuals legal status. You can emphasize that certification does not grant status, nor does it allow the person to remain in the United States indefinitely. It is merely a statement to immigration authorities that this person has been or will be helpful in an investigation.
 - USCIS has ultimate authority to decide U-Visa applications.
 - Certification alone will not result in granting legal status, but can still improve community relationships by sending an important message to immigrants.
- There does not have to be a charge against the notario or a conviction. There must simply be evidence of an investigation.
- Certification can be used for cases or investigations that are closed, not just for current cases.
- Certification can be offered if the victim is outside of the United States.

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It is important to be proactive in building a relationship with law enforcement agencies. This can be done by visiting these agencies, calling relevant officers, or sending a letter along with your application explaining the process. If you are reaching out for the first time, try to meet in person, but consider sending a letter explaining the U-Visa program so the law enforcement official may refer to it in advance.¹⁶⁴ Asista, a partnership funded by the Office of Violence Against Women to support immigrant survivors of gender-based violence, published an outreach paper, prepared by the International Institute of the Bay Area and the National Immigrant Family Violence Initiative, which you might want to modify for your jurisdiction.¹⁶⁵ You can consider enlisting the help of sympathetic political officials or other advocates to encourage law enforcement to embrace the U-Visa program. For a creative guide to outreach, please see a paper prepared by the National Immigrant Family Violence Institute.¹⁶⁶ DHS also has a guide for certifying agencies that would be useful to provide to law enforcement.¹⁶⁷

If you have concerns about how to reach out to law enforcement, try to find community organizations or legal service providers that may already have relationships with law enforcement and might be interested in conducting the initial outreach on this issue. You can also put target law enforcement officials in touch with officials in other jurisdictions that are actively engaging with the program. They not only can provide guidance to other officials who are just beginning to certify, but can also ease those who might be suspicious or hesitant about the program.

POTENTIAL LAW ENFORCEMENT AGENCIES TO APPROACH

The U-Visa's statutory language allows a wide variety of government officials to certify. If local officials in your jurisdiction are not receptive, there are a range of alternative certifiers to consider reaching out to on behalf of your client, including judges and state and federal agencies. If you pursue these alternative certifiers, keep in mind that the law enforcement agency must still have jurisdiction to investigate the crime alleged.

Local Law Enforcement

Local law enforcement, including the police department and district attorneys' offices, should always be the first stop for certification. While USCIS reviews applications holistically on a case-by-case basis, officials have explicitly stated a preference for certification from local authorities, stating that "[c]ertifications signed by entities other than police officers or prosecutors may raise questions when the form is adjudicated."¹⁶⁸ Certification by local law enforcement may not always be possible, but you should always consider going through local officials before turning to alternative certifiers.

Some jurisdictions may be aware of the U-Visa but decline to offer certifications, and some may be outright hostile to the program. As an advocate, you must determine the stance of local officials, and consider whether to engage. One potential avenue to assess law enforcement attitudes is to examine the implementation of Secure Communities in the area. Secure Communities is a program implemented by ICE requiring local governments to share arrestee fingerprints with ICE so that federal agencies can identify undocumented immigrants.¹⁶⁹ Some jurisdictions have chosen to limit their implementation of the act. For instance, Washington,

¹⁶⁴ GAIL PENDLETON, WINNING U VISAS: GETTING THE LAW ENFORCEMENT CERTIFICATION 11 (LexisNexis Expert Commentaries, 2008) available at http://www.asistahelp.org/documents/resources/ExpCommPendleton0208_4D9DF98448BDF9.pdf.

¹⁶⁵ INT'L INSTITUTE OF THE BAY AREA & THE NAT'L IMMIGR. FAMILY VIOLENCE INITIATIVE, SAMPLE U VISA REQUEST TO LAW ENFORCEMENT (2009) available at http://www.asistahelp.org/en/access_the_clearinghouse/u_visa/.

¹⁶⁶ NAT'L IMMIG. FAMILY VIOLENCE INST., PROMOTING U VISA WITH LOCAL OFFICIALS, *supra* note 163.

¹⁶⁷ DHS, U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE, *supra* note 157.

¹⁶⁸ NAT'L NETWORK TO END VIOLENCE AGAINST IMMIGR. WOMEN, ADVANCE QUESTIONS/DISCUSSION TOPICS FOR VSC MEETING 10 (Aug. 20, 2009), available at http://www.asistahelp.org/documents/resources/Q__A_w_CIS_809_E66CAB833F44B.pdf [prepared by Gail Pendleton].

¹⁶⁹ ELIZABETH COHEN, CAROLINE VAN WAGONER, & SARA WARD, GEORGETOWN UNIVERSITY LAW CTR., COMMUNITY JUSTICE PROJECT, TO PROTECT AND SERVE: ACCESS TO JUSTICE FOR VICTIMS OF NOTARIO FRAUD IN THE NATION'S CAPITAL 27 (Ayuda ed., 2012), available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice/upload/Ayuda-Final-Report-Stylized-Web-Version.pdf>.

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D.C. only detains undocumented immigrants for 24 hours rather than the requested 48 and refuses to allot funding for compliance with the program. However, not every jurisdiction has been immigrant friendly. Some jurisdictions report particularly high rates of non-criminal deportations and present other troubling patterns that suggest bias.¹⁷⁰ If you detect a particularly stringent application of this program or other similar circumstances, you should be wary of approaching local authorities and instead reach out to judges, or local, state, or federal agencies for certification.

Judges

Judges offer a second potential source for certification, particularly if your client has participated or will participate in criminal or civil proceedings against the notario. Asista has published several motions for certification for non-notario specific cases that you could modify.¹⁷¹ While there is no requirement that your client be involved in court proceedings, or that the judge be presiding over your client's case, you are more likely to be successful if the judge has some point of reference for your request. This certifier could be the judge for the notario's criminal or civil trial, or from small claims court or other administrative adjudications. Approaching a judge may be particularly appropriate if other local authorities are hostile to immigrants and your client's situation is compelling. In a recent case in Texas, McLennan County District Attorney Abel Reyna refused to provide certification for a 13-year-old victim of sexual abuse, stating that he disagreed with the underlying purpose of the program, and that visas shouldn't be offered to victims as "rewards" for helping law enforcement. In that case, the client's attorney successfully appealed to a state judge for certification.¹⁷² However, at least one practitioner has noted that judges are often hesitant to invoke this option while a case is ongoing out of a fear of appearing partial.¹⁷³

When approaching judges, emphasize that Congress intended to empower a wide range of actors to certify, and specifically included judicial officials in the statute. Stress that your client's certification serves the wider interests of justice by ensuring that those who come forward to hold perpetrators accountable do not suffer adverse personal consequences, like deportation, for doing so.

State and Federal Agencies

State and federal agencies with investigative abilities can also certify. Certifying agencies are only required to have investigative abilities; it is not necessary that they be actively prosecuting the case, or that they engage in prosecutions as part of their mandate.¹⁷⁴ Consider the client's particular circumstances to determine which agencies might be appropriate for your purposes. However, be aware that even when the infrastructure is already in place agency certifications can be a lengthy process.

Many cities and states have consumer fraud agencies that could potentially provide certification. The United States Government maintains a directory of state consumer protection agencies that you can use to identify appropriate resources.¹⁷⁵ Some may already actively engage in investigating and prosecuting scams that target immigrants; if that is the case, try to identify the individuals involved in that area and approach these persons directly to discuss your case and the certification procedure.

¹⁷⁰ See RIGHTS WORKING GROUP, *FACES OF RACIAL PROFILING: A REPORT FROM COMMUNITIES ACROSS AMERICA 5-7* (2010), available at <http://www.rightsworkinggroup.org/sites/default/files/ReportText.pdf>; CTR. FOR CONSTITUTIONAL RIGHTS, NAT'L DAY LABORER ASSOC., & CARDOZO LAW SCHOOL, BRIEFING GUIDE TO "SECURE COMMUNITIES"-- ICE'S CONTROVERSIAL IMMIGRATION ENFORCEMENT PROGRAM NEW STATISTICS AND INFORMATION REVEAL DISTURBING TRENDS AND LEAVE CRUCIAL QUESTIONS UNANSWERED 3 (2010), available at <http://ccrjustice.org/files/Secure%20Communities%20Fact%20Sheet%20Briefing%20guide%208-2-2010%20Production.pdf>.

¹⁷¹ See generally *U-Visa*, ASISTA, <http://www.asistahelp.org/index.cfm?nodeID=23546&audienceID=1> (last visited Apr. 25, 2013).

¹⁷² Cindy Culp, *Waco Judge Grants U-Visa to Girl After DA Denied Paperwork*, WACO TRIBUNE, Dec. 14, 2012, available at <http://sinelson.typepad.com/susan-i-nelson-immigrat/2012/12/waco-judge-grants-u-visa-certification-to-girl-after-da-denied-paperwork.html> (last visited Apr. 25, 2013).

¹⁷³ GAIL PENDLETON, *WINNING U VISAS: GETTING THE LAW ENFORCEMENT CERTIFICATION*, *supra* note 164, at 4.

¹⁷⁴ See *id.* at 6-7.

¹⁷⁵ For an Index of state consumer protection agencies, visit: <http://www.usa.gov/directory/stateconsumer/index.shtml> (last visited Apr. 17, 2013).

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If regional authorities are hostile to immigrants, federal agencies might offer an alternative. The statute specifically includes the federal Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL); however, both only certify in the context of labor violations. The Federal Trade Commission (FTC) has investigative authority over fraud, but it does not currently have an official designated to certify for U-Visas. However, the agency is actively engaged on the notario fraud issue,¹⁷⁶ and could potentially begin offering certification in the future. If the unique circumstances of your case are particularly compelling, and you do not have any local alternatives, you can present this information to FTC authorities. Consider partnering with other practitioners or organizations that have worked with the FTC to advocate for certification procedures.

V. APPLICATION PROCEDURE

USCIS has sole jurisdiction over all petitions for U nonimmigrant status. Petitions must be submitted by mail to the Vermont Service Center (a USCIS office). There is no filing fee for this application regardless of income; however, fees may be associated with other forms (such as inadmissibility waivers). Some clients may be eligible for fee waivers associated with these additional forms. Many experienced practitioners will already be familiar with this process and may wish to skip to the conclusion of this section.

If your client has a final order of removal, deportation, or exclusion, she is not precluded from filing a petition for U nonimmigrant status directly with USCIS nor is she precluded from U-Visa approval, but the filing has no effect on ICE's authority to execute a final order.¹⁷⁷ If such an order exists, you should consider filing a request for a stay of removal.¹⁷⁸ If your client is in removal proceedings, the DHS Office of Chief Counsel will often agree to stay proceedings until after the resolution of a U-Visa application. In some cases, ICE trial attorneys may even agree to terminate proceedings altogether.¹⁷⁹ However, be sure to assess the attitudes of decision-makers in your jurisdiction, particularly if your client has a criminal conviction or other factors that might place her in priority removal. If a client is deported while awaiting U-Visa approval, there is the possibility of parole to allow a deported immigrant back into the U.S. when the visa is granted.¹⁸⁰

These steps do not necessarily have to be completed in this order, but each component is needed for a successful U-Visa application.¹⁸¹

STEP 1 – APPLICATION FORM

Complete the application form – Form I-918 “Petition for U Nonimmigrant Status.” USCIS is very particular about how the I-918 should be filled out and submitted so be certain to read instructions USCIS supplies to aid in filling out the form.¹⁸²

STEP 2 – DERIVATIVE APPLICANTS¹⁸³

If there are derivative applicants (family members or spouses), fill out Supplement A for each family member.

- **Qualifying:** If the applicant is under 21, spouse, siblings, minor children, and parents are permissible derivative applicants.¹⁸⁴ If your client is over 21, then her spouse and minor children are permissible

¹⁷⁶ See e.g., *Scams Against Immigrants*, FEDERAL TRADE COMMISSION, <http://www.consumer.gov/articles/1017-scams-against-immigrants> (last visited Apr. 17, 2013).

¹⁷⁷ 8 C.F.R. § 214.14(c)(1)(ii).

¹⁷⁸ You may file a stay of removal pursuant to 8 C.F.R. § 241.6(a) and 8 C.F.R. § 1241.6(a). Fill out Form I-246 “Application for Stay of Removal.”

¹⁷⁹ See Section II: (A) Prosecutorial Discretion of this Manual.

¹⁸⁰ Espinoza & Choi, *supra* note 112, at 650-51.

¹⁸¹ For more information see DHS, USCIS, *Instructions for Form I-918, Petition for U Nonimmigrant Status*, OMB No. 1615-0104, available at <http://www.uscis.gov/files/form/i-918instr.pdf> (expires Jan. 31, 2016).

¹⁸² *Id.* at 5.

¹⁸³ These applications can be filed at the same time as the primary application or subsequently. See SALLY KINOSHITA, SUSAN BOWYER, JESSICA FARB & CATHERINE SEITZ, *IMMIGR. LEGAL RES. CTR., THE U-VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME*, 7-2 (3d ed. 2012).

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derivative applicants.¹⁸⁵ For a spouse to be included as a derivative applicant she must have been married to the primary applicant before the time of filing and they must have a valid marriage during the application process.¹⁸⁶

- **Evidence:** Provide evidence of the qualifying relationship and the derivative applicant's admissibility into the United States. (if inadmissible, see Step 3)
- **Work Authorization:** Consider applying for work authorization.

STEP 3 – WAIVER OF INADMISSIBILITY FORM (IF APPLICABLE)

If the applicant has previously committed a crime or entered the U.S. without inspection by immigration officials, fill out a waiver of inadmissibility form – Form I-192.¹⁸⁷ To be successful, you must show that it is within the national or public interest for your client to stay in the United States. It is commonly believed among advocates that the best practice is to admit all potential grounds for inadmissibility and seek a waiver for all of them, because if ICE discovers your client's inadmissibility later in the process it will greatly affect your client's eligibility for the U-Visa and for future immigration benefits.¹⁸⁸ Inadmissibility will *never* be waived for members of the Nazi party and perpetrators of genocide, torture, or extrajudicial killing.¹⁸⁹

STEP 4 – FEE WAIVER FORM (IF APPLICABLE)

Unlike the other forms in a U-Visa application, waivers for inadmissibility include a fee. If the applicant does not have sufficient funds, file a fee waiver form – Form I-912.¹⁹⁰

STEP 5 – CERTIFICATION FORM

Attach the signed Supplement B Form from a certifying government entity. NOTE: the Supplement B is void *after six months* of certification so your client's U-Visa application *must* be submitted within that time.

Certification is not considered conclusive evidence that the petitioner meets the eligibility requirements;¹⁹¹ so you must complete all subsequent steps. *Note that the six-month timer starts ticking once the Supplement B is signed by the certifying agency and it may take extra time for your client to receive the certification from law enforcement; therefore, plan accordingly.*

STEP 6 – PERSONAL STATEMENT

Assist the applicant in writing a personal statement¹⁹² about what happened to her. This statement must be in the petitioner's own words. Because there is no court hearing or interview for U-Visa applicants, this is the only time the applicant will be able to tell her own story. The statement must include persuasive reasons as to why the applicant qualifies for a U-Visa, including: the nature of the criminal activity; the who, what, when, and where of the criminal activity; surrounding events; how the criminal activity came to be investigated or prosecuted; and what substantial physical and/or mental harm the victim(s) suffered as a result.¹⁹³ Try to paint a detailed and humanizing portrait of your client to appeal to the official reviewing the application.

¹⁸⁴ 8 U.S.C. § 1101(a)(15)(U)(ii)(I). Note that if your applicant is under 21 yet is married, his or her parents are not eligible as derivative applicants. *Id.* § 1101(a)(15)(U)(ii)(II).

¹⁸⁵ *Id.* § 1101(a)(15)(U)(ii)(II).

¹⁸⁶ See 8 C.F.R. § 214.14(f)(4).

¹⁸⁷ See 8 C.F.R. § 214.14(c)(2)(iv); see also 8 U.S.C. § 1182 for grounds for inadmissibility.

¹⁸⁸ "[I]t's better to acknowledge and explain as much as possible to not appear evasive. It's better to include and explain as much as possible upfront so your client will appear more credible. Err on the side of caution and disclose upfront." *Questions for CIS re: U-Visa 4* (Nov., 2007), available at http://www.asistahelp.org/documents/resources/CIS_Q_A_on_Us_2007_9EB4BC84ED006.doc.

¹⁸⁹ 8 U.S.C. § 1182(d)(14).

¹⁹⁰ Waivers currently cost \$585. See USCIS, I-192, *Application for Advance Permission to Enter as Nonimmigrant*, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a6855d010VgnVCM10000048f3d6a1RCRD> [last updated May 3, 2013].

¹⁹¹ New Classification for Victims of Criminal Activity Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,024.

¹⁹² 8 C.F.R. § 214.14(c)(2)(iii). See Appendix Section: IIB(1) Sample U-Visa Request for Notario Fraud Victim.

¹⁹³ New Classification for Victims of Criminal Activity Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,024-25.

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STEP 7 – CORROBORATING EVIDENCE

Collect additional documents that corroborate your client's case.

- **Evidence to prove that your client is a victim of a qualifying criminal activity include:** police reports, trial transcripts, court records, and news articles describing the crime, as well as affidavits from your client and other witnesses.
- **Evidence to establish the nature of the abuse suffered include:** letters from friends and family, pictures associated with the crime, restraining orders, medical and mental health reports, and affidavits from police, judges, school officials, medical personnel, clergy, and social workers.
- **Evidence to establish that your client has knowledge of the crime include:** reports and affidavits from police and court officials. If your client is under 16, or is incapacitated or incompetent, give evidence that the parent, guardian, or next friend has knowledge. In this case you must also provide evidence of the qualifying relationship between your client and the individual providing the information and that the individual providing the information is otherwise independently eligible for U nonimmigrant status.
- **Evidence to establish your client has provided or is providing the necessary assistance to law enforcement include:** trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits of other witnesses or officials.
- **Evidence to establish that the criminal activity qualifies under the U-Visa regime includes:** a copy of the state statutory provision(s) showing the elements of the offense. If you are trying to prove “substantially similar” criminal activity, include factual information about the crime demonstrating that it is similar to one or more of the enumerated crimes.¹⁹⁴ Include the text of the substantially similar crime and explain the similarities.
- **Identifying documents:** copy and attach any identification your client and derivative applicants may have such as birth certificates and passports.

STEP 8 – CHARACTER EVIDENCE

This evidence can be compiled for any U-Visa application, but is necessary when filing for a waiver of inadmissibility. If you are filing this waiver, you must compile additional evidence that your client is an upstanding citizen who deserves grace for commission of the previous crime or uninspected entry. USCIS will waive grounds for inadmissibility if it determines that it is in the public interest to do so.¹⁹⁵ Common grounds of inadmissibility include: immigration violations, such as entering the United States without permission; failing to attend removal proceedings; misrepresentation or fraud for the purpose of obtaining an immigration benefit; alien smuggling; civil document fraud; prior removal orders; unlawful presence; communicable diseases; physical or mental disorders that may pose a threat; drug abuse or addiction; and criminal acts or convictions.¹⁹⁶

If your client was the victim of a notario who misrepresented facts in an immigration application, you may have to prove to USCIS that your client was the victim of fraud, not the perpetrator. This can be done by including documentation of reports to law enforcement.¹⁹⁷ Additional evidence could include affidavits from family, church or school officials, city council members, or any other individual who can attest to your client's good character. Remember that you will be sending your application to an officer working in a cubicle in Vermont reviewing hundreds if not thousands of applications. Your client's application needs to stand out.

¹⁹⁴ See *id.* at 53,018.

¹⁹⁵ 8 C.F.R. § 212.17(b)(1).

¹⁹⁶ See 8 U.S.C. § 1182.

¹⁹⁷ See Section III: Complaints and Referrals in this Manual.

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Think about who may be reading the application and what would peak that person's interest. For example, consider having children of the applicant write letters or draw pictures.¹⁹⁸

STEP 9 – COVER LETTER

Attach a cover letter describing what your client is applying for and her identifying information. A sample letter is available in the Appendix.¹⁹⁹ Unlike the personal statement, this does not need to contain specific information about the injury or crime, though a brief and strong statement of your client's claim may be helpful to the adjudicating official.

STEP 10 – ATTACH A G-28: NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR ACCREDITED REPRESENTATIVE

As a representative of the immigrant filing for a U-Visa, you will need to fill out a G-28.²⁰⁰

STEP 11 - SEND APPLICATION FORMS AND ACCOMPANYING DOCUMENTS

Send the forms and documents to the address below. Consider placing the application and evidence in two envelopes and clearly marking them as U-Visa applications to ensure that, if the outer envelope gets damaged or opened, the distributors know to whom it should be sent.²⁰¹

U.S. Citizenship and Immigration Services, Vermont Service Center,

Attn: VAWA Unit,

75 Lower Welden St.

St. Albans, VT 05479-0001

BIOMETRIC APPOINTMENTS

Once USCIS has received your client's application, the agency will ask her to submit to biometric capture (photographs and fingerprints) and will notify your client of the proper time and place to appear to complete the biometric capture appointment.²⁰²

¹⁹⁸ Presentation by Debi Sanders, Staff Attorney, Catholic Charities, at a U-Visa and VAWA Training in Washington, D.C. (Feb. 28, 2013).

¹⁹⁹ See Appendix Section IIA for Sample PD Letter.

²⁰⁰ This form can be found at: <http://www.uscis.gov/files/form/g-28.pdf>.

²⁰¹ Presentation by Debi Sanders, *supra* note 198.

²⁰² 8 C.F.R. § 214.14(c)(3).

VI. CONCLUSION

The U-Visa is an excellent option for those who qualify. However, it will be unavailable for the majority of notario fraud victims. Make sure to manage your client's expectations and inform your client that she might not obtain U nonimmigrant status. If she is not already in proceedings, carefully consider the potential costs and benefits of bringing her immigration status to the attention of law enforcement and immigration authorities. As notario fraud and its dire effects become more apparent to government officials, USCIS may become more persuaded by the very real harms. This transformation can only occur if staunch advocates present egregious cases in a persuasive and compelling manner.

The U-Visa is not the only form of possible substantive relief for victims of notario fraud. If the notario prevented your client from receiving legal status for which she was eligible you should weigh the pros and cons of pursuing the U-Visa as opposed to a motion to reopen proceedings, which is described in the next section.²⁰³ Either avenue may result in attaining legal status for your client. Both require creative and effective lawyering to inform decision makers. Practitioners will be instrumental in altering the legal landscape to effect substantive change and ensure substantial justice for victims of notario fraud.

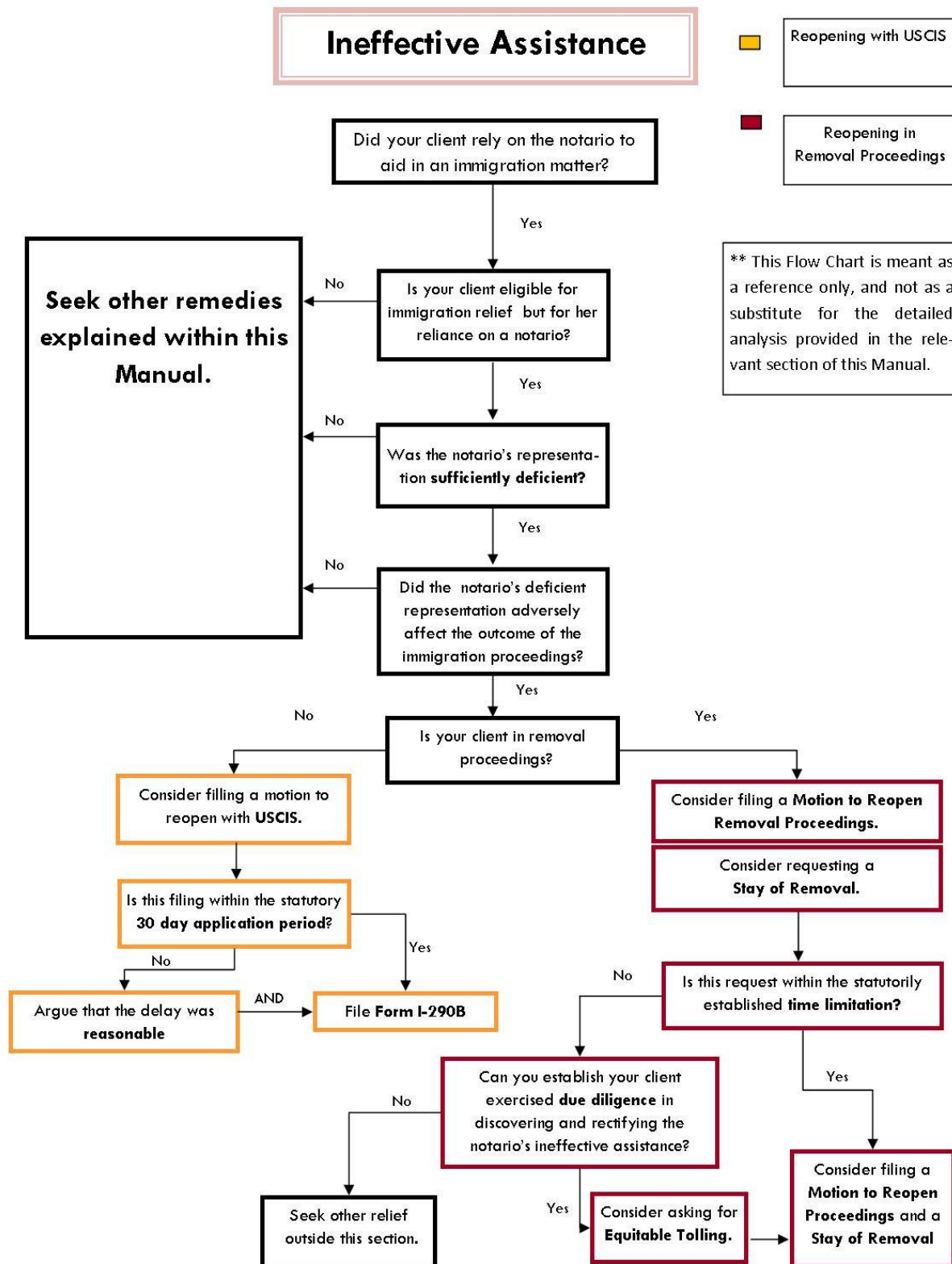
SHARE YOUR SUCCESS!

Obtaining U-Visas for notario fraud victims is a novel concept and an area of the law that is still being developed. It is extremely helpful for immigration practitioners if you broadcast successful cases to the greater practitioner community. Submit your claims to the ABA website and to the notario fraud listserv.²⁰⁴

²⁰³ See Section II: (C) Ineffective Assistance of this Manual.

²⁰⁴ See "Building the Network" in the Introduction to this Manual.

SECTION II: (C) MOTIONS TO REOPEN DUE TO THE NOTARIO'S INEFFECTIVE ASSISTANCE



I. INTRODUCTION

In a nutshell→ Notarios generally do not possess the necessary training to adequately guide an individual through the immigration process. Eligible applicants for legal status have been deported or denied an adjustment of status on the basis of a notario's error. USCIS and federal courts have begun to recognize the harmful effects resulting from the immigrant community's engagement with notarios who exploit immigrants' limited knowledge of the legal system.²⁰⁵ These harms are directly due to reliance on a notario for legal representation, similar to a client's reliance on a licensed attorney. The BIA and most circuit courts have fashioned a remedy, reopening an immigrants removal proceedings or visa applications, based upon the concept of ineffective assistance of counsel.

What is it?→ If granted a motion to reopen, your client will be given another chance to attain lawful status. This remedy is used in two circumstances: (1) in applications USCIS has denied and (2) in reopening removal proceedings.

What are the Requirements?→ If, but for the notario's ineffective assistance, your client was eligible for lawful status, you may request reopening. You must show that your client relied on the notario for competent legal services and was diligent in rectifying her undocumented status.

Reopening removal proceedings and adverse USCIS decisions due to the ineffective assistance of a notario is a relatively new addition to the arsenal of remedies available to your client. The Ninth Circuit has been particularly amenable to this line of argument, and other circuits are beginning to follow suit. Although there is no constitutionally-recognized right to appointed representation in immigration proceedings,²⁰⁶ the BIA recognizes the claim of ineffective assistance of counsel as a basis for reopening removal proceedings.²⁰⁷ Both the BIA and Circuit courts have extended this protection, in many circumstances, to non-attorney representation. Courts have permitted reopening an immigrant's case where the immigrant established that she relied on a notario who provided ineffective assistance and prevented the immigrant from adequately bringing her petition for immigration relief. Making motions based on this argument could mean attaining lawful status for your client.

Reopening based on the ineffective assistance of a non-attorney is a relatively uncharted path and BIA case law is still unsettled as to which requirements should be applied in these cases. However, case law has emerged that directly supports the argument that ineffective non-attorney representation warrants reopening in certain circumstances.²⁰⁸

The legal landscape is ripe to push for greater acknowledgment of this form of relief. As the BIA itself opened the door to claims of ineffective representation against non-attorneys by permitting non-attorney accredited

²⁰⁵ USCIS and DOJ describe notario fraud on their websites and explicitly state it is a problem. *Common Scams*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.e8b24a3cec33ca34c48bfc10526e0aa0/?vgnextoid=148522800d9bb210VgnVCM100000082ca60aRCRD&vgnextchannel=7a5ca25b1279f210VgnVCM100000082ca60aRCRD> (last updated Sept. 21, 2011); *Consumer Protection Branch*, DOJ, <http://www.justice.gov/civil/cpb/notario.html> (this branch was constituted on June 9, 2011).

²⁰⁶ See *Avagyan v. Holder*, 646 F.3d 672, 676-77 (9th Cir. 2011) (quoting *Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005) (holding that immigration detainees have no right to counsel while being held for a civil matter)).

²⁰⁷ See *Matter of Lozada*, 19 I. & N. Dec. 637, 639 (B.I.A. 1988) (the court established procedural requirements for bringing a motion based on ineffective assistance).

²⁰⁸ See e.g., *Fajardo v. I.N.S.*, 300 F.3d 1018 (9th Cir. 2002) (holding that non-attorney representation warrants a motion to reopen); *Rodriguez-Lariz v. I.N.S.*, 282 F.3d 1218 (9th Cir. 2002) (finding non-attorney's representation of immigrant petitioners ineffective without discussing his status as a non-attorney).

SECTION II: (C) Ineffective Assistance

representatives to represent immigrants in immigration courts,²⁰⁹ it is important to advocate for the consistent enforcement of this rule to *all* non-attorneys.

WHAT DOES A NOTARIO'S INEFFECTIVE ASSISTANCE LOOK LIKE?

A notario's fraud or deficient assistance may manifest in various ways; however, common scenarios include: filing untimely documents;²¹⁰ filing incorrect applications;²¹¹ filing inadequate applications for asylum, Temporary Permanent Status (TPS) or other forms of relief;²¹² and misinforming the immigrant of the time, date, or place of hearing, resulting in an *in absentia* ruling.²¹³ While this list is not all-encompassing, it represents the most common manifestations of a notario's fraud or incompetence. If the facts of your client's story raise these or similar issues, you should consider filing a motion to reopen based on ineffective assistance as courts have granted motions under these circumstances. Indeed, anytime the failure to grant your client relief can be tied to the acts of a notario, this remedy should be considered.

WHY IS REOPENING DUE TO INEFFECTIVE ASSISTANCE A REMEDY?

Just as an unscrupulous or incompetent licensed attorneys' ineffective representation can warrant reopening removal proceedings against a client, so can a notario's ineffective assistance. As mentioned above, this concept is founded on the notion that a notario fraud victim relies upon a notario for accurate legal advice in the same way a claimant would rely on a licensed practitioner or accredited representative. This reasonable reliance is born of the fact that victims of notario fraud believe the notario is qualified to represent them in immigration proceedings. Because of this, judges and policy-makers have recognized that penalizing an immigrant for this reasonable reliance is unfair.²¹⁴

Ineffective assistance of counsel in immigration law is similar to criminal ineffective assistance claims, founded in the Sixth Amendment Right to Counsel. However, as there is no constitutional right to counsel in immigration proceedings, judges have had to be more creative in determining how to extrapolate a valid argument for ineffective assistance of counsel in the immigration context. Implicitly recognizing that immigrants have an important liberty interest in not being deported, judicial opinions ground viable arguments of ineffective assistance in the Fifth Amendment Right to a Fair Trial, finding that "ineffective assistance of counsel in a deportation proceeding is a denial of Due Process under the Fifth Amendment if the proceeding was so fundamentally unfair that the [immigrant] was prevented from reasonably presenting his case."²¹⁵

Although the foundation and application of ineffective assistance in immigration law are slightly different than those found in criminal law, the underlying doctrinal bases are similar:

1. An individual has relied upon a representative.
2. This reliance has robbed the individual of the opportunity to present his or her case. (In immigration law, this means you must show that the immigrant would otherwise have been eligible for the underlying immigration relief that she seeks).
3. The remedy in both situations is ultimately a *de novo* proceeding: a new hearing, case, or consideration of a motion that is not prejudiced by the previous proceedings.

²⁰⁹ See 8 C.F.R. § 292.1(a).

²¹⁰ See *Rodriguez-Lariz*, 282 F.3d 1218.

²¹¹ See *Lopez v. I.N.S.*, 184 F.3d 1097 (9th Cir. 1999).

²¹² See *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) (granting reopening where counsel failed to include critical evidence in an asylum application); *Hernandez Lucena v. Gonzales*, 215 F. App'x 627 (9th Cir. 2006) (granting reopening where notario filed an inadequate application for cancellation of removal).

²¹³ See *Aris*, 517 F.3d 595.

²¹⁴ See *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (stating that it would be unfair to penalize immigrants for reasonably relying on counsel even where counsel was not an attorney).

²¹⁵ *Lopez v. I.N.S.*, 775 F.2d 1015, 1017 (9th Cir.1985).

SECTION II: (C) Ineffective Assistance

These commonsense doctrines of fairness are powerful equitable arguments in your client's favor and can be utilized to create flexible and innovative case theories. However, there are differences between the arguments one would use in the criminal context versus the immigration context:

1. Fifth versus Sixth Amendment – No right to counsel exists for non-citizens in removal proceedings.²¹⁶ The foundation for ineffective assistance of counsel in immigration proceedings is housed in the Fifth Amendment Right to Due Process rather than the Sixth Amendment Right to Counsel.
2. Standard of Care/Establishing Representation – A notario is not a licensed attorney; therefore, unlike ineffective assistance in criminal law, it is not presumed that a notario owed the immigrant a duty of care, or that the immigrant relied on the notario. You will need to establish, through persuasive arguments and corroborating evidence, that the notario put himself forward as competent to represent your client in legal proceedings, and that your client reasonably relied upon this claim, thus invoking a duty of care.

The Supreme Court has yet to provide direct guidance on the requirements to prove ineffective assistance in immigration matters. *Strickland v. Washington*,²¹⁷ the landmark case for ineffective assistance of counsel in criminal trials, has no immigration law corollary. This provides a unique opportunity for practitioners engaged in these claims to shape and mold the approach to ineffective assistance in immigration matters.

Below we outline two different points along an immigrant's journey towards lawful status where a motion to reopen on the basis of ineffective assistance could be used. The first occurs after USCIS has rendered an adverse decision, denying your client lawful status. The second occurs after your client has been placed in removal proceedings. Although the procedural requirements for motions to reopen removal proceedings are more stringent than those for motions to reopen USCIS decisions, be aware that arguments you should put forward in a USCIS application, as well as the evidence to support them, are very similar to those required for a motion to reopen removal proceedings in court.

Because your client is subject to removal once an order has been issued, you should petition for a stay of removal concurrent with a motion to reopen removal proceedings to prevent your client's deportation while the motion is pending. This section ends with a delineation of the elements you must prove to successfully petition for a stay of removal. As you proceed through this section, keep in mind the equitable arguments and constitutional underpinnings that serve as the jurisprudential foundations for these motions as they will guide you in crafting effective and persuasive arguments.

II. REOPENING USCIS ADVERSE DECISIONS RESULTING FROM INEFFECTIVE ASSISTANCE

USCIS will consider reopening any type of adverse decision when new facts arise that may have affected the determination.²¹⁸ Although ineffective assistance is not expressly listed as a reason for reopening a decision by USCIS, practitioners have made successful arguments for reopening when reliance on a notario resulted in a denial by USCIS of legal status.²¹⁹ Explore with your client whether and how a notario inaccurately advised her. If you discover through interviews with your client that she was eligible for immigration relief but USCIS

²¹⁶ *Hernandez v. Mukasey*, 524 F.3d 1014, 1017-18 (9th Cir.2008) (finding that, although *Strickland v. Washington* does not directly apply, the BIA has statutorily recognized that immigrants are permitted counsel during removal, and that the right to effective assistance is derived from Fifth Amendment Due Process).

²¹⁷ *Strickland v. Washington*, 466 U.S. 668 (1984).

²¹⁸ See 8 C.F.R. § 103.5(a)(2).

²¹⁹ Telephone Interview with Elizabeth Kohler Maya, Attorney, Bromberg, Kohler Maya & Maschler, PLLC (Apr. 9, 2013).

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denied an application due to some inadequate or unscrupulous action of the notario, you can request that the agency reopen the decision. For example, if USCIS denied your client's request for temporary protected status (TPS) because the notario failed to include adequate information in your client's application, you may be able to request that USCIS reopen its determination to consider these newly discovered facts. The Appendix contains a sample motion to reopen a USCIS decision due to ineffective assistance, which can serve as helpful guidance in constructing arguments.²²⁰

REQUIREMENTS FOR FILING FOR REOPENING WITH USCIS

Federal regulations govern the procedure and requirements for filing a motion to reopen USCIS determinations.²²¹ You will need to submit the motion by filing Form I-290B.²²² You should also attach an affidavit from your client explaining the nature of the fraud and/or ineffective representation, its effects on your client's immigration claim, why your client did not know of the fraud or inaccuracy before the filing, and what she did after discovering the fraud. You should also attach a brief to clarify any points in your client's affidavit and reiterate her factual claims in light of the relevant law. Your motion and the accompanying brief and documents must be:

- (A) In writing and signed by the affected party or the attorney or representative of record;
- (B) Accompanied by a nonrefundable fee as set forth in § 103.7;
- (C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;
- (D) Addressed to the official having jurisdiction; and
- (E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.²²³

Be sure to file the motion within 30 days of the USCIS adverse decision or else explain why "delay was reasonable and beyond the control of the applicant."²²⁴ If your client did not realize that the notario rendered her initial application inadequate or inaccurate until after the 30-day deadline, this may qualify as a reasonable delay.²²⁵ Similarly, the notario might have filed the immigrant's application for legal status late, or not filed at all, which you can also argue was outside of your client's control.

²²⁰ See Appendix Section II(C)1 Sample Motion to Reopen with USCIS.

²²¹ See 8 C.F.R. § 103.5.

²²² Form I-290B is available at <http://www.uscis.gov/files/form/i-290b.pdf>. Note that the filing fee is currently \$630. However, you may request a fee waiver pursuant to 8 C.F.R. § 103.7(c).

²²³ 8 C.F.R. § 103.5(a)(1)(iii).

²²⁴ *Id.* § 103.5(a)(1)(i).

²²⁵ See *infra* Equitable Tolling of this section p. 71 for more information.

If you are dealing with an application for **Temporary Protected Status** and your client did not refile based on the notario's failure to inform her that she needed to do so, you can argue under a provision that allows for late filing with a showing of good cause.²²⁶ Make sure to cite the 1991 Memorandum by then-INS Commissioner Gene McNary, which states that government officials "should be generous and give the benefit of any doubt to the [immigrant]. An [immigrant's] TPS should be withdrawn only when the [immigrant] willfully fails to re-register. If an [immigrant] contends he or she did not know or forgot about re-registration, TPS should not be withdrawn."²²⁷

Pointers

- Attempting to abide by the evidentiary and procedural standards required for reopening removal proceedings will enhance your application. Review the requirements described below in "Reopening Removal Proceedings" for a more in-depth view of facts and information you should include in your brief to USCIS.
- Provide evidence that your client showed due diligence in attempting to discover the inadequate or inaccurate request the notario filed. Explain very specifically your client's actions to seek out new counsel and rectify the notario's inaccurate or fraudulent representation.
- USCIS appears to give greater weight to claims of ineffective assistance committed by notorious notarios, those who have many complaints lodged against them, or who have committed fraud on a mass scale.²²⁸ If possible, include information regarding patterns of unscrupulous behavior such as proof of criminal or civil complaints, or Unlicensed Practice of the Law (UPL) complaints that have been brought against the notario involved.
- Explain the specific consequences your client will suffer if his or her motion is denied.

III. REOPENING REMOVAL PROCEEDINGS DUE TO INEFFECTIVE ASSISTANCE

INTRODUCTION

While the arguments for reopening removal proceedings are very similar to those detailed above, there is significant case law on motions to reopen proceedings in immigration court due to ineffective assistance that describes the more rigorous elements you must prove to present a *prima facie* case. This line of argument has been most extensively developed in the Ninth Circuit,²²⁹ but many other circuits have granted motions to reopen when a notario provided ineffective assistance.²³⁰ Not every court will be amenable to this request,

²²⁶ *Temporary Protected Status*, USCIS,

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD#Maintaining%20TPS> (last visited Apr. 25, 2013).

²²⁷ See INS Memorandum Discusses Withdrawal of TPS for Failure to Reregister, 68 No. 32 Interpreter Releases 1083 (Aug. 26, 1991); Memorandum by former INS Commissioner Gene McNary (1991) in Appendix D2 Determination of Timely Reregistration for TPS.

²²⁸ Telephone Interview with Nancy Vizer, Attorney, Nancy M. Vizer, P.C. (Apr. 18, 2013).

²²⁹ See generally, *Viridiana v. Holder*, 646 F.3d 1230 (9th Cir. 2011) (fraudulent deceit by a non-attorney can constitute an 'extraordinary circumstance' that excuses an otherwise untimely asylum application even when the immigrant knew the representative was not an attorney); *Albillo-De Leon v. Gonzales*, 410 F.3d 1090 (9th Cir. 2005) (where a nonattorney engaged in fraudulent activity resulting in ineffective assistance in an immigration application the court may equitably toll the statute of limitations); *Lopez v. I.N.S.*, 184 F.3d 1097 (9th Cir. 1999) ("the statute of limitations to reopen an order of deportation is equitably tolled where the alien's late petition is the result of the deceptive actions by a notary posing as an attorney"). *Fajardo v. I.N.S.*, 300 F.3d 1018 (9th Cir. 2002) (holding an IJS decision not to reopen a case simply because the counsel was given by a non-attorney was clearly erroneous).

²³⁰ See generally, *Smartsiev v. Holder*, 349 F. App'x 586 (2d 2009) (although the court denied the motion to reopen, it did so not because the ineffective assistance was provided by a non-attorney but because the petitioner made no attempt to comply with *Lozada*); *Borges v. Gonzales*, 402 F.3d 398, 408 (3d Cir. 2005) (immigration consulting fraud is "by definition 'ineffective assistance of counsel'").

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but when an immigrant has relied on a notario, believing the notario was capable of representing her in immigration court, the BIA largely has applied the same criteria as it does in cases involving licensed attorneys.²³¹ Furthermore, the more notario fraud is brought to the attention of judges as the reason for adverse decisions in immigration proceedings, the more common this remedy is likely to become. This section will provide you with the necessary tools and considerations to make strong arguments for your client in favor of reopening, and to aid you in efforts to move case law in a favorable direction.

The appropriate avenue to raise ineffective assistance claims in removal proceedings is in a motion to reopen (as opposed to a motion for reconsideration)²³² because you are asking for a fresh determination based on newly discovered facts that came to light after the hearing, namely the notario's fraudulent or inept assistance.²³³ You can only file one motion to reopen.²³⁴ Note, however, that if the notario previously filed frivolous motions to reopen some circuits may toll the numerical limitation.²³⁵ A motion to reopen will not be granted unless the Immigration Judge is satisfied that the new evidence offered is material, was not available, and could not have been discovered or presented at the previous hearing.²³⁶

As noted above, motions to reopen in immigration proceedings are generally based on the Fifth Amendment's Due Process Right to a Fair Hearing.²³⁷ Case law has determined that Fifth Amendment violations occur if proceedings were so "fundamentally unfair that the [immigrant] was prevented from reasonably presenting his case" and this resulted in prejudicial proceedings.²³⁸ An easily discernible example of fundamental unfairness is an *in absentia* removal order resulting from a notario's failure to notify his victim of the hearing, as the immigrant was entirely prevented from presenting her case.²³⁹

PRESENTING A PRIMA FACIE CASE

In order to present a successful motion, you must show:

1. Your client reasonably relied on the notario to the client's detriment;
2. That the notario's representation was sufficiently deficient, falling below the reasonable standard for a licensed practitioner in a similar circumstance;
3. Your client would have been eligible for the underlying relief and thus the outcome of her case would likely have been different but for the notario's assistance.

²³¹ In at least one unpublished decision the BIA has applied the same procedural requirements for reopening to cases where counsel was a non-attorney as it does to cases involving licensed attorneys. See e.g., *In re Orellana-Gutierrez*, 2011 WL 891899 (BIA 2011) (even though the former counsel was not an attorney, the immigrant was required to follow the same procedural requirements of a motion to reopen for ineffective assistance of an attorney). However, note that the BIA generally requires the immigrant believes that the notario was an attorney or accredited representative. See e.g., *In re Orellana-Gutierrez*, 2011 WL 891899 (affirming previous reasoning by BIA to deny motion to reopen because petitioner did not comply with *Lozada* to establish ineffective assistance of his non-attorney representatives); *In re Lee*, 2010 WL 4509785, *1 (BIA 2010) (citing *Monjaraz-Munoz v. I.N.S.*, 327 F.3d 892, 897 (9th Cir. 2003)).

²³² See *Iturrizarria v. INS*, 321 F.3d 889, 891 (9th Cir. 2003) ("Where the facts surrounding allegedly ineffective representation by counsel were unavailable to the petitioner at an earlier stage of the administrative process, motions before the BIA based on claims of ineffective assistance of counsel are properly deemed motions to reopen").

²³³ See 8 U.S.C. § 1229a(c)(7)(B).

²³⁴ 8 C.F.R. § 1003.23(b)(1)

²³⁵ The Ninth and Second circuits have explicitly ruled that, just as the time limit for motions to reopen may be tolled due to ineffective assistance, so too can the numerical limitation. See *Valera v. I.N.S.*, 204 F.3d 1237, 1240 (9th Cir. 2000) ("The rationale underlying equitable tolling of the statute of limitation also justifies waiving § 3.2(c)(2)'s numerical limit on motions to reopen in cases of fraud. Tolling the statute of limitation without waiving the numerical limit would serve no purpose where, as here, the fraud perpetrated on the petitioner included the filing of a worthless motion to reopen."); *Iavorski v. I.N.S.*, 232 F.3d 124, 132-33 (2d Cir. 2000) (holding that both time and number limitations on motions to reopen are subject to equitable tolling).

²³⁶ 8 C.F.R. § 1003.23(b)(3).

²³⁷ See *Matter of Lozada*, 19 I. & N. Dec. 637, 638 (BIA 1988) This is still the leading BIA decision governing ineffective assistance per *Compean II*, 25 I. & N. Dec. 1 (A.G. 2009). However, the Government continues to contend that immigrants do not have a Due Process right to effective assistance of counsel in removal proceedings and three circuits – the Fourth, Seventh and Eighth – agree, leaving it to the BIA's discretion to determine whether ineffective assistance should provide a reason for reopening. All other circuits disagree. See Walter Gindin, Note, (*Potentially*) *Resolving the Ever-Present Debate Over Whether Noncitizens in Removal Proceedings Have a Due Process Right to Effective Assistance of Counsel*, 96 Iowa L. Rev. 669, 682-83 (2011).

²³⁸ *Matter of Lozada*, 19 I. & N. Dec. at 638.

²³⁹ See *Hernandez-Lucena v. Gonzales*, 215 F. App'x 627, 629-30 (9th Cir. 2006) (citing *In re Rivera-Claros*, 21 I. & N. Dec. 599, 603 n. 1 (BIA 1996)); *Lo v. Ashcroft*, 341 F.3d 934, 939 fn. 6 (9th Cir.2003)).

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Additionally, the BIA and circuit courts almost always require that you meet the procedural requirements established by the BIA in *Matter of Lozada*²⁴⁰ and show that your client was ignorant of the notario's fraud or ineffective assistance.

File your motion to reopen within the allotted time period, which may vary depending on the type of proceeding. If the motion is not filed by the deadline because your client only recently became aware of the fraud, you may seek equitable tolling if you can show that your client exercised due diligence to correct the error once she became aware of it.²⁴¹

Below, we provide a more thorough analysis of each of these elements and what is required to legally establish that they have been met.

1) Detrimental Reliance

You must establish that your client (a) reasonably believed (albeit erroneously) that the notario was an attorney or an accredited representative, and that she (b) relied on the notario's advice on the basis of this assumption.²⁴²

The BIA has clear precedent indicating that reopening is available in cases in which the notario misrepresented himself as an attorney.²⁴³ The BIA has stated that it is unclear which requirements apply to situations in which the immigrant knew the notario was not an attorney yet believed he could represent her in immigration proceedings.²⁴⁴ However, where the immigrant can show she relied on the notario as a capable representative, the BIA has permitted reopening where the prima facie elements are satisfied.²⁴⁵

Due to the BIA's divergent views, explain in your affidavit the way in which the notario misrepresented his ability to provide representation and advice. Did the notario claim he was an attorney? An accredited representative? Did he make any other claims, or engage in other behavior that would have lead a reasonable person to believe he was qualified to act as counsel? You must be explicit. *In re Juarez Gonzalez*, the BIA denied the respondent's motion to reopen, even though the notario erroneously advised Gonzalez not to attend a hearing and she could not understand the NTA issued against her without his assistance due to her lack of English-language skills. Because Gonzalez provided no explicit evidence in the motion that she believed the notario was an attorney or otherwise qualified representative, her motion failed.²⁴⁶ If the notario represented himself as an accredited representative, you should state this expressly, as the BIA permits non-attorney accredited individuals to represent immigrants in proceedings.²⁴⁷

Similarly, you must show that your client relied upon the notario's advice. In *Aris v. Mukasey*, the BIA denied a motion to reopen because Aris' counsel did not convey in the motion that Aris relied on the erroneous

²⁴⁰ *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988).

²⁴¹ See *infra*, page 7 for further explanation and associated arguments.

²⁴² See e.g., *Hernandez v. Mukasey*, 524 F.3d 1014, 1020 (9th Cir. 2008); *In re Vasquez-Gonzalez*, 2011 WL 2261214 (BIA 2011); *In re Lee*, 2010 WL 4509785, *1 (BIA 2010).

²⁴³ See *In re Juarez Gonzalez*, 2011 WL 1373694, *2 (BIA 2011) (ineffective assistance of a non-attorney can be sufficient for reopening where the consultant held himself out as an attorney).

²⁴⁴ *In re McDonald*, 2012 WL 2835217, *1 (BIA 2012).

²⁴⁵ See *In re Zimjewska*, 24 I. & N. Dec. 87, 94-5 (BIA 2007).

²⁴⁶ *In re Juarez Gonzalez*, 2011 WL 1373694, *1-2 (BIA 2011).

²⁴⁷ 8 C.F.R. § 292.1(a)(4).

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information relayed to him by a paralegal.²⁴⁸ You must be explicit as to whether your client would have acted differently but for the notario's advice.

If your client knew the notario was not permitted to represent her in immigration proceedings, your motion will likely fail.

The BIA often considers an immigrant's reliance to be unreasonable if the notario did not misrepresent his legal capacity. Courts have held that when "an individual chooses not to retain an attorney, and instead knowingly relies on assistance from individuals not authorized to practice law, such a voluntary choice will not support a due process claim based on ineffective assistance of counsel."²⁴⁹ If there is evidence your client relied on a notario in lieu of available authorized representation, knowing that the notario was not a licensed representative, the BIA and many Circuit courts are unlikely to grant a motion to reopen.

However, if you are dealing with an untimely *asylum* application, you may argue that the notario's fraudulent actions constitute an unenumerated extraordinary circumstance,²⁵⁰ not ineffective assistance of counsel, and should be reopened.²⁵¹

Overview of BIA's Views on What Type of Counsel Warrants Reopening

If your client believed the notario was an attorney → It is fairly clear that the BIA will allow reopening in this circumstance.²⁵²

If your client believed the notario was an accredited representative or an individual legally permitted to represent her → It is less clear that the BIA will allow reopening in this circumstance.²⁵³ There is some case law to support reopening, yet this was unsettled by the abrogation of *Compean I*, which had stated non-attorney ineffective representation can warrant reopening.²⁵⁴

If your client knew the notario could not legally represent her → The BIA is clear that it will not grant reopening in this circumstance.²⁵⁵

2) Sufficiently Deficient Representation

You must provide evidence in your affidavit that the notario's representation was sufficiently deficient to merit relief. The metric courts have set for determining whether counsel was effective is not stringent. The judge will only hold that sufficiently deficient representation has occurred if prior counsel's actions were so incompetent

²⁴⁸ See *Aris v. Mukasey*, 517 F.3d 595, 598 (2d Cir. 2008).

²⁴⁹ *Hernandez v. Mukasey*, 524 F.3d 1014, 1020 (9th Cir. 2008) (concluding that where petitioners waived their right to counsel, and knowingly relied on a non-attorney immigration consultant for advice, there was no denial of due process because "reliance on a non-attorney [is] not sanctioned by law").

²⁵⁰ 8 C.F.R. § 208.4(a)(5).

²⁵¹ See *Viridiana v. Holder*, 646 F.3d 1230, 1238 (9th Cir. 2011) (concluding that immigration consultant fraud is an unenumerated extraordinary circumstance that can toll the 1-year asylum filing deadline even where petitioner knowingly relies on a non-attorney).

²⁵² See e.g., *In re Juarez Gonzalez*, 2011 WL 1373694, *2 (BIA 2011) (ineffective assistance of a non-attorney can be sufficient for reopening where the immigrant believed the notario was an attorney).

²⁵³ See *In re McDonald*, 2012 WL 2835217, *1 (BIA 2012); *In re Zmijewska*, 241 I. & N. Dec. 87, 94-95 (BIA 2007).

²⁵⁴ *Matter of Compean I*, 24 I. & N. Dec. 710 (A.G. 2009).

²⁵⁵ See *In re Mena-Herrera*, 2009 WL 888469, *1 (BIA 2009) (deficient performance of counsel extends only to those the immigrant believed were counsel or accredited representatives).

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that he made the proceedings fundamentally unfair.²⁵⁶ The BIA should begin its analysis by determining whether competent counsel would have acted otherwise.²⁵⁷

For guidance on what is considered sufficiently deficient, the court's reasoning in *Lin v. Ashcroft* is particularly useful. In *Lin*, the court found that the petitioner's prior representative was sufficiently deficient for a number of reasons: First, the representative failed to investigate the client's factual claims and appeared never to have spoken to him about the substance of his asylum claim. Second, she did not personally attend the hearing but rather chose to conduct her representation over the telephone. She did so despite the fact that the phone line's connection was so spotty that her closing argument was largely indiscernible. Finally, she never filed a brief to appeal the adverse decision resulting from this farce of a hearing, although she told the BIA she would.²⁵⁸

As *Lin* demonstrates, courts are more amenable to granting a motion where the notario's errors are clearly enumerated and an explicit argument is made as to why competent counsel would have performed differently. Gather all of the relevant facts about the notario's representation in order to paint a compelling picture of the notario's deficiency. Often how the deficiency is framed can have considerable impact on the outcome.

3) Prejudice

You must show that the notario's representation "was so inadequate that it may have affected the outcome of the proceedings."²⁵⁹ Essentially, you must present evidence that your client was unable to adequately present her case as a result of this ineffective assistance and that, but for the notario's representation, the outcome might have been different.²⁶⁰

You must also show that your client would have been entitled to remain in the United States if not for the ineffective assistance.²⁶¹ In *Kaur v. Holder*, the Sixth Circuit upheld the BIA's denial of the immigrant's motion to reopen even though former counsel omitted evidence that the immigrant client was raped in India, because the addition of this evidence would not have created a viable claim for asylum.²⁶² Similarly, in *Huicochea-Gomez v. INS*, the Sixth Circuit held ineffective assistance unavailable where an attorney advised immigrants to file for discretionary relief under a repealed statute because the immigrants would not have been able to receive relief under any other statute, and therefore were not prejudiced.²⁶³ If your client is eligible for any form of immigration relief that the notario bungled or overlooked, explain this in your motion along with why your client meets the requirements for the relief.

²⁵⁶ *Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004) (citing *Lopez v. I.N.S.*, 775 F.2d 1015, 1017 (9th Cir. 1985) ("Ineffective assistance of counsel in a deportation proceeding is a denial of due process under the Fifth Amendment if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case").

²⁵⁷ *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858 (9th Cir. 2004).

²⁵⁸ *Lin*, 377 F.3d at 1024-27.

²⁵⁹ *Iturribarria v. I.N.S.*, 321 F.3d 889, 899-900 (9th Cir. 2003).

²⁶⁰ See *Ortiz v. I.N.S.*, 179 F.3d 1148, 1153 (9th Cir. 1999); *Maravilla Maravilla*, 381 F.3d at 857-58.

²⁶¹ See e.g., *Shi v. Holder*, 349 F. App'x 569, 570 (2d Cir. 2009).

²⁶² *Kaur v. Holder*, 475 F. App'x 78, 82-6 (6th Cir. 2012).

²⁶³ *Huicochea-Gomez v. I.N.S.*, 237 F.3d 696, 699-700 (6th Cir. 2001).

Exception: *In absentia* Removal Orders

The BIA presumes that your client suffered prejudice when the notario's ineffective assistance resulted in an *in absentia* removal order.²⁶⁴ While the BIA “does not require a showing of prejudice to obtain relief from an *in absentia* order,”²⁶⁵ it will not hurt your application to present evidence that the notario's assistance prejudiced your client's case.

IV. PROCEDURAL REQUIREMENTS

MATTER OF LOZADA REQUIREMENTS

In *Matter of Lozada*, the BIA developed three additional procedural prerequisites to prove a prima facie case of ineffective assistance in a motion to reopen immigration decisions.²⁶⁶ Motions to reopen must be supported by a client affidavit providing the following:

- a) A detailed description of the agreement your client entered into with the notario, as well as how the notario's actions constituted ineffective assistance.
- b) Evidence that you informed the notario of the allegations and provided him with an opportunity to respond.
- c) Documentation of civil or criminal complaints made to disciplinary authorities responsible for monitoring and prosecuting the notario's fraudulent actions²⁶⁷ or an explanation as to why no such complaint was filed.²⁶⁸

GENERAL ADVICE FOR COMPLIANCE

- Remember that oral arguments during hearings for a motion to reopen are not evidence. You must present all evidence explicitly in your brief and in your client's affidavit, and attach all relevant documentation.²⁶⁹
- Do not assume that it is implicit in your client's affidavit that the notario was informed of the allegations. Provide documentation where available and expressly state when the notario was contacted or why you were unable to reach him.²⁷⁰
- Present evidence of any form of complaint or referral made to law enforcement, federal agencies, state bar associations, or other disciplinary bodies. If you are unable to make any official complaints, be explicit about why complete compliance is infeasible.²⁷¹
- If your client is unsure whether the prior representative was an attorney, make sure to check his status with the local Bar Association and include in your affidavit the date on which you inquired and what you learned.
- If you choose not to file a complaint with the local Bar or an Unauthorized Practice of Law committee, explain your reasoning expressly.

²⁶⁴ *Hernandez-Lucena v. Gonzales*, 215 F. App'x 627, 629-30 (9th Cir. 2006) (citing *In re Rivera-Claros*, 21 I. & N. Dec. 599, 603 n. 1 (BIA 1996)); see also *Lo v. Ashcroft*, 341 F.3d 934, 939 fn. 6 (9th Cir. 2003).

²⁶⁵ *Hernandez-Lucena*, 215 F. App'x at 629-30 (citing *In re Rivera-Claros*, 21 I. & N. Dec. 599, 603 n. 1 (BIA 1996)).

²⁶⁶ *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988); see *Rodriguez-Lariz v. I.N.S.*, 282 F.3d 1218, 1226 (9th Cir. 2002) (describing *Lozada* requirements as procedural prerequisites for motions to reopen due to ineffective assistance).

²⁶⁷ See Section III: Complaints and Referrals of this Manual.

²⁶⁸ See *Iturribarria v. INS*, 321 F.3d 889, 900 (9th Cir. 2003) (construing *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988)).

²⁶⁹ See *In re Santos*, 2011 WL 2038488, *1 (BIA 2011) (motion to reopen denied where respondent failed to state explicitly in his affidavit that the notario told him not to appear for his hearing).

²⁷⁰ See *In re Shaw*, 2009 WL 952485, *2 (BIA 2009) (motion to reopen denied where immigrant failed to provide any evidence in her affidavit to prove that she informed her former notario of allegations of ineffective assistance).

²⁷¹ See *In re Shaw*, 2009 WL 952485 at *2 (holding petitioner failed to meet the requirement to file a complaint against counsel where she was unable to file a complaint because the notario had already entered into a consent agreement with the Florida bar for UPL and petitioner failed to include a copy of the consent agreement in her affidavit).

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- If you choose to file a complaint with the Consumer Sentinel Network, explain the FTC's jurisdiction and mandate.²⁷²
 - It is important to be explicit about where the complaint was filed and why. Even in cases where a consumer complaint was lodged, the BIA has denied the motion because there was no evidence that the agency had authority over persons purporting to provide immigration services.²⁷³

Note: The primary purpose of the *Lozada* requirements is to create an evidentiary basis for determining whether the assistance provided by counsel was, in fact, ineffective, while the secondary purpose is deterrence of meritless claims.²⁷⁴ If your motion and facts deviate from the three requirements, you must state explicitly why it was not feasible for you to fully comply, and why your motion should still be granted pursuant to these goals.²⁷⁵

What if you can't fully comply? → In cases of prior representation by a notario, "the extent to which the *Matter of Lozada* requirements are mandated is an unsettled question, but some compliance has been required, generally of the first two steps."²⁷⁶ Consult the relevant precedent of your circuit to determine whether it staunchly holds to the *Lozada* requirements or whether it takes reasonable explanations for noncompliance into account.²⁷⁷

Also, if the ineffective assistance was egregious on its face, and resultant prejudice obvious, certain circuits do not require strict compliance with the *Lozada* requirements.²⁷⁸ For example, in *Attiogbe v. Gonzales*, the Ninth Circuit found that prejudice was obvious because the former counsel admitted in a letter that she sent the appeal to the wrong address and did not rectify this flaw until after the filing deadline; accordingly, the court did not require that the immigrant comply with *Lozada*.²⁷⁹

Courts have recently expressed some confusion as to whether and how to apply the *Lozada* requirements due to contradictory positions put forward by two different Attorneys General within the span of a couple months. The administration's current position is that the requirements remain in effect until future EOIR regulations are promulgated.²⁸⁰ Keep in mind that these future regulations may, for better or worse, change what types of evidence are required to prove ineffective assistance, making the equitable arguments discussed in the introduction of this section that much more important.

²⁷² See Section III: Complaints and Referrals of this Manual.

²⁷³ *In re Segovia-Supliguicha*, 2010 WL 4035457, *2 (BIA 2010).

²⁷⁴ See *Piranej v. Mukasey*, 516 F.3d 137, 141-42 (2d Cir. 2008).

²⁷⁵ *In re Zmijewska*, 24 I. & N. Dec. 87, 94-5 (BIA 2007) (granting a motion to reopen where petitioner did not file a disciplinary complaint against a non-attorney); see also *in re Shaw*, 2009 WL 952485, *2 (BIA 2009).

²⁷⁶ *In re McDonald*, 2012 WL 2835217, *1 (BIA 2012) (citing *In re Zmijewska*, 24 I. & N. Dec. 87, 94-5 (BIA 2007)).

²⁷⁷ For example, in *Esposito v. INS*, the Second Circuit granted a motion to reopen even though the immigrant did not file a complaint. The court stated that the immigrant's explanation for not filing, namely that he thought the attorney had already been suspended from practicing law, was reasonable. *Esposito v. I.N.S.*, 987 F.2d 108, 111 (2d Cir. 1993).

²⁷⁸ *Attiogbe v. Gonzales*, 243 F. App'x 642, 644 (2d Cir. 2007) (citing *Yang v. Gonzales*, 478 F.3d 133, 143 (2d Cir. 2007) (stating that the *Lozada* requirements are not sacrosanct if the facts are plain on the administrative record)).

²⁷⁹ *Attiogbe*, 243 F. App'x at 644.

²⁸⁰ *Matter of Compean II*, 25 I. & N. Dec. 1 (A.G. 2009). On January 7, 2009, in *Matter of Compean I*, 24 I. & N. Dec. 710 (A.G. 2009), Attorney General Mukasey abrogated the use of the *Lozada* requirements. Five months later, on June 3, 2009, Attorney General Holder reversed that decision and reinstated *Lozada* in *Matter of Compean II*.

V. UNTIMELY FILING FOR RELIEF – TOLLING

In addition to making a prima facie showing of ineffective assistance, you may need to request equitable tolling of the filing deadline if you are filing your motion to reopen after the relevant time period has expired.²⁸¹ Note that depending on the stated reason for removal, a different deadline for filing a motion to reopen attaches.²⁸² Ensure that you check what the deadline is for your case and timely file. If the notario fraud was not discovered until after the period for reopening had passed, you may ask that the deadline be tolled. The BIA has left open the possibility for equitable tolling when an immigrant demonstrates due diligence in rectifying her former counsel's errors,²⁸³ and most Circuit courts also explicitly recognize ineffective assistance as a reason to provide equitable tolling.²⁸⁴

"In tolling statutes of limitations, courts have typically assumed that the event that 'tolls' the statute simply stops the clock until the occurrence of a later event that permits the statute to resume running."²⁸⁵ In practice, courts have held that "the requisite limitations period does not begin to run until 'the date [the immigrant] conclusively learned of [the representative's] deficient representation.'"²⁸⁶ This means, for example, that the 90-day clock governing certain motions to reopen begins the moment your client learned of the fraud or inadequate representation. For a judge to grant equitable tolling, you will need to show that your client exercised due diligence in discovering the fraud and rectifying her late application (or other filing problem) after discovering the fraud.

PROVING DUE DILIGENCE ONCE THE INEFFECTIVE ASSISTANCE IS DISCOVERED:

If you are filing a motion to reopen after the statute of limitations has run, you must demonstrate that your client was unaware of the fraud or ineffective assistance and that she exercised due diligence to remedy the situation once she became aware of the problem. Submit documentation sufficient to prove due diligence with your client's affidavit attached to the motion to reopen.²⁸⁷ Facts to support a finding of due diligence include: information regarding how the notario concealed his actions from your client, how and when your client realized the fraud or error, and the steps your client took upon discovering the fraud, such as seeking assistance from qualified representatives. Note that if your client failed to commence any action to rectify the situation relatively soon after discovering that she was defrauded, it is unlikely the court will find she exercised the necessary diligence to support equitable tolling.²⁸⁸ For example, the Ninth Circuit affirmed the BIA's decision to deny equitable tolling of an immigrant's application because he waited more than six years after discovering the fraud to file his motion to reopen and had no excuse for the lapse.²⁸⁹

²⁸¹ See 8 C.F.R. 1003.23 for filing deadlines.

²⁸² 8 C.F.R. § 1003.23(b)(1) states that the filing deadline for a motion to reopen is 90 days; however, (b)(4) provides specific exceptions to asylum, withholding of removal, in absentia orders, and jointly filed motions and allows 180 days).

²⁸³ See e.g., *in re Mejia-Castillo*, 2009 WL 2437177 (BIA 2009).

²⁸⁴ See e.g. *Avila-Santoyo v. Att'y Gen.*, 2013 WL 1499419, *5 (11th Cir. 2013) (reversing prior circuit decisions holding that motions to reopen may not be tolled); *Varela v. I.N.S.*, 204 F.3d 1237, 1240 (9th Cir. 2000) (holding that both the time and numerical limitations on motions to reopen may be equitably tolled); *Iavorski v. I.N.S.*, 232 F.3d 124, 127 (2d Cir. 2000) (holding that "the filing deadline for motions to reopen may be equitably tolled" where petitioner demonstrates due diligence in pursuing his claim).

²⁸⁵ *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1195 (9th Cir. 2001) (emphasis in original).

²⁸⁶ *Zavala v. Gonzales*, 213 F. App'x 594, 596 (9th Cir. 2006) (quoting *Albillo-De Leon v. Gonzales*, 410 F.3d 1090, 1100 (9th Cir. 2005)).

²⁸⁷ See e.g., *In re Min Chen*, 2012 WL 3911755 (BIA 2012) (dismissing motion to reopen because immigrant did not include proof of due diligence).

²⁸⁸ See *In re Mejia-Castillo*, 2010 WL 4035450, *2 (BIA 2010) (while petitioner did not show due diligence in waiting three years to file her motion to reopen, where petitioner had been pregnant, due diligence may have been found had she begun her search for a new attorney within a few months of giving birth); *in re Santos*, 2011 WL 2038488, *1 (BIA 2011) (petitioner did not show due diligence where he waited 12 years to act after discovering notario fraud).

²⁸⁹ *Bernal v. Gonzalez*, 139 F. App'x 853 (9th Cir. 2005).

Pointers

- Detail how the notario concealed his fraudulent actions and be specific as to why your client did not discover the fraud sooner.
- If your client approached the notario because she was suspicious of the notario's representation, state this expressly and describe the notario's reaction.
- Provide every detail of your client's efforts to rectify her immigration status. If she requested help from multiple attorneys and was continually turned away before seeking your help include that information.
- If a mental, physical, or other disability prevented your client from acting with "reasonable" diligence, present evidence of the disability and expressly argue that your client was diligent under the circumstances.

VII. CHOOSING THE PROPER FORUM

Generally speaking you will need to file your motion with the court in which the adverse decision was rendered. Where ineffective assistance of counsel occurred "prior to and during the removal proceeding," petitioners must first raise ineffective assistance claims in a motion to reopen before the BIA, and not in district court.²⁹⁰ Additionally, if your motion is denied by the IJ, you may appeal that decision to the BIA, and if the BIA denies your motion you may appeal that decision to the Circuit court.

Note: In certain limited circumstances, a claim of ineffective assistance may not need to be housed in a motion to reopen. Where the ineffective assistance of counsel claim arises out of attorney misconduct after the BIA decision on appeal (for example, the attorney failed to file a petition for review), the petitioner can bring the claim in district court habeas proceedings without filing a motion to reopen.²⁹¹ This type of claim is beyond the scope of this Manual; if you believe your client may be eligible for such relief, you should consult with experienced immigration practitioners.

VIII. STANDARD OF REVIEW ON APPEAL OF DENIAL OF A MOTION TO REOPEN

If your motion to reopen is denied by an Immigration Judge, the BIA will review the IJ's factual findings on a clearly erroneous standard, and questions of law, discretion, and judgment on a *de novo* standard.²⁹² The BIA has noted that the IJ must fully identify and explain his or her reasoning for denying the motion.²⁹³

If you are in a Circuit court appealing the BIA's denial of your motion, the court will review the denial on an abuse of discretion standard.²⁹⁴ "The BIA abuses its discretion when it denies the petitioner's claim with no

²⁹⁰ NINTH CIRCUIT, IMMIGRATION OUTLINE: MOTIONS TO REOPEN OR RECONSIDER IMMIGRATION PROCEEDINGS, C-38 (2012) [prepared by the Office of Staff Attorneys] [hereinafter 9th Circuit Immigration Outline] available at http://www.ca9.uscourts.gov/guides/immigration_outline.php (citing *Puga v. Chertoff*, 488 F.3d 812, 815-16 (9th Cir. 2007)).

²⁹¹ *Id.* at C-38-39 (citing *Singh v. Gonzales*, 499 F.3d 969, 972 (9th Cir. 2007)).

²⁹² 8 C.F.R. § 1003.1(d)(3); *In re Guimaraes*, 2010 WL 1747404, *1 (BIA 2010).

²⁹³ *In re Sixtos-Juarez*, 2009 WL 1800113, *1 (BIA 2009).

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indication that it considered all of the evidence and claims presented by the petition.”²⁹⁵ Thus the BIA must provide a substantive analysis of the facts and articulate reasons for denial of a motion.²⁹⁶ The courts will evaluate whether the BIA failed to provide a “reasoned explanation” for its determination and will remand where an explanation is lacking.²⁹⁷ If the BIA did not determine whether prejudice resulted, explicitly request that the circuit remand for that determination.

Findings of fact regarding the former representative’s performance are reviewed on a substantial evidence standard.²⁹⁸ Under this standard, a circuit court must uphold the BIA’s findings “unless the evidence presented would *compel* a reasonable finder of fact to reach a contrary result.”²⁹⁹

VIV. HOUSEKEEPING MATTERS

In addition to meeting the requirements outlined above, be aware of the following points when filing your motion to reopen:

- Your motion and accompanying affidavits must be in English or accompanied by a certified translation.³⁰⁰
- The motion must state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date, the court in which such proceeding took place or is pending, and its result or status.³⁰¹
- The motion must include a certificate showing proof of service on the opposing party.³⁰²
- The motion must be filed in duplicate with the Immigration Court.³⁰³
- You must attach the fee receipt.³⁰⁴

CHECKLIST FOR THE CLIENT’S AFFIDAVIT AND YOUR BRIEF

- **Details of the fraud or ineffective assistance**
 - Present a vivid portrayal of the fraud and its effects on your client
- **Reliance**
 - Detail how the notario gained your client’s trust and what your client thought about the representation
 - Check whether other immigrants your client knew received services from the notario
 - Check whether the notario was recommended by the community
 - Describe how the notario represented himself as legally knowledgeable, licensed, or accredited
 - Check for the presence of other factors that conveyed the notario’s legal knowledge, such as the use of the phrase “notario público,” and explain the factor’s significance.
- **Deficiency**

²⁹⁴ See *I.N.S. v. Doherty*, 502 U.S. 314, 315 (1992); *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012); *Chen v. Holder*, 441 F. App’x 342, 345 (6th Cir. 2011).

²⁹⁵ *Avagyan v. Holder*, 646 F.3d 672, 681 (9th Cir. 2011).

²⁹⁶ *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005) (citing *Rodriguez-Lariz v. I.N.S.*, 282 F.3d 1218, 1227 (9th Cir. 2002)).

²⁹⁷ See *id.* at 1098.

²⁹⁸ *Monjaraz-Munoz v. I.N.S.*, 327 F.3d 892, 895 (9th Cir. 2003).

²⁹⁹ *Id.* (quoting *Singh-Kaur v. I.N.S.*, 183 F.3d 1147, 1149-50 (9th Cir. 1999) (emphasis in original)).

³⁰⁰ 8 C.F.R. § 1003.23(b)(1)(i).

³⁰¹ *Id.* § 1003.23(b)(1)(i).

³⁰² *Id.* § 1003.23(b)(1)(ii).

³⁰³ *Id.* § 1003.23(b)(1)(ii).

³⁰⁴ *Id.* § 1003.23(b)(1)(ii).

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- Describe the notario's deficient actions in detail and why they fall far below the level of competency an attorney or accredited representative should provide
- **Prejudice**
 - Describe the form of relief your client would have been eligible for and why
 - Explain how she would have acted differently if the notario had not provided bad advice
- **Agreement between notario and client**
 - Describe what exactly the notario said he would do and what he actually did.
 - Include any contracts, receipts, letters, and/or emails explaining the agreement
 - List the notario's name, address, and phone number
 - Attach any advertisements of the notario's services
- **Notario informed of allegations**
 - Compile emails, call logs, or letters from the client to the notario, alleging fraudulent or ineffective assistance
 - Detail when and how the notario was contacted and what was said
 - If there has been no contact with the notario provide a reasonable explanation
- **Complaints**
 - Check the notario's status with the State Bar and log the date of this inquiry
 - If applicable, include the FTC Consumer Sentinel Complaint and any UPL, Bar, criminal, or civil complaints the client made against the notario.³⁰⁵
 - Describe the jurisdiction and mandate of any agency to which a complaint was filed (if not evident)
 - Include an explanation for failure to file complaints if no complaint was filed
- **Diligence**
 - Explain how the notario concealed the fraud
 - Characterize how and when your client discovered the fraud
 - Specify why your client did not discover the fraud sooner
 - Describe any factors that may have made your client more susceptible to fraud or made it difficult for the client to discover the fraud.
 - Describe steps the client took after discovering the fraud, including the dates she spoke with other legal representation and documentation of these conversations.

X. REQUESTING A STAY OF REMOVAL

You should bring the ineffective assistance to the attention of the immigration judge at your earliest opportunity (as soon as you discover the notario's ineffective assistance) and simultaneously request a stay of removal pending review of your motion.³⁰⁶ In *Nken v. Holder*,³⁰⁷ the Supreme Court outlined the requirements for a motion for a stay of removal. You must show: (1) a likelihood of success on the merits; (2) that irreparable harm would occur if a stay is not granted; and (3) that the balance between the governmental or public interest and your client's interest tips in your favor.³⁰⁸ This inquiry is fact-specific; however, below are some general pointers for proving each element.

LIKELIHOOD OF SUCCESS ON THE MERITS

In order to win a stay of removal, you must establish that there is a substantial likelihood your client will receive immigration relief as a result of reopening the proceedings. Highlight the particular instance of the

³⁰⁵ See Section III: Complaints and Referrals of this Manual.

³⁰⁶ For particularized filing instructions, see AM. IMMIGR. COUNCIL, SEEKING A JUDICIAL STAY OF REMOVAL IN THE COURT OF APPEALS: STANDARD, IMPLICATIONS OF ICE'S RETURN POLICY AND THE OSG'S MISREPRESENTATION TO THE SUPREME COURT, AND SAMPLE STAY MOTION (2012), available at http://www.nationalimmigrationproject.org/legalresources/practice_advisories/pa_Seeking_a_Judicial_Stay_of_Removal_May2012.pdf.

³⁰⁷ *Nken v. Holder*, 556 U.S. 418 (2009).

³⁰⁸ *Id.* at 426; see also *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005); *Nwakanma v. Ashcroft*, 352 F.3d 325, 327-28 (6th Cir. 2003).

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notario's fraud or incompetence and why your client would have had a reasonable probability of relief on the merits. For example, if your client had a viable asylum claim based on tangible past persecution, yet the notario neglected to file a timely application, explicitly state why your client would likely have won her asylum application if not for the untimely filing. Many circuits have held this factor to be the most important in their determinations,³⁰⁹ so it is imperative that your brief explicitly outline why your client is likely to succeed.

Likelihood of success must be based on your client's factual circumstances. For instance, if your client was denied a green card because a notario waited until after the statute of limitations had run to submit an application, your client would obviously have been harmed by this delay, but only if she would have been eligible to receive a green card in the first place. Therefore it is necessary to establish that your client met all legal requirements to obtain a green card at the time she could have legally applied. In other words, if not for the notario's delay, there was a *substantial likelihood* (more likely than not) that your client would have received permanent resident status.³¹⁰

It is important to note the word "substantial" in this context. This indicates that immigration courts have chosen a higher standard than "reasonable likelihood." It is not enough to establish that relief was likely, it has to have been "more likely than not." The same types of information that you will present to prove prejudice in your motion to reopen may be helpful to establish this element; however, the burden of proof is higher in this context.

IRREPARABLE HARM

Explicitly state that if the court does not grant a stay, your client will likely suffer irreparable injustice as a result of removal or will be deprived of judicial review of the removal in his or her country of origin. Since removed immigrants are now permitted to petition for review of their removal, "the burden of removal alone no longer constitutes irreparable injury."³¹¹ Therefore, you must show that "there is a reason [that your client's removal should be stayed] specific to [your client's] case, as opposed to a reason that would apply equally well to all [immigrants] and all cases."³¹² For example, if your client will be subject to harm, torture, or death upon return to her home country, this could satisfy the irreparable harm requirement.³¹³ Likewise, if removal would effectively prevent your client from pursuing review or effective relief (such as where the immigration relief for which your client is eligible is only available if the immigrant is present in the United States), the requirement may be satisfied.³¹⁴ Other factors courts consider for determining irreparable harm include separation from family, medical needs, and potential economic hardship.³¹⁵

HARM TO GOVERNMENT AND PUBLIC INTEREST

You must present reasons why a stay for your client outweighs commonly held government interests such as speedy and effective enforcement of immigration laws,³¹⁶ ensuring public safety, and avoiding incurring further litigation costs.³¹⁷ If your client is not a removal priority according to ICE policy,³¹⁸ this may negate the claim that the government will ensure public safety by your client's removal. If removal would deny her the opportunity of a fair hearing, the public interest in ensuring the application of justice may weigh heavily in your client's favor and outweigh the government's interest in a speedy trial. "There is a public interest in

³⁰⁹ See e.g., *Tesfamichael*, 411 F.3d at 176 (citing *Shrink Mo. Gov't PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998)).

³¹⁰ *Nken*, 556 U.S. at 420.

³¹¹ *Nken*, 556 U.S. at 420 (J. Kennedy, concurring).

³¹² *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

³¹³ See *id.*

³¹⁴ See *Chen v. Holder*, 441 F. App'x 342, 347 (6th Cir. 2011).

³¹⁵ See e.g., *Leiva-Perez*, 640 F.3d at 969 (quoting *Andreu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001)).

³¹⁶ *Nken*, 556 U.S. 418, 420 (2009).

³¹⁷ See *Sofinet v. I.N.S.*, 188 F.3d 703, 708 (7th Cir. 1999).

³¹⁸ See Section II(A): Prosecutorial Discretion of this Manual.

SECTION II: (C) Ineffective Assistance

preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.”³¹⁹ If your client is in this situation, it may help to outweigh certain government’s interests. Furthermore, removal in the face of notario fraud is not in the public interest as it solidifies fear of reporting crime to the authorities and penalizes vulnerable immigrants while immunizing those who pose a public safety risk. Developing the facts that support your client’s interest in avoiding removal is critical to the success of a motion for a stay of removal.

Although your client has the ultimate burden to justify a stay, “the government is obliged to bring circumstances concerning the public interest to the attention of the court.”³²⁰ The government cannot simply make “blithe assertions” in opposing a stay of removal; it must present some sufficiently specific argument that effecting removal is in the public interest.³²¹ Examples of negative factors the government might present that would weigh in favor of removal are: felony convictions, prior deportations, or a heavy monetary burden on the government.³²² You should anticipate these arguments where relevant and present counter arguments or mitigating evidence.

Note – If you are reopening an *in absentia* removal order, the order is automatically stayed pursuant to 8 C.F.R. § 1003.23(b)(4)(ii). Therefore, in these cases you do not have to request a stay of removal. However, you should indicate in bold letters on the cover page and front page of your motion that a stay applies.³²³

XI. CONCLUSION

Although BIA precedent on ineffective assistance of non-attorneys is unsettled, viable arguments for reopening have been made in these circumstances. Victims of notario fraud have been able to receive some form of rectification for wrongs because their attorneys were creative and intrepid. There may be many circumstances in which an immigrant walks through your doors and should be eligible for relief, but instead faces deportation and other severe hardship because a notario grasped the opportunity to profit from the immigrant’s limited knowledge of the immigration system. The more practitioners use the arguments set forth in this section to ensure constitutional due process protections for their clients, the more available this remedy will become. This effective remedy, if added to your arsenal of arguments, can completely impact your client and requite the hopes the notario’s representation threatened to destroy. If you choose to seek this remedy, filing a complaint against the notario is necessary for an adequate and persuasive motion. The following section will provide guidance on where and how to lodge these complaints and what overarching principles you should keep in mind as you proceed.

³¹⁹ Nken, 556 U.S. at 436 (2009) (J. Kennedy, concurring).

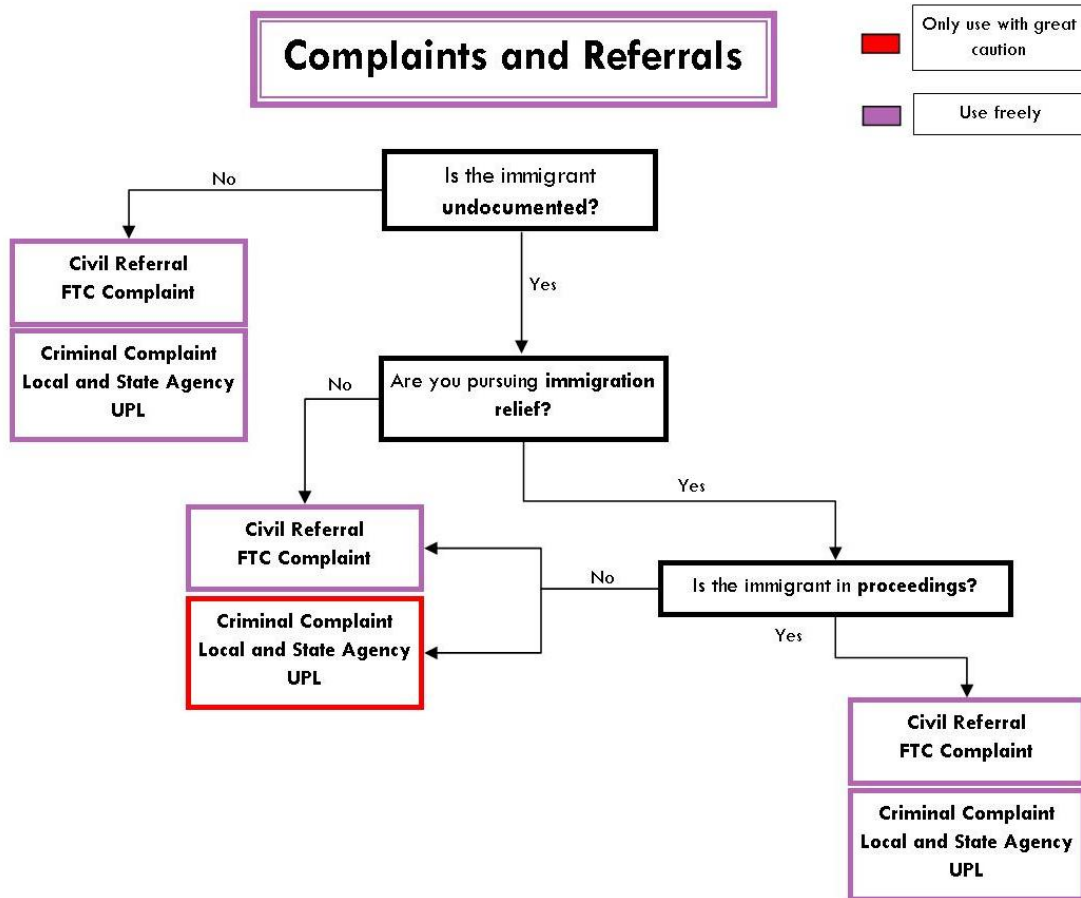
³²⁰ Leiva-Perez v. Holder, 640 F.3d 962, 970 (9th Cir. 2011).

³²¹ See *id.* (construing Nken v. Holder, 556 U.S. 418, 436 (2009)).

³²² See Nken v. Holder, 556 U.S. at 436; Leiva-Perez, 640 F.3d at 970.

³²³ AM. IMMGR. L. FOUNDATION, RESCINDING AN IN ABSENTIA REMOVAL ORDER, 8 (2004) [prepared by Beth Werlin], available at http://www.asistahelp.org/documents/resources/AILF_on_in_absentia_7C79E5CB2220E.pdf.

SECTION III: COMPLAINTS AND REFERRALS



** The above Flow Chart is meant as a reference only, and not as a substitute for the detailed analysis provided in the relevant section of this Manual.

I. INTRODUCTION

Immigration consultant fraud is not only harmful to individual clients, it is a crime that, if left unreported, allows predatory individuals to continue exploiting victims. As an immigration practitioner, you are likely to be the first point of legal contact for many victims. The purpose of this section is threefold: to outline options for compiling a compelling evidence packet for a petition for the various forms of immigration relief outlined in this Manual; to offer resources for locating practitioners and government officials in different areas of the law that provide alternative forms of relief, either in conjunction with or apart from immigration remedies; and to give you options for, and to stress the importance of, making some record of the notario's activities based on your client's circumstances.

ENHANCING PETITIONS FOR IMMIGRATION RELIEF

If you are pursuing immigration relief for a client, creating an official record of the crime is a requirement for some remedies and generally a sound strategy for enhancing your client's application overall. When seeking immigration remedies, you will need to gather as much evidence as possible to enhance your client's case and validate any assertions you put forward. A record of a formal complaint with local, state, or federal authorities helps establish that your client was the *victim* of fraud, not the perpetrator. It can thus be used to bolster an application for the favorable exercise of prosecutorial discretion,³²⁴ or establish compliance with the *prima facie* requirements for motions to reopen due to ineffective assistance.³²⁵ If you are seeking a U-Visa, your client must be working with law enforcement officials and documentation can help establish your client's helpfulness to authorities.³²⁶

MAKING REFERRALS: ALTERNATIVE FORMS OF RELIEF

As you gather facts from a notario fraud victim, consider whether she might be able to bring criminal charges or a civil suit against the notario. Civil suits allow victims to obtain individual restitution, and hold the notario accountable for deceptive practices. Criminal cases can result in fines, jail time and other disciplinary actions against the notario. A civil suit may be filed in conjunction with any immigration remedies, or it can provide an alternative course of action for those who do not qualify for immigration relief. If your practice does not have the capacity to assist a victim with this type of matter, this section will help you consider the immigrant's circumstances and, where appropriate, advise you in making a referral to a civil practitioner, criminal prosecutor, or consumer protection agency, who may be able to offer forms of relief outside of immigration law.

CREATING A RECORD

Urging your client to create a record of a notario's activities, or doing so on the client's behalf, is important regardless of whether your client is eligible for immigration relief. As most notario scammers have numerous victims, bringing the notario to the attention of authorities may prevent further exploitation of immigrants. Creating a record also assists other advocates working to prevent notario fraud by increasing the amount of statistical information available, thereby creating a more accurate depiction of the scope of the problem.

I. COMPLAINTS

³²⁴ See Section II(A): Prosecutorial Discretion of this Manual.

³²⁵ See Section II(C): Motion to Reopen of this Manual.

³²⁶ See Section II(B): U-Visa of this Manual.

Choosing the Method(s) of Reporting that Fit Your Client's Situation

There are local, state and federal options for filing a formal complaint. Below, we offer instructions and outline relevant considerations for filing criminal complaints with (1) local law enforcement, (2) Unlicensed Practice of Law (UPL) Committees, (3) local and state agencies, and (4) the Federal Trade Commission (FTC). This is not intended to be an exhaustive list. You could, for example, consider approaching the local Chamber of Commerce or Better Business Bureau. Additionally, if the case is particularly egregious and implicates interstate commerce, you can bring it to the attention of the Department of Justice (DOJ) who may be interested in investigating. The DOJ is particularly intent on prosecuting scammers who impersonate government officials.³²⁷ Filing a complaint with one agency does not preclude filing a complaint with another, and multiple filings may be useful to your client. The process and time frame for filing vary depending on the type of complaint. It is important to ensure that you pay particular attention to these aspects of the procedure.

Which of the below authorities you choose to approach will depend on the outcome you and your client are seeking, the relevant law and processes available in your jurisdiction, local political will and attitude towards immigrant rights, and the strength of the case against the notario. Each section contains more particularized risks and benefits associated with the specific type of complaints, but below are some general considerations you should keep in mind from the outset.

A. WEIGHING THE RISKS: CHOOSING THE METHOD OF REPORTING THAT FITS YOUR CLIENT'S SITUATION

Immigration status

Filing a report with the police or a prosecutorial office will require that your client identify herself to authorities. This also applies to some local UPL Committees or state consumer protection agencies that do not accept anonymous complaints. A core concern for many immigrants, especially undocumented individuals, will be the potential revelation of their immigration status. As something of a silver lining, if your client is already in proceedings, this leaves you with a wide range of possibilities for reporting the notario. Since her status is already on file with immigration authorities, your client has little to lose by contacting other government officials to report the crime.

However, in cases where your client has not yet been brought to the attention of immigration officials but has been defrauded, weighing the costs and benefits of moving forward with a complaint is critical. If the fraud directly impacted the immigration status of your client, this decision could be even more complex. You must be mindful of the potential risks your client faces by filing a complaint. Engaging with government officials can carry significant risks of exposure to immigration authorities that could end up having negative consequences for your client, such as permanent removal.

Local Attitudes Towards Immigrants

Along with the potential impact on your client's immigration status, you must also consider the relative responsiveness of authorities within your jurisdiction. Some law enforcement authorities do not even know what notario fraud is, much less that it is prevalent among immigrant communities. There is a need to increase awareness of the issue, and reporting the individual to the proper authorities can assist in this effort. However, this has to be balanced against the potential adverse consequences of engaging with officials in your jurisdiction who may be indifferent or hostile towards immigrants.

³²⁷ See, e.g., Press Release, Dep't of Justice, Two Plead Guilty in Scheme to Defraud Consumers Seeking Immigration Services (Aug. 23, 2012) available at <http://www.justice.gov/opa/pr/2012/August/12-civ-1041.html>.

SECTION III: Complaints and Referrals

If you are uncertain how local officials will respond to your efforts, consider approaching the authorities without your client present in order to determine how they might handle your client's case.³²⁸ For example, you might call the local police department's victims services liaison and inquire into their policies regarding a victim's immigration status, or request a meeting with a local consumer agency to discuss the case without divulging your client's identity. You should also consider building these relationships before you represent a particular client.³²⁹

One potential measure of local attitudes is the jurisdiction's implementation of Secure Communities, a federal program that requires arrestee fingerprints collected by local governments be shared with ICE so the agency can identify undocumented immigrants.³³⁰ Some jurisdictions have chosen to limit their implementation of the program. Others report particularly high rates of non-criminal deportations and present other troubling patterns that suggest particularly aggressive approaches towards the undocumented population.³³¹ Understanding your jurisdiction's attitude towards Secure Communities may help you evaluate whether local law enforcement is likely to be sympathetic to your client's case.

Be aware that our research has also revealed numerous government entities that are not only progressive in regards to the plight of immigrants, but want to prosecute notarios or are actively engaged in prosecuting them.³³² Depending on your jurisdiction, there may already be individuals that are eager to offer assistance to your client.

Strength of Your Client's Individual Case

You should assess whether your client has a strong criminal or civil case against the notario. Which claims may be brought will depend on the particularities of your jurisdiction, but we have laid out below the basic elements of the primary criminal and civil law claims your client might have against a notario.

CRIMINAL LAW³³³

Fraud

Criminal fraud is "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."³³⁴ While individual state statutes vary in their precise definition, the

³²⁸ CATHOLIC LEGAL IMMIGRATION NETWORK, FILING COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS 3 (2013) available at <http://cliniclegal.org/sites/default/files/FilingcomplaintsagainstNotariosandImmigrationConsultants.pdf>.

³²⁹ Telephone Interview with Gail Pendleton, Co-Director, Asista (Feb. 20, 2013).

³³⁰ SECURE COMMUNITIES, ICE, http://www.ice.gov/secure_communities/ (last visited Apr. 23, 2013).

³³¹ See e.g., RIGHTS WORKING GROUP, FACES OF RACIAL PROFILING: A REPORT FROM COMMUNITIES ACROSS AMERICA, 5-6 (2010) available at <http://www.rightsworkinggroup.org/sites/default/files/rwg-report-web.pdf>; CTR. FOR CONSTITUTIONAL RIGHTS, NAT'L DAY LABORER ASSOC., & CARDOZO LAW SCH., BRIEFING GUIDE TO "SECURE COMMUNITIES"-- ICE'S CONTROVERSIAL IMMIGRATION ENFORCEMENT PROGRAM NEW STATISTICS AND INFORMATION REVEAL DISTURBING TRENDS AND LEAVE CRUCIAL QUESTIONS UNANSWERED 1-2 (2010) available at <http://ccrjustice.org/files/Secure%20Communities%20Fact%20Sheet%20Briefing%20guide%208-2-2010%20Production.pdf>.

³³² For example, a Montgomery County State's Attorney has issued a letter asking victims of notario fraud to come forward. See Appendix Section II(B)4. See also INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, A POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES (2007) available at <http://www.theiacp.org/PublicationsGuides/TopicalIndex/tabid/216/Default.aspx?id=866&v=1>; Press Release, USCIS, National Initiative to Combat Immigration Services Scams: DHS, DOJ and FTC Collaborate with State and Local Partners in Unprecedented Effort (June 9, 2011) available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD>.

³³³ The boxed information is based on: ELIZABETH COHEN, CAROLINE VAN WAGONER, & SARA WARD, GEORGETOWN UNIVERSITY LAW CTR., COMMUNITY JUSTICE PROJECT, TO PROTECT AND SERVE: ACCESS TO JUSTICE FOR VICTIMS OF NOTARIO FRAUD IN THE NATION'S CAPITAL 22 (Ayuda ed., 2012), available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice/upload/Ayuda-Final-Report-Stylized-Web-Version.pdf>

³³⁴ BLACK'S LAW DICTIONARY, "Fraud" (9th ed. 2009).

SECTION III: Complaints and Referrals

perpetrator's intent to willfully misrepresent important information seems to be a critical element across jurisdictions.³³⁵

Theft

Theft is generally defined as "the felonious taking and removing of another's personal property with the intent of depriving the true owner of it."³³⁶ The perpetrator's intent and the wrongful use of stolen property are common elements across state theft statutes.³³⁷

Extortion

Extortion is commonly defined as "the act or practice of obtaining something or compelling some action by illegal means, as by force or coercion."³³⁸ Although states have differing definitions, the use of coercion is a common factor.³³⁹

CIVIL LAW³⁴⁰

Common Law Fraud

In general, a person commits common law fraud when he or she knowingly misrepresents a material fact on which another individual has relied to his or her own detriment.³⁴¹

Negligent Misrepresentation

To establish negligent misrepresentation, the plaintiff must generally demonstrate that (1) the defendant had a duty to exercise reasonable care in giving information, (2) the defendant supplied false information, (3) the plaintiff reasonably relied on that information, and (4) the plaintiff suffered damages as a result of the defendant's negligence.³⁴² Some states require contractual privity for a negligent misrepresentation claim, while others do not.³⁴³ The difference between fraud and negligent misrepresentation rests on the defendant's intent.³⁴⁴ In a fraud claim, the defendant knows the information is untrue or misleading, yet *intentionally* conveys the falsity. In a negligent misrepresentation claim, the defendant *negligently* makes a false statement that he would not have made if exercising reasonable care.

Breach of Contract

The typical elements in a breach of contract action are (1) the existence of a valid contract, (2) the plaintiff's performance of any necessary obligations, (3) the defendant's failure to perform obligations in the contract without legal excuse, and (4) resulting damage to the plaintiff.³⁴⁵

³³⁵ See, e.g., D.C. CODE § 22-3221 (1982); N.Y. PENAL LAW § 155.05(d) (McKinney 2011).

³³⁶ BLACK'S LAW DICTIONARY, "Theft" (9th ed. 2009).

³³⁷ See, e.g., D.C. CODE § 22-3211(b)(1982); MD. CODE ANN. CRIM. LAW § 7-104 (West 2013); N.Y. PENAL LAW § 155.05 (McKinney 2011); TEX. PENAL CODE ANN. § 31.03 (West 2011). "While victims may not think of the fraud committed against them as 'theft,' it certainly fits within that crime's general definition. Notarios may charge and collect fees for services they never intend to provide, essentially wrongfully taking the victim's money or property. Notarios may also take paperwork and vital documents from their clients, intentionally withholding and failing to return these important documents to their rightful owner." COHEN, VAN WAGONER, & WARD, *supra* note 329, at 23 (Ayuda ed., 2012).

³³⁸ BLACK'S LAW DICTIONARY, "Extortion" (9th ed. 2009).

³³⁹ See e.g., D.C. CODE § 22-3251 (1982); MD. CODE ANN. CRIM. LAW § 7-101 (West 2012).

³⁴⁰ Excerpt derived from COHEN, VAN WAGONER, & WARD, *supra* note 337, at 19 (Ayuda ed., 2012).

³⁴¹ See BLACK'S LAW DICTIONARY, "Fraud" (9th ed. 2009); 37 AM. JUR. 2D *Fraud and Deceit* § 23 (2012).

³⁴² See 37 AM. JUR. 2D *Fraud and Deceit* § 128 (2012).

³⁴³ See 37 AM. JUR. 2D *Fraud and Deceit* § 129 (2012).

³⁴⁴ 37 AM. JUR. 2D *Fraud and Deceit* § 26-29 (2012).

³⁴⁵ See 17A AM. JUR. 2D *Contracts* § 707 (2012).

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Regardless of the applicability of the causes of actions outlined above, you can always, at a minimum, file a complaint with the Federal Trade Commission (FTC). The FTC maintains a database called Consumer Sentinel that allows institutions and other advocates to file anonymous complaints on behalf of victims. This guaranteed anonymity ensures that this option will not expose the victim's immigration status.

B. FILING A CRIMINAL COMPLAINT WITH LOCAL LAW ENFORCEMENT

Criminal complaints can be filed with any agency that has prosecutorial authority established by law. This most often includes Attorney General Offices, District Attorney Offices, and local police bureaus. For citizens, local police and prosecutorial offices are the natural places to seek justice after being defrauded, as they have the ability to enjoin the practice and prosecute the perpetrator. Unfortunately, when working with immigrants there are additional factors that often make these individuals hesitant to report directly to law enforcement agencies. As discussed above, it is important to weigh the risks and benefits of collaborating with law enforcement.

BENEFITS OF FILING A CRIMINAL COMPLAINT

- (1) The complaint can result in criminal action against the notario, which could mean restitution for your client and punishment for the perpetrator, including fines and jail time. It could also result in an injunction to prevent the notario from harming future victims.
- (2) It creates a public record of the notario's activities, so that others will be aware of the notario's actions. This is particularly useful if the notario crosses jurisdictional lines and continues his activities.
- (3) Collaboration with law enforcement makes it clear that your client was the *victim* rather than the *perpetrator* of a crime, which can enhance future requests for prosecutorial discretion.
- (4) A complaint can be used to comply with the prima facie requirements of an ineffective assistance of counsel claim, and can help to establish the U-Visa requirement that the immigrant was helpful to law enforcement.

DRAWBACKS OF FILING A CRIMINAL COMPLAINT

- (1) Depending on your jurisdiction, authorities may hold anti-immigrant biases or other policy concerns that may color their decision to prosecute your client's case, and may even result in them referring your client to immigration authorities.³⁴⁶
- (2) Resources are often scarce in government offices, which could affect whether or not your client's case is pursued.³⁴⁷
- (3) The decision to pursue the case may also be colored by political considerations.
- (4) If your client is not already in immigration proceedings, her status could be revealed to immigration authorities during this process. Furthermore, if the complaint is pursued, the defendant is entitled to face his accuser. Therefore, it is possible the notario could become aware of your client's identity.³⁴⁸

³⁴⁶ See "Assessing the Risks" in the Introduction of this section.

³⁴⁷ COHEN, VAN WAGONER, & WARD, *supra* note 337, at 22 (Ayuda ed., 2012).

³⁴⁸ Presentation by Debi Sanders, Staff Attorney, Catholic Charities, at a U-Visa and VAWA Training in Washington, D.C. (Feb. 28, 2013).

SECTION III: Complaints and Referrals

Weighing the Risks and Benefits of Engaging with Law Enforcement

If your client is already in proceedings, your primary consideration is the relative receptivity of your local officials. Political considerations and anti-immigrant sentiment, to say nothing of resource constraints, may color the decision-making process.³⁴⁹ In many jurisdictions local policy may favor assisting immigrants. For example, in Washington, D.C., the police department's explicit policy is not to inquire into crime victims' immigration status.³⁵⁰ However, in other areas, law enforcement may be indifferent or outright hostile to the needs of the immigrant population.³⁵¹

If your client is not currently in immigration proceedings, think carefully before engaging in any activity that would risk exposing her. Some of these concerns might be ameliorated if your client is eligible for a U-Visa.³⁵² However, prosecutors might be unwilling to initially sign off on a U-Visa, as it might make their case appear weaker if their witness is perceived as obtaining a benefit for testifying.³⁵³ Therefore even if you have a strong case, be mindful that involvement with officials, even sympathetic ones, can have negative consequences.³⁵⁴ Carefully consider the potential consequences of filing a criminal complaint and discuss them fully and candidly with your client.

Unfortunately, for many immigrants local actors are often not the best or safest option. If this is the case for your client, you may want to consider alternative options outlined below, including local and state executive agencies, UPL Committee (often run by quasi-private entities like the State Bar), civil judges and lawyers, or federal officials.

C. FILING A COMPLAINT BASED ON UNLICENSED, OR UNAUTHORIZED PRACTICE OF LAW

Fraudulent actions performed by a notario often amount to unauthorized or unlicensed practice of law (UPL).³⁵⁵ Jurisdictions vary regarding what constitutes the practice of law in the immigration setting, but most jurisdictions agree that selecting immigration forms, offering immigration advice, and other services commonly performed by notarios do invoke a duty of care as between a legal practitioner and a client. These actions therefore constitute unauthorized practice of law.

Most states have formed committees to facilitate collecting UPL reports; these committees are often selected by the state Bar and analyze UPL complaints to decide on an appropriate course of action.³⁵⁶ Jurisdictions may vary regarding who is allowed to report UPL. Many jurisdictions allow both lawyers and victims to report to committees.³⁵⁷

³⁴⁹ COHEN, VAN WAGONER, & WARD, *supra* note 337, at 22.

³⁵⁰ *Id.* at 27.

³⁵¹ See "Assessing the Risks" in the Introduction of this section.

³⁵² See Section II(B): U-Visa of this Manual.

³⁵³ Presentation by Debi Sanders, Staff Attorney, Catholic Charities, at a U-Visa and VAWA Training in Washington, D.C. (Feb. 28, 2013).

³⁵⁴ For example, in Colorado, ICE issued an NTA to the star witness of a murder trial who had completely complied with prosecutorial efforts. Francisco Miraval, *Migrant Who Helped Convict Killer Faces Deportation*, LATIN AMER. HERALD TRIBUNE, 2009, available at <http://www.laht.com/article.asp?ArticleId=330068&CategoryId=12395>; see also *Anulan deportación de mexicana que ayudó a esclarecer asesinato*, LA GENTE, June 18, 2009, available at <http://www.radiolaprimerisima.com/noticias/55110/anulan-deportacion-de-mexicana-que-ayudo-a-esclarecer-asesinato>. This witness was able to achieve a U-Visa. ICE's response to her helpful efforts should serve as a cautionary tale. Telephone Interview with Alyssa Reed, Attorney, Lichter Immigration (Apr. 11, 2013).

³⁵⁵ See Sande L. Buhai, *Act Like A Lawyer, Be Judged Like A Lawyer: The Standard of Care for the Unlicensed Practice of Law*, 2007 Utah L. Rev. 87, 89 (2007).

³⁵⁶ See e.g., *Professional Regulation*, VIRGINIA STATE BAR, www.vsb.org/site/regulation/unauthorized-practice (last updated Nov. 3, 2011); *Filing an Unlicensed Practice of Law Complaint Pamphlet*, FLORIDA BAR, www.floridabar.org/TFB/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/59cac57c8be11c2085256b2f006c58a5? (last visited Apr. 21, 2013).

³⁵⁷ Interview with Christine Poarch, Chair of the Standing Committee of the Va. State Bar on Unauthorized Practice of Law, in Salem, Virginia (Feb. 21, 2003); Interview with David Zetony, Partner, Bryan Cave, in Washington, D.C. (Jan. 28, 2013).

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A UPL complaint takes time to process. If you decide to pursue this option it should be one of your first courses of action. It can be done in conjunction with any of the other remedies available to your client, but keep in mind that you should notify the committee if you decide to file a civil or criminal complaint separately.

BENEFITS OF SUBMITTING A UPL COMPLAINT

- (1) The committee could demand the entrance of a consent agreement in which the accused agrees to cease the activity at issue. This would enjoin the notario from harming other immigrants.
- (2) The committee could submit the complaint to the state attorney general or other law enforcement agencies in order to receive an injunction or pursue criminal charges against the notario. UPL committees may have preexisting relationships with law enforcement officials and knowledge of the intricacies of the local jurisdiction.
- (3) Regardless of the outcome, your report will have educated the committee about notario fraud in the community. Thus, even in the case of denial reporting serves a purpose.

Therefore, through the UPL process law enforcement may become aware of the notario's activities, the notario's license may be removed, and you may gather evidentiary documentation such as a written opinion of the committee's decision explaining the notario's actions and why they were considered UPL that can be used to further bolster your client's case.

DRAWBACKS OF SUBMITTING A UPL COMPLAINT

- (1) There is generally no private right of action for UPL claims. At best, the notario might be held to account but your client will not receive individual restitution.
- (2) UPL Committees only meet sporadically throughout the year, therefore, it can often take a while for a complaint to be fully processed. This lengthy process may cause a subsequent referral to law enforcement to be outside of the statutory time period to report fraud and other related crimes.
- (3) Many jurisdictions do not allow anonymous complaints, and require testimony as evidence of a violator's illegal behavior. Therefore, you and your client run the risk of having to testify at UPL hearings. This can be a hefty time obligation and may require revealing your identity and/or that of your client.
- (4) Keeping your client's immigration status undisclosed is often paramount to her wellbeing. In the process of filing a UPL complaint you risk exposing your client's status in several ways.
 - a. The accused is often provided a packet with the evidence against him. If your client is required to testify, the notario could see your client during proceedings. If the notario knows that your client is undocumented, he may report her out of a sense of revenge.
 - b. If the UPL committee refers your client's case to the authorities it is possible that the prosecuting authority will receive information regarding your client's status.

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UPL Referral Versus Filing Your Own Complaint with Law Enforcement

While the Committee's pre-existing relationship with prosecutors may enhance the likelihood of an investigation, you should still file your own complaint to ensure that the fraud is reported within the statute of limitations. Also, UPL committees may decide not to file with other reporting agencies, so you should log any complaints you determine to be necessary with the relevant agency yourself.

Weighing the Risks and Benefits of Filing a UPL Complaint Yourself

There are a few things that you should be aware of when deciding whether to file a UPL complaint on behalf of a victim. If you are located within a jurisdiction that does not allow anonymous complaints, or decide that it is best to prepare a victim to file a UPL complaint *pro se*, make sure to have a conversation with your client concerning the risks and potential time commitment. Not every victim will want to encounter the notario who defrauded her, and there is always the possibility that this individual may retaliate by reporting your client to the authorities. If your client is not already in proceedings, a notario's retaliation could have a very negative effect on her immigration status. Furthermore, if a UPL committee refers a case to a prosecutorial agency, this report could potentially include your client's information. This again risks exposing your client's immigration status. You must ensure that your client understands these risks before submitting a UPL complaint or before you submit a complaint on her behalf.

If you filed the complaint yourself, the committee could call on you to testify against the notario or to be otherwise involved in UPL proceedings. This can take a significant amount of time and directly exposes you to the notario and, potentially, his counsel. Be certain that you are willing to undertake these burdens before filing. If you are not, after weighing the risks and benefits for your client consider preparing him or her to apply *pro se* if this is permitted within your jurisdiction.

How to Report Instances of UPL

Step 1: Make sure to gather any information relevant to the offense committed.

This could include affidavits from your client and relevant witnesses, any evidence provided by your client, and anything else you think the committee would find useful.

Step 2: Check your jurisdiction's regulations.

Check your jurisdiction, particularly in regards to the statute of limitations for fraud, blackmail, perjury, or any other crime affiliated with notario fraud so that you can assess whether you will need to file a criminal complaint separately from the UPL complaint. Also check your state's procedure for reporting UPL (we have provided an example based upon Virginia's procedures in the Appendix).

Step 3: Collect documentation.

Collect any and all documentation affiliated with the notario fraud, and fill out the form or complaint provided by the committee.

Step 4: Be prepared to provide additional information as necessary.

Should the committee decide to refer the incident to other offices, be prepared to follow up with these offices and potentially provide them with further information. Keep in mind that, should the case proceed to trial, you or your client may be asked to testify.

Step 5: Follow up with the committee if you have not heard from them.

If you have received a decision be sure to inform your client.

SECTION III: Complaints and Referrals

D. FILING COMPLAINTS WITH LOCAL AND STATE AGENCIES

USCIS maintains a state-by-state list of designated agencies that accept reports of immigration consultant fraud and may undertake actions including investigations and criminal or civil prosecutions of the individual.³⁵⁸ Appropriate agencies vary by jurisdiction. At the state level, the Attorney General or the Secretary of State is usually the office ultimately responsible for regulating and issuing professional licenses, including notary licenses. If you determine that the person who defrauded your client is an authorized notary public, you can report him to these officials. Furthermore, many municipal and state agencies have units specifically focused on consumer protection that exclusively deal with unfair and deceptive business practices, and can bring fraud charges against those hoodwinking innocent people.

BENEFITS OF CONTACTING A LOCAL OR STATE AGENCY

- (1) Reporting can result in criminal charges or other disciplinary actions, such as revoking the notario's license.
- (2) State agencies may be less likely than local law enforcement to harbor bias against immigrants.
- (3) Some jurisdictions are already actively engaged in prosecuting notario fraud, so officials may be more responsive and/or knowledgeable about the issue.
- (4) Some jurisdictions may allow anonymous complaints, or permit you to file the claim on the victim's behalf.

DRAWBACKS TO REPORTING WITH STATE AND LOCAL AGENCIES

- (1) Local and state agencies work in the broadly defined public interest, and do not usually bring lawsuits on behalf of individuals. This means there generally will not be individual restitution for your client, and unless there are multiple victims, the agency might not consider the notario's actions egregious enough to act.
- (2) Some jurisdictions will require disclosing the client's identity, potentially exposing her to the notario, or to immigration authorities.
- (3) Some jurisdictions require complainants to contact the business named in a complaint directly before submitting the matter to the agency, or provide an explanation for why your client failed to do so.³⁵⁹ Even if a jurisdiction does not require this, many jurisdictions will contact the business once the complaint is received.³⁶⁰ At minimum, this will alert the notario to the fact that he has been reported.
- (4) State-level agencies have wide discretion over when and how to investigate and pursue cases, and may be driven by political considerations.
- (5) Even if a case is opened, it can be a slow, bureaucratic process

³⁵⁸ Report *Immigration Scams*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem.e8b24a3cec33ca34c48bfc10526e0aa0/?vgnextoid=e309d4aaee6ab210VgnVCM100000b92ca60aRCRD&vgnnextchannel=6358d4aaee6ab210VgnVCM100000b92ca60aRCRD> (last updated July 16, 2012).

³⁵⁹ CATHOLIC LEGAL IMMIGRATION NETWORK, FILING COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS, *supra* note 332, at 3.

³⁶⁰ *Id.*

SECTION III: Complaints and Referrals

WEIGHING THE RISKS AND BENEFITS OF CONTACTING STATE AGENCIES

There are risks inherent to interacting with any government official. However, there may be more leeway for anonymity when contacting state agencies. The right to confront witnesses is a fundamental aspect of a criminal case, but as mentioned above, some jurisdictions will allow anonymous submission of complaints, or allow you to file on your client's behalf.³⁶¹ However, the requirements vary substantially across jurisdictions. Be sure to review yours before advising your client.

Some states permit complaints lodged via telephone calls to hotlines. Avoid this option as proof of these calls is difficult to document. Instead lodge written complaints where possible, as maintaining written evidence of a complaint is preferable for record keeping and immigration filing.

Some jurisdictions may, at some point in the proceedings, make information publicly available, which might cause the notario to lash out at the victim by reporting her to immigration authorities or take other retaliatory measures. Investigate the specific procedures in your jurisdiction, and be sure to clearly explain the implications of filing such a complaint to your client.

HOW TO REPORT

Notary Licensing

If you find that the notario is abusing his position as a notary public, you may decide to file a complaint with the state licensing office that oversees notaries.³⁶² Each state has its own procedures for licensing, as well as for dealing with professional misconduct. Be sure to check your local jurisdiction for requirements and procedures for reporting professional infractions. Many jurisdictions have relatively straight-forward procedures for reporting notaries; for example the Maryland Secretary of State provides a simple form on its website.³⁶³

If your client is afraid of exposure, you should consider filing the claim yourself, but be aware that the office might require follow-up, and you might be obliged to identify your source before they take any action against the notario. Other jurisdictions may allow anonymous reporting. Licensing authorities will generally not be able to pursue restitution for your client,³⁶⁴ but could potentially prevent the notario from continuing to operate and/or refer the case to a prosecutor.

Consumer Fraud

Every state has different offices and procedures for reporting consumer fraud. The American Immigration Lawyer's Association has a state-by-state guide to filing consumer complaints.³⁶⁵

³⁶¹ See generally, AM. IMMGR. LAWYERS ASSOC., GUIDELINES FOR CONSUMERS: HOW AND WHERE TO FILE COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS, available at http://www.americanbar.org/content/dam/aba/administrative/immigration/fightnotariofraud/aila_howandwheretofile_notariofraud.authcheckdam.pdf (last visited Apr. 25, 2011).

³⁶² See, e.g., *Preliminary Statement of Complaint*, N.Y. DEP'T OF STATE, DIVISION OF LICENSING SERV., available at <http://www.dos.ny.gov/licensing/complaint.html> (last visited Apr. 21, 2013).

³⁶³ See, e.g., *Notary Complaint Form*, MD. SEC'Y OF STATE, available at <http://www.sos.state.md.us/notary/ConcernNotary.aspx> (last visited Apr. 21, 2013).

³⁶⁴ See, e.g., *File a Complaint: Notary Public*, WASH. STATE OFFICE OF LICENSING, available at <http://www.dol.wa.gov/business/notary/ncomplaint.html> (last visited Apr. 21, 2013).

³⁶⁵ AM. IMMGR. LAWYERS ASSOC., GUIDELINES FOR CONSUMERS: HOW AND WHERE TO FILE COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS, *supra* note 365.

SECTION III: Complaints and Referrals

Potential Consumer Fraud Claims

False Advertising

Deceptive Business Practices

Intentional Misrepresentation

Negligent Misrepresentation

On the state level, consumer protection units are often housed in the Secretary of State or Attorney General's office. In some states, such as California, New York, and Texas, state-level offices are actively engaged in combating notario fraud.³⁶⁶ In Texas, the Office of the Secretary of State has a specific form for complaints against notaries.³⁶⁷ Other state offices may be unaware of the issues that notario fraud presents but provide forms for general complaints where you can describe what has occurred. These forms are most often available via the office's website. For information and outreach pointers, refer to the guide produced by the Catholic Legal Immigration Network.³⁶⁸

D. FILING A COMPLAINT WITH THE FEDERAL TRADE COMMISSION

The Federal Trade Commission (FTC) is tasked with investigating and overseeing all forms of consumer fraud. The agency maintains an internal online, searchable database of consumer complaints from across the nation, called Consumer Sentinel.³⁶⁹ This database helps the agency identify patterns of fraudulent activities, and is available to other law enforcement officials.

If the notario's actions constitute a pattern that affects interstate commerce, the FTC might open an investigation. In its investigations, the FTC looks for patterns of behavior or trends in a reported area, but does not resolve individual cases. Be aware that the FTC also does not state publicly when they have opened an investigation, nor does it disclose an investigation's status.

We recommend as a best practice that you *always* file a complaint with Consumer Sentinel, since it takes little time, can be done without personally identifying your client, and will create a public record that can help advocacy efforts as the FTC will track the actions of individual notarios and assess the problem on a national level. Furthermore, the FTC allocates its limited resources according to the number of complaints lodged for specific consumer issues. The greater the number of notario fraud complaints, the more resources the FTC will allocate to responding to the problem.

BENEFITS OF FILING A COMPLAINT WITH THE FTC

- (1) Creates a national record of the notario's activities that law enforcement can use as a reference. This is particularly useful since notarios caught and prosecuted in one jurisdiction sometimes simply move operations to another.
- (2) The complaint system does not require that individual victims be identified, and institutions and advocates can file on the victim's behalf. Thus, if your client is seeking to avoid both alerting immigration officials and the notario that she has filed a complaint, this is the least risky option.

³⁶⁶ See *id.* at 9, 38, & 51.

³⁶⁷ *Id.* at 51.

³⁶⁸ CATHOLIC IMMIGR. NETWORK INC., FILING COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS, *supra* note 332.

³⁶⁹ Visit the FTC Consumer Sentinel website at <https://www.ftccomplaintassistant.gov/>.

SECTION III: Complaints and Referrals

DRAWBACKS TO FILING A COMPLAINT WITH THE FTC

- (1) The FTC does not pursue individual cases. There will be no individual retribution for your client.
- (2) The FTC will only open an investigation if there is a pattern of behavior that affects interstate commerce. The agency has limited resources, so even egregious circumstances will not guarantee that the agency will review the case.
- (3) The FTC does not publicly disclose the status of investigations so you should not expect updates on the status of your case.

How To File

Your client can file the complaint individually, or you can file on her behalf. If your client is not comfortable using computers, the FTC has created a one-page printout in both English and Spanish that she can fill out and give to you or someone else to enter the information into the system.³⁷⁰

The FTC is engaged in investigating the issue of notario fraud, and is actively seeking information regarding notarios and their effect on immigrant communities.³⁷¹ If you think you have a particularly compelling case that warrants an FTC investigation, once you have filed your complaint, the agency suggests you call your regional FTC branch or the national office to discuss your case directly.³⁷² Personally contacting the FTC will bring the incident to the office's attention, and they can advise you on the best course of action.

II. REFERRALS TO CIVIL ATTORNEYS

In addition to, or instead of, filing a complaint with government or other authorities, you can refer your client to attorneys who specialize in civil litigation to obtain individual restitution.

BENEFITS OF FILING A CIVIL CASE

- (1) Your client can obtain monetary damages, an injunction, or other individual restitution.
- (2) A positive outcome in a civil suit results in financial accountability for the notario and creates a public record of his activity.
- (3) A civil suit is often comparably faster than criminal charges.
- (4) The plaintiff has more control over when and how the suit is brought.

³⁷⁰ See Appendix Section III(A) and III(B) for copies of the FTC Complaint in Spanish and English. .

³⁷¹ The agency maintains a website devoted to fighting scams against immigrants that prominently features notarios. See *Scams Against Immigrants*, FED. TRADE COMM'N, <http://www.consumer.ftc.gov/articles/0141-scams-against-immigrants> (last updated June 2011).

³⁷² The national contact point is R. Michael Waller in the Division of Enforcement, available at 202-326-2902.

SECTION III: Complaints and Referrals

DRAWBACKS OF FILING A CIVIL CASE

- (1) Bringing civil claims is costly, specialized, and complex.
- (2) It can be difficult or impossible for lawyers to take on these cases for a profit. Many state laws limit class actions, damages, and/or attorneys fees for various types of civil claims.
- (3) It can be difficult to locate *pro bono* representation.
- (4) There is always a risk that an undocumented plaintiff might be brought to the attention of the authorities, particularly if the notario decides to retaliate once served with process.

In addition to the common law claims discussed in the introduction to this section, many state and municipal consumer protection statutes confer private rights of action. For more information, please see the training prepared by attorneys at Bryan Cave,³⁷³ and the list of additional resources maintained by the ABA.³⁷⁴

Check the law in your jurisdiction regarding civil complaints, or reach out to practitioners or organizations familiar with consumer protection in your state or municipality. Some cities and states have specific statutes that regulate immigration consultants, including (but not necessarily limited to):

Arizona: Az. Rev. Stat. Ann. §§12-2701–12-2704

California: Cal. Bus. & Prof. Code §§22440–48

Georgia: Ga. Code Ann. § 43-20A-6

Illinois: 85 Ill. Comp. Stat. 505/2AA

Chicago: Chicago Municipal Code, Chapter 4-372, Immigration Assistance

Maryland: MD Code, Commercial Law, §§14-3301 – 14-3306

Michigan: Mich. Comp. L. Ann. §§338.3451–71

Minnesota: Minn. Stat. §325E.031

New Jersey: N.J. Stat. Ann. §2C:21-31

New Mexico: N.M. Stat. Ann. §§36-3-1 to 36-3-10

New York: NY Laws Gen. Business 460-a to 460-j

Oregon: OR. Rev. Stat. §9.280

Texas: Tex. Gov. Code Ann. § 406.017

Utah: Utah Code Ann. 1953 §§ 13-49-201, -303, -304

Washington: Wash. Rev. Code §§19.154.010 to 19.154.902

Wisconsin: Wis. Stat. §137.01

POTENTIAL BARRIERS TO A CIVIL SUIT

Civil suits are expensive. While the amount a victim spends on a notario's services is often significant for the individual and family involved, it usually pales in comparison to the costs of litigation. There is no right to representation in a civil suit, and many statutes limit or forbid the collection of attorneys' fees or damages, and sometimes disallow the use of class actions.³⁷⁵ Therefore, it is often difficult or impossible for attorneys to take on these cases for a profit.³⁷⁶ There may be additional transactional costs, such as translation services, that add to an already hefty bill. Further, ensuring that the notario does not attempt to evade payment, such

³⁷³ PATRICE HAYDEN & BRYAN ZETOONY, BRYAN CAVE LLP, CONSUMER PROTECTION: THEORIES FOR BRINGING CIVIL ACTIONS AGAINST NOTARIOS, available at <http://apps.americanbar.org/publicserv/immigration/notario/dcmdva1.pdf>.

³⁷⁴ Training Materials, ABA, http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/attorneyresources/attorneyresources_trainingmaterials.html (last visited Apr. 21, 2013).

³⁷⁵ See HAYDEN & CAVE, *supra* note 377.

³⁷⁶ COHEN, VAN WAGNER, & WARD, *supra* note 337, at 20.

SECTION III: Complaints and Referrals

as by filing for bankruptcy, or by leaving the jurisdiction entirely, might involve multiple courtroom appearances.³⁷⁷ Make sure to discuss the monetary and time commitments involved in bringing a civil suit when making a referral.

FIND A PRO BONO ATTORNEY

Due to resource constraints, it is infeasible for most immigrants to conscript the services of a private attorney. Unfortunately, there are currently few legal services programs dedicated to fighting this issue. Many legal services organizations cannot take on cases for undocumented immigrants, or those who are ineligible for immigration relief.

There may be multiple organizations and private firms that provide pro bono legal services in your area. We provide advice below on how to find a viable referral option for immigrants you wish to refer.

- **Contact the American Bar Association**

- The American Bar Association runs a pro bono program to place victims of notario fraud with volunteer attorneys. You may contact the ABA's Fight Notario Fraud Taskforce at: (202) 442-3363 or fnf@americanbar.org.
- For more information visit:
http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/victimresources.html

- **Approach Local Law Firms or Practitioners**

- Particularly if you are in a larger urban area, many firms have established contact points to organize pro bono activities. Look on firms' websites, or call their offices.

- **Approach Law School Clinical Programs and/or Public Service Officers**

- Clinics with a focus on consumer protection or immigration might be particularly interested in pursuing claims.
- Most law schools have public interest or pro bono coordinators who may be able to find interested students to assist with a civil claim.
- Alternatively, approach individual professors with expertise for pro bono representation.

- **Approach local legal services organization or NGOs focused on immigration or consumer protection**

- These organizations may have on-staff attorneys, or suggestions for additional resources.

III. CONCLUSION

There are numerous resources on the local, state, and federal level for enhancing your immigration petition, ensuring your client receives restitution, and creating a record of the notario's activities. Whether done in conjunction with the immigration relief options described above, or as an alternative when you have concluded

³⁷⁷ *Id.* at 21.

SECTION III: Complaints and Referrals

that none of those options are available, we hope this section enhances your ability to serve your clients, and empowers you to provide holistic support and guidance to notario fraud victims.

CONCLUSION

We hope this Manual has enhanced your understanding of the complexities involved in notario fraud; informed you of potential immigration remedies; and offered guidance on the ways to approach the range of stakeholders involved in creating access to justice for victims of notario fraud.

Holistically addressing notario fraud requires coordinated actions by many different actors. It is encouraging to see lawmakers and law enforcement beginning to search for ways to hold individual perpetrators accountable for their crimes. Measures that focus only on pecuniary interests without appreciating the ways in which notario fraud jeopardizes the victim's undocumented status are incomplete. They fail to provide redress for the suffering caused by the notario, nor do they address the underlying reason immigrants seek out notarios in the first place.

By representing a victim of notario fraud in the immigration system, you are joining the fight to address this complex problem, and serving a population in dire need of legal services. Creative lawyering can advance and expand the remedies available when unethical or incompetent individuals prey on the hopes of the immigrant community. This Manual was designed to contribute to building successful cases that will bring meaningful and effective relief to victims of notario fraud. We ask that those who see developments in law and policy share their triumphs and challenges with other practitioners. Together we can grow the network of advocates and activists committed to ensuring immigrants receive effective, zealous representation and build a system that recognizes and seeks to remedy the harm our clients experience.

APPENDIX

SUGGESTED READINGS

Please find below a list of suggested readings, this list is not comprehensive of all material relative to this Manual but does contain those sources we found most valuable.

NOTARIO FRAUD GENERALLY

Cori Alonso-Marsden, *“Strong Words, Gentle Deeds”: Evaluating the Effectiveness of the Maryland Immigration Consultant Act Five Years On*, 4 Legis. and Pol’y Brief 75, 82-3 (2012).

ELIZABETH COHEN, CAROLINE VAN WAGONER, & SARA WARD, GEORGETOWN UNIVERSITY LAW CTR., COMMUNITY JUSTICE PROJECT, TO PROTECT AND SERVE: ACCESS TO JUSTICE FOR VICTIMS OF NOTARIO FRAUD IN THE NATION’S CAPITAL (Ayuda ed., 2012), available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice/upload/Ayuda-Final-Report-Stylized-Web-Version.pdf>

INTAKE AND INFORMATION GATHERING

How to File A FOIA Request, USCIS, <http://www.uscis.gov/USCIS/About%20Us/FOIA/uscisfoiarequestguide%2810%29.pdf> (last updated Apr. 24, 2013).

PROSECUTORIAL DISCRETION

Memorandum from John Morton, Dir., U.S. Immigration and Customs Enforcement, to all Field Directors et. al, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Priorities of the Agency, USCIS (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

Memorandum from John Morton, Dir., USCIS, to all Field Office Dirs. et. al., Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, USCIS (June 17, 2011), available at <http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

Memorandum from John Morton, Dir., USCIS, to all ICE Employees, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, USCIS (Mar. 2, 2011), available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

Memorandum from Doris Meissner, Comm’r., USCIS, to Regional Directors et. al, Exercising Prosecutorial Discretion, USCIS (Nov. 17, 2000), available at <http://www.scribd.com/doc/22092970/INS-Guidance-Memo-Prosecutorial-Discretion-Doris-Meissner-11-7-00>.

Memorandum from William J. Howard, Principal Legal Advisor, USCIS, to all OPLA Chief Counsel, Prosecutorial Discretion, USCIS 2 (Oct. 24, 2005), available at http://www.legalmomentum.org/assets/pdfs/cis_memo_for_chief_counsels_-_prosecutorial_discretion_.pdf.

Appendix

NAT'L IMMIGR. LAW CTR. ET. AL., SELF-HELP GUIDE FOR A PROSECUTORIAL DISCRETION REQUEST (2011)
<http://www.chirla.org/sites/default/files/Prosecutorial%20Discretion%20Pro%20Se%20Packet.pdf>.

MARY KENNEY, AMERICAN IMMIGRATION COUNCIL, PROSECUTORIAL DISCRETION: HOW TO ADVOCATE FOR YOUR CLIENT (2011), *available at*
<http://www.legalactioncenter.org/sites/default/files/ProsecutorialDiscretion-11-30-10.pdf>.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PROTECTING THE HOMELAND – TOOLKIT FOR PROSECUTORS (Apr. 2011), *available at* <http://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

U-VISA

Asista maintains an online clearinghouse with a wealth of information about all aspects on the U-Visa program, including many helpful trainings and advocacy documents. Please visit the organization's website, http://www.asistahelp.org/en/access_the_clearinghouse/u_visa/.

DEPARTMENT OF HOMELAND SECURITY (DHS), U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE, *available at* <http://www.dhs.gov/u-visa-law-enforcement-certification-resource-guide>.

See SALLY KINOSHITA, SUSAN BOWYER, JESSICA FARB & CATHERINE SEITZ, IMMIGR. LEGAL RES. CTR., THE U-VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME (3D ED. 2012).

GAIL PENDLETON, WINNING U VISAS: GETTING THE LAW ENFORCEMENT CERTIFICATION (LexisNexis Expert Commentaries, 2008), *available at*
http://www.asistahelp.org/documents/resources/ExpCommPendleton0208_4D9DF9844BDF9.pdf.

NATIONAL IMMIGRANT FAMILY VIOLENCE INSTITUTE, PROMOTING U VISA WITH LOCAL OFFICIALS, *available at* <http://www.nifvi.org/Promoting%20U%20Visas%20with%20Local%20Officials.pdf>.

IAC

NINTH CIRCUIT, IMMIGRATION OUTLINE: MOTIONS TO REOPEN OR RECONSIDER IMMIGRATION PROCEEDINGS [prepared by the Office of Staff Attorneys], *available at*
http://www.ca9.uscourts.gov/guides/immigration_outline.php.

AM. IMMGR. L. FOUNDATION, RESCINDING AN IN ABSENTIA REMOVAL ORDER (2004) [prepared by Beth Werlin], *available at*
http://www.asistahelp.org/documents/resources/AILF_on_in_absentia_7C79E5CB2220E.pdf.

LaJuana Davis, *Reconsidering Remedies for Ensuring Competent Representation in Removal Proceedings*, 58 Drake L. R. 123 (2009).

CRIMINAL LAW

Appendix

INT'L ASSOC. OF CHIEFS OF POLICE, A POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES (2007), *available at* <http://www.theiacp.org/PublicationsGuides/TopicalIndex/tabid/216/Default.aspx?id=866&v=1>.

CIVIL LAW

Patrice Hayden & Bryan Zetony, Bryan Cave LLP, Consumer Protection: Theories for Bringing Civil Actions Against Notarios, *available at* <http://apps.americanbar.org/publicserv/immigration/notario/dcmdva1.pdf>.

UPL

Sande L. Buhai, *Act Like A Lawyer, Be Judged Like A Lawyer: The Standard of Care for the Unlicensed Practice of Law*, 2007 Utah L. Rev. 87 (2007).

REPORTING TO EXECUTIVE AGENCIES

AM. IMMGR. LAWYERS ASSOC., GUIDELINES FOR CONSUMERS: HOW AND WHERE TO FILE COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS, *available at* http://www.americanbar.org/content/dam/aba/administrative/immigration/fightnotariofraud/aila_howandwheretofile_notariofraud.authcheckdam.pdf.

CATHOLIC LEGAL IMMIGRATION NETWORK, FILING COMPLAINTS AGAINST NOTARIOS AND IMMIGRATION CONSULTANTS (2013), *available at* <http://cliniclegal.org/sites/default/files/FilingcomplaintsagainstNotariosandImmigrationConsultants.pdf>

APPENDIX SECTION 1:

Intake and Fact Gathering

SEC. IA NOTARIO FRAUD INTAKE FORM

Date: Month | ____ | ____ | Day | ____ | ____ | Year | ____ | ____ | ____ | ____ |

THERE ARE NUMEROUS CASES INVOLVING IMMIGRATION CONSULTANTS REPRESENTING THEMSELVES AS AUTHORIZED TO ASSIST IMMIGRANTS WITH THEIR LEGAL CASES (FOR EXAMPLE, A NOTARY OR NOTARY PUBLIC IS NOT LICENSED OR QUALIFIED TO PROVIDE IMMIGRATION LEGAL SERVICES). SOMETIMES THESE CONSULTANTS CHARGE EXORBITANT FEES FOR SERVICES THEY NEVER PROVIDE, OR FOR SERVICES NOT APPROPRIATE TO THEIR VICTIMS' CIRCUMSTANCES. THESE SERVICES CAN DAMAGE THE PERSON'S IMMIGRATION CASE.

1. Have you ever gone to anyone to consult about your immigration status?

YES

NO

2. Has anyone ever helped you fill out forms before?

YES

NO

3. Have you ever worked with anyone who advised you not to mention your interaction with him/her?

YES

NO

4. Have you gone to a notary, notary public, or immigration consultant before?

YES

NO

5. Have you contacted a private attorney before?

YES

NO

6. If YES, when were you in contact with him/her?

- 7. Do you have the name, address, and/or phone number of the person or company, and/or a business card, flyer, etc.? If YES, please provide a copy.**

[If licensed attorney, END Survey.]

- 8. How did this person present him/herself to you?**
- a. As a person qualified to handle legal matters in your immigration or naturalization case?**
 - b. As a person “licensed” by the court or “qualified” to provide legal services or legal advice?**
 - c. OTHER**

- 9. Did s/he use the terms “notary,” “notary public,” “licensed attorney,” and/or “advocate”?**

- 10. What did this individual, company, or notary offer you?**

- 11. Did the notary, notary public, or immigration consultant offer you a special deal, discount, expedited processing, or tell you that s/he had a special relationship with the Department of Homeland Security or any other government agency?**

YES

NO

- 12. What type of services did s/he provide?**
- a. Were you advised of the legal remedies in your case? _____**
 - b. Did s/he assist you with the selection of immigration forms or filings? _____**

- c. Did s/he help you complete immigration forms or filings? _____
- d. Did s/he send anything to USCIS/the court on your behalf? _____
- e. Did s/he translate documents for you? _____
- f. OTHER Services _____
- g. NOTHING: The individual accepted payment (YES or NO) but did not provide any services.

13. What did you think the consultant or notario could do for you? Why did you think this?

14. If you worked with someone who was not an attorney, did you know s/he was not qualified to represent you in immigration proceedings? YES or NO (Circle)

15. How did you find out about the services of this person or company?

- a. Advertisements
 - i. Radio – where? _____
 - ii. Television – where? _____
 - iii. Newspaper – where? _____
 - iv. Personal card/business card advertising his/her services
 - v. Sign/poster of the person/company – where? _____
- b. Acquaintance– family member/friend/colleague? _____
- c. Recommendation – who made the recommendation? _____

16. Did you refer anyone else to this notary or immigration consultant? YES or NO

- a. If YES, whom did you refer?

17. Did s/he charge you for the consultation? YES or NO If yes, how much?

18. Do you remember the prices this notary or consultant charged for his/her services?

[Only if “represented”:]

19. How much did you pay and what services did you receive? Did s/he provide you a receipt? If yes, and you still have it, please provide a copy.

20. Did you receive a contract? YES or NO If yes, in what language?

21. Did you sign any document(s)? YES or NO If yes, what documents did you sign?

22. Did they keep your original documents and/or your legal notifications from court or USCIS?

YES or NO

23. If so, what documents?

24. Did you ask him/her to return your documents? How did s/he respond?

25. How often were you in contact with the notary/consultant?

26. After these services, what happened in your case?

Appendix

27. Did you ever confront the notario? How did s/he respond?

Observations:

SEC. IB PD INTAKE FORM**Intake for Prosecutorial Discretion**

Date: ____/____/____

Interview by: _____

Name of**Petitioner:** _____

Address: _____

Statistics:

Marital Status: S M D W DOB: ____/____/____ Age: _____ POB: _____

Sex: M F

Population Group: ____Hispanic ____Black ____Caucasian ____Asian ____Other

Language: _____

POSITIVE FACTORS:**Length of Stay**

How long has the petitioner been in the US?: _____

How old was s/he when s/he entered the country?: _____

Military Service

Has s/he served in the US military?: _____

Has someone in his/her immediate family?
_____**Family of Petitioner:**

Name (relationship)	DOB	Place of Birth	Resides in	Status

Does the applicant have any family who are citizens or legal permanent residents? Y N

Appendix

Do any family members have physical or mental disabilities? Y N

Are there other extraordinary family circumstances that would cause severe hardship?

Health

Is the petitioner pregnant? Y N

Does the petitioner suffer from any health problems? Y N

Ties to the Community

Is the petitioner active in the community? Do they volunteer with any organizations, engage with any local programs, etc?

Crime Victim

Date(s) of criminal activity: ___/___/___ ___/___/___ ___/___/___

Where did crime occur?

Who harmed you? _____

Witness(es)? Y N _____

Physical injury? Y

N _____

General circumstances/description:

Has the petitioner reported the crime? Y N

Law enforcement agency _____ ___ Local ___ State ___ Federal

Is the police report available? Y N

Case Status? ___ Not Started ___ On-Going ___ Completed ___ Prosecuted

Is the petitioner willing to make a report? Y N

Appendix

Is the petitioner involved in a civil case regarding this matter?

Financial/ Employment Background of Petitioner

Are you employed? Y N If yes, weekly income? _____

Is your spouse and/or adult child employed? Y N If yes, total weekly family income _____

Number of dependents you support financially (including those outside of US) _____

If not employed, who supports you? _____

NEGATIVE FACTORS:

Criminal History

Has the Petitioner ever been arrested, jailed, detained, charged etc. by the Police, FBI, or BCIS? Y N

When? _____ Where? _____ Is the Court Disposition available? _____

Nature of the arrest? _____

What was the outcome? _____

Has the petitioner been arrested, jailed, detained, charged etc. more than once? Y N

When? _____ Where? _____ Is the Court Disposition available? _____

Nature of the arrest? _____

What was the outcome? _____

How many times total? _____

Does the petitioner have any felony convictions? Y N Multiple? Y N

Total Number: _____

Any aggravated felony convictions? Y N

Multiple misdemeanor convictions? Y N Total Number: _____

Was the Petitioner detained by immigration upon entering the U.S. or has he/she ever had to appear before the immigration court? No _____ Yes _____

If yes, explain: _____

Did Petitioner enter the U.S. with a visa? Y N Is I-94 available? Y N

Where did Petitioner first enter the U.S.? _____ on ____/____/____

Current Status? _____

Has petitioner been detained more than once?

Has the petitioner even been questioned in any matter relating to national security? Y N

Circumstances: _____

Are there any other reasons why the US government might consider the petitioner a security threat? Y N

Appendix

SEC.1C U-VISA INTAKE FORM

Intake for U Nonimmigrant Status (I-918)

Date: ____/____/____

Interview by: _____

Name of Petitioner: _____

Address: _____

Statistics:

Marital Status: S M D W DOB:____/____/____ POB:_____

Sex: M F

Population Group: ____Hispanic ____Black ____Caucasian ____Asian ____Other

Language: _____

I-918B Law Enforcement Certification and Qualifying Crime (s):

Date(s) of criminal activity: ____/____/____ ____/____/____ ____/____/____

Where did crime occur? _____

Has Petitioner crime? Y N

Law enforcement agency _____

____Local ____State ____Federal

Police report available? Y N

Case Status? ____Not Started ____On-Going ____Completed

____Prosecuted

Helpfulness to law enforcement/ prosecution:

Past/future helpfulness: _____

Qualifying for U status crime: (check all that apply)

- | | | | |
|--|--|--|---|
| <input type="radio"/> Abduction | <input type="radio"/> Hostage | <input type="radio"/> Prostitution | <input type="radio"/> Stalking |
| <input type="radio"/> Abusive Sexual Contact | <input type="radio"/> Incest | <input type="radio"/> Rape | <input type="radio"/> Fraud in For. Contract. |
| <input type="radio"/> Blackmail | <input type="radio"/> Involuntary Servitude | <input type="radio"/> Solicitation | <input type="radio"/> Sexual Exploitation |
| <input type="radio"/> Domestic Violence | <input type="radio"/> Kidnapping | <input type="radio"/> Sexual Exploitation | |
| <input type="radio"/> Extortion | <input type="radio"/> Manslaughter/ Murder | <input type="radio"/> Slave Trade | |
| <input type="radio"/> False Imprisonment | <input type="radio"/> Conspiracy | <input type="radio"/> Torture | |
| <input type="radio"/> Felonious Assault | <input type="radio"/> Obstruction of Justice | <input type="radio"/> Unlawful Crim. Restraint | |
| <input type="radio"/> Attempt | <input type="radio"/> Peonage | <input type="radio"/> Witness Tampering | |
| | <input type="radio"/> Abduction | | |
| | <input type="radio"/> Abusive Sexual Contact | | |
| | <input type="radio"/> Blackmail | | |
| | <input type="radio"/> Domestic Violence | | |
| | <input type="radio"/> Extortion | | |
| | <input type="radio"/> False Imprisonment | | |
| | <input type="radio"/> Felonious Assault | | |
| | <input type="radio"/> Attempt | | |

Appendix

CRIME AND SUBSTANTIAL HARM:

Describe criminal activity: Location? _____

Who harmed you? _____

Witness(es)? Y N _____

Physical injury? Y N _____

General circumstances/description:

Substantial harm to Petitioner: Describe the lasting physical, mental or emotional effect of the crime

Hospital records ? Y N Where? _____

In mental health counseling? Y N Where, length of treatment, counselor: _____

General description of harm:

Other evidence of harm (photos, bills, CVCP payments, etc.):

Family of Petitioner:

Derivatives for I-918A: List qualifying derivatives: spouse, children, parents, unmarried siblings under 18

Name (relationship)	DOB	Place of Birth	Resides in	Status

Financial/ Employment Background of Petitioner

Are you employed? Y N If yes, weekly income? _____

Is your spouse and/or adult child employed? Y N If yes, total weekly family income _____

Number of dependents you support financially (including those outside of US) _____

If not employed, who supports you? _____

Criminal History

Has the Petitioner ever been arrested, jailed, detained, charged etc. by the Police, FBI, or UCIS Y N

When? _____ Where? _____ Is the Court Disposition available? _____

Nature of the arrest? _____

What was the outcome? _____

Was the Petitioner **detained by immigration** upon entering the U.S. or has he/she ever had to appear before the immigration court? No _____ Yes _____ If yes, explain: _____

Appendix

Did Petitioner enter the U.S. with a visa? Y N

Is I-94 available? Y N

Where did Petitioner first enter the U.S.? _____ on ____/____/____

Current Status? _____

SEC. ID INFORMATION RELEASE (ENGLISH)

AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION

I, _____, hereby authorize _____ to:

- ☐ release information contained in my records to the individual or organization listed below
- ☐ request and receive information from the individual or organization listed below
- ☐ exchange information with the individual or organization listed below on an ongoing basis for the duration of the terms of this release

1. Name of Individual or Organization

2. Type of Information to be Disclosed

3. The Purpose or Need for Such Disclosure

I understand that information shared is done so in confidence and will not be disseminated to any party not referenced without my permission. Said release is intended to cover the verbal and written release/transmission of information. I understand that this consent is subject to revocation in writing at any time.

I further understand that this information cannot be disclosed without my authorization and cannot be re-released without my written permission, except as required by law.

Date of Expiration of Consent: _____

Client Signature

Witness Signature

Printed Name of Client

Printed Name of Witness

Date

Date

Signature of parent/guardian
(when required)

SEC. IE INFORMATION RELEASE (SPANISH)

AUTORIZACIÓN PARA COMPARTIR INFORMACIÓN CONFIDENCIAL

Yo, _____, autorizo a _____ a:

compartir información de mi expediente con la persona/organización mencionada a continuación
pedir y recibir información por parte de la persona/organización mencionada a continuación
intercambiar información con la persona/organización mencionada a continuación durante el período de este acuerdo

1. Nombre de la persona u organización

2. Clase de información que será compartida

3. El motivo o necesidad de compartir la información

Entiendo que la información será compartida confidencialmente y no será compartida con ninguna parte no incluida en este acuerdo sin mi permiso explícito. Este acuerdo incluye la transmisión/revelación de información verbal y escrita. Entiendo que este consentimiento puede ser derogado de manera escrita en cualquier momento.

Además, entiendo que esta información no puede ser compartida sin mi autorización y no puede ser re-compartida sin mi permiso escrito, excepto según las excepciones bajo la ley.

Fecha de vencimiento de este consentimiento: _____

Firma del cliente

Firma del testigo

Nombre del cliente

Nombre del testigo

Fecha

Fecha

Firma de padre/tutor (en caso de ser relevante)

APPENDIX SECTION II:

Immigrant Remedies

SEC. IIA SAMPLE PD LETTER

SAMPLE REQUEST¹

Office of the Chief Counsel, Baltimore
Immigration and Customs Enforcement
U.S. Department of Homeland Security
George H. Fallon Federal Building
31 Hopkins Plaza
Suite 1600
Baltimore, Maryland 21201

RE: Request for Exercise of Favorable Prosecutorial Discretion
Respondent: Ms. Rosa Ventura [A# 222-222-222]
Next Hearing: August 31, 2012 at 10AM

Dear Chief Counsel,

[Law firm or non-profit name] represents respondent Rosa Ventura² (“Ms. Ventura”). Ms. Ventura respectfully requests that the Office of the Chief Counsel exercise favorable prosecutorial discretion by joining in her Motion to Terminate Removal Proceedings.

Ms. Ventura is a victim of immigration services fraud. In August 2011, a non-attorney immigration consultant named Steven Jimenez³ falsely advised her that the U.S. government had decided to offer an amnesty to undocumented immigrants and that she should apply for adjustment of status. With Ms. Ventura’s assent, Mr. Jimenez prepared an I-485 form on her behalf, charging her more than five thousand dollars. Because Ms. Ventura was ineligible, U.S. Citizenship and Immigration Services (USCIS) rejected her application. The Immigrations and Customs Enforcement (ICE) division of the Department of Homeland Security (DHS) subsequently issued her a Notice to Appear for removal proceedings.

Ms. Ventura is now a client of [law firm or non-profit name]. She understands the fraud perpetrated against her and has filed complaints against Mr. Jimenez with the Federal Trade Commission (FTC) and the Maryland Attorney General. Combating immigration services scams of the type perpetrated against Ms. Ventura is an important DHS policy goal. It makes little sense for ICE to continue removal proceedings against her, given that she may prove helpful in stopping an ongoing scam. Furthermore, in recent policy memoranda, ICE has determined that prosecutorial discretion is presumptively warranted in cases involving crime victims, witnesses,

¹ This sample request is not a substitute for independent legal advice. The authors, Gregory Krauss, volunteer attorney with the Catholic Charities of the Archdiocese of Washington Immigration Legal Services, and Michelle Mendez, staff attorney at the Catholic Charities of the Archdiocese of Washington Immigration Legal Services, thank Maureen Sweeney and Patricia Chiriboga-Roby of the Maryland Immigrant Rights Coalition (MIRC) Board of Directors for providing invaluable guidance during the drafting of this sample request.

² This is a fictional name.

³ This is a fictional name.

and individuals seeking to protect their civil rights and liberties. Ms. Ventura falls directly into this category of individuals and therefore a favorable exercise of prosecutorial discretion is appropriate.

For these reasons and the reasons that follow, Ms. Ventura asks the Office of Chief Counsel to join in her Motion to Terminate Removal Proceedings. Ms. Ventura encloses a draft of the motion and an exhibit list with the relevant memoranda and other evidence.

ARGUMENT

1. The Department of Homeland Security has the right and the responsibility to exercise prosecutorial discretion in appropriate cases.

It is well-established as a matter of law that the Department of Homeland Security enjoys the power of prosecutorial discretion. Both federal courts and the Board of Immigration Appeals have found that DHS possesses discretion in deciding how best to exercise its immigration enforcement powers. See, e.g., Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 489-92 (1999) (finding that the INS retains inherent prosecutorial discretion as to whether to bring removal proceedings); Matter of Yauri, 25 I&N Dec. 103, 110 (BIA 2009) (noting that DHS has prosecutorial discretion to grant deferred action status to a respondent).

Moreover, DHS has long expressed as a policy matter the necessity of exercising its power of prosecutorial discretion. See generally Exhibit A, Doris Meissner, Commissioner: Exercising Prosecutorial Discretion (Nov. 17, 2000) (hereinafter, “Meissner Memorandum”); William Howard, Principal Legal Advisor: Prosecutorial Discretion (October 24, 2005). On June 17, 2011, ICE issued its two most recent policy memoranda on prosecutorial discretion. See Exhibit B: John Morton, Director: Prosecutorial Discretion: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011) (hereinafter “Morton Prosecutorial Discretion Memorandum”); Exhibit C, John Morton, Director: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011) (hereinafter “Morton Victims Memorandum”). These memoranda reaffirmed the importance of prosecutorial discretion to DHS and explained, once again, the reasons for it. As the Morton Prosecutorial Discretion Memorandum states,

“One of ICE’s central responsibilities is to enforce the nation’s civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency’s enforcement priorities, namely the promotion of national security, border security,

public safety, and the integrity of the immigration system.” Exhibit B, Morton Prosecutorial Discretion Memorandum at 2.

Given that ICE possesses only limited resources and must allocate those resources efficiently, prosecutorial discretion is a practice which DHS positively encourages and even expects to be exercised. See, e.g., Exhibit A, Meissner Memorandum at 1 (stating that “[s]ervice officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process.”) (Emphasis in original). ICE attorneys are among the employees who are encouraged to exercise prosecutorial discretion where appropriate. See, e.g., Exhibit B, Morton Prosecutorial Discretion Memorandum at 3.

2. It is counterproductive to DHS policy goals to pursue removal of individuals, such as Ms. Ventura, who are cooperating with law enforcement in the fight against immigration services scams.

One of DHS’s top policy priorities in the realm of immigration enforcement is reducing immigration services fraud. Along with the Department of Justice (DOJ) and the FTC, DHS is helping to lead a major new national initiative aimed at combating immigration services scams. See, e.g., Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (June 9, 2011). These agencies, in partnership with state and local governments around the country, are combating immigration services scams using a variety of tools, including better coordination and improved enforcement and education efforts. Id.⁴

Ms. Ventura is a victim of immigration services fraud who is cooperating with the FTC and the Maryland Attorney General, two of DHS’s partners, in the investigation of that fraud. Her presence in the United States is necessary if she is to continue providing her assistance. It makes little sense, and is indeed counterproductive to DHS’s own policy goals, to pursue a removal action against her. Instead of seeking her removal, ICE should facilitate and encourage her cooperation with DHS partners by exercising prosecutorial discretion in the present case.

a. Ms. Ventura is a victim of immigration services fraud who has offered her assistance to the FTC and the Maryland Attorney General.

Ms. Rosa Ventura is a resident of Prince George’s County, Maryland. Exhibit I, Affidavit of Rosa Ventura (May 3, 2012). She was born in El Salvador and speaks limited English. Id.; Exhibit R, Birth Certificate of Rosa Ventura. In August 2011, she found an advertisement on her car windshield promoting the services of a company called Asuntos Inmigratorios. Exhibit I, Affidavit of Rosa Ventura. The advertisement, written in Spanish, falsely stated that the U.S. government had decided to grant an “amnesty” to qualifying undocumented immigrants. Id.; see

⁴ Maryland is among the states where the FTC has been active in combating immigration services fraud. On June 9, 2011, the FTC issued its own press release drawing attention to an FTC complaint filed against Manuel and Lola Alban, a Maryland couple accused of running an immigration services scam. See Exhibit G, Federal Trade Commission: FTC Combats Immigration Services Scams (June 9, 2011).

also Exhibit J, Advertising Material Distributed by Asuntos Inmigratorios. Ms. Ventura called the phone number and made an appointment. Exhibit I, Affidavit of Rosa Ventura.

The appointment took place in late August 2011 at the office of Asuntos Inmigratorios, located at 56507 New Hampshire Ave. in Silver Spring, Maryland. Id. The day of the appointment, Ms. Ventura entered the office and met a well-dressed man named Steven Jimenez. Id. Introducing himself, he provided her a business card that identified him as a “notario publico.” Id.; Exhibit K, Business Card of Steven Jimenez. Mr. Jimenez spoke Spanish and explained that he, too, was from El Salvador, helping Ms. Ventura feel more at ease. Exhibit I, Affidavit of Rosa Ventura. Mr. Jimenez interviewed Ms. Ventura about her immigration history and charged her a \$100 consultation fee. Id. He then informed her that a recently-announced amnesty program made her eligible to apply for adjustment of status. He urged her to take advantage of the opportunity as soon as possible. Id.

With Ms. Ventura’s assent, Mr. Jimenez subsequently prepared an I-485 form on her behalf. Id.; Exhibit M, Copy of USCIS I-485 Form. He charged her a fee of \$5,330 for the work. Exhibit I, Affidavit of Rosa Ventura; Exhibit L, Copy of Check to Asuntos Inmigratorios and Bank Statement. Mr. Jimenez did not identify himself on the application or complete a G-28 form disclosing his role in the application’s preparation. Exhibit M, Copy of USCIS I-485 Form. He instead advised Ms. Ventura to mail in the form herself. Exhibit I, Affidavit of Rosa Ventura. Ms. Ventura mailed the completed I-485 form to USCIS and paid the required \$1,070 filing fee, keeping a copy of the application for her records. Id. Because she was not eligible to adjust her status, USCIS rejected the application. In February 2012, DHS notified Ms. Ventura that it was placing her in removal proceedings.

Federal regulations permit only certain individuals to represent clients in immigration matters, including attorneys; law students or graduates working under the supervision of an attorney; unpaid friends and family members; and other individuals meeting regulatory requirements, such as employees of non-profit organizations approved by the Department of Justice. See 8 C.F.R. § 292.1 et seq. At all times during her interactions with Mr. Jimenez, Ms. Ventura assumed that she was working with a licensed attorney. Id. However, there are no registered attorneys in Maryland named Steven Jimenez. Exhibit N, Client Protection Fund of the Bar of Maryland: Attorney Listing (accessed May 20, 2012). Nor has Mr. Jimenez or Asuntos Inmigratorios been authorized by the Department of Justice to represent clients in immigration matters. See Exhibit O, Department of Justice, Executive Office for Immigration Review: Recognition and Accreditation Program (accessed May 20, 2012) (listing individuals and organizations authorized to represent immigration clients before federal agencies).

It is clear that Mr. Jimenez intentionally deceived Ms. Ventura, defrauded her of several thousand dollars, and provided her faulty and unauthorized legal counsel leading to her placement in removal proceedings. In practicing this deception, he took advantage her unfamiliarity with U.S. legal practices and willingness to trust a person of Salvadoran heritage. A

“notario publico” in Latin America is usually a licensed attorney, in contrast with the customary meaning of “notary public” in the United States. See Barroso v. Gonzales, 429 F.3d 1195, 1197 n.2 (9th Cir. 2005) (“Latino immigrants often mistakenly believe that ‘notarios’ are lawyers because in many Latin American countries, notarios are ‘a select class of elite attorneys subject to rigorous examinations, regulation, and codes of professional responsibility.’” (citation omitted)). By calling himself a notario publico, Mr. Jimenez deliberately misled Ms. Ventura as to his qualifications. This tactic is prevalent in immigrant communities and is why immigration services fraud is often known as “notario fraud.”

Suspecting that Mr. Jimenez had misled her, Ms. Ventura terminated her relationship with him and became a client of [law firm or non-profit name]. She is now aware of the fraud perpetrated against her. In April 2012, she reported this fraud to the FTC and the Maryland Attorney General. Exhibit P, Rosa Ventura’s Complaint to the FTC (April 16, 2012); Exhibit Q, Rosa Ventura’s Complaint to the Maryland Attorney General (April 16, 2012). To date, neither agency has sought injunctive relief or filed charges against Mr. Jimenez or Asuntos Migratorios. However, owing to Ms. Ventura’s cooperation, both agencies now are in a position to decide on appropriate next steps.

b. DHS should exercise prosecutorial discretion in support of its efforts to combat immigration services scams.

Immigration services scams of the type experienced by Ms. Ventura are unfortunately all too common. As the Ninth Circuit Court of Appeals has observed, “[t]he immigration system in this country is plagued with ‘notarios’ who prey on uneducated immigrants.” Mendoza-Mazariegos v. Mukasey, 509 F.3d 1074, 1078 n.4 (9th Cir. 2007) Immigration service scams cause harm in a number of ways. Immigrants who turn to fraudulent immigrant consultants are duped, defrauded of their money, and denied quality legal representation; many of them, consequently, never receive immigration benefits for which they are eligible. Conversely, immigration services scams clog the system with fraudulent, incomplete, and error-filled applications for immigration benefits. Immigration services scams waste DHS and federal resources and, in some cases, result in the awarding of benefits to thousands of ineligible individuals. See Exhibit E, U.S. Attorney’s Office, Southern District of New York: Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (April 2, 2012).

Overall, immigration services fraud impairs the quality and fairness of the nation’s immigration system. It also blemishes the reputation of immigration attorneys, DHS, other federal agencies, and the immigration system as a whole.

All these reasons, and others, explain why DHS is helping to lead a national partnership to stop immigration services fraud. DHS should strengthen that partnership by exercising prosecutorial discretion in the present case, in which Ms. Ventura is cooperating with the FTC and the Maryland Attorney General, two of DHS’s partners. Ms. Ventura is willing to cooperate

with these authorities in whatever legal action they may decide to take against Mr. Jimenez. She is willing, for instance, to continue providing information about her experience and to serve as a witness. She also wishes to preserve the possibility of filing her own civil claim for damages, if neither agency takes action. Exercising prosecutorial discretion will allow Ms. Ventura to continue cooperating with authorities and, if necessary, pursue her own legal action, without risk or fear of her removal.

Furthermore, a decision to exercise prosecutorial discretion in this case would be well-rooted in existing DHS policy guidelines on the use of such discretion. There is ample precedent for ICE exercising prosecutorial discretion to encourage and facilitate cooperation with law enforcement. To minimize conflict between immigration enforcement and the enforcement of other important laws, DHS is often willing to exercise prosecutorial discretion in cases involving individuals who assist law enforcement agencies. The Morton Prosecutorial Discretion Memorandum of June 11, 2011, outlines a list of factors that ICE attorneys should consider when deciding to exercise prosecutorial discretion. Those factors include, among others, whether an individual “is currently cooperating or has cooperated with federal, state, or local law enforcement authorities.” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4; see also Exhibit C, Morton Victims Memorandum at 1 (prosecutorial discretion is appropriate for certain crime victims, witnesses, and individuals pursuing civil rights claims).

Declining to pursue removal proceedings against Ms. Ventura would be fully consistent with another aspect of ICE guidelines on prosecutorial discretion. One of the specific goals guiding ICE officials in their use of prosecutorial discretion has long been “promoting the integrity of the legal immigration system.” Exhibit A, Meissner Memorandum at 4; see also Exhibit B, Morton Prosecutorial Discretion Memorandum at 2. With this policy goal in mind, ICE officials are less likely to grant prosecutorial discretion to individuals with a record of immigration violations, such as those with a record of illegal re-entry or individuals who themselves have engaged in immigration fraud. Exhibit B, Morton Prosecutorial Discretion Memorandum at 2

Pursuant to this same goal of promoting the integrity of the legal immigration system, ICE should consider a favorable exercise of prosecutorial discretion with respect to individuals such as Ms. Ventura, who are helping stop immigration services scams.⁵ Immigration services

⁵ It might be argued that the removal of Ms. Ventura might alert other immigrants to the need to choose their legal representatives more carefully. By injecting greater caution into the immigrant community, fraudulent immigration consultants such as Mr. Jimenez might have more difficulty finding clients, helping to reduce immigration services scams. However, this argument ignores two critical points. First, most immigrants without legal status already approach the immigration system with caution. To avoid fraudulent immigration consultants, these immigrants need better information. Removing Ms. Ventura will do little to educate the immigrant community about how to avoid immigrant services scams. Second, prosecuting fraudulent immigration services consultants and subjecting them to costly penalties, and possibly jail time, is the most effective way to stop them.

scams undoubtedly pose a substantial threat to the integrity of the legal immigration system; ICE Director John Morton himself noted as much in USCIS's June 9, 2011 press release, when he observed that ICE's efforts to combat notario fraud would help "protect the integrity of the legal immigration system." Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (emphasis added).

Finally, there may be few better tools at DHS's disposal to combat immigration services fraud than the strategic exercise of prosecutorial discretion. If ICE exercises prosecutorial discretion in this case and in similar cases, it could create a powerful incentive for immigrants to work with the FTC, the DOJ, and state law enforcement authorities to stop immigration services scams. The impact and scope of law enforcement efforts could be multiplied.

3. It is against DHS policy to initiate removal proceedings against individuals who, like Ms. Ventura, are crime victims, witnesses, or individuals seeking to protect their civil rights and liberties.

Reflecting ICE's commitment to a law-abiding society, it has defined a special group of individuals for whom prosecutorial discretion is particularly appropriate. Under the Morton Victims Memorandum, prosecutorial discretion is highly encouraged in removal cases involving crime victims and witnesses, as well as individuals taking measures to protect their civil rights and liberties. See Exhibit C, Morton Victims Memorandum at 1. The memorandum explains:

"To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints.

Particular attention should be paid to:

- Victims of domestic violence, human trafficking or other serious crimes;
- Witnesses involved in pending criminal investigations or prosecutions;
- Plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaged in a protected activity related to civil or other rights . . . who may be in a non-frivolous dispute with an employer, landlord, or contractor." Id. at 2.

Essentially, ICE has determined that actions to enforce the nation's immigration laws should, to the extent possible, not interfere with efforts to enforce the nation's other essential laws. Exercising prosecutorial discretion encourages immigrants who might otherwise be removed to cooperate with investigations and prosecutions, and it allows them to stay in the country to testify or to pursue claims as plaintiffs. As the memorandum observes at the outset, ICE seeks to "to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." Id. at 1.

Ms. Ventura falls squarely within the group of individuals contemplated by the Morton Victims Memorandum. As a victim of immigration services fraud, she is a crime victim and witness. In addition, as an individual assisting law enforcement authorities and contemplating her own claim against Mr. Jimenez, she is an individual seeking to protect her civil rights. A favorable exercise of prosecutorial discretion is warranted in this case to encourage and allow Ms. Ventura to seek redress for the immigration fraud perpetrated against her.

a. As a victim of immigration services fraud, Ms. Ventura is a crime victim and witness who merits a favorable exercise of prosecutorial discretion.

Although the Morton Victims Memorandum allows room to take many factors into account, it is quite pointed in urging that prosecutorial discretion be exercised in cases involving crime victims and witnesses. The memorandum provides that “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be an immediate victim or witness to a crime.” *Id.* at 1 (emphasis added).

As the victim of immigration services fraud, Ms. Ventura is both a crime victim and a witness. Immigration services fraud of the type perpetrated by Mr. Jimenez is serious enough to be treated as a crime and may be prosecuted as such under Maryland and federal law.

In Maryland, Mr. Jimenez could be subject to criminal penalties under the Maryland Immigration Consultant Act (MICA). *See* Md. Commercial Law Code Ann. § 14-3301, *et seq.* The Act prohibits individuals who, under federal regulations are ineligible to represent clients in immigration cases, from providing “legal advice or legal services concerning an immigration matter.” Md. Commercial Law Code Ann. § 14-3303(1). Actions that qualify as “legal services” include completing immigration forms on behalf of an individual and encouraging the individual to file those forms. Md. Commercial Law Code Ann. § 14-3301(e)(2). Based on available evidence, Mr. Jimenez likely violated this and other provisions of MICA in his dealings with Ms. Ventura.⁶ Violators of MICA may be assessed civil penalties and found guilty of a criminal misdemeanor carrying a prison term up to one year. Md. Commercial Law Code Ann. § 14-3306.

Mr. Jimenez could be subject to criminal and civil penalties under other Maryland statutes as well. For instance, Mr. Jimenez could be prosecuted in Maryland for the unauthorized practice of law. *See* Maryland Business Occupation & Professions Code Ann. §10-601(a); *Indiana v. Diaz*, 838 N.E.2d 433, 448 (Ind. 2005) (finding that a non-attorney immigration consultant’s promotion of herself as a “Notario Publico” was “inherently misleading” and constituted the unauthorized practice of law in Indiana.) Prosecutors could seek a criminal misdemeanor penalty of up to a year imprisonment, civil penalties, and injunctive relief. *See* Md.

⁶ Other prohibited actions include making a “misrepresentation or false statement” to encourage a client to use an immigration consultant’s services and representing “in any manner that the immigration consultant possesses titles or credentials that would qualify the immigration consultant to provide legal advice or legal services.” Md. Commercial Law Code Ann. § 14-3303(2); § 14-3303(6).

Business Occupation & Professions Code Ann. §10-606(c); Md. Business Occupation & Professions Code Ann. §10-406. Mr. Jimenez could also be liable for civil and criminal penalties for violations of the Maryland Consumer Protection Act. See Md. Commercial Law Code Ann. § 13-101 et seq.

One of the main federal tools for cracking down on immigration services fraud is a civil suit under Section 5 of the FTC Act. See 15 U.S.C. § 45(a) (prohibiting “unfair or deceptive acts or practices in or affecting commerce”). However, depending on the conduct, fraudulent immigration services consultants may also be prosecuted for federal crimes. As part of the national initiative to combat immigration services scams, DOJ has prosecuted perpetrators of immigration services fraud for crimes including visa fraud, in violation of 18 U.S.C. § 1546; false impersonation of an immigration officer, in violation of 18 U.S.C. § 912; and false statements, in violation of 18 U.S.C. § 1001. Exhibit F, Federal Trade Commission: Combating Immigration Services Scams: Federal Action List (June 9, 2011).

Perhaps the main argument against treating immigration services fraud as a crime within the scope of the Morton Victims Memorandum relates to the seriousness of the crime. The Morton Victims Memorandum names domestic violence and human trafficking as examples of “serious crimes” deserving “particular attention.” Although immigration services fraud is a less serious crime than human trafficking, this does not mean that victims of immigration services fraud should not be considered crime victims for the purposes of prosecutorial discretion. Even if the Morton Victims Memorandum allows the severity of a crime to be a factor in ICE decision-making, the memorandum’s provisions apply to any individual “known to be an immediate victim or witness to a crime.”

Moreover, criminal penalties for the behavior engaged in by Mr. Jimenez would not necessarily be minor. For instance, pursuant to 8 U.S.C. § 1324(a), which criminalizes the harboring of illegal aliens, federal prosecutors have filed charges against fraudulent immigration services providers who induce ineligible individuals to file for adjustment of status. See U.S. v. Sineng Smith, 2011 U.S. Dist. LEXIS 117959 (N.D. Calif. October 11, 2011) (denying motion to dismiss against fraudulent immigration services provider accused of violating 8 U.S.C. § 1324(a)(1)(A)). Criminal penalties for violations of this statute can be substantial. See, e.g. 8 U.S.C. § 1324 (a)(1)(B) (imposing a jail term of up to 10 years for individuals who violate certain provisions of 8 U.S.C. § 1324(a) for purposes of financial gain).

The seriousness of immigration services fraud must also be judged by its repeat nature and potential to inflict widespread harm. See, e.g. Exhibit E, Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (immigration services consultant filed more than 25,000 fraudulent applications and could face up to 25 years in prison). In the case at hand, it is likely that Mr. Jimenez has defrauded other individuals besides Ms. Ventura and that he continues to do so. Part of the reason why it is important that Ms. Ventura have the chance to continue cooperating with law enforcement authorities is so that the full nature and scope of Mr.

Jimenez's illegal activities can be brought to light and so that these activities can be stopped. In the final analysis, exercising prosecutorial discretion in the present case potentially could be a very effective way to help reduce criminal activity.

b. Because Ms. Ventura is an individual seeking to protect her civil rights and liberties, a favorable exercise of prosecutorial discretion is warranted.

The Morton Victims Memorandum specifies that, in addition to crime victims and witnesses, individuals taking action to defend their civil rights and liberties are also strong candidates for a favorable exercise of prosecutorial discretion. The memorandum provides that "[a]bsent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or liberties." Exhibit C, Morton Victims Memorandum at 2 (emphasis added). Ms. Ventura's pursuit of legal remedies for the immigration services fraud perpetrated against her is, in essence, an effort to defend her civil rights. ICE should recognize it as such and exercise prosecutorial discretion in this case.

Immigration services fraud is a civil rights issue in that it involves the exploitation of a vulnerable minority group. As the Second Circuit Court of Appeals has noted, immigrants are "a vulnerable population who come to this country searching for a better life, and who often arrive unfamiliar with our language and culture, in economic deprivation and in fear." Aris v. Mukasey, 517 F.3d 595, 600 (2d Cir. 2008). Perpetrators of immigration services scams target immigrants who are at a disadvantage due to these factors, a disadvantage which is only exacerbated when immigrants confront the complexity of U.S. immigration laws. See, e.g., Exhibit D, USCIS: National Initiative to Combat Immigration Services Scams (quoting ICE Director John Morton as stating that "[n]otarios and other illegal immigration service providers take advantage of unsuspecting immigrants trying to navigate the immigration system.")

Immigration services fraud is just as unconscionable as situations when employers exploit immigrants by denying them labor protections, such as a minimum wage, or when property owners deny immigrants the benefit of housing laws. In all these cases, violators of the law suppose that immigrants are too unsophisticated and powerless to defend their rights.

Ms. Ventura is determined to defend her rights by taking advantage of the options available to her. It is too early to say whether the Maryland Attorney General or the FTC will initiate legal action against Mr. Jimenez. If they do not investigate further or file a complaint, Ms. Ventura is prepared to file her own claim for relief, likely alleging violations of MICA and the Maryland Consumer Protection Act. See Md. Commercial Law Code Ann. § 14-3306 (b) (creating a private right of action under MICA); Md. Commercial Law Code Ann. § 13-408 (a) (establishing a private right of action under Maryland Consumer Protection Act).

Regardless of whether she files her own claim or limits her activities to working with the FTC and the Maryland Attorney General, ICE should support her efforts to pursue justice by

exercising prosecutorial discretion. Continuing removal proceedings against her would interfere with her efforts to challenge an injustice that affects too many immigrants in this country.

4. No serious adverse factors overturn the presumption that prosecutorial discretion is merited, and additional positive factors only make the case for prosecutorial discretion more compelling.

Under the terms of the Morton Victims Memorandum, ICE must take into account at least several additional factors when deciding whether to exercise prosecutorial discretion in removal cases involving crime victims, witnesses, and individuals pursuing civil rights or liberties claims. The memorandum establishes a strong presumption that prosecutorial discretion is warranted in such cases. Nevertheless, it states that “serious adverse factors” may overturn this presumption. Exhibit C Morton Victims Memorandum at 2. According to the memorandum, “[t]hose factors include national security concerns, or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety.” Id. They also “include evidence the alien is a human rights violator or has engaged in significant immigration fraud.” Id.

None of these factors applies in the present case. Ms. Ventura, who falls within the scope of the Morton Victims Memorandum, has no criminal record and strives to behave as a responsible resident of the United States. Exhibit H, Affidavit of Rosa Ventura. She has no record of immigration violations and submitted only truthful statements on her I-485 form. Any mistakes or errors on the form are due to the fraud committed against her by Mr. Jimenez. The Morton Victims Memorandum is fairly emphatic that “[i]n the absence of these or other serious adverse factors, exercising favorable prosecutorial discretion . . . will be appropriate.” Exhibit C, Morton Victims Memorandum at 2 (emphasis added). Since there are no serious adverse factors at play, ICE should grant a favorable exercise of prosecutorial discretion

Prosecutorial discretion is clearly warranted in this case based on the Morton Victims Memorandum alone. However, looking to the broader range of factors outlined in the Morton Prosecutorial Discretion Memorandum, the case for exercising prosecutorial discretion in this matter only grows stronger. Several additional factors weigh in favor of an exercise of prosecutorial discretion, such as:

- “The person’s length of presence in the United States...” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4.

Ms. Ventura arrived in the United States in 2002. Exhibit I, Affidavit of Rosa Ventura. She has now resided in the United States for about 10 years. Her ties to her community and her church are strong. Id. If she were forced to return to El Salvador, those ties would suffer. Also, her siblings and parents all reside in the United States. Id. Her support network is much weaker in El Salvador than in the United States.

- “Whether the person has a U.S. citizen or permanent resident spouse, child, or parent...” Exhibit B, Morton Prosecutorial Discretion Memorandum at 4.

Ms. Ventura, whose husband is named Ruben Ventura, has two children who are U.S. citizens: Carlos Ventura, age 7, and Eva Ventura, age 4. Exhibit R, Birth Certificates of Carlos Ventura and Eva Ventura. Removal of Ms. Ventura would cause severe hardship to her children. Assuming Mr. Ventura decided to remain in the United States, her U.S. citizen children would be forced to choose between accompanying her back to El Salvador or remaining in the United States with their father.

- “Whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities...” Id.

As noted many times previously, Ms. Ventura has reported the fraud perpetrated against her to the FTC and the Maryland Attorney General. She is willing to cooperate with these agencies in whatever legal action they may take. This factor unambiguously weighs in favor of an exercise of prosecutorial discretion.

5. ICE should exercise favorable prosecutorial discretion for the reason that the immigration services fraud perpetrated against Ms. Ventura drew upon ICE policy memoranda and announcements.

The issuance of the Morton Prosecutorial Discretion Memorandum and the Morton Victims Memorandum on June 17, 2011 gave rise to a spate of immigration services fraud. On August 18, 2011, DHS announced that it would use these memoranda as the basis for an administrative review of pending removal cases. Unfortunately, fraudulent immigration consultants, such as Mr. Jimenez, took advantage of this situation to spread the false rumor that the U.S. government was offering an “amnesty.” The problem became serious enough that the American Immigration Lawyers Association issued a public advisory warning that “this case review is NOT an amnesty and it is NOT about giving people work permits or legal status.” Exhibit M, American Immigration Lawyers Association: Don’t Get Scammed! What You Need to Know About Recent DHS Announcements (December 30, 2011).

In the present matter, Mr. Jimenez convinced Ms. Ventura that recent DHS policy announcements made her eligible to apply for adjustment of status. Based on this mistaken belief, Ms. Ventura allowed Mr. Jimenez to prepare an I-485 form on her behalf. The filing of this form directly led to her placement in removal proceedings.

A principal objective of the ICE memoranda issued on June 17, 2011 was to refocus ICE’s limited resources on threats to law enforcement, and away from individuals such as Ms. Ventura, who cooperate with law enforcement authorities. It would be paradoxical if, as an indirect result of these memoranda, Ms. Ventura were removed. ICE should exercise prosecutorial discretion to ensure that ICE policy guidelines have their intended purpose.

In addition, DHS has made it a goal to combat the exploitation of immigrants by immigration services scam artists. Arguably, in any case involving a victim of immigration services fraud, ICE should exercise prosecutorial discretion to demonstrate its opposition to such fraud and avoid compounding the impact on victims. See, e.g., Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948) (noting that “deportation is a drastic measure and at times the equivalent of banishment or exile,” where “the stakes are considerable for the individual”). This argument is only stronger here, where ICE’s own policy memoranda and announcements were misrepresented to further a scam. Although Mr. Jimenez bears responsibility for that scam, ICE should exercise prosecutorial discretion to show that it will not allow its public statements to be the instrument of scam artists, at the expense of vulnerable immigrants.

6. The Form of Discretion Sought is Well Within ICE’s Discretionary Authority

Ms. Ventura seeks termination of the civil removal proceedings that have been instituted against her. Such a step is well within the authority of ICE. “Discretion may take different forms and extend to decisions to [...] seek termination of proceedings, or to join a motion to administratively close a case.” Morton Prosecutorial Discretion Memorandum, Seeking termination of removal proceedings is a step which may be taken “in any immigration removal proceeding before EOIR.” Id.

Moreover, the Government will not be prejudiced by the granting of a motion to terminate, because it retains the power to institute removal proceedings in the future under Section 240 of the INA. In the attached draft motion, both parties also request that the motion be granted without prejudice.

7. Conclusion

For the foregoing reasons, Ms. Ventura respectfully requests that the Office of Chief Counsel join her motion requesting to terminate removal proceedings against her. Should you agree to exercise favorable prosecutorial discretion, I have attached a draft Motion to Terminate Removal Proceedings. Alternatively, I can offer an oral motion at Ms. Ventura’s next Master Calendar Hearing on August 31, 2012 at 10AM.

Respectfully submitted,

[Name]
Attorney for the Respondent
[Firm Name]
[Address]

Date

Respondent: VENTURA
A# 222-222-222

EXHIBIT LIST

EXHIBIT	DESCRIPTION OF EXHIBIT
Legal and Policy Exhibits	
A	Doris Meissner, Commissioner: Exercising Prosecutorial Discretion (Nov. 17, 2000)
B	John Morton, Director: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011)
C	John Morton, Director: Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs (June 17, 2011)
D	USCIS, National Initiative to Combat Immigration Services Scams (June 9, 2011), available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01083ffa91570310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb90
E	United States Attorney's Office, Southern District of New York: Ringleader of Massive Immigration Fraud Mill Pleads Guilty in Manhattan Federal Court (April 2, 2012), available at http://dl.dropbox.com/u/52397139/David%2C%20Earl%20Plea%20PR.pdf
F	Federal Trade Commission: FTC Combats Immigration Services Scams (June 9, 2011), available at http://www.ftc.gov/opa/2011/06/immigration.shtm
G	Federal Trade Commission, Combating Immigration Services Scams: Federal Action List (June 9, 2011), available at http://www.ftc.gov/os/2011/06/110609localaction.pdf
H	American Immigration Lawyers Association: Don't Get Scammed! What You Need to Know About Recent DHS Announcements (December 30, 2011), available at http://www.aila.org/content/default.aspx?docid=38057
Evidence that Ms. Ventura is a victim of immigration services fraud	
I	Affidavit of Rosa Ventura (May 3, 2012)

J	Advertising material distributed by Asuntos Inmigratorios, the Maryland company that defrauded Ms. Ventura
K	Business card of Steven Jimenez identifying him as a “notario publico”
L	Copy of check for \$5,320 written to by Rosa Ventura to Asuntos Inmigratorios and bank statement showing withdrawal of amount.
M	USCIS I-485 form prepared by Steven Jimenez on behalf of Rosa Ventura
N	Client Protection Fund of the Bar of Maryland: Attorney Listing (accessed May 20, 2012), available at http://www.courts.state.md.us/cpf/attylist.html
O	Department of Justice, Executive Office for Immigration Review: Recognition and Accreditation Program (accessed May 20, 2012), available at http://www.justice.gov/eoir/ra.html
Evidence that Ms. Ventura is cooperating with law enforcement authorities	
P	Rosa Ventura’s complaint to the FTC and confirmation of receipt (April 16, 2012)
Q	Rosa Ventura’s complaint to the Maryland Attorney General and confirmation of receipt (April 16, 2012)
Biographical information about Ms. Ventura and her two children	
R	Birth certificate of Rosa Ventura
S	Birth certificates of Carlos Ventura and Eva Ventura, Rosa Ventura’s children

SEC. IIB(1) SAMPLE U-VISA REQUEST FOR NOTARIO FRAUD VICTIM

Kortz & Funke
Immigration Law Firm, PLLC
6461 W. La Grange Road
P.O. Box 1108
Crestwood, KY 40014
DFunke@ImmigrationKY.com

Angela Kortz Funke
David E. Funke

Phone (502) 241-8221

Fax (502) 241-8250

USCIS
75 Lower Welden Street
St Albans VT 05479

Re: U-1 Application of [REDACTED]
U Dependent Application of unmarried child [REDACTED]

Dear Examiner:

This office represents M [REDACTED]. Enclosed please find the following core items:

- ✓ I-912 fee waiver affidavit
- ✓ G-28
- ✓ Form I-918
- ✓ Form I-918A signed by direct victim [REDACTED] and her child, [REDACTED]
- ✓ Form I-918B, signed by [REDACTED]
Department, together with designation letter.
- ✓ Form I-192
- ✓ Passport photos

We believe Ms. [REDACTED] good candidate for the "U visa," that Congress created to provide respite to select victims of criminal activity who are not U.S. Citizens.

A threshold requirement is that abuse resulted from an enumerated crime. "Blackmail" is one of the enumerated crimes. Blacks's Law Dictionary (5th ed. 1984) defines the crime as follows:

Blackmail. Unlawful demand of money or property under threat to do bodily harm, to injure property, to accuse of crime, or to expose disgraceful defects. **This crime is commonly included under extortion statutes.** (Emphasis added)

Kentucky's blackmail law is codified at KRS 514.080 Theft by extortion:

- (1) A person is guilty of theft by extortion when he intentionally obtains property of another by threatening to:
 - (a) Inflict bodily injury on anyone or commit any other criminal offense; or
 - (b) Accuse anyone of a criminal offense; or
 - (c) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
 - (d) Use wrongfully his position as a public officer or servant or employee by performing some act within or related to his official duties, either expressed or implied, or by refusing or omitting to perform an official duty, either expressed or implied, in a manner affecting some person adversely; or
 - (e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
 - (f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
- (2) It is a defense to prosecution based on subsection (1)(b), (c), or (d) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was claimed as restitution or indemnification for harm done in the circumstances to which accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.
- (3) Theft by extortion is a Class A misdemeanor unless the value of the property obtained is:
 - (a) Five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony; or
 - (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.

Effective: June 25, 2009

History: Amended 2009 Ky. Acts ch. 106, sec. 11, effective June 25, 2009. -- Amended 1992 Ky. Acts ch. 451, sec. 6, effective July 14, 1992. -- Created 1974 Ky. Acts ch. 406, sec. 124, effective January 1, 1975.

The immigrant must have suffered substantial physical or mental abuse as a result of the blackmail. In her affidavit, she describes loss of sleep, dramatic weight loss, fear of retaliation, and mental anguish over her family's economic loss. The Applicant states under oath that she was groomed by the perpetrator [REDACTED], a self described "English teacher" and "notario," whom she thought was [REDACTED].¹ The notario filed an I-360 for the Applicant, [REDACTED], based on abuse that occurred outside the U.S.A., and abuse committed [REDACTED] in a country that was never prosecuted. The perpetrator then obtained electronic receipt of the income tax refunds of the Applicant, and never returned them. When Applicant demanded her funds, the extortion began: demanding Applicant cease attempts of collection and threatening more crimes (false allegations of drug possession) to accuse Applicant of crimes (a threat to have someone deported is also a threat of possible prosecution, since entry without inspection is a

¹The notario is well known to area attorneys and immigration agencies. Attached is a sample flyer and documentation of [REDACTED] lapsed business charter. (Tab K)

crime), threatening to expose secrets (her lack of work authorization) that would cause economic impairment

It is worth noting that the perpetrator, [REDACTED] has an established modus operandi that features theft, threats, and use of fear, documented in court records related to three separate victims in three counties as follows:

[REDACTED] was indicted in [REDACTED] for identity theft related to another "customer" of her "business that purports to assist foreign citizens with matters in the U.S." Case [REDACTED] (Tab D)

[REDACTED] was convicted of felony Wanton Endangerment, to wit, she "pointed a loaded gun at [two victims]." [REDACTED] (Tab E)

[REDACTED] was convicted of Harassment. According to the complaint filed, [REDACTED] called stating I must call or she will 'send someone.' ... I do not feel safe or secure in my own home ... I am being watched and harassed." (Tab F)

This is significant since it corroborates Applicant's own testimony of being blackmailed. But is also shows why blackmail is included in the list of crimes with a nexus to a U visa ... the crime involves violence and acts tantamount to violence.

The Applicant [REDACTED] also possesses information about the criminal activity, since she witnessed the extortionate threats and was deprived of the property that Castro obtained.

[REDACTED] *has been helpful, or is likely to be helpful to law enforcement.* 8 U.S.C. 1108(a)(15)(U). She was brave enough to sign the affidavit that launched the prosecution (Tab B). The Applicant and the perpetrator (against her lawyer's advice) both testified at a probable cause hearing related to the extortion. Counsel does not have a typed transcript at this time, but counsel reviewed the record and found several things remarkable. Applicant testified that [REDACTED] gave her a driver license belonging to someone else, and told her to use it. Counsel believes this was a set-up, planned by [REDACTED] as part of the future blackmail. [REDACTED] accused Applicant of being a "gun smuggler" (false and laughable). [REDACTED] testified that she indeed was paid for the I-360 and kept the tax money but it was her fee. When the prosecutor asked if she had a law license or accreditation from the Board of Immigration Appeals, she testified "no" and "she did not need it." Finally, Judge [REDACTED] at the end of the hearing, said "if this were morality court, this would be a capital crime."

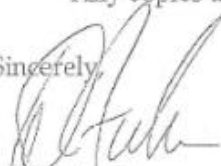
The case against [REDACTED] was sent to the Grand Jury, where Applicant obeyed her request to testify again. (Tab B, p. 9)

The Applicant submits the following supporting items:

- A. Affidavit related to suffering experienced by direct victim
- B. Commonwealth vs. [REDACTED]
- C. Commonwealth vs. [REDACTED]
- D. Commonwealth vs. [REDACTED]
- E. Commonwealth vs. [REDACTED]
- F. Commonwealth vs. [REDACTED]
- G. Tax transcripts of Applicant
- H. Consular ID of applicant
- I. Birth Certificates of Applicant's children
- J. ID of children's father (now deported)
- K. Flyer and other documentation of perpetrator's "business"
- L. Birth certificate and translation for dependent [REDACTED]
- M. Passport of dependent [REDACTED]

Any copies are exact duplicates of originals. Thank you for your assistance.

Sincerely,



David Funke
Attorney At Law

AFFIDAVIT OF [REDACTED]

1. My name is [REDACTED] live at [REDACTED].
I first met a person named [REDACTED] in spring [REDACTED]. She posted flyers on doors of Mexican groceries and stores that she taught English. This was being taught at a church near me, so I thought it was a good idea. I went in and talked to her at the church. When I went she told me the church would not let her "teach" there. She said she'd call me. She became very friendly with me. I told her where I lived and Ruthie came over to visit as a friend.

2. I told her about the problems I had with my husband [REDACTED] that he was abusive and my son [REDACTED] and I left [REDACTED] to get away from him and start a new life I told her about how I met another man here [REDACTED] and we fell in love and had two children together here in the U.S. [REDACTED]. Unfortunately, he also became abusive, and also got in trouble with ICE and was deported.

3. [REDACTED] said I could get immigration papers because of the troubles with my past relationships. She asked for money and gave me papers to sign. She said she filed papers with USCIS. She told me I would be getting a better place to live and immigration papers. However, [REDACTED] never "helped" me with the papers any further, and I never got word if the papers were approved. [REDACTED] told me I was supposed to call her "when the blue papers arrive from immigration." I have now learned she has no license to prepare immigration papers.

[REDACTED] knew I was worried about not having a driver license, so she gave me somebody else's license and told me to use it. I did not do this.

[REDACTED] also offered to help me by collecting my tax refund. Since I had no bank account or state ID card, I had to rely on others to collect any refund due on my tax return. So, she did something to get the refund put in her bank account. I was due to get [REDACTED] in the spring or summer of [REDACTED] from my [REDACTED] federal taxes. She got it. I asked and asked for the money, but she never gave it to me.

6. Eventually, I got tired of asking nicely for my tax refund, and information about how to finish my immigration papers. In November, I filed a complaint for theft against her, but it was dismissed because I could not make it to court on a certain hearing day, since I had transportation troubles.

7. About [REDACTED] I went to her house again to ask for my state and federal tax refund, and the money back for the immigration papers. The total was close to [REDACTED]. She became very angry. She told me if I kept trying to get my tax refund, she would have me deported, she told me she would have me prosecuted for other crimes like drug possession (I have never used or sold drugs) and she said she would tell all my employers [REDACTED] restaurant and [REDACTED] I had no immigration status. She immediately called the police, who arrived soon. They did search my car and of course found no drugs.

8. In [REDACTED] I spoke again with the prosecutor's office. They said they could prosecute [REDACTED] for extortion because she was taking my money by threatening me with all these things. Their detective had other cases like this with [REDACTED]. So I signed the prosecutor's affidavit, and I testified in court about the tax refund, the immigration papers, and the threats. I was then asked to testify at a grand jury and be available, which I have done.

9. This whole experience with [REDACTED] has been a nightmare. Because I am a single mother, I had a real need for whatever money I had, and I planned on using my tax refund in [REDACTED]. I could not buy any entertainment for the children. I had to get diapers and food from the church. I was very embarrassed I let this happen and used to cry a lot. In fact, I lost almost 60 pounds during the whole ordeal. I did not sleep well. I knew [REDACTED] had a gun and also learned that she is vengeful. So I did not feel safe on the street or in my apartment.

10. I also lost my jobs because of [REDACTED]. My son, [REDACTED], was working at the same [REDACTED] as I was. He said he picked up the phone at work one day and a woman asked for the manager. He said the manager had a funny look on her face. When she hung up the phone, she said "that woman said she was from immigration and we have illegals here." We both had to quit the next day. When I went to my shift at [REDACTED], the manager said someone called complaining that I was "an illegal." So, I lost that job too.

11. In some ways this was worse than being hit or slapped by my husband or boyfriend.

Appendix

In my life I have been hurt physically by some men. However, this is worse, because it never goes away in the mind. She also took my children's food away.

I am happy to answer any more questions you have.

[REDACTED]

Acknowledged, subscribed, and sworn to before me this [REDACTED] day of November [REDACTED]





David E. Funke
Notary Public
State of Iowa, KY

My commission expires 7-16-13

I am fluent in Spanish and English, and this is a complete and accurate translation of [REDACTED]
[REDACTED] statement.

[REDACTED]

SEC. IIB(2) SAMPLE REQUEST FOR EVIDENCE FROM USCIS

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services

Notice of Action
Page 1 of 3

Applicant/Petitioner A #	Application/Petition
Notice Date	Response due by
June 29, 2010	



EAC1012450370

Applicant/Petitioner
Beneficiary
Receipt Number

IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER AND MUST BE SUBMITTED IN THE ORIGINAL WITH THE REQUESTED EVIDENCE.

1. The evidence submitted with your form is insufficient. U. S. Citizenship and Immigration Services (USCIS) requires certain additional evidence to process your form. Please respond with the evidence listed on the attached page(s).
2. Your response must be received in this office on or before **September 24, 2010**.
3. All requested evidence should be submitted at the same time. Incomplete submission of the requested evidence will be considered a request for a decision on the record [8 CFR 103.2(b)(11)].
4. An extension of time will not be granted for you to submit the requested evidence.
5. You will be notified separately about any other applications or petitions you have filed.
6. You should save a copy of this notice for your records.
7. From the date this office receives your submission, it will take a minimum of 14 days to process your form. If you have not heard from USCIS within **60 days**, you may contact the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at **1-800-767-1833**.
8. Responses, inquiries or correspondence must include this notice and be mailed to:

U. S. CITIZENSHIP AND IMMIGRATION SERVICES
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
ST. ALBANS, VT 05479-0001

FOR OFFICE USE ONLY

S

[REDACTED]

You are seeking to obtain status as the victim of witness tampering and obstruction of justice. Witness tampering and obstruction of justice is qualifying criminal activity pursuant to 8 CFR 214.14(a)(9); however, you have not provided sufficient evidence to demonstrate that you are a victim of substantial physical or mental abuse as a result of witness tampering and obstruction of justice. Form I-918 Supplement B indicates that you have reported suffering nightmares and trouble sleeping. The only other evidence of the abuse you suffered was your own statement. You did not submit any additional documentation to support your claim. The police report you submitted shows that you are the victim of Harassment. The report specifically indicates that "Jose is concerned for her safety but at the time of this report indicated that she did not feel that she was in immediate danger."

Pursuant to 8 CFR 214.14(a)(14)(ii) a victim of obstruction of justice or witness tampering is an alien who has been directly and proximately harmed by the perpetrator of one of these crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system.

You have not specifically demonstrated that you have been directly or proximately harmed by the perpetrator of this crime nor have you demonstrated that there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system. Additional evidence is needed.

If you wish to pursue your claim of victimization based on the crime of witness tampering and obstruction of justice, you will need to provide evidence to demonstrate that you are the victim of substantial physical or mental abuse as a result of the witness tampering. Such evidence may include but is not limited to:

1. Reports and affidavits from police, judges and other court officials;
2. Reports and affidavits from medical personnel, school officials, clergy, social workers or other social agency personnel;
3. Counseling/psychological evaluations, diagnoses and treatment related to your victimization as a result of the qualifying criminal activity;
4. Evidence of occupational therapy referrals or other measures taken to assist you following medical or psychological treatment needed as a result of qualifying criminal activity;
5. Affidavits from friends and family detailing the impact of the crime on you;

Evidence submitted to support this requirement should address, in detail, the following:

- a) The nature of the damage suffered;
- b) The severity of the perpetrator's conduct;
- c) The severity of the harm suffered;
- d) The duration of the harm;
- e) The duration of infliction of the harm while the qualifying criminal act was being committed; and
- f) The extent to which there is serious or permanent harm to the appearance, health, or physical or mental soundness of the victim.

FOR OFFICE USE ONLY

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Additionally, if you pursue your claim to eligibility based on witness tampering you must also provide evidence to demonstrate that there are reasonable grounds to conclude that the perpetrator committed the witness tampering as a means to: (1) Avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise be brought to justice for other criminal activity; or (2). To further the abuse, exploitation or undue control over you through manipulation of the legal system.

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SEC. IIB(3) SAMPLE RESPONSE TO REQUEST FOR EVIDENCE FROM USCIS

September 23, 2010

USCIS Vermont Service Center

Attn: U Visa

75 Lower Welden Street

St. Albans, VT 05479-0001

Via Federal Express

RESPONSE TO REQUEST FOR EVIDENCE

Form I-918, Petition for U Nonimmigrant Status, [REDACTED]

Applicant: [REDACTED]

Dear Sir or Madam:

Our office represents [REDACTED] on a *pro bono* basis; our Entry of Appearance is on file with your office. This letter is in response to your request for evidence dated June 29, 2010.

Substantial Physical or Mental Abuse

You request additional evidence that the Applicant suffered substantial physical or mental abuse as the result of having been the victim of witness tampering and obstruction of justice. As explained in the initial filing, [REDACTED] was a material witness in the investigation and prosecution [REDACTED] in the brutal murder of his girlfriend, [REDACTED], a good friend and co-worker of the Applicant. The perpetrator tied a noose around [REDACTED] neck and dragged her more than a mile to her death behind his car. [REDACTED] was the only one to step forward to assist in the investigation and prosecution of her friend's murderer, thereby risking her own personal safety and wellbeing.

As a result of [REDACTED] cooperation with authorities, which included extensive testimony showing the perpetrator's motive and discrediting his defense of mental incompetency, she received threatening phone calls in which she was told that next time, it would be her tied up behind a car if she continued to cooperate with the prosecution. See *exhibits 4, 8, and 9, previously submitted*. These threats caused [REDACTED] to fear for her safety and that of her children. As she explained in the affidavit (*exhibit 8, previously provided*) and in the attached declaration (*exhibit 25*), she initially received police protection because of the threats but that protection was discontinued when the prosecution was over.

[REDACTED] and her therapist describe the fear she still feels for her safety and that of her family following these threats and the effect this has had on her life, including depression, weight loss, nightmares, inability to leave her house, paranoia, insomnia, panic attacks and chest pains. See *exhibits 25, 27, 28, 29, and 30* [REDACTED] has therefore been directly and

proximately harmed by these threats, which amount to witness tampering, and has suffered extreme physical and mental abuse as a result.

Evidence that Witness Tampering was Committed to Avoid or Frustrate Prosecution

Because of her instrumental role in [REDACTED] prosecution for murder and eventual conviction and life sentence [REDACTED] was intimidated and harassed by the perpetrator's family and friend, with one unknown caller stating that she would "regret" her cooperation. See exhibits 4, 8, and 9, previously submitted.

These threats were made during the pretrial hearings in which [REDACTED] testified against the perpetrator. As [REDACTED] and his family knew she was the only witness who stepped forward with knowledge of his actions both immediately before and after the crime, as well as his mental state, and her testimony was critical to obtaining a conviction. The threats were clearly made for the purpose of discouraging her cooperation with authorities in the criminal prosecution in order to frustrate efforts to bring him to justice for the murder of [REDACTED]

This sentiment is echoed by [REDACTED] Judicial District Attorney. See exhibit 26, attached. Moreover, the very definition of witness tampering in [REDACTED] pursuant to [REDACTED] Revised Statutes section [REDACTED] requires that the act of harassment be committed in order to influence or induce a witness or victim into withholding testimony, testifying falsely, avoid being served with a subpoena, or to make it impossible to attend a hearing in order to testify, all of which are goals intended to frustrate criminal prosecution. See [REDACTED] previously attached as exhibit 14.

In further support of [REDACTED] U visa petition and in response to your Request for Evidence, attached please find the following:

25. Supplemental affidavit of the Applicant;
26. Letter from [REDACTED] District Attorney, [REDACTED] Judicial District;
27. Therapist evaluation by [REDACTED] with treatment plan and CV;
28. Letter from [REDACTED], a friend of the Applicant;
29. Letter from [REDACTED], the Applicant's daughter;
30. Letter from [REDACTED], a friend of the Applicant;
31. Photos of Applicant with murder victim and with perpetrator.

We hope this answers any remaining questions regarding [REDACTED] U visa petition. Thank you for your attention to this matter.

Very truly yours,



Additionally, if you pursue your claim to eligibility based on witness tampering you must also provide evidence to demonstrate that there are reasonable grounds to conclude that the perpetrator committed the witness tampering as a means to: (1) Avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise be brought to justice for other criminal activity; or (2). To further the abuse, exploitation or undue control over you through manipulation of the legal system.

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SEC. IIB(4) MONTGOMERY COUNTY INVITATION FOR VICTIMS TO COME FORWARD



State's Attorney for Montgomery County

50 Maryland Avenue
Rockville, Maryland 20850

(240) 777-7300
FAX (240) 777-7413
www.montgomerycountymd.gov/sao

DEPUTY STATE'S ATTORNEYS
LAURA CHASE
JOHN M. MALONEY

13 de enero de 2013

Estimado Víctima,

Nuestra oficina esta investigando el Fraude Notario que ocurre en el Condado de Montgomery, Maryland. Si usted cree que ha sido víctima del Fraude Notario, nos gustaría reunirnos con usted tan pronto posible para discutir lo que ocurrió.

Nuestro interés en reunirnos con usted es para que se haga justicia si ha sido víctima de un delito. Creemos que se deben investigar y procesar todos los crímenes exitosamente porque hace que nuestra comunidad sea un lugar seguro para vivir.

Contacte al fiscal Curt Zeager en 240.777.7421 o curtis.zeager@montgomerycountymd.gov lo más pronto posible para discutir lo que ocurrió.

Saludos cordiales,

Curtis L. Zeager
ASA, Montgomery County, Maryland

SEC. IIB(5) SAMPLE PETITION FOR U NONIMMIGRANT STATUS COVER LETTER

[REDACTED]
LICHTER & ASSOCIATES, P.C.

August 26, 2008

EH401187890US

USCIS Vermont Service Center
Attn: U Visa
75 Lower Welden Street
St. Albans, VT 05479-0001

Via Express Mail

Petition for U Nonimmigrant Status

RE: Form I-918, Petition for U Nonimmigrant Status

Principal Applicant: [REDACTED] A [REDACTED]

Derivative Applicants: [REDACTED] A [REDACTED]
[REDACTED] A [REDACTED]

Dear Sir or Madam:

Our office represents Ms. [REDACTED] and two of her children, [REDACTED] and [REDACTED]. Our Entries of Appearance are enclosed.

FACTS

[REDACTED] is a 38-year-old native and citizen of Mexico. She was the victim of extortion, theft and criminal impersonation at the hands of an unscrupulous "immigration consultant," [REDACTED] several thousand dollars for his immigration "services," which he was not legally authorized to provide. Despite his attempts to extort her and threats to report her and her family to immigration authorities, [REDACTED] reported [REDACTED] to the police and cooperated with both the police and District Attorney in the investigation and prosecution of the case. In addition [REDACTED] assisted ICE agents with their own investigation into [REDACTED] activities.

[REDACTED] first contacted [REDACTED] a realtor who also held himself out as an immigration consultant, after seeing his advertisement on television. After charging [REDACTED] \$100.00 to meet with him, reviewing her paperwork and discovering that she did not have lawful immigration status in the United States, he informed her that he could help her become a Legal Permanent Resident of the United States through her husband's LPR brother. [REDACTED] agreed and paid [REDACTED] over \$3,000.00. Additionally, [REDACTED] attempted to charge her \$2,500 for his services in helping her to buy a house, services which are typically free for home buyers. *See Ex. F.*

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██████████ became aware that ██████████ was misleading her and her family after speaking with her brother-in-law and his attorney, who told her that obtaining permanent residency through a LPR sibling was impossible. She spoke with ██████████ on several occasions, and she stated that she was no longer interested in submitting any paperwork regarding her immigration case and that she wanted a refund of her money. ██████████ refused to refund her money and threatened to report ██████████ family to immigration officials. He called her at her work and pretended to be a loan officer inquiring into her social security number, and also called and told her that if she wanted her refund she would have to go to immigration to obtain it. He repeatedly threatened to have her and her family arrested and deported. *Id.* Moreover, ██████████ filed a baseless request for a restraining order against ██████████, alleging she was threatening him.

Despite his attempts to extort money from ██████████ and threats to her and her family's well-being, she decided to report ██████████ to the police. He was charged with Theft and Felony Impersonation. Additionally, the Colorado Supreme Court's Office of Attorney Regulation initiated proceedings against ██████████, and his real-estate license was also revoked. ICE initiated its own investigation into ██████████ activities as an "immigration consultant," and acknowledged ██████████'s helpfulness. *See Ex. L.*

U VISA ELIGIBILITY

██████████ meets each of the criteria required for U nonimmigrant status. The Deputy District Attorney for the 20th Judicial District of Colorado has certified that ██████████ committed extortion against her and could have been charged with Criminal Extortion, in violation of Colorado Revised Statutes section 18-3-207, for threatening to report her to immigration officials in an attempt to keep her from reporting his crime. Extortion is a qualifying crime for U visa interim relief. INA §101(a)(15)(U)(iii). Although it was not charged, the U visa regulations make clear that qualifying criminal activity can occur even where only non-qualifying crimes were charged. Supp. to 72 FR 179, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status* (Sept. 17, 2007) at III(A)(1)(c).

Moreover, ██████████ suffered substantial emotional harm as a result of this crime. She was threatened by ██████████ with arrest and deportation multiple times over approximately one and a half years and lived with fear and anxiety during that time. Finally, ██████████ possesses information concerning the criminal activity and assisted in the investigation, and the criminal activity described occurred in the state of Colorado. In support of ██████████ application for U nonimmigrant status, enclosed please find the following:

Petition for U Nonimmigrant Status

- A. Form I-918, Petition for U Nonimmigrant Status;
 - a. Birth certificate, with translation;
 - b. Copy of passport;

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- B. Form I-918 Supplement A for [REDACTED] derivative applicant;
 - a. Birth certificate, with translation;
 - b. Copy of passport;
- C. Form I-918 Supplement A for [REDACTED], derivative applicant;
 - a. Birth certificate, with translation;
 - b. Copy of passport;
- D. Form I-918, Supplement B, U Nonimmigrant Status Certification, executed by [REDACTED] Chief Deputy District Attorney, 20th Judicial District Attorney's Office, dated June 25, 2008;

Evidence of Relationship between Principal Applicant and Derivatives

Please refer to derivative applicants' birth certificates;

Evidence that Principal Applicant is the Victim of Qualifying Criminal Activity

See refer to exhibit D, law enforcement certification;

- E. Letter from Colorado Supreme Court Attorney Regulation Counsel, addressed to [REDACTED], requesting additional documents in support of complaint against [REDACTED] with translation;
- F. "Request for Investigation filed by [REDACTED]", letter from Colorado Supreme Court Office of Attorney Regulation addressed to [REDACTED];
- G. "Request for Investigation of [REDACTED]", letter from Colorado Supreme Court Office of Attorney Regulation, addressed to [REDACTED];
- H. Colorado Courts Database, Case No. 2001CR000678, with DA case info printout;
- I. *Suspected con artist pleads not guilty*, THE DAILY CAMERA, June 12, 2001, available at www.thedailycamera.com;
- J. [REDACTED] *Man accused of conning immigrants warrant issued after complaints of theft, promises of social security numbers*, ROCKY MNTN NEWS, Apr. 5, 2001, available at www.highbeam.com;
- K. [REDACTED] *Cheating of Aliens Alleged, Former Real Estate Agent is Accused of Defrauding Immigrants*, ROCKY MNTN NEWS, Feb. 25, 2001, available at www.highbeam.com;

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Evidence that Victim Suffered Substantial Physical or Mental Abuse

Please refer to exhibits D-K;

Evidence that Victim Possesses Information Concerning Qualifying Criminal Activity

Please refer to exhibit D, law enforcement certification;

- L. Email from [REDACTED] formerly with INS in Denver, and current Director of the Office of Detention and Removal Operations within ICE;

Evidence that the Qualifying Criminal Activity Violated the Laws of the United States

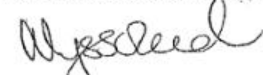
- M. Colorado Revised Statutes §18-3-207 (Criminal Extortion); § 18-4-401 (Theft), § 18-5-113 (Criminal Impersonation);

Please note that we are in the process of gathering additional documentation in support of [REDACTED] application for U nonimmigrant status, which we will submit as soon as they become available. In addition, we anticipate filing I-192 waiver applications for each of the applicants, once a fee waiver becomes available.

Thank you for your attention to this matter. Please forward all future correspondence regarding this filing to our office.

Very truly yours,

LICHTER & ASSOCIATES, P.C.



Alyssa C. Reed, Esq.
ACR/mm

SEC. IIB(6) SAMPLE RESPONSE TO REQUEST FOR EVIDENCE



LICHTER & ASSOCIATES, P.C.

March 17, 2010

USCIS Vermont Service Center
Attn: U Visa
75 Lower Welden Street
St. Albans, VT 05479-0001

Via Federal Express

Response to Request for Evidence

Applicant/Petitioner: [REDACTED]

Receipt Number: [REDACTED]

Dear Sir or Madam:

This letter is in response to your Request for Evidence dated December 21, 2009, in which you requested (1) additional evidence to demonstrate that the crime involved is a qualifying crime under INA § 101(a)(15)(U)(iii), and (2) additional evidence of substantial physical or mental abuse as a result of qualifying criminal activity.

Enclosed please find the following:

Additional Evidence of Qualifying Crime

1. Warrant for Arrest Upon Affidavit and Affidavit for Arrest Warrant, Boulder County Court, showing that the Applicant was a victim of criminal extortion as defined in Colorado Revised Statutes section 18-3-207;
2. Excerpt from Federal Register, 72 Fed. Reg. 179, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status* (Sept. 17, 2007), indicating that qualifying criminal activity can happen even where only non-qualifying crimes are charged;
3. Letter from [REDACTED] County Court Victim Specialist, Boulder County District Attorney's Office, confirming that the Applicant "...was a victim of the qualifying crime of extortion and that she was helpful to the prosecution" (the original document was submitted with Applicant's I-918 petition, attached as Exhibit D).

Additional Evidence of Substantial Physical or Mental Abuse

4. Affidavit of the Applicant, dated March 11, 2010;

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Phone 303.554.8400 | Fax 303.554.8099
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5. Affidavit of [REDACTED] Applicant's son, dated February 3, 2010;
6. Evaluation Report by [REDACTED] Psychotherapist, with copy of Ms. [REDACTED]'s curriculum vitae;
7. Correspondence from Mary T. Keenan, District Attorney, Twentieth Judicial District, regarding the criminal activity, with victim impact statement executed by the Applicant.

Please note that the qualifying crime in question is criminal extortion, INA §101(a)(15)(U)(iii). Although the District Attorney's Office chose not to prosecute Mr. [REDACTED] for extortion, the executed law enforcement certification and accompanying cover letter confirms that [REDACTED] was a victim of criminal extortion, as described in Colorado Revised Statutes section 18-3-207, and that she was helpful to the prosecution.

After obtaining the file from the archives, all documents were reviewed including arrest reports, warrants, transcripts from the civil protection order hearings, and victim/witness statements. Additionally, our Certifying Official, Deputy District Attorney [REDACTED], made contact with the former prosecutor, Judge [REDACTED]. After reviewing the documents and receiving input from Judge [REDACTED] regarding her recollection of the original facts and possible interpretation of those facts as extortion, DDA [REDACTED] has determined that based on the original facts of the case, the charge of extortion under CRS 18-3-207(1)(b)(L)(1.5) could have been filed. Further, a review of our Victim/Witness Unit records documenting contacts with [REDACTED] demonstrates that she was available and cooperative with the prosecution.

Letter from [REDACTED], County Court Victim Specialist, Boulder County District Attorney's Office, regarding the qualifying criminal activity (original submitted with Applicant's I-918 filing as Exhibit D).

The U Visa Regulations make clear that *qualifying criminal activity can occur even where only non-qualifying crimes are charged*:

In addition, qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity.

Supp. to 72 Fed. Reg. 179, *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status* (Sept. 17, 2007) at III(A)(1)(c) (attached).

In [REDACTED] case, the perpetrator was charged with felony theft and criminal impersonation following a lengthy investigation into his criminal activity, which clearly included criminal extortion pursuant to the Colorado Revised Statutes section 18-3-207, which states that, "A person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, *threatens to report to law enforcement officials the immigration status of the threatened person* or another person." C.R.S. §

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18-3-207(1.5) (emphasis added). Although [REDACTED] is not charged with extortion [REDACTED] was a victim of the qualifying crime, as certified by the District Attorney's Office on the first page of the executed I-918, Supplement B.

Moreover [REDACTED] suffered substantial emotional harm as a result of this crime. For a period of approximately 18 months, [REDACTED] repeatedly threatened her by telling her he was going to or already had reported her to immigration authorities in an attempt to coerce her into not reporting her victimization. He also called her employer to inform him of her immigration status, which caused her to lose her job. This emotion harm manifested itself in physical symptoms, such as trouble sleeping and lack of energy. According to Clinical Psychologist Ms. [REDACTED], it is likely that [REDACTED] was suffering from depression and posttraumatic stress disorder. *See exhibit 6.* Her emotional suffering was exacerbated by the family violence she was experiencing at that time.

We hope these additional documents satisfy any questions or concerns you might have regarding this matter. Thank you for your attention to this matter. Please direct all future correspondence regarding this filing to our office.

Very truly yours,

LICHTER & ASSOCIATES, P.C.


Alyssa C. Reed, Esq.

SEC. IIB(7) SAMPLE FORM I-918 SUPPLEMENT B

OMB No. 1615-0104; Expires 08/31/2010

Department of Homeland Security
Citizenship and Immigration Services

**I-918 Supplement B,
U Nonimmigrant Status Certification**

START HERE - Please type or print in black ink.

Part 1. Victim information.			For USCIS Use Only.	
Family Name [REDACTED]	Given Name [REDACTED]	Middle Name [REDACTED]	Returned Date	Receipt
Other Names Used (include maiden name/nickname) [REDACTED]			Date Resubmitted	
Date of Birth (mm/dd/yyyy) [REDACTED]			Date	
Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female			Date Reloc Sent	
			Date	
			Date Reloc Rec'd	
			Date	
			Date	
Part 2. Agency information.			Remarks	
Name of Certifying Agency BOULDER DISTRICT ATTORNEY'S OFFICE				
Name of Certifying Official [REDACTED]				
Title and Division/Office of Certifying Official Deputy District Attorney				
Name of Head of Certifying Agency [REDACTED]				
Agency Address - Street Number and Name Justice Center 1777 Sixth Street				
City BOULDER				
State/Province COLORADO				
Zip/Postal Code 80302				
Daytime Phone # (with area code and/or extension) (303) 441-3700				
Fax # (with area code) (303) 441-4703				
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local				
Case Status <input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Other				
Certifying Agency Category <input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input checked="" type="checkbox"/> Prosecutor <input type="checkbox"/> Other				
Case Number 20010-00000000				
FBI # or SID # (if applicable) [REDACTED]				
Part 3. Criminal acts.				
1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)				
<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade	
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture	
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking	
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint	
<input checked="" type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering	
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)	
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)	
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes		

Form I-918 Supplement B (08/31/07)

Part 4. Helpfulness of the victim. (Continued.)

5. Other, please specify.

[REDACTED] cooperated in everything requested of her.

Part 5. Family members implicated in criminal activity.

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim?

☐ Yes ☒ No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement

Part 6. Certification.

I am the head of the agency listed in Part 2 or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in Part 1 is or has been a victim of one or more of the crimes listed in Part 3. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make no promises regarding the above victim's ability to obtain a visa from the U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Date (mm/dd/yyyy)

[REDACTED], Chief Deputy District Attorney

06/25/2008; reaffirmed 03/17/2010

SEC. IIC(1) SAMPLE MOTION TO REOPEN WITH USCIS

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

ADMINISTRATIVE APPEALS OFFICE

In the Matter of:

VICTIMIZED SALVADORAN

A 000000000

Application for Employment Authorization



MOTION TO REOPEN

Now comes the Petitioner, Victimized Salvadoran (“Mr. Salvadoran”), through his attorneys, Nancy M. Vizer, P.C., and files this Motion to Reopen the June 2, 2011 denial of Mr. Salvadoran’s Application for Employment Authorization and the underlying Application for Temporary Protected Status (the “Denial”). Although the Denial correctly states that Mr. Salvadoran failed to respond to a Notice of Intent to Deny, the Denial fails to take into consideration the fact that Mr. Salvadoran was the victim of Latinos Unidos Multiservices of 6269 Leesburg Pike, Suite 102, Falls Church, VA 22044 (“Latinos Unidos”), a “notario,” or unauthorized provider of immigration legal services. The evidence attached to this Motion confirms that counsel has previously expressed concerns about Latinos Unidos to the Department of Justice. We are quite concerned that USCIS continues to accept immigration applications prepared by Latinos Unidos. We hope that in light of the scam perpetrated on Mr. Salvadoran, his case can be reopened and readjudicated.

I. STATEMENT OF FACTS

On July 24, 2010, Mr. Salvadoran sought assistance from Latinos Unidos to renew his Temporary Protected Status (“TPS”). (see **Exhibit 1**). Mr. Salvadoran states that:

4. . . . While I was aware that this organization was not a law firm, I believed that it was authorized to assist with immigration matters. I chose this organization over a law firm in the same building because Latinos Unidos charges \$5 less than the law firm for the same service.

5. The name “Latinos Unidos” implied to me that it was some sort of social service organization. In addition, the words “notary public” on its sign made me think of a “notario,” which is an important official in my country. When I visited Latinos Unidos, many other TPS applicants were lined up to complete their renewals, so there was no reason for me to think that anything was wrong.

Exhibit 1, p. 1.

Mr. Salvadoran subsequently received a Notice of Intent to Deny his TPS, requesting information about his arrest (see **Exhibit 3**). He attempted to get additional assistance from Latinos Unidos, with no success. Mr. Salvadoran states:

8. . . . I suspected that this letter was important, and attempted to contact Latinos Unidos about it. I left several telephone messages that were not returned. I also visited the office, but no one was there. I now understand that Latinos Unidos is not open full time, outside of “TPS season.”

9. I was not able to read the NOID, as I am not literate in English. I did not know where to turn, so I did not respond.

Exhibit 1, pp. 1 - 2.

As Mr. Salvadoran did not respond to the Notice of Intent to Deny, his TPS renewal was denied (see **Exhibit 4**).

Mr. Salvadoran has now sought counsel, and has learned for the first time that he has been the victim of a scam. He now provides the evidence sought by USCIS, and hopes that his TPS renewal application can be reopened and readjudicated.

The evidence requested in the NOID is attached as **Exhibit 8**, which shows that Mr. Salvadoran pled guilty to a misdemeanor DUI on November 8, 2006.

We note that on August 5, 2010, counsel wrote to USCIS and the Board of Immigration Appeals to express concern about Latinos Unidos' activities (see **Exhibit 6**). We noted that we were unable to persuade any of the clients who had been hurt by Latinos Unidos' services to come forward with their complaints. The Department of Justice acknowledged counsel's concern by letter dated February 7, 2011 (see **Exhibit 7**).

II. ARGUMENT

USCIS has recently acknowledged the difficulties that immigrants encounter when faced with selecting assistance with their immigration matters. The USCIS website indicates that:

Many people offer help with immigration services. Unfortunately, not all are authorized to do so. While many of these unauthorized practitioners mean well, all too many of them are out to rip you off. This is against the law and may be considered an immigration service scam.

USCIS wants to combat immigration service scams by equipping applicants, legal service providers and community-based organizations with the knowledge and tools they need to detect and protect themselves from dishonest practices.

. . . . In many Latin American countries, the term "notario publico" (for "notary public") stands for something very different than what it means in the United States. **In many Spanish-speaking nations, "notarios" are powerful attorneys with special legal credentials.**

Exhibit 5, pp. 1, 3 (emphasis supplied).

We note that in this case, USCIS had received and acknowledged a warning about Latinos Unidos (see **Exhibits 6 and 7**). Counsel's letter to USCIS was dated August 5, 2010, well before the USCIS December 27, 2010 Notice of Intent to Deny (see **Exhibit 3**). Yet the Notice of Intent to Deny contains no warning to Mr. Salvadoran about Latinos Unidos, nor does it suggest that he seek counsel to assist him with his case.

With this case, USCIS has an ideal opportunity to show that it is serious about assisting immigrants who have been hurt by immigration scams. Mr. Salvadoran is clearly such a victim. As

he has stated:

3. I first applied for TPS in 2001. This status has been very important to me, as it has allowed me to live and work legally in the United States and send money to my family in El Salvador. My family is unable to survive without these funds, as our village was devastated by the earthquakes that led to El Salvador's TPS designation in early 2001.

Exhibit 1, p. 1.

Aside from one misdemeanor DUI, there is nothing adverse in Mr. Salvadoran's background. Mr. Salvadoran notes:

6. Unfortunately, I once made the mistake of driving under the influence, and was arrested for that offense. After completing an educational program, I have learned from this mistake, and have not repeated it.

Exhibit 1, p. 1.

Surely, a man who has paid for his mistakes, and then been a victim of a scam, should not suffer the harsh punishment of banishment from the United States, particularly given that USCIS was on notice that Mr. Salvadoran's "form preparer" was not authorized to assist him.

IV. CONCLUSION

Mr. Salvadoran failed to respond to the NOID in this matter because of his victimization by a "notario" of which USCIS had been previously made aware. Mr. Salvadoran has now provided the documentation requested in the NOID. In light of USCIS' commitment to combating this type of fraud, and to helping those who have been victimized by the fraud, we hope that this matter can be reopened and readjudicated.

Respectfully submitted,

Dated:

April 26, 2013

Appendix

Nancy M. Vizer
Nancy M. Vizer, P.C.
Attorney for Petitioner
Victimized Salvadoran.



SEC. IIC(2) TIMELY RE-REGISTRATION FOR TPS

03/02/2005 13:33 FAX

Ayuda, Inc.

003/008

INTERPRETER RELEASES, August 26, 1991

1111

Appendix III

Memorandum



CO 1588-C

Subject Determination of Timely
Re-registration for TPS

DMACT # 67

Date

AUG 15 1991

To All Operations Liaison Officers
All District Directors
All Officers in Charge

From Office of the Commissioner

The final regulations in the Temporary Protected Status (TPS) Program require that an alien must register annually with the District Office having jurisdiction over the alien's place of residence. The registration must be accomplished within the 30-day period prior to the anniversary of the grant of TPS. For Salvadoran nationals, the registration shall take place semiannually. The District Director may withdraw the status of an alien who fails without "good cause" to register as required by the regulations.

Officers should review 8 CFR 240.14(b)(1) concerning withdrawal of TPS. If an applicant fails to re-register in a timely manner, he or she must be given a notice of withdrawal, which provides the alien with 30 days within which to provide evidence of good cause for failure to register.

When reviewing an alien's TPS to determine if the failure to re-register was without good cause, District Directors should be generous and give the benefit of any doubt to the alien. An alien's TPS should be withdrawn only when the alien willfully fails to re-register. If an alien contends he or she did not know or forgot about re-registration, TPS should not be withdrawn.

To ensure nationwide consistency, a copy of all final withdrawals of TPS, where the only ground is the failure to re-register timely, will be sent through Regional TPS coordinators to COEXM.

Gene McNary
Gene McNary
Commissioner

1588-C
AUG 15 1991
COEXM

APPENDIX SECTION III:

Referrals and Complaints

159

SEC. IIIB FTC COMPLAINT (SPANISH)

<div style="display: flex; align-items: center;"><div>FEDERAL TRADE COMMISSION <i>PROTECTING AMERICA'S CONSUMERS</i></div></div> <div style="text-align: right; font-size: 1.2em; font-weight: bold; margin-top: 0;">Formulario de queja</div>	
Fecha: <input style="border: none; border-bottom: 1px solid black; text-align: center; font-family: monospace; font-size: 0.9em;" type="text" value=" / "/>	
Información de contacto	
<small>NOTA: Los datos escritos en este formulario serán usados para llenar el Formulario de queja en línea de la FTC en www.ftc.gov/queja. La FTC no puede presentar las quejas recibidas en papel.</small>	
Nombre/Apellido:	<input style="width: 250px;" type="text"/>
Edad:	<input style="width: 100px;" type="text"/>
Domicilio:	<input style="width: 400px;" type="text"/>
	<input style="width: 400px;" type="text"/>
Teléfono:	<input style="width: 400px;" type="text"/>
Email:	<input style="width: 400px;" type="text"/>
Información sobre la empresa	
<small>NOTA: Por favor proporcione cualquier información que usted tenga sobre la empresa o el individuo que está demandando. Si otras empresas o individuos fueron involucrados, por favor proporcione esa información en la sección de Detalles de la queja a continuación.</small>	
Nombre de la empresa:	<input style="width: 300px;" type="text"/>
Domicilio:	<input style="width: 250px;" type="text"/>
	<input style="width: 400px;" type="text"/>
Teléfono:	<input style="width: 400px;" type="text"/>
Sitio Web:	<input style="width: 400px;" type="text"/>
Detalles de la queja	
<small>NOTA: Por favor proporcione más detalles. ¿Qué hizo la empresa o el individuo para causarle daño a usted? ¿Cómo se estableció el contacto con la empresa o el individuo?</small>	
<div style="border: 1px solid black; height: 150px; margin-top: 5px; padding: 5px;"><small>(Fuente: por favor ingrese el nombre de su organización para ayudar a identificar las quejas.)</small></div>	

SEC. IIIC SAMPLE CIVIL COMPLAINT (RAMIREZ CASE)

**IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY, VIRGINIA**

EDUARDO GUERRERO FLORES,

[REDACTED]

Plaintiff,

v.

LUIS M. RAMIREZ and LUIS RAMIREZ

[REDACTED]

Defendants.

Case No. 2012-02359

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Eduardo Guerrero Flores, by and through counsel, brings this Amended Complaint against Defendants Luis M. Ramirez and Luis Ramirez and Associates, LLC.

PARTIES

1. Plaintiff Eduardo Guerrero Flores ("Plaintiff" or "Mr. Flores") resides in Fairfax County, and is a citizen of Honduras. Mr. Ramirez can be contacted through his attorneys at

[REDACTED]

2. Upon information and belief, Defendant Luis M. Ramirez ("Mr. Ramirez") is an adult resident of Fairfax County.

3. Upon information and belief, Defendant Luis Ramirez and Associates, LLC ("LRAA", together with Mr. Ramirez, "Defendants") is a commercial entity located at

[REDACTED]

4. Upon information and belief, LRAA is not registered to do business in Virginia or any other state.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action because the monetary claim exceeds \$25,000.

6. This Court also has jurisdiction over this action by virtue of its inherent power, apart from statute, to inquire into the conduct of any person, whether an individual, lay agency, or corporation, to determine whether that person is usurping the functions of an officer of the court and illegally engaging in the practice of law and to put an end to such unauthorized practice where it is found to exist. *Richmond Ass'n of Credit Men, Inc. v. The Bar Ass'n of the City of Richmond*, 167 Va. 327, 335-36, 189 S.E. 153, 157 (1937).

7. This Court has jurisdiction over Mr. Ramirez because, upon information and belief, he is a domiciliary of Virginia.

8. This Court has jurisdiction over LRAA because it has an office in Virginia.

9. In addition, this Court has jurisdiction over both Defendants because the actions of Defendants alleged herein occurred in Virginia.

10. Venue in this Court is appropriate pursuant to Va. Code Ann. § 8.01-262(3), as the Defendants regularly conduct substantial business activity in Fairfax County.

11. Venue in this Court is also appropriate pursuant to Va. Code Ann. § 8.01-262(4), as the causes of action arose in Fairfax County, Virginia.

FACTUAL ALLEGATIONS

Business Operations of Defendants

12. Upon information and belief, Mr. Ramirez is the founder, Partner and CEO of, and/or does business as, LRAA.

13. Mr. Ramirez advertised his and LRAA's services by, among other things, publishing and distributing written materials, including business cards. A true and correct copy of Mr. Ramirez's business card (the "Business Card") is attached hereto as Exhibit A.

14. Mr. Ramirez distributed the Business Card, as described more fully below, to consumers in Northern Virginia, including Plaintiff.

15. Defendants also advertised their services through the website, www.lramirezlaw.com (the "Website")¹. True and correct copies of screen shots from the Website, as of January 3, 2012, are attached hereto as Exhibit B.

16. As described more fully below, the Website was aimed at consumers nationally, including those located in Northern Virginia, such as Plaintiff.

17. Mr. Ramirez also advertised his and LRAA's services through his radio show on 920 AM, "Luis Ramirez inform you" (the "Radio Show").

18. The Radio Show is self-described as "a legal and economic radio show ... targeted to the Hispanic community." *See* Ex. B.

19. Defendants purported to perform legal and immigration services, among other services, for immigrants in Northern Virginia, as described more fully below.

¹ All future references to the Website are to the Website as it appeared on January 3, 2012, and as shown in Exhibit B.

20. According to the Website, Defendants “assist with immigration.” In addition, the Website states that one can “find out how to apply for U.S. Citizenship and Naturalization.” See Ex. B.

21. The procedures of the United States Citizenship and Immigration Service, formerly known as the Immigration and Naturalization Service (“USCIS”), are codified in Title 8 of the Code of Federal Regulations, section 292, *et seq.*, which provide that only certain individuals are permitted to represent immigrants seeking asylum, residency, work permits, or other immigration matters before the United States Government. These individuals include attorneys, law students under the supervision of, among other things, a legal aid program, and representatives accredited pursuant to 8 C.F.R. § 292.2.

22. A search of the Virginia State Bar online membership records revealed that no results or matches could be found for “Luis Ramirez.” Counsel for Plaintiff requested confirmation that Mr. Ramirez was not a member of the Virginia State Bar and received a reply e-mail stating that “[Mr. Ramirez] was not found on the Virginia State Bar’s membership roll.” A copy of the e-mail from the Virginia State Bar is attached hereto as Exhibit C.

23. Upon information and belief, Mr. Ramirez is not now, and has not been at any time relevant to the facts in this Complaint, an attorney, a law student under the supervision of a legal aid program, or an individual otherwise authorized to represent individuals in immigration matters under 8 C.F.R. § 292.2.

24. Upon information and belief, Defendant does not employ, and has not employed at any time relevant to the facts in this Complaint, representatives accredited pursuant to 8 C.F.R. § 292.2.

25. Upon information and belief, LRAA is not now, and has not been at anytime relevant to the facts in this Complaint, an organization authorized to represent consumers in immigration matters under 8 C.F.R. § 292.2.

26. Mr. Ramirez did not disclose to Plaintiff that he was not authorized to represent individuals in immigration matters before the USCIS.

27. Upon information and belief, during the times relevant to this Complaint, Mr. Ramirez did not disclose to consumers the fact that he was not authorized to represent individuals in immigration matters before the USCIS.

Written Representations

The Business Card

28. Defendants distributed the Business Card to customers, potential customers, and other consumers in Virginia in 2011, and, upon information and belief, before and after 2011.

29. Among other things, the Business Card states that LRAA is “A Professional Legal Recognized Corporation.” *See* Ex. A.

30. The Business Card states that Mr. Ramirez is the “Partner” and “CEO” of LRAA. *See* Ex. A.

31. The Business Card also states that Mr. Ramirez’s e-mail address is: lramirez@lramirezlaw.com and that LRAA’s web address is: www.lramirezlaw.com. *See* Ex. A.

32. The Business Card prominently displays the symbol of balanced scales, commonly referred to as the “scales of justice.” *See* Ex. A.

33. Defendants included the above statements and the balanced scales symbol on the Business Card in order to represent to customers, potential customers, and other consumers in

Virginia that Mr. Ramirez is qualified to, and in fact does, provide legal advice and legal assistance.

The Website

34. Defendants chose www.lramirezlaw.com as the Website address for LRAA.

35. The Website states that LRAA is comprised of “[a] group of legal and media professionals...” and that LRAA “is a recognized legal corporation....” *See* Ex. B.

36. The Website states that LRAA “offer[s] a variety of services including legal assistantship, paralegal services, lobbying services, professional translation, notary public services and much more....” *See* Ex. B.

37. The Website states that LRAA “also assist[s] with immigration....” *See* Ex. B. In a video that can viewed on the Website, Mr. Ramirez states that LRAA can “assist you with your immigration needs.”

38. The Website states that the services offered by LRAA include: paralegal services, legal assistantship, immigration, home preservation, real estate services, lobbying services, corporate and business solutions and consulting, professional translators (Spanish, Arabic, Polish, Hindi, and Punjabi), and notary public services. *See* Ex. B.

39. The Website states that LRAA “is a company that is heavily involved with the community and is featured in various different media outlets. [Mr. Ramirez] is featured every Monday, Tuesday and Wednesday at 11:00 Am on ‘Luis Ramirez inform you’ a legal and economic radio show on 920 AM targeted to the Hispanic community.” *See* Ex. B.

40. The Website also boasts that Mr. Ramirez was “featured internationally on Univision’s Primer Impacto, a news show watched all over the world. In addition, he has been

featured on new shows on CNN, Telemundo and much more as well as various news publications.” *See* Ex. B.

41. As for LRAA’s immigration work, the Website states: “Citizenship As a U.S. Citizen you have the right to vote, travel with a U.S. Passport, work as a Federal employee and much more. Learn all about these privileges and find out how to apply for U.S. Citizenship and Naturalization.” *See* Ex. B.

42. Defendants included the above statements on the Website in order to represent to customers, potential customers, and other consumers in Virginia that Mr. Ramirez is qualified to, and in fact does, provide legal advice and legal assistance.

Oral Representations

43. In or around mid-October, Mr. Flores’ wife heard the Radio Show. Mrs. Flores told Mr. Flores about Mr. Ramirez and the services LRAA provided.

44. Because one of Mr. Flores’ friends was being detained in Pennsylvania and was subject to deportation, Mr. Flores contacted Mr. Ramirez by telephone on or about October 15, 2011.

45. During the October 15, 2011 telephone conversation, Mr. Ramirez told Mr. Flores: “Yo soy abogado de inmigracion,” which in English means “I am an immigration attorney.”

46. Later that day, on October 15, 2011, Mr. Ramirez called Mr. Flores and purported to have information about his friend, namely that Mr. Ramirez had spoken to the federal government and determined that a \$4,000 bond would have to be paid to get his friend released.

47. That same day, Mr. Ramirez also told Mr. Flores that, in addition to the \$4,000 bond, Mr. Flores would have to pay \$1,500 for LRAA's services in securing the release of his friend. Mr. Ramirez told Mr. Flores to meet him at his office the next day.

48. On or about October 16, 2011, Mr. Flores met with Mr. Ramirez at the LRAA office, located at 8201 Greensboro Drive, Suite 300, McLean, Virginia 22102.

49. On the wall of Mr. Ramirez's office was a placard that said "Notario."

50. The USCIS, the Federal Trade Commission ("FTC"), and numerous other state agencies have recognized that the term "notario" is often used to deceive native Spanish speakers since, in many Latin American countries, the term "notario publico" (for "notary public") refers to "powerful attorneys with special legal credentials." USCIS – Common Scams, attached hereto as Exhibit D. *See also* FTC, An important message from the Federal Trade Commission, Avoiding Scams Against Immigrants, attached hereto as Exhibit E; New York State Office of the Attorney General, Immigration Services Fraud: Know Your Rights!, attached hereto as Exhibit F.

51. During the October 16, 2011 meeting, Mr. Ramirez again told Mr. Flores that his friend would be deported if the \$4,000 bond was not posted.

52. In reliance on these representations, Mr. Flores agreed to retain Defendants to assist him with his friend's immigration matters, and to help him post bond in exchange for his friend's release.

53. Mr. Ramirez provided Mr. Flores with a contract (the "Contract"), which was supposed to govern the terms of their relationship. A true and correct copy of the Contract, and a good faith translation of the Contract, is attached hereto as Exhibit G.

Payments to Defendants

54. Mr. Flores initially paid Mr. Ramirez \$4,000, which he understood to be payment for his friend's bond.

55. Mr. Flores paid this amount in three separate cash installments. He paid \$2,500 on October 16, 2011, \$500 on October 17, 2011, and \$1,000 on October 21, 2011. True and correct copies of the receipts for these payments are attached hereto as Exhibit H.

56. Mr. Flores made these payments in reliance upon Mr. Ramirez's representation that he was an attorney authorized to practice law in the Commonwealth of Virginia or was otherwise authorized to give advice concerning immigration matters.

57. On or about October 17, 2011, Mr. Ramirez provided Mr. Flores with a Bail Bonding receipt, purporting to show that the \$4,000 bond had been paid to Immigration Services (the "Bond Receipt"). Upon information and belief, the Bond Receipt was fabricated by Mr. Ramirez. A true and correct copy of the Bond Receipt is attached hereto as Exhibit I.

Discovery of Fraud

58. Despite Mr. Flores providing Mr. Ramirez with \$4,000 for his friend's bond, Mr. Ramirez's provision of the Bond Receipt, and Mr. Ramirez's assurances, no bond was ever posted for Mr. Flores' friend.

59. In fact, Mr. Flores' friend remained in custody. Upon information and belief, hearings were held on January 3, 2012 and February 3, 2012, and Mr. Flores' friend is going to be deported.

60. Sometime in mid-November 2011, Mr. Flores discovered that no bond had been paid for the release of his friend.

61. Upon learning that Mr. Ramirez never posted bond for his friend, Mr. Flores confronted Mr. Ramirez. Upon being confronted, Mr. Ramirez admitted that he had failed to pay the \$4,000 bond for Mr. Flores' friend's release, and orally agreed to refund the \$4,000.

62. Mr. Ramirez has refunded only \$2,700 of Mr. Flores' money. Mr. Flores has been unable to collect the remaining \$1,300.

Pattern and Practice

63. Upon information and belief, Mr. Ramirez has perpetrated similar fraudulent schemes against other victims in Virginia, Maryland, and Washington, D.C. For instance, on June 15, 2011, a *pro se* Complaint was filed in D.C. Superior Court. A true and correct copy of this *pro se* Complaint is attached hereto as Exhibit J.

64. The Plaintiff in that case stated in her claim, under oath, that:

Mr. Ramirez mislead me to believe that he was an attorney willing to represent my husband ... in a criminal case. He collected from me \$2,200 to start working on the case. On the first court date, he showed up but never introduced himself as an attorney to my husband's public defender, instead told the attorney he was my friend. Please see receipts of the monies paid for services he cannot render because he is not an attorney and defrauded me.

Ex. J (emphasis supplied).

65. The *pro se* Complaint was dismissed for inability to effectuate service.

Mr. Ramirez's Arrest

66. On January 30, 2012, Mr. Ramirez was arrested and charged with five counts of obtaining money under false pretenses in the second degree. True and correct copies of the Fairfax County Criminal Case Details for each charge are attached hereto as Exhibit K.

67. Upon information and belief, these charges were brought for similar fraudulent schemes against other victims in Virginia.

68. Mr. Ramirez was arraigned on February 1, 2012. The preliminary hearing has been continued until May 15, 2012.

COUNTS 1 THROUGH 10
VIOLATIONS OF VIRGINIA'S CONSUMER PROTECTION ACT
Va. Code Ann. § 59.1-196, *et seq*

69. Defendants are "suppliers" within the meaning of the Virginia Consumer Protection Act, Va. Code Ann. § 59.1-196, *et seq.* ("CPA"), which defines a "supplier" as "a seller ... who advertises, solicits or engages in consumer transactions...." Va. Code Ann. § 59.1-198.

70. Defendants provided "services" to Mr. Flores within the meaning of the CPA, which defines "services" to include "work performed in the business or occupation of the supplier...." Va. Code Ann. § 59.1-198.

71. Defendants advertised, solicited, and engaged in a "consumer transaction" with Mr. Flores within the meaning of the CPA, which defines a "consumer transaction" as (1) "[t]he advertisement, sale, ... or offering for sale ... of ... services to be used primarily for personal, family or household purposes...." Va. Code Ann. § 59.1-198.

COUNT 1
MISREPRESENTATION OF SOURCE,
SPONSORSHIP, APPROVAL, OR CERTIFICATION
Va. Code Ann. § 59.1-200(2)

72. Plaintiff repeats and realleges paragraphs 1 through 71 as if fully pleaded herein.

73. Defendants violated the CPA's prohibition against "[m]isrepresenting the source, sponsorship, approval, or certifications of ... services." Va. Code Ann. § 59.1-200(2).

74. Specifically, a reasonable consumer would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez had a court license or legal degree authorizing him to perform legal services and/or immigration consulting services.

75. In fact, however, Mr. Ramirez did not have a court license or legal degree authorizing him to provide legal services and/or immigration consulting services.

COUNT 2
MISREPRESENTATION OF AFFILIATION,
CONNECTION, OR ASSOCIATION
Va. Code Ann. § 59.1-200(3)

76. Plaintiff repeats and realleges paragraphs 1 through 75 as if fully pleaded herein.

77. Defendants violated the CPA's prohibition against "[m]isrepresenting the affiliation, connection, or association of the supplier, or of the ... services, with another." Va. Code Ann. § 59.1-200(3).

78. Specifically, a reasonable consumer would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez had a court license or legal degree authorizing him to perform legal services and/or immigration consulting services.

79. In fact, however, Mr. Ramirez did not have a court license or legal degree authorizing him to provide legal services and/or immigration consulting services.

COUNT 3
MISREPRESENTATION OF CHARACTERISTICS OR BENEFITS
Va. Code Ann. § 59.1-200(5)

80. Plaintiff repeats and realleges paragraphs 1 through 79 as if fully pleaded herein.

81. Defendants violated the CPA's prohibition against "[m]isrepresenting that ... services have certain ... characteristics ... or benefits." Va. Code Ann. § 59.1-200(5).

82. Specifically, a reasonable consumer would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez had a court license or legal degree authorizing him to perform legal services and/or immigration consulting services.

83. In fact, however, Mr. Ramirez did not have a court license or legal degree authorizing him to provide legal services and/or immigration consulting services.

COUNT 4
MISREPRESENTATION OF STANDARD OR QUALITY
Va. Code Ann. § 59.1-200(6)

84. Plaintiff repeats and realleges paragraphs 1 through 83 as if fully pleaded herein.

85. Defendants violated the CPA's prohibition against "[m]isrepresenting that ... services are of a particular standard [or] quality...." Va. Code Ann. § 59.1-200(6).

86. Specifically, a reasonable consumer would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez had a court license or legal degree authorizing him to perform legal services and/or immigration consulting services.

87. In fact, however, Mr. Ramirez did not have a court license or legal degree authorizing him to provide legal services and/or immigration consulting services.

COUNT 5
NO INTENTION TO PROVIDE SERVICES OF AN ATTORNEY
Va. Code Ann. § 59.1-200(8)

88. Plaintiff repeats and realleges paragraphs 1 through 87 as if fully pleaded herein.

89. Defendants violated the CPA's prohibition against "[a]dvertising ... services with intent not to sell them as advertised...." Va. Code Ann. § 59.1-200(8).

90. Specifically, a reasonable consumer would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez had a court license or legal degree authorizing him to perform legal services and/or immigration consulting services.

91. In fact, however, Mr. Ramirez did not have a court license or legal degree authorizing him to provide legal services and/or immigration consulting services, and thus intended not to sell his services as advertised.

COUNT 6
NO INTENTION TO PAY BOND AS ADVERTISED
Va. Code Ann. § 59.1-200(8)

92. Plaintiff repeats and realleges paragraphs 1 through 91 as if fully pleaded herein.

93. Defendants violated the CPA's prohibition against "[a]dvertising ... services with intent not to sell them as advertised...." Va. Code Ann. § 59.1-200(8).

94. Specifically, Plaintiff believed, based upon the Contract and Mr. Ramirez's oral representations, that Mr. Ramirez would pay the \$4,000 bond for Mr. Flores' friend's release on Mr. Flores' behalf.

95. However, Mr. Ramirez did not intend to make such bond payment at the time he represented that he would.

96. In fact, Mr. Ramirez never made the bond payment for Mr. Flores' friend's release.

COUNT 7
MISREPRESENTATIONS ON BUSINESS CARD
Va. Code Ann. § 59.1-200(14)

97. Plaintiff repeats and realleges paragraphs 1 through 96 as if fully pleaded herein.

98. Defendants violated the CPA by generally "[u]sing any ... deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction." Va. Code Ann. § 59.1-200(14).

99. Specifically, Defendants used deception, fraud, false pretense, false promise, and/or misrepresentation by circulating the Business Card to consumers. These falsities and misrepresentations include, among other things: (1) the statement that LRAA is "A Professional Legal Recognized Corporation;" (2) the use of "lramirezlaw.com" as a website address and e-

mail address; (3) the use of "Partner" as Mr. Ramirez's title; and (4) the prominent symbol of balanced scales.

100. All of the above representations would cause a reasonable person to believe that Mr. Ramirez was licensed to practice law.

101. In fact, however, Mr. Ramirez was not, and is not, licensed to practice law.

COUNT 8
MISREPRESENTATIONS ON WEBSITE
Va. Code Ann. § 59.1-200(14)

102. Plaintiff repeats and realleges paragraphs 1 through 101 as if fully pleaded herein.

103. Defendants violated the CPA by generally "[u]sing any ... deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction." Va. Code Ann. § 59.1-200(14).

104. Specifically, Defendants used deception, fraud, false pretense, false promise, and/or misrepresentation by making the Website, lramirezlaw.com, available to consumers. These falsities and misrepresentations include, among other things: (1) the use of "lramirezlaw.com" as a website address; (2) the statement that LRAA is comprised of "[a] group of legal and media professionals..." and that LRAA "is a recognized legal corporation...."; (3) the statement that LRAA "offer[s] a variety of services including legal assistantship, paralegal services, lobbying services, professional translation, notary public services and much more...."; (4) the statement that LRAA "also assist[s] with immigration...."; (5) the statement that the services offered by LRAA include paralegal services, legal assistantship, immigration, and notary public services; and (6) the invitation to "[l]earn all about these privileges and find out how to apply for U.S. Citizenship and Naturalization."

105. All of the above representations would cause a reasonable person to believe that Mr. Ramirez was licensed to practice law.

106. In fact, however, Mr. Ramirez was not, and is not, licensed to practice law.

COUNT 9
ORAL MISREPRESENTATION THAT HE WAS AN ATTORNEY
Va. Code Ann. § 59.1-200(14)

107. Plaintiff repeats and realleges paragraphs 1 through 106 as if fully pleaded herein.

108. Defendants violated the CPA by generally “[u]sing any ... deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.” Va. Code Ann. § 59.1-200(14).

109. Specifically, Mr. Ramirez orally represented to Mr. Flores that, “Yo soy abogado de imigracion,” which in English means, “I am an immigration attorney.”

110. This representation would cause a reasonable person to believe that Mr. Ramirez was licensed to practice law.

111. In fact, however, Mr. Ramirez was not, and is not, licensed to practice law.

COUNT 10
MISREPRESENTATION OF BOND PAYMENT
Va. Code Ann. § 59.1-200(14)

112. Plaintiff repeats and realleges paragraphs 1 through 111 as if fully pleaded herein.

113. Defendants violated the CPA by generally “[u]sing any ... deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.” Va. Code Ann. § 59.1-200(14).

114. Specifically, Mr. Ramirez represented that he had paid the \$4,000 bond when he provided Mr. Flores with the Bond Receipt, which states: “...security deposit money has been received from ... in custody of Luis M. Ramirez....”

115. This representation would cause a reasonable person to believe that Mr. Ramirez had paid the \$4,000 bond for Mr. Flores' friend's release.

116. In fact, however, Mr. Ramirez did not pay the \$4,000 bond for Mr. Flores' friend's release, which Mr. Ramirez has since admitted.

**COUNT 11
UNAUTHORIZED PRACTICE OF LAW
IN THE COMMONWEALTH OF VIRGINIA
Va. R. Sup. Ct., Pt. 6, § 1**

117. Plaintiff repeats and realleges paragraphs 1 through 116 as if fully pleaded herein.

118. Mr. Ramirez is not authorized or qualified to practice law in the Commonwealth of Virginia.

119. Upon information and belief, Mr. Ramirez is not a foreign attorney admitted to practice and in good standing in any state in the United States.

120. Mr. Ramirez never informed Mr. Flores that he was not admitted to practice law in the Commonwealth of Virginia. In fact, Mr. Ramirez led Mr. Flores to believe just the opposite.

121. Upon information and belief, Mr. Ramirez did not associate with an attorney authorized to practice law in the Commonwealth of Virginia at any time relevant hereto.

122. Mr. Ramirez engaged in the authorized practice of law by:

- a. Furnishing to Mr. Flores advice or services under circumstances that implied his possession of legal knowledge or skill. Va. R. Sup. Ct., Pt. 6, § I, Practice of Law in the Commonwealth of Virginia.
- b. Undertaking, for direct compensation, to advise Mr. Flores in matters involving the application of legal principles to facts or purposes or desires.

Va. R. Sup. Ct., Pt. 6, § I, Practice of Law in the Commonwealth of Virginia.

- c. Holding himself out to Mr. Flores as qualified or authorized to practice law in the Commonwealth of Virginia. Va. R. Sup. Ct., Pt. 6, § I, Practice of Law in the Commonwealth of Virginia.
- d. Holding himself out as authorized to furnish Mr. Flores advice or services under circumstances that implied his possession of legal knowledge or skill in the application of federal immigration law, rules, and regulations.

Va. R. Sup. Ct., Pt. 6, § I, R. 9.

123. Specifically, Mr. Ramirez represented that he was qualified or authorized to practice law in the Commonwealth of Virginia through the statements on the Business Card, the Website, and the oral representations made to Mr. Flores.

124. A reasonable person would believe, based upon the Business Card, the Website, and Mr. Ramirez's oral representations, that Mr. Ramirez was authorized or qualified to practice law in the Commonwealth of Virginia.

**COUNT 12
FRAUD RELATED TO ORAL REPRESENTATIONS**

125. Plaintiff repeats and realleges paragraphs 1 through 124 as if fully pleaded herein.

126. Defendants knowingly and intentionally made numerous false representations to Plaintiff that induced Plaintiff to retain Defendants' services and pay Defendants \$4,000.

127. On or about October 15, 2011, during a telephone conversation, Mr. Ramirez made the following oral representation to Plaintiff: "Yo soy abogado de inmigracion," which in English means "I am an immigration attorney."

IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY, VIRGINIA

FILED
COURT SERVICES

2012 MAR 26 PM 3:05

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

EDUARDO GUERRERO FLORES,

Plaintiff,

v.

LUIS M. RAMIREZ and LUIS RAMIREZ
AND ASSOCIATES, LLC

Defendants.

Case No. 2012-02359

PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO AMEND THE COMPLAINT

Pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia, Plaintiff Eduardo Guerrero Flores ("Plaintiff"), by counsel, respectfully moves for leave to amend the Verified Complaint and to file the First Amended Complaint (attached as Exhibit 1) against Defendants Luis M. Ramirez and Luis Ramirez and Associates, LLC (collectively, the "Defendants").

Defendants' counsel does not oppose this motion.

Background

Plaintiff filed the Verified Complaint in this action on February 15, 2012. Attached to the Verified Complaint as Exhibit C was a contract between Defendants and Plaintiff (the "Contract"), and a Spanish to English translation of the Contract that had been prepared by someone fluent in Spanish and English, but who was not a professional translator. On March 16, 2012, the day Defendants' answer or response to the Verified Complaint was due, counsel for the Defendants contacted Plaintiff's counsel and indicated that the Defendants disagreed with the translation of the Contract.¹ Although Plaintiff does not believe that the contract language is

¹ No answer or response has yet been filed by Defendants. Once Defendants raised this issue, Plaintiff granted Defendants an extension until March 23, 2012 while Plaintiff investigated the issue and made a

directly relevant to Plaintiff's claims, Plaintiff, in an effort to minimize potential dispute, requested that the contract be retranslated by a professional translation company. The proposed First Amended Complaint includes a copy of the new translation, now as Exhibit G.²

Argument

Under Rule 1:8, leave to amend "shall be liberally granted in furtherance of the ends of justice." In this instance, leave to amend should be granted because there will be no prejudice to Defendants and no burden on the Court. No discovery has been provided, the initial scheduling conference has not yet been held, and the proposed First Amended Complaint does not seek to add additional counts. Moreover, Defendants do not oppose the motion for leave to amend the Complaint.

Conclusion

For the foregoing reasons, the motion should be granted.

determination whether to amend the Complaint. Once Plaintiff made the decision to amend, Plaintiff's counsel contacted Defendants' counsel to let him know that they would be amending and that an answer or response to the Verified Complaint was not necessary.

² In amending the Verified Complaint, Plaintiff also deleted paragraphs 21, 55, and 56, which affected the numbering, and made minor administrative changes. Although the First Amended Complaint has not been verified, the factual allegations contained in paragraphs 1 through 4, 12 through 20, 22 through 49, 51 through 68, 94, 96, 109, 114, 116, 120, 126 through 134, 137 through 147, and 150 through 157 correspond to substantively identical statements in the original Verified Complaint, the truthfulness of which were verified by the Plaintiff.

Respectfully submitted,

By:



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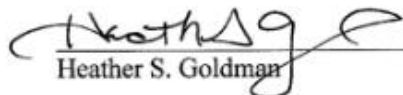
Counsel for Plaintiff

Dated: March 26, 2012

Certificate of Service

I certify that on March 26, 2012, I caused a copy of the foregoing Motion, attaching the proposed First Amended Complaint, and proposed order to be served by email and first-class mail, postage prepaid, upon counsel for Defendants:

Wayne Hartke, Esq.
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